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STATE OF MISSOURI

PUBLIC SERVICE COMMISSION

At a Hearing of the Public Service Commission, held at Jefferson City, Missouri, on the 5th day of September, . . . . . 1996.

CASE NO. EM-96-149

In the matter of the application of Union Electric Company for an order authorizing: (1) certain merger transactions involving Union Electric Company, (2) the transfer of certain assets, real estate, leased property, easements and contractual agreements to Central Illinois Public Service Company; and (3) in connection therewith, certain other related transactions.

BEFORE:

JOSEPH A. DERQUE, III, Presiding  
ADMINISTRATIVE LAW JUDGE  
KARL ZOBRIST, Chairman,  
KENNETH McCLURE,  
DUNCAN E. KINCHELOE,  
HAROLD CRUMPTON,  
M. DIANNE DRAINER,  
COMMISSIONERS.

REPORTED BY:

KELLENE K. FEDDERSEN, CSR, RPR  
ASSOCIATED COURT REPORTERS, INC.

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Emerson Electric Company.  
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17 FOR: Staff of the Missouri Public  
18 Service Commission.

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P R O C E E D I N G S

ALJ DERQUE: We need to go on the record in the matter of the application of Union Electric Company, Case No. EM-96-149.

Ms. Morgan, it's my understanding that you're representing Utilicorp and all intervenors, Utilicorp, Empire District Electric and Missouri Gas Energy; is that correct?

MS. MORGAN: That's correct.

ALJ DERQUE: Okay. I'm obliged to at least recognize the fact that representing those three clients all in a big group from one attorney is -- can be a conflict. I'll leave that up to you and your firm as to whether it is or not. I believe I'm obliged to at least acknowledge the fact --

MS. MORGAN: We understand that.

ALJ DERQUE: -- that I'm aware of it and I'm sure you understand it also. Thank you.

Off the record.

(Discussion off the record.)

ALJ DERQUE: We're on the record in Case No. EM-96-149, the application of Union Electric Company for an order authorizing certain merger transactions.

It's my understanding, Mr. Dottheim, that

1 prior to the presentation of the Stipulation and  
2 Agreement, the parties wish to enter testimony into  
3 evidence.

4 MR. DOTTHEIM: Yes, that is correct.

5 ALJ DERQUE: Enter material into evidence.  
6 Okay. The Staff may begin. How many do you have?

7 MR. DOTTHEIM: There were ten Staff  
8 witnesses. There in some instances was some  
9 supplemental testimony. We also have a Hearing  
10 Memorandum that I would suggest be marked as an  
11 exhibit. I think it generally is. And also we have  
12 the Stipulation and Agreement itself that probably  
13 should be marked as an exhibit.

14 Other than that, that is all that the Staff  
15 has to offer. I might for housekeeping purposes, and  
16 can do this also when the Commission is in the hearing  
17 room, we now have from all parties to Case No.  
18 ER-95-411, parties to that case that are not parties  
19 to the instant case, statements of position stating  
20 that they have no objection to the alteration of the  
21 currently existing alternative regulation plan, which  
22 is altered in the third year by the Stipulation and  
23 Agreement. The experimental alternative regulation  
24 plan has to commence on July 1, 1998.

25 ALJ DERQUE: I would mention that in my

1 statement to the Commission and leave it at that. I  
2 think what they have filed is pretty self -- at least  
3 Asarco, is that -- what they have filed is  
4 self-explanatory.

5 MR. DOTTHEIM: Yes. What's been filed to  
6 date are statements of position from Asarco, Doe Run  
7 Company and the Missouri Retailers Association. We  
8 also have a statement of position of the very same  
9 nature from Cominko-American, which will be filed. We  
10 have an original and 14 copies.

11 ALJ DERQUE: I think that's all you need to  
12 have to do is simply mention in your opening statement  
13 to the Commission so that they're aware. That will be  
14 satisfactory.

15 Let's do -- let's make the Hearing  
16 Memorandum No. 1, and No. 2 will be the Stipulation  
17 and Agreement.

18 Off the record.

19 (Discussion off the record.)

20 ALJ DERQUE: Hearing Memorandum, No. 1 will  
21 also -- the entire exhibit will also include some  
22 supplemental schedules?

23 MR. DOTTHEIM: Yes. That is correct. It  
24 contains the order of issues and witnesses and dates  
25 which the parties had decided prior to the settlement

1 that the issues would be heard.

2 ALJ DERQUE: Let's make it all one exhibit.

3 (Discussion of the record.)

4 (EXHIBIT NOS. 1 THROUGH 14 INCLUSIVE WERE  
5 MARKED FOR IDENTIFICATION.)

6 ALJ DERQUE: We're back on the record.

7 The Staff has offered Exhibit No. 1, the  
8 Hearing Memorandum and the accompanying schedules;  
9 No. 2, Stipulation and -- Proposed Stipulation and  
10 Agreement in this matter; No. 3 and 3HC, the rebuttal  
11 of Featerstone, No. 4 and 4HC, the rebuttal of  
12 Hyneman.

13 No. 5 and 5HC is the rebuttal of Imhoff. 6  
14 and 6HC is the rebuttal of Lin. 7 and 7HC is the  
15 rebuttal of Elliott. 8 and 8HC is the rebuttal of  
16 Moore; 9, the rebuttal of Oligschlaeger; 10 and 10HC,  
17 the rebuttal of Wallace. 11 is the rebuttal of Beck,  
18 which is marked direct.

19 12 is the supplemental rebuttal of Beck, and  
20 12P is proprietary supplemental rebuttal of Beck. 13,  
21 rebuttal of Schwieterman, and 14 is the supplemental  
22 rebuttal of Schwieterman.

23 Okay. Are there any objections to the entry  
24 of any of that into evidence?

25 (No response.)

1           ALJ DERQUE: Seeing none, Nos. 1 through 14  
2 will be admitted.

3           (EXHIBIT NOS. 1 THROUGH 14 INCLUSIVE WERE  
4 RECEIVED INTO EVIDENCE.)

5           ALJ DERQUE: Mr. Cook.

6           MR. COOK: Thank you, your Honor. Start  
7 with the direct testimony of Charles W. Mueller.

8           ALJ DERQUE: Off the record.

9           (Discussion off the record.)

10           (EXHIBIT NOS. 15 THROUGH 35 INCLUSIVE WERE  
11 MARKED FOR IDENTIFICATION.)

12           ALJ DERQUE: We're on the record. I have  
13 what's marked Exhibit No. 15, the direct of Mueller;  
14 No. 16, the direct of Brandt; 17, the surrebuttal of  
15 Brandt, which has supplemental on the cover, and 17  
16 highly confidential; 18, the direct of Borkowski; 19,  
17 supplemental direct of Borkowski; 20, the surrebuttal  
18 of Borkowski; 21, the direct of Baxter; 22, the  
19 supplemental direct of Baxter; 23, the second  
20 supplemental direct of Baxter; 24, the surrebuttal of  
21 Baxter; 25, supplemental surrebuttal of Baxter;  
22 No. 26, the direct of Rainwater; 27, the surrebuttal  
23 of Rainwater; 28, the direct of Birdsong; 29, the  
24 supplemental -- I'm sorry -- the surrebuttal of  
25 Birdsong, and 29HC; 30, the direct of Kimmelman; 31,

1 the direct of Flaherty; 32, the surrebuttal of  
2 Flaherty; 32HC, the highly confidential surrebuttal of  
3 Flaherty; 33, the surrebuttal of Nelson; 33HC, the  
4 highly confidential surrebuttal of Nelson; and 34, the  
5 surrebuttal of Reid.

6 Is there any objection to the admission of  
7 No. 15 through 34 into evidence?

8 (No response.)

9 ALJ DERQUE: Seeing none, they will be  
10 admitted.

11 (EXHIBIT NOS. 15 THROUGH 34 INCLUSIVE WERE  
12 RECEIVED INTO EVIDENCE.)

13 ALJ DERQUE: I have what's marked as Exhibit  
14 No. 35. It's a pro forma balance sheet for Ameren  
15 Corporation offered by Union Electric. Is there any  
16 objection to the admission of No. 35 into evidence?

17 (No response.)

18 ALJ DERQUE: Seeing none, it will be  
19 admitted.

20 (EXHIBIT NO. 35 WAS RECEIVED INTO EVIDENCE.)

21 MR. COOK: Thank you.

22 ALJ DERQUE: Is there anything else,  
23 Mr. Cook?

24 MR. COOK: Did you admit the others as well?

25 ALJ DERQUE: I admitted 15 through 34

1 earlier.

2 MR. COOK: Nothing else, then. Thank you.

3 ALJ DERQUE: Mr. Mills.

4 MR. MILLS: First would be the rebuttal of  
5 Trippensee.

6 ALJ DERQUE: Off the record.

7 (Discussion off the record.)

8 (EXHIBIT NO. 36 THROUGH 39 INCLUSIVE WERE  
9 MARKED FOR IDENTIFICATION.)

10 ALJ DERQUE: We're on the record. Thank  
11 you, Mr. Mills. Office of the Public Counsel offered  
12 Nos. 36 and 36HC, the rebuttal of Trippensee; 37 and  
13 37HC, the rebuttal of Burdette; 38 and 38HC, the  
14 rebuttal of Kind; and 39 and 38 -- 39HC, the cross-  
15 surrebuttal of Kind.

16 Is there any objection to the admission of  
17 those into evidence?

18 (No response.)

19 ALJ DERQUE: Seeing none, they will be  
20 admitted.

21 (EXHIBIT NOS. 36 THROUGH 39 INCLUSIVE WERE  
22 RECEIVED INTO EVIDENCE.)

23 ALJ DERQUE: Does anyone else -- do any  
24 intervenors have exhibits that they wish to offer.

25 MR. ANNIS: Yes. The MIEC, Missouri



1 Industrial Energy Consumers, have the rebuttal  
2 testimony of Morris Brubaker. It's misnamed direct.

3 ALJ DERQUE: Let's go off the record.

4 (Discussion off the record.)

5 ALJ DERQUE: Is it one piece of testimony?

6 MR. ANNIS: Yes, your Honor.

7 ALJ DERQUE: And it is the --

8 MR. ANNIS: Rebuttal testimony of Morris  
9 Brubaker.

10 ALJ DERQUE: Okay. That will be No. 40, and  
11 you need to send three copies to -- I believe the  
12 procedure is you send them to me and I get them to the  
13 reporter, I think. I believe that's right. Mr. Mills  
14 is shaking his head. He's saying that's correct.  
15 That's one of the duties of the Office of Public  
16 Counsel.

17 Is that all for the Missouri Industrial  
18 Energy Consumers?

19 MR. ANNIS: Yes, it is.

20 ALJ DERQUE: Okay. Thank you, sir.

21 Is there any other intervenors that have  
22 testimony that they wish to offer? Seeing none, we'll  
23 be off the record.

24 (Discussion off the record.)

25 ALJ DERQUE: Mr. Dottheim.

1           MR. DOTTHEIM: Mr. Derque, would you like  
2 entries of appearance or do you want to take opening  
3 statements at this point?

4           ALJ DERQUE: You can just enter your  
5 appearance when you get up.

6           MR. DOTTHEIM: All right. Steven Dottheim,  
7 Aisha Ginwalla, Roger W. Steiner, appearing on behalf  
8 of the Staff of the Missouri Public Service  
9 Commission.

10          ALJ DERQUE: Thank you. You may proceed.

11          MR. DOTTHEIM: Thank you. May it please the  
12 Commission?

13                 The Staff has submitted to the Commission a  
14 rationale of some length which addresses why the Staff  
15 entered into the Stipulation and Agreement that was  
16 filed with the Commission on July 12 of this year.

17                 Given that rationale and the length of it,  
18 my opening statements will be brief. If the  
19 Commission has not asked for that document, my  
20 comments would have covered a great deal of what is  
21 covered in that document, probably not some of the  
22 legal citations and case law that's presented in  
23 there, though.

24                 The Staff, as other parties, very closely or  
25 as best it can attempts to track what the Commission

1 does in other pending cases, in particular items such  
2 as stipulations and agreements.

3 And the Staff has attempted in this  
4 proceeding at this time and earlier to be responsive  
5 to what it believes the Commission is indicating at  
6 the present in regards to presenting stipulations and  
7 agreement to the Commission.

8 The Staff doesn't view that it has that  
9 policy for the Commission and the Stipulation and  
10 Agreement that has been presented.

11 A great many of the points that are covered  
12 in the Stipulation and Agreement are items that  
13 previously have been presented to the Commission in  
14 certain instances or in many instances the Stipulation  
15 and Agreement which was presented to the Commission  
16 last summer involving an earnings audit of Union  
17 Electric Company, Case No. ER-95-411.

18 But clearly this is a different proceeding,  
19 and there are certain features to the Stipulation and  
20 Agreement which are different.

21 The key point, and I just mention this in  
22 passing as it was mentioned in the Staff's rationale,  
23 the key point in the Stipulation and Agreement is that  
24 there's no merger premium that is explicitly provided  
25 for recovery in rates.

1           There is a recognition of transition and  
2 transaction cost through an amortization. There is a  
3 proposal for a new experimental alternative regulation  
4 plan which would commence at the conclusion of the  
5 alternative regulation plan that presently is in  
6 existence.

7           There is a change to that plan on a going-  
8 forward basis that is a change proposed to commence  
9 July 1, 1998 with the addition of an additional band  
10 in the sharing grid.

11           There is also provision for a rate reduction  
12 to occur on September 1 or around the date of  
13 September 1, 1998 for a credit to be created if that  
14 date cannot be met. The rate reduction would be based  
15 upon an average of the three years credits under the  
16 presently existing alternative regulation plan  
17 adjusted to normalize for weather.

18           It appears clearly that there will be for  
19 the first year of the presently existing plan a credit  
20 which will be provided to customers. As a consequence  
21 and because it's believed that not all of that credit  
22 is related to weather, there will be in some fashion a  
23 rate reduction in 1998.

24           But again, of course, the size of that is  
25 not known at this time and will depend upon final

1 determination of the credits for the first year which  
2 has occurred and the two remaining years.

3 Another very significant item that has not  
4 been presented to the Commission before is the  
5 proposed corporate structure of Union Electric  
6 Company, CIPSCO and Ameren Corporation as a registered  
7 public utility holding company presents any number of  
8 very significant state jurisdictional issues.

9 Those issues relate both to the jurisdiction  
10 of the FERC and the SEC in addition, of course, to the  
11 Missouri Commission. The Staff has attempted to  
12 address those issues, and it is known to the parties  
13 who have been tracking the Commission's own pleadings  
14 before the FERC that that is an area of great concern  
15 to the Commission itself.

16 Not only in the Stipulation and Agreement is  
17 the matter of jurisdiction of the FERC, the SEC and  
18 the Missouri Commission addressed, but also questions  
19 relating to just in general access to books and  
20 records and personnel of Ameren Corporation and its  
21 subsidiaries.

22 Probably the one remaining item that I  
23 haven't mentioned that is different in this proposal  
24 that's been submitted to the Commission, a new item,  
25 is a retail wheeling pilot program.

1                   And hopefully both the Stipulation and  
2 Agreement and the Staff's rationale is clear that if  
3 the Commission were to accept that proposal, that is  
4 if the Commission were to go forward with the  
5 Stipulation and Agreement, the Staff does not view the  
6 Commission as committing itself to any policy other  
7 than having Union Electric Company file a pilot  
8 program.

9                   Accepting the Stipulation and Agreement  
10 would not be a pronouncement by the Commission  
11 respecting whether the Commission might accept the  
12 program that's filed or any pronouncement on behalf of  
13 the Commission or any of the parties to the  
14 Stipulation and Agreement regarding the lawfulness of  
15 a retail wheeling pilot program.

16                   Another item that is very clear to the Staff  
17 that is of great concern to the Commission is notice  
18 to customers. We've made an effort to attempt to  
19 address that in the rationale that has been submitted  
20 to the Commission.

21                   One kind of housekeeping item is that the  
22 documents that have been submitted to the Commission  
23 to date indicate that all but one of the parties to  
24 the Stipulation and Agreement last summer, ER-95-411,  
25 have filed Statements of Position indicating no

1 problem with an alteration of the presently existing  
2 experimental alternative regulation plan in the third  
3 year to accommodate the new proposed alternative  
4 regulation plan.

5 We have and we will find this date a  
6 Statement of Position of the remaining party to that  
7 proceeding last summer indicating that it has no  
8 problem with the alteration that is proposed to the  
9 third year of the presently existing experimental  
10 alternative regulation plan.

11 One last item. Jay Moore of the Commission  
12 Staff who heads up, of course, the Commission's  
13 department financial analysis, has updated some of the  
14 schedules that are in his rebuttal testimony. We have  
15 copies. We've provided a copy to the Company for its  
16 review.

17 We would like to distribute those copies to  
18 the Commission, and Mr. Moore would explain his update  
19 of those -- of those schedules, which would provide  
20 some additional information to the Commission that we  
21 thought might be of interest.

22 Excuse me. I did have them here.

23 ALJ DERQUE: Let's go off the record a  
24 minute.

25 (EXHIBIT NO. 41 WAS MARKED FOR

1 IDENTIFICATION.)

2 ALJ DERQUE: We have what's marked as  
3 Exhibit No. 41. It's updated schedules of Staff  
4 witness Jay Moore. Mr. Dottheim, you may proceed.

5 MR. DOTTHEIM: Yes. If Moore would --  
6 Mr. Moore would provide an explanation of these  
7 updated schedules.

8 MR. MOORE: My name is Jay Moore. I'm  
9 manager of the Financial Analysis Department for the  
10 Staff. I provided updates to Schedule 15 and Schedule  
11 18.

12 COMMISSIONER ZOBRIST: Excuse me. Why don't  
13 we at least get this into evidence before we discuss  
14 it?

15 ALJ DERQUE: Do you want to offer this,  
16 Mr. Dottheim?

17 MR. DOTTHEIM: Yes. I would offer this as  
18 Exhibit 41.

19 ALJ DERQUE: Is there any objection to the  
20 admission into evidence of Exhibit No. 41?

21 MR. COOK: No objection.

22 ALJ DERQUE: Seeing none, Exhibit No. 41  
23 will be admitted.

24 (EXHIBIT NO. 41 WAS RECEIVED INTO EVIDENCE.)

25 ALJ DERQUE: Thank you. Mr. Moore, you may



1 proceed.

2 MR. MOORE: I provided an update of  
3 Schedule 15-1. This presents month-ending stock  
4 prices, movements for the period of January 1995  
5 through August of 1996.

6 This graph shows the convergence of CIPSCO,  
7 Inc. stock price to Union Electric Company stock price  
8 that occurred in August of 1995 as a result of the  
9 announcement of the proposed merger.

10 This graph also shows that UE and CIPSCO's  
11 month-ending stock prices move in the same general  
12 pattern of that of the Standard & Poor's Electric  
13 Utility Index.

14 Update Schedule 15-2 represents monthly  
15 price changes from February of 1995 to August of 1996.  
16 This graph shows CIPSCO's large percent increase of  
17 11.44 percent for the month of August 1995, which  
18 accounts for the merger of premium associated with the  
19 proposed merger.

20 Update Schedule 15-3 and 15-4 show that  
21 CIPSCO's and UE's percent change has outperformed the  
22 Electric Utility Index for the period of August 9th,  
23 1995, which was the Wednesday prior to the merger  
24 announcement, to August of 1996 and for the periods of  
25 August 16th, 1995, which was the merger after the --

1 which was the Wednesday after the merger announcement,  
2 to August of 1996.

3 CIPSCO's stock price increased 19.83  
4 percent. UE's stock price increased 5.28 percent.  
5 And the SMP Electric Index only increased 3.82 percent  
6 for the periods of August 9th, 1995 through August  
7 1996.

8 CIPSCO's stock price increased 10.51  
9 percent. UE's stock price increased 6.03 percent.  
10 And SMP Electric Utility Index increased 3.2 percent  
11 for the period of August 16th, 1995 to August 6th --  
12 excuse me -- August of 1996.

13 To date, I would conclude that UE  
14 stockholders have projected that the proposed merger  
15 will create some value for them. I believe that this  
16 is indicated by the outperformance of UE's stock price  
17 when compared to that of the Electric Utility Index in  
18 general since the merger announcement.

19 Updated Schedule 18 shows the ratio of  
20 CIPSCO's stock price over UE stock price for the month  
21 ended January 1995 to August of 1996.

22 This graph shows that the ratio of CIPSCO to  
23 UE generally increased from January of 1995 through  
24 July of 1995, which indicates an increase in CIPSCO's  
25 market value compared to UE's market value. This

1 ratio gradually increased during the month of August  
2 1995 to account for the premium being paid to CIPSCO's  
3 shareholders.

4 Over time, it is thought that the merger  
5 trans-- if the merger transaction eventually will take  
6 place, that the ratio should gradually increase to the  
7 merged stock exchange ratio of 1.03 times.

8 However, during May of 1996 and July of  
9 1996, you can see that the ratio actually dropped. I  
10 believe that these drops are associated with the  
11 negative press regarding the proposed merger here and  
12 before the Illinois Commerce Commission.

13 Even though this ratio should increase, it's  
14 not known whether CIPSCO's price will appreciate more  
15 than that of UE, if CIPSCO's stock will not decrease  
16 in value as much as UE's stock price, or if CIPSCO's  
17 price will increase somewhat while UE stock price  
18 decreases somewhat.

19 I also believe that CIPSCO's stock price  
20 would fall back several points if the proposed merger  
21 does not actually close. As of this date, I believe  
22 that the market has somewhat placed a positive value  
23 on UE's stock price associated with the proposed  
24 merger.

25 If this is the case and the proposed merger

1 does not actually close, I believe that UE's stock  
2 price will also drop somewhat but not near the  
3 magnitude when compared to CIPSCO.

4 Thank you.

5 ALJ DERQUE: Thank you, Mr. Moore.

6 Do you have anything else, Mr. Dottheim?

7 MR. DOTTHEIM: No, not at this time.

8 ALJ DERQUE: Mr. Cook for Union Electric.

9 MR. COOK: May it please the Commission and  
10 your Honor?

11 The Stipulation and Agreement that you have  
12 before you recommends that the Missouri Public Service  
13 Commission approve the merger of Union Electric and  
14 CIPSCO, Incorporated.

15 I will not repeat here all of the reasons  
16 why the merger is good for the customers of Union  
17 Electric and CIP and their shareholders, but the  
18 overriding benefit has to be considered as the \$644  
19 million of net merger savings to be realized in the  
20 first ten years after the merger.

21 I believe there's ample evidence in the  
22 record to support a finding that this merger is,  
23 quote, not detrimental to the public interest.

24 As I indicated at the end of our comments to  
25 the Staff's comments, we think that, quite the

1 contrary, that it is going to be very beneficial to  
2 the public interest.

3 In addition, in the Stipulation and  
4 Agreement, the new experimental alternative regulation  
5 plan, which I will probably eventually start calling  
6 new alt reg plan. So when that's what I say, you know  
7 where I'm coming from.

8 We believe that that ensures that the  
9 company -- that the customers of Union Electric will  
10 realize the significant benefits of this merger while  
11 also allowing the shareholders the opportunity to  
12 share in those benefits to the extent the company  
13 management can successfully implement the merger plan.

14 Moreover, the other terms of the Stipulation  
15 shield Union Electric's customers from any alleged  
16 possible ill effects of the merger.

17 More specifically, the Company's agreements  
18 concerning the Commission's jurisdiction guarantees  
19 that the protection afforded UE's customers by this  
20 Commission will not be diminished.

21 The additional terms such as those covering  
22 the general services agreement, the system support  
23 agreement, and the other details concerning Staff and  
24 Public Counsel access to company books and records all  
25 assure the Commission that the holding company's

1 structure that was proposed in this case will not be  
2 detrimental to the Commission's future oversight of  
3 Ameren or UE's operations.

4 This Stipulation and Agreement is good for  
5 UE's customers, UE's shareholders and the public  
6 interest in general. We ask that it be approved by  
7 this Commission.

8 Rather than attempt to anticipate all of  
9 your questions or even any of your questions on  
10 jurisdiction or the credit or anything else, I will  
11 not go into any of those details at this time, but  
12 obviously we are prepared to attempt to answer those  
13 questions.

14 With me also today -- I think I failed to  
15 enter my appearance initially. Hopefully that will  
16 not negate all the important things I've already said.  
17 My name is James J. Cook, Associate General Counsel.  
18 With me also is William J. Niehoff, attorney, and  
19 Ms. Eileen Bauman, legal assistant from Union Electric  
20 Company. Our address is Post Office Box 149,  
21 St. Louis, Missouri 63166.

22 Also with me at counsel table is  
23 Mr. Donald E. Brandt, Senior Vice President of Finance  
24 and Corporate Services. Also with us, sitting  
25 immediately behind us, are Mr. Charles Mueller,

1 President and Chief Executive Officer of Union  
2 Electric, Mr. William E. Jaudes, Vice President and  
3 General Counsel.

4 We also have other officers and managers who  
5 will be available should the questions that you may  
6 have tend to go to their area of expertise.

7 If you would, though, allow me to update the  
8 Commission very briefly on the status of the other  
9 regulatory approvals that we are awaiting as part of  
10 the approval of this merger process.

11 As you know, we've had to file this request  
12 at several locations. The Illinois Commerce  
13 Commission is obviously an important one. Hearings  
14 were held in that case. The final hearings were held  
15 on August the 22nd. Briefing is underway. Initial  
16 briefs will be due on September the 20th. Did I say  
17 August 22nd for the last hearing? August 22nd was the  
18 last hearing.

19 Briefs will begin to come in on September  
20 20th. It is anticipated that a hearing examiner's  
21 proposed order will be issued around November the 6th.  
22 Additional briefing is then allowed prior to a final  
23 commission order, and we would anticipate that order  
24 to come probably right before Christmas at the end of  
25 this year.

1           The Federal Energy Regulatory Commission,  
2           since this Commission filed its Motion to Defer, we  
3           have not heard anything from the Federal Energy  
4           Regulatory Commission. So we're not sure where  
5           they're going to go.

6           If the Commission would decide -- if the  
7           Federal Energy Regulatory Commission would decide to  
8           hold hearings, it appears by looking at some of the  
9           recent schedules that they have issued in other  
10          mergers that there would be an approximate six-month  
11          hearing schedule ending with an ALJ order.

12          And they've not issued any final orders  
13          after ALJ orders at this point, so we don't know how  
14          long they would -- we would wait for that.

15          So although it is possible that this  
16          afternoon we could hear that they've approved the  
17          merger, thank you very much, no need for hearings, it  
18          could come any time from today until several months  
19          from now, although we would anticipate in the fairly  
20          near future to hear whether or not they're going to  
21          set it for hearing.

22          The Securities and Exchange Commission has  
23          also a role in this matter. We've met informally with  
24          the staff of the Securities and Exchange Commission  
25          and told them generally what our plans are. We've



1 heard no grave concerns from them. It's, I don't want  
2 to say routine, but there's certainly nothing that  
3 stuck out as being unusual nature in those  
4 conversations.

5 We would anticipate making that filing later  
6 this month, most likely before the end of the month,  
7 and we would anticipate a decision there, they -- the  
8 staff has indicated that they would probably issue  
9 their opinion or their decision within one or two  
10 months following the last state or FERC action. They  
11 will wait until the states and the FERC act.

12 But they will be processing it. If there  
13 are any questions or anything like that, those will go  
14 on in the meantime. But then they will see what the  
15 final outcome is of the other actions first.

16 The Nuclear Regulatory Commission, we've  
17 made a filing there. That filing was made some time  
18 ago. We've been told the financial review has been  
19 complete, and we've not heard any questions on that.  
20 The anti-trust review is under way, and according to  
21 their internal schedule, that person or group has  
22 another two months to complete that review. And we  
23 still anticipate a decision from the NRC by the end of  
24 the year.

25 The Department of Justice will be receiving

1 the Hart-Scott-Rodino filing. We have not made that  
2 filing yet. We would anticipate doing that within the  
3 next 60 days probably.

4 We have, however, provided copies of our  
5 filings in the other jurisdictions in an informal way  
6 to the Department of Justice, and we've had informal  
7 discussions with them, and we've heard nothing  
8 negative in their review of those documents, but again  
9 this is all informal.

10 We would still hope for a closing as early  
11 in 1997 as possible. Early in '97 is a fairly wide  
12 window, but it would obviously depend on the various  
13 actions by the different commissions.

14 With that, I will sit down. Thank you.

15 ALJ DERQUE: Thank you, Mr. Cook. The  
16 Office of the Public Counsel, Mr. Mills.

17 MR. MILLS: Thank you. May it please the  
18 Commission?

19 My name is Lewis Mills. I'm here on behalf  
20 of the Office of the Public Counsel. My address is  
21 P.O. Box 7800, Jefferson City, Missouri 65102.

22 I don't have a prepared opening statement.  
23 I anticipate that the Commission will have a great  
24 deal of specific questions for us. Like Mr. Cook,  
25 I've not tried to anticipate those.

1           We had, when we filed our testimony, a  
2           number of concerns with the merger as it was  
3           structured. As you can see from the face of the  
4           Stipulation and Agreement, we believe all those  
5           concerns were addressed.

6           And as it states in the Stipulation and  
7           Agreement, we believe that as it is currently  
8           proposed, it is not detrimental to the public  
9           interest, which we believe is the standard the  
10          Commission needs to follow.

11          I have nothing further at this time. I'd be  
12          happy to answer any questions. We have members of the  
13          technical staff of the Public Counsel's office here as  
14          well.

15          Thank you.

16          ALJ DERQUE: Thank you, Mr. Mills.

17          Statements, if any, from intervenors for the  
18          Missouri Industrial Energy Consumers, Mr. Annis.

19          MR. ANNIS: May it please the Commission?

20          My name is Mike Annis. I am with the Peper  
21          Martin law firm, 720 Olive Street, 24th Floor,  
22          St. Louis, Missouri 63101.

23          The Missouri Industrial Energy Consumers  
24          supports the Stipulation and Agreement in this case.  
25          We believe that it is a product of extensive

1 negotiation. We have here today an expert witness,  
2 Morris Brubaker, who will be able to answer any  
3 questions that the Commission may have.

4 Thank you.

5 ALJ DERQUE: Thank you, sir. Trigen  
6 St. Louis, Mr. French.

7 MR. FRENCH: Yes. May it please the  
8 Commission?

9 Richard W. French, French & Stewart Law  
10 Offices, 1001 Cherry Street, Suite 302, Columbia,  
11 Missouri, appearing today on behalf of  
12 Trigen-St. Louis Energy Corporation.

13 Trigen-St. Louis signed the Stipulation and  
14 Agreement which has been presented to the Commission.  
15 It has no statement to make at this time.

16 ALJ DERQUE: Thank you, Mr. French.  
17 Representing Utilicorp, Empire District  
18 Electric and Missouri Gas Energy, Ms. Morgan.

19 MS. MORGAN: Sondra B. Morgan of the law  
20 firm Brydon, Swearingen & England, Post Office  
21 Box 456, Jefferson City, Missouri, representing  
22 Utilicorp United, Inc., Empire District Electric  
23 Company and Missouri Gas Energy, a division of  
24 Southern Union.

25 All of these parties were signatories to the

1 Stipulation and Agreement that you have before you.  
2 Subject to the conditions and modifications set forth  
3 in that agreement, we believe that the merger is not  
4 detrimental to the public interest and should be  
5 approved by the Commission.

6 ALJ DERQUE: Thank you.

7 Laclede Gas Company, Mr. Byrne.

8 MR. BYRNE: I'm Thomas M. Byrne. My address  
9 is 720 Olive Street, St. Louis, Missouri 63101,  
10 representing Laclede Gas Company.

11 Laclede Gas Company does not oppose the  
12 Stipulation and Agreement, and we have no opening  
13 statement.

14 ALJ DERQUE: It's my understanding that --  
15 that's correct. It's my understanding that Laclede  
16 Gas Company has filed a statement waiving their due  
17 process right to a hearing and to cross-examine  
18 witnesses in this matter; is that correct?

19 MR. BYRNE: That is correct.

20 ALJ DERQUE: Thank you, Mr. Byrne.

21 The Attorney General's office, Mr. Hylton.

22 MR. HYLTON: May it please the Commission?

23 My name is Daryl Hylton from the Missouri  
24 Attorney General's Office, Post Office Box 899,  
25 Jefferson City, Missouri 65109.

1 I represent the State of Missouri at the  
2 relation of the Attorney General's Office. We are  
3 signatories to the agreement and support the merger  
4 pursuant to the terms of the Stipulation and  
5 Agreement.

6 ALJ DERQUE: Thank you, Mr. Hylton.  
7 Kansas City Power and Light, Mr. Fischer.

8 MR. FISCHER: Yes, your Honor. James M.  
9 Fischer, 101 West McCarty --

10 ALJ DERQUE: Excuse me. Mr. Fischer, could  
11 you step up to the microphone it's awfully hard to  
12 hear.

13 MR. FISCHER: Let the record reflect the  
14 appearance of James M. Fischer, 101 West McCarty  
15 Street, Suite 215, Jefferson City, Missouri, and also  
16 the appearance of Bill Riggins, Kansas City Power and  
17 Light Company, 1201 Walnut Street, Kansas City,  
18 Missouri 64141-9679.

19 We on behalf of Kansas City Power and Light  
20 have signed the stipulation. We would waive our  
21 opening statement at this time.

22 ALJ DERQUE: Thank you, Mr. Fischer. Is  
23 there a representative here from Illinois Power? Is  
24 there an attorney representing the IBEW labor unions?  
25 Is there an attorney here representing the labor

1 unions? No. Okay. Is there anyone I left out  
2 accidentally? No. All right.

3 ALJ DERQUE: Chairman Zobrist.

4 COMMISSIONER ZOBRIST: Let me ask some  
5 questions with regard to the anti-trust matters.

6 Why, Mr. Cook, is the Hart-Scott-Rodino  
7 filing being made, at least in my view, a little bit  
8 late in the process? Was there a reason for this?

9 MR. COOK: Yes, your Honor. There is a time  
10 limit during which an approval by the Attorneys  
11 General of the states and the Department of Justice is  
12 good, and if the merger is not closed within that  
13 window, then you've got to do it again.

14 And we do not anticipate that it will take a  
15 long time for that approval to be made. So we've been  
16 waiting until we get further down the road in the  
17 other jurisdictions.

18 COMMISSIONER ZOBRIST: And you said you  
19 anticipate making that filing in about 60 days?

20 MR. COOK: Yes.

21 COMMISSIONER ZOBRIST: Does the filing need  
22 to be made at the Federal Trade Commission as well?

23 MR. COOK: I don't believe so at this time,  
24 but we're not planning on that. We will be checking  
25 on it, obviously.

1                   COMMISSIONER ZOBRIST: Mr. Dottheim, in  
2                   evaluating the market power issues here when we see  
3                   these two companies merging together, it's generally  
4                   my impression that this is probably more of a matter  
5                   that would concern the State of Illinois rather than  
6                   the State of Missouri because the acquisition by the  
7                   holding company deals with an Illinois company rather  
8                   than a Missouri company.

9                   I'd like to have your thoughts on that and a  
10                  statement as to what concerns you may see, why any  
11                  concerns should not be paramount in our mind.

12                 MR. DOTTHEIM: Market power is not an issue  
13                 that the Staff has traditionally presented to the  
14                 Commission. The issue itself is addressed in a  
15                 limited manner in the rebuttal testimony of Mark L.  
16                 Oligschlaeger.

17                 It is an issue that seems to have taken  
18                 greater significance with the changes that are  
19                 occurring at the FERC with open access transmission  
20                 service and the Energy Policy Act of 1992 just opening  
21                 up wholesale sphere to competition.

22                 It's an issue that some might argue, so long  
23                 as there is no retail competition in Missouri, that it  
24                 may not be a paramount issue.

25                 Now, it may become, even under that



1 thinking, a significant issue in that there is a  
2 proposal for an experimental retail wheeling program,  
3 and as a consequence, that although the Staff has not  
4 presented testimony to the Commission in that area  
5 previously, that might be something that would be  
6 appropriate, the Commission at least may deem it  
7 appropriate and want to see testimony filed respecting  
8 that associated with the retail wheeling pilot program  
9 docket.

10 COMMISSIONER ZOBRIST: Mr. Mills, do you  
11 have any views on whether this merger creates any  
12 market power problems for us as the statutes exist  
13 right now and the way our regulations exist?

14 MR. MILLS: Much like the Staff, we didn't  
15 look at that issue in any great detail, partly  
16 because, as Mr. Dottheim pointed out, there's not  
17 currently a retail market for electricity.

18 As far as the wholesale market goes, we took  
19 a cursory look at that and did not believe there is  
20 undue market power created by this merger.

21 And also, as you alluded to in framing your  
22 question to the extent that there may be the creation  
23 of some, I don't want to say excess market power, but  
24 some market advantage --

25 COMMISSIONER ZOBRIST: Concentration.

1           MR. MILLS:  -- concentration in the new  
2 Ameren Company, it's nice that it's a Missouri  
3 company.  If you have -- if you have somebody that's  
4 going to be -- that's going to be competing at an  
5 advantage with other companies, it certainly is nice  
6 to have it based in Missouri rather than an outside  
7 company competing with our own companies.

8           So those are the ways that we looked at the  
9 question, and from those standpoints we didn't really  
10 see a problem.

11           COMMISSIONER ZOBRIST:  Mr. Cook, do you have  
12 any comment?

13           MR. COOK:  I was just going to say that  
14 we've addressed this at some length in our FERC filing  
15 and do not see that there's a market power problem.  
16 In fact, we believe that the addition of the many  
17 interconnections that we have certainly at the  
18 wholesale level would alleviate any appearance of a  
19 market power problem.

20           We think that in comparison to some of the  
21 other mergers in other areas of the country where  
22 there's more constraint on transmission access, that  
23 we're very well situated for that.  It is not really a  
24 problem for us.

25           COMMISSIONER ZOBRIST:  Well, in your view,

1 will the merger result in the new company having a  
2 preferential access to transmission facilities that  
3 could be needed by competitors?

4 MR. COOK: No, not a preferential access  
5 that would be needed by competitors. It brings under  
6 one holding company a larger number of transmission  
7 interconnections with a whole variety of generation  
8 sources.

9 And I think, in fact, what that does is,  
10 absent the merger, someone in the southwest of our  
11 service territory trying to purchase power from the  
12 northeast or CIPS territory would have to go through  
13 two utilities even under the new FERC regulations.

14 Whereas, now there would be just one tariff  
15 to get all the way through the two systems, which  
16 would then be virtually one system.

17 COMMISSIONER ZOBRIST: I've got a few  
18 questions, and I know probably the other Commissioners  
19 do, on the retail wheeling pilot program. We're going  
20 to probably break in about five minutes, but I'd like  
21 to ask just a couple of questions about this.

22 Mr. Dottheim, is it fair to say that if  
23 you -- if Staff did not believe that a pilot program  
24 proposing retail wheeling were absolutely blatantly  
25 illegal, it wouldn't be a part of this Stipulation and

1 Agreement?

2 MR. DOTTHEIM: That is something, even if  
3 the Staff thought that it -- that it was unlawful,  
4 that is the Staff's view. That is, if that were the  
5 case, the Staff would present that view to the  
6 Commission in the context of that retail wheeling  
7 pilot program docket.

8 The Staff doesn't view that the Commission  
9 by accepting the Stipulation and Agreement would be  
10 committing itself to anything other than creating a  
11 docket based upon the filing from Union Electric  
12 Company to hear that proposal.

13 It is a subject matter, of course, that is  
14 at the cutting edge of regulation, electric regulation  
15 at this time, and it may be, independent of the  
16 Stipulation and Agreement, something that some company  
17 might file or an item that the Commission on its own  
18 motion might create a docket.

19 And if the Staff thought that the proposal  
20 was unlawful, the Staff would make that representation  
21 to the Commission with the legal support for which the  
22 Staff opinion is based.

23 So even if the Staff might believe that,  
24 given the status of certain statutes, the  
25 anti-flipflop statutes as they're generally referred

1 to, change in supplier statutes that make it  
2 questionable whether retail wheeling is lawful, for  
3 purposes of Stipulation and Agreement and affording  
4 the Commission an opportunity to address that question  
5 is something that the Staff was willing to go forward  
6 on, so long as all the additional language that is  
7 found in the Stipulation and Agreement were included  
8 in the Stipulation and Agreement.

9 That is, indicating hopefully an  
10 understanding by all the parties that there is no  
11 commitment on behalf of the Commission as to whether a  
12 retail wheeling pilot project is lawful by the mere  
13 willingness of the Commission to open up such a  
14 docket.

15 COMMISSIONER ZOBRIST: The opening of a  
16 docket was not specifically addressed in the  
17 pleadings.

18 Mr. Cook, does Union Electric concur that  
19 the opening of a separate docket with regard to the  
20 proposed program is the way to proceed?

21 MR. COOK: Yes. The Company anticipates  
22 that when we make our filing at that time it would be  
23 in the form of proposed tariffs or something similar  
24 to that that would suggest, then, that a docket would  
25 be opened for the parties to then officially

1 participate.

2 COMMISSIONER ZOBRIST: Mr. Mills.

3 MR. MILLS: If I may, I think perhaps  
4 Mr. Dottheim stated your, as the Commission,  
5 obligation too strongly. I think he may have stated  
6 that the Commission would be obligated to open a new  
7 docket for that filing, and I don't believe that  
8 there's anything in the Stipulation and Agreement that  
9 even requires the Commission to go that far.

10 Should the Commission look at the filing and  
11 determine on its face that it's unlawful, I don't  
12 believe the Commission is obligated to docket it as a  
13 case.

14 COMMISSIONER ZOBRIST: I didn't see anything  
15 one way the other. I personally believe that opening  
16 a docket in some form is the way to proceed, but  
17 that's --

18 MR. MILLS: I would assume that would be  
19 case. I just wanted to clarify that we don't view the  
20 Commission's obligated to do that.

21 MR. COOK: I believe the only obligation  
22 that the retail wheeling provision puts on anyone in  
23 an affirmative manner is for the company to seek  
24 substantive input and to make a filing with the  
25 Commission, and then the other parties have indicated

1 what they would or might not do with that filing.

2 COMMISSIONER ZOBRIST: Mr. Annis, I  
3 understand that your clients were the driving force  
4 behind this program; is that correct?

5 MR. ANNIS: That's correct.

6 COMMISSIONER ZOBRIST: What are your views  
7 on how we should proceed?

8 MR. ANNIS: Certainly opening up a docket as  
9 Mr. Dottheim has suggested is the best force. That is  
10 exactly what we've done -- well, similar to what we've  
11 done in Illinois. And I concur with Mr. Cook's  
12 position as to what obligations the stipulation sets  
13 forth.

14 COMMISSIONER ZOBRIST: We're going to take a  
15 break. Let me just make two comments. I think that  
16 there is room for the Commission to maneuver within a  
17 docket, and I think that that's a good issue, a good  
18 way to proceed.

19 And I would encourage the parties, you know,  
20 if and when we reach that stage, to give us the  
21 benefit of their advice, and obviously that includes  
22 Staff and Office of Public Counsel in that as well.

23 I want to compliment all the parties on the  
24 materials that were presented to the Commission. They  
25 were very helpful. We said the same thing when

1 Laclede Gas Company was here a few weeks ago, that we  
2 appreciate being educated beforehand, and we view this  
3 as a continuing process when we have stipulations and  
4 agreements to educate ourselves in a different fashion  
5 as if it -- a different fashion than a contested rate  
6 case.

7 This certainly benefits the Commissioners,  
8 and we can read it and rely upon to make a  
9 well-reasoned decision.

10 ALJ DERQUE: Thank you. We're off the  
11 record.

12 (The noon recess was taken.)

13 ALJ DERQUE: We're back on the record in  
14 Case No. EM-96-149.

15 MS. SMITH: If I may, I'm Michelle Witaker  
16 Smith. I'd like to enter my appearance on behalf of  
17 the Attorney General, and I'm substituting for  
18 Mr. Daryl Hylton who was called away for a family  
19 medical emergency.

20 ALJ DERQUE: Thank you, Ms. Smith.  
21 Mr. Cook.

22 MR. COOK: If I might, I over the lunch hour  
23 was able to check with my staff on a question  
24 concerning the Hart-Scott-Rodino filing at the SEC.  
25 The filing was made simultaneously -- the



1 Hart-Scott-Rodino filing was made simultaneously with  
2 the SEC and the Department of Justice.

3 Our understanding, however, is that there's  
4 an agreement between those two organizations that the  
5 Department of Justice reviews the utility cases, and  
6 so we don't anticipate that the SEC will do anything  
7 with it actually, but it is filed there.

8 COMMISSIONER ZOBRIST: I always thought that  
9 it was filed in both places, but thank you. I  
10 appreciate that.

11 I'd like to get back to the retail wheeling  
12 discussion that we had before the lunch break. I  
13 think we were talking procedurally about the method by  
14 which the Commission would consider the proposal.

15 Mr. Cook, I think that the Agreement said  
16 that proposal is that it would be filed before March  
17 of 1997 or that would be the prospective date of any  
18 project.

19 MR. COOK: That would be the date that we  
20 would file it by.

21 COMMISSIONER ZOBRIST: When do you  
22 anticipate filing your proposal?

23 MR. COOK: That would be March of --  
24 March 1st of '97 would be the deadline. We would file  
25 it prior to that time, no later than that date.

1                   COMMISSIONER ZOBRIST: Well, I'm just asking  
2 because we've got particularly in the  
3 telecommunications industry a lot of things going on  
4 this fall. I'm just trying to get a feel for when you  
5 think your proposal might be filed, just assuming that  
6 a decision by this Commission comes out within 30  
7 days.

8                   MR. COOK: I would be surprised if it were  
9 filed much before that date. We were going to attempt  
10 to file it earlier than that, but I -- between the  
11 fact that we are going to seek substantive input from  
12 other parties, the fact that people in our own company  
13 who will be putting this together have been working on  
14 some of the other things that this Commission is  
15 looking at as well as the merger, I don't think it's  
16 likely to be filed much before that date.

17                   COMMISSIONER ZOBRIST: Okay. If this  
18 Commission itself decided to open some kind of a  
19 docket, either a generic docket, be it retail wheeling  
20 or some type of a rulemaking inquiry, for example like  
21 the docket that we have on intraLATA presubscription,  
22 would that -- do you foresee anything like that done  
23 independently by this Commission would harm or deter  
24 you from proceeding on your project?

25                   MR. COOK: Well, it would not deter us from

1 proceeding on the pilot project. I think that it  
2 would probably be a question to be answered either by  
3 the parties as a suggestion to the Commission or by  
4 the Commission itself as to what to do then if it  
5 decides that it has a generic proceeding that it would  
6 like to pursue at the same time we are filing this.

7 It's a possibility that those could be  
8 joined. It's possible that they could be done  
9 separately. I'm not sure what would be more  
10 appropriate.

11 But unless otherwise directed, it would be  
12 our intent to go ahead and file this on that time, by  
13 that date, even if the Commission were looking at that  
14 issue in a generic sense, I believe.

15 COMMISSIONER ZOBRIST: Has your company  
16 formulated any position as to whether a pilot project  
17 can be undertaken without specific enabling  
18 legislation?

19 MR. COOK: We are comfortable with the  
20 Commission authorizing a pilot project. I would not  
21 go so far as to say we have that same level of comfort  
22 on a permanent retail wheeling proposal.

23 COMMISSIONER ZOBRIST: And can you detail  
24 for me a little bit why you have a level of confidence  
25 that a pilot program could be implemented under the

1 current statutory scheme?

2 MR. COOK: I think one, a couple of the  
3 cases that were mentioned in the Staff's memorandum  
4 concerning the ability of the Commission to authorize  
5 experiments, I think clearly allows the Commission to  
6 do that within certain parameters. I'm not sure that  
7 those parameters have ever been set really.

8 Plus, I think the fact that those who are  
9 most likely to object to that -- those who are likely  
10 to object pursuant to other laws, such as the  
11 anti-flipflop law, would be the company itself. So we  
12 would not be objecting in this particular case.

13 COMMISSIONER ZOBRIST: I want to switch  
14 gears a little bit and ask, because I know some of the  
15 other Commissioners have some questions about retail  
16 wheeling, but I want to ask two other fairly small  
17 questions, and then I'll pass on to another  
18 Commissioner.

19 The accounting controls between affiliates,  
20 it's discussed in the Stipulation and Agreement, I  
21 think in Section 8, pages 22 and 23. I wanted to try  
22 to clarify in my own mind what was going on here.

23 I think Staff, Mr. Dottheim, you mentioned  
24 that there was an interplay between Section 8A and  
25 Section 8C, and I may have been reading this just too

1 late at night, but I didn't understand the distinction  
2 that you were making about certain events occurred,  
3 when one section would come into play versus the  
4 other.

5 MR. DOTTHEIM: I'm sorry. I would have to  
6 go back and take a look at that myself.

7 COMMISSIONER ZOBRIST: Section 8A deals --

8 MR. DOTTHEIM: I don't know -- I think

9 COMMISSIONER ZOBRIST: Section 8A deals with  
10 access to books, records and personnel, and then  
11 Section C dealt with accounting controls. And you  
12 made a statement, I think it was at page 29 -- maybe  
13 it was a little bit later. Maybe it was on page 31,  
14 that said that -- at the top of page 31, Section 8A  
15 provides that transaction rules for accounting  
16 controls for similarly situated electric utilities  
17 shall apply in lieu of Section 8C.

18 And I just -- I'm missing the effect of  
19 what's the difference here?

20 MR. DOTTHEIM: I am sorry for the confusion.  
21 I think what I was attempting to indicate is the  
22 tie-in to the Commission's adoption, possible adoption  
23 of rules, affiliated transaction rules that might in  
24 essence supersede or supplant, may cover the very same  
25 subject matter that's addressed in 8C.

1           And Union Electric Company has indicated  
2 that, although it has agreed to various provisions in  
3 the Stipulation and Agreement, it has also indicated  
4 that it doesn't want to be held to a higher standard  
5 than other companies.

6           And I think that's a reference to whatever  
7 other action, such as the rulemaking docket, the  
8 investigatory docket, Case No. 00-96-329.

9           If the Commission in that docket would adopt  
10 some accounting controls to address affiliated  
11 transactions to attempt to ensure and facilitate full  
12 review and protect against cross-subsidization, Union  
13 Electric Company might argue that that rulemaking, if  
14 there is rulemaking, whatever the Commission might  
15 adopt, should apply to Union Electric company in lieu  
16 of its agreement under Section 8C.

17           So there -- it was an effort on my part to  
18 try to be precise, which I obviously was not, as that  
19 there's a potential tie-in to other actions that the  
20 Commission may take, and that being in particular the  
21 00-96-329 docket which will be addressing hopefully  
22 the transaction presumably and access to books and  
23 records, access to personnel and offices of companies.

24           And that, I think, was the tie-in I was  
25 trying to make and trying to indicate that that

1 applied to both Section 8A and 8C.

2 COMMISSIONER ZOBRIST: All right. So the  
3 point that Staff is making and I guess the parties  
4 have agreed to is that regardless of other actions  
5 that the Commission may take in that rulemaking  
6 proceeding, this Stipulation and Agreement will govern  
7 the conduct of Union Electric as far as the merger is  
8 concerned?

9 MR. DOTTHEIM: At this point. I think Union  
10 Electric may want to argue at a future time that if  
11 the Commission adopts rules that are different than  
12 arguably what is provided for in Section 8A and 8C, if  
13 Union Electric -- if the Commission adopts rules in  
14 that rulemaking docket, then those rules should apply  
15 to Union Electric Company in lieu of 8A and 8C.

16 COMMISSIONER ZOBRIST: Okay.

17 MR. DOTTHEIM: And the memo makes reference  
18 about similarly situated companies, entities. The  
19 argument might be made in the Case No. 00-96-329  
20 docket that, for example, Union Electric Company as a  
21 subsidiary of a registered public utility holding  
22 company is differently situated than the other  
23 electric utilities in the state because Union Electric  
24 Company is the only subsidiary of a registered public  
25 utility holding company.

1           And, therefore, rules that might apply to  
2           the other electric utility companies that might be a  
3           division, such as hypothetically Missouri Public  
4           Service, a division of Utilicorp United, one set of  
5           rules might be appropriate in that situation, and a  
6           separate set of rules might be appropriate to apply to  
7           a subsidiary of a registered public utility holding  
8           company.

9           COMMISSIONER ZOBRIST: Mr. Cook, as I  
10          understand it, then, although Union Electric would be  
11          free to make that argument in a subsequent proceeding,  
12          depending upon what the Commission would do, you've  
13          agreed here to be bound by the terms of Section A?

14          MR. COOK: The intent of A and C is to say  
15          that prior to the setting, the promulgation of some  
16          affiliate transaction rules or something like that,  
17          that we will abide by what we said here as access to  
18          books, records, personnel and accounting controls.

19          Should there be a rulemaking that sets those  
20          rules, that would cover that sort of thing, then we  
21          wish to be bound by those rules and not what this --  
22          this one doesn't get very specific. It just says  
23          we're going to open it up. But should those rules be  
24          different, we don't want our treatment to be different  
25          from other similarly situated companies.



1           So I think basically I'm agreeing with what  
2 Steve has said. If you don't decide that you're going  
3 to have any affiliate transaction rules, then we will  
4 clearly for the indefinite future be bound by A and C.  
5 If you did come up with rules and they apply to us,  
6 then we would be bound by those rules and not A and C.

7           COMMISSIONER ZOBRIST: Mr. Dottheim, is that  
8 your understanding?

9           MR. DOTTHEIM: Yes. But I think the Staff  
10 would be looking for in a rulemaking such as might  
11 occur in 00-96-329 something explicitly forthcoming  
12 from the Commission that unquestionably made it clear  
13 that the rules were to apply to similarly situated  
14 electric utilities, for example, and what are  
15 similarly situated electric utilities.

16           COMMISSIONER ZOBRIST: Well, I guess the  
17 point that I just want to make certain is that you've  
18 agreed to be covered by these rules here in Section 8,  
19 and if at a future time in the docket Mr. Dottheim's  
20 referring to the matter is raised, then, of course,  
21 you would be free to express your opinion as to how  
22 the obligations upon your company should either be the  
23 same or be changed?

24           MR. COOK: Yes.

25           COMMISSIONER ZOBRIST: Okay. All right.

1 Related to rules, of course, are the rules that bind  
2 you by the federal agencies, FERC and the SEC. And I  
3 understand the commitments that were made by Union  
4 Electric management, and I believe you reiterated  
5 those in page 8, and I appreciate your senior  
6 management being here.

7 I would just like to have -- Mr. Mueller, I  
8 appreciate your being here. I would like to have you  
9 advise me if you, as a representative of the company  
10 and the board of directors, do support these  
11 commitments made here in to the Missouri Public  
12 Service Commission.

13 MR. MUELLER: Your Honor, we do support  
14 these commitments. Our contention is that we will be  
15 bound by the rules that we had been bound by and no  
16 more, no less. That's basically our commitment.  
17 That's our intent.

18 COMMISSIONER ZOBRIST: And I appreciate that  
19 on your behalf, on behalf of your board and your  
20 company.

21 I'll pass.

22 ALJ DERQUE: Vice Chair Drainer.

23 COMMISSIONER DRAINER: Good afternoon. I  
24 just have a couple questions and a couple statements I  
25 wish to make.

1                   First, I too would like to thank  
2 Mr. Dottheim for the excellent review paper for us on  
3 the Stipulation and Agreement. It has gone a very  
4 long way to answering many of my questions, which  
5 shortens this procedure, and I believe you've done an  
6 excellent job of anticipating what some of our  
7 concerns would be and addressing that. Thank you very  
8 much for that.

9                   I also want to thank you, Mr. Cook, for your  
10 additional follow-up to the comments because that lets  
11 me know that you too read them and want to add your  
12 own flavor and thoughts to the Stipulation and  
13 Agreement, and it lets us know what you're committing  
14 to and where you may have some differences of  
15 position, and that too helps me think through this  
16 process.

17                   So it was a very good effort on both your  
18 parts, and I appreciate it.

19                   MR. COOK: Thank you.

20                   COMMISSIONER DRAINER: Furthermore, I would  
21 like to -- Chair Zobrist has done an excellent job of  
22 asking some of the questions already. So I'm going to  
23 follow up with what was one of my last questions and I  
24 believe his last question.

25                   Mr. Cook, in your comments, you do make a

1 statement that Union Electric has never gone back on a  
2 commitment it has made to this Commission and has no  
3 intention of ever doing so.

4 So I believe that Mr. Mueller has addressed  
5 that, that you are committed to the agreements that  
6 you're making to this Commission --

7 MR. COOK: That's correct.

8 COMMISSIONER DRAINER: -- and will follow  
9 forward with those commitments?

10 MR. COOK: Absolutely.

11 COMMISSIONER DRAINER: I appreciate that.

12 Now, would you clarify for me, with respect  
13 to some of your comments on your alternative  
14 regulation plan, in layman's terms, the difference  
15 between the collection and temporary holding of funds  
16 or the way the current regulatory plan would operate  
17 with respect to that and how the new plan does differ,  
18 or if it does differ.

19 MR. COOK: There is no difference in that  
20 respect. The difference that I was raising in my  
21 comments was to the characterization of what those  
22 credits are.

23 And I felt that the Staff was suggesting  
24 that they were a recognition of overearning through  
25 the entire sharing period, and so they were a return

1 to the customer of money that they had overpaid in  
2 effect during that period.

3 And our view of it is that at the end of the  
4 sharing period, you look to see what the company  
5 earned, and then you determine that -- at the end of  
6 the period we determine that the company's rate of  
7 return is X and, therefore, a credit is due.

8 That could have occurred within just the  
9 last month of the -- of the sharing period, or the  
10 reverse is just the same. It could be that we had  
11 been earning well at the beginning and then there was  
12 a bad month or two and the reverse occurred.

13 It's really just a view of the  
14 characterization of what that credit was, and I don't  
15 believe there's any difference in the way it's been  
16 treated in the -- in the new plan.

17 COMMISSIONER DRAINER: Now, with the new  
18 plan, there's an extra grid.

19 MR. COOK: Yes.

20 COMMISSIONER DRAINER: And that additional  
21 grid basically -- well, two things. One, it's bumping  
22 it up to earning greater than 16 percent versus the  
23 current grid that goes to earnings greater than  
24 14 percent. So that has -- is one addition. But with  
25 the 14 to 16 percent, there is now that additional 10

1 percent sharing --

2 MR. COOK: Uh-huh.

3 COMMISSIONER DRAINER: -- with UE, and 90  
4 percent sharing with the customer?

5 MR. COOK: Correct.

6 COMMISSIONER DRAINER: Can you explain to me  
7 why this change was made?

8 MR. COOK: I'm going to ask Mr. Brandt to  
9 address that.

10 COMMISSIONER DRAINER: Okay.

11 MR. BRANDT: Your Honor, last year about  
12 this time when the first sharing plan, alternative  
13 regulatory plan was approved by the Commission and was  
14 received generally very well within the financial  
15 community as a very progressive and positive step both  
16 for Missouri regulation and for Union Electric, the  
17 only criticism that we really received of the plan is  
18 it's supposed to be an incentive plan and at 14  
19 percent, we essentially get capped at that level and  
20 then everything goes back to customers, and what  
21 incentive is there for the company once you hit that  
22 14 percent level to continue.

23 And that was something we had brought up,  
24 and I think, from Mr. Dottheim's memoranda, it was  
25 something that the Staff was aware of or had taken

1 into consideration.

2 COMMISSIONER DRAINER: Mr. Dottheim?

3 MR. DOTTHEIM: Yes, that is accurate. This  
4 is obviously something by the fact that it appears in  
5 the Stipulation and Agreement, the Staff did not  
6 consider it to be inappropriate.

7 And the Staff was most interested in what  
8 Mr. Brandt reported to us, as he's just done a little  
9 earlier here. And, of course, the Stipulation and  
10 Agreement is the result of negotiations. One may be  
11 able to move in one direction so as to be able to  
12 possibly achieve something on another item.

13 So in the total picture of the Staff's  
14 negotiating with the Company, the Staff did not  
15 consider it unreasonable, inappropriate, as part of a  
16 total settlement to move to the sharing grid that is  
17 presently shown for the new experimental alternative  
18 regulation plan.

19 COMMISSIONER DRAINER: Thank you.

20 MR. BRANDT: I might just add a little  
21 perspective to it, that both we and the Staff had,  
22 during the period of negotiations, we had informed the  
23 Staff very early on, and the Office of the Public  
24 Counsel and all the other parties, that we had  
25 anticipated a significant amount of credit to go back

1 to customers as a result of the first period, the  
2 first one-year period.

3 As a matter of fact, with our second quarter  
4 1996 earnings release put out the information to the  
5 financial community that we anticipated the total  
6 amount of the refund would proximate \$45 million.

7 That includes Missouri and a portion that's  
8 attributable to FERC customers, wholesale customers  
9 that sort of piggyback onto the Missouri alternative  
10 regulatory plan.

11 And the Missouri number is more like in a  
12 \$42 million number, and that's a degree of estimate in  
13 there, but we're fairly comfortable, plus or minus a  
14 million or two.

15 But the final number we will file later this  
16 month would be in that range, and that that amount of  
17 refund actually reflects a sharing that passed not  
18 only the 12, 6 to 14 percent range, but got over the  
19 14 percent where it all went back to the customers.

20 I think that's what both the Company and  
21 Staff and Public Counsel and other parties recognize  
22 warranted some form of further incentive but maybe not  
23 as significant as 50/50.

24 As you know, it's significantly less where  
25 the company retains 10 percent, customers get 90



1 percent. So there still is an incentive to continue  
2 once you hit that 14 percent level.

3 COMMISSIONER DRAINER: But it's your  
4 position, then, that this really does strengthen and  
5 encourage the company's incentive?

6 MR. BRANDT: Absolutely. I think it's truly  
7 an incentive for the company and potentially a  
8 significant benefit to the customers.

9 COMMISSIONER DRAINER: Okay. Thank you. If  
10 you would help me with this a little bit,  
11 Mr. Dottheim, on the market power issue, I believe I  
12 heard you say this morning that traditionally the  
13 Staff has not addressed that issue with the changing  
14 market structures that we're looking at and retail  
15 wheeling.

16 Maybe I'm looking here for assurance that we  
17 are going to be more cognitive of this issue in the  
18 future, and is the Staff comfortable that it has  
19 addressed it appropriately in this docket?

20 MR. DOTTHEIM: Yes. I mean, there's always  
21 things that one in retrospect might do differently.  
22 There's always a question of how one marshals  
23 available resources.

24 And although it was -- the question was  
25 raised internally about addressing market power, it

1 wasn't addressed any more than what appears in the  
2 rebuttal testimony of Mark Oligschlaeger, which starts  
3 at page 44 of his testimony, and does in a fashion  
4 address it, but not necessarily as much or in a manner  
5 that the Commission might prefer to see.

6           The Staff in part views the market power  
7 issue in some fashion being addressed when questions  
8 such as regional transmission pricing, pancaking of  
9 transmission service rates, when those items are  
10 addressed, that is addressing the mitigation of market  
11 power if there is market power.

12           In Mr. Oligschlaeger's testimony, there's  
13 also a reference to the Midwest ISO, Midwest  
14 Independent System Operator, which both Union Electric  
15 Company and Central Illinois Public Service Company  
16 are presently participating in.

17           So yes, we take to heart what the  
18 Commissioners suggest. The subject matter may not  
19 have been addressed as much as what the Commission may  
20 be indicating now, and we will -- and we will review  
21 that.

22           COMMISSIONER DRAINER: Okay. Thank you. Is  
23 there anything that the Company would like to add?

24           MR. BRANDT: I might just suggest that a few  
25 factors the Commission might want to take into

1 consideration in looking at the market power issue,  
2 not just the fact that open --

3 COMMISSIONER DRAINER: Can you speak up into  
4 the mike so they can hear you in the back, please?

5 MR. BRANDT: The issue relative to market  
6 power with the change in FERC regulation, new orders  
7 out of FERC relative to transmission, how we manage  
8 it, how it becomes independent, the absence of pancake  
9 transmission rates, and, in addition to that, both  
10 FERC and Justice albeit different regulatory bodies,  
11 and the Missouri Commission look at market power on a  
12 very in-depth basis.

13 But beyond that, from a very practical  
14 sense, looking I know within the State of Missouri  
15 Union Electric is very large, and the Union Electric  
16 CIPS merger with what this Commission has dealt with  
17 is relatively sizable, if not the largest.

18 But when you look in the context of the  
19 potential competitors surrounding us, and we just  
20 listed them over the lunch, there's soon to be  
21 Primergy Wisconsin, a northern states merged company,  
22 American Electric Power and Unicom central and  
23 southwest, Intergy and TBA, all of which are huge  
24 enterprises relative to Union Electric and/or Union  
25 Electric combined with CIPS.

1           Just to put us in perspective, we're a  
2 pretty small piece of the pie given the neighbors  
3 surrounding us.

4           COMMISSIONER DRAINER: Okay. Thank you.  
5 And one final question. With respect to the retail  
6 wheeling pilot, can -- I mean, you have talked about  
7 possibly filing something in 30 days; is that correct?  
8 Or when will we expect this filing?

9           MR. BRANDT: The retail wheeling pilot  
10 program, we're obligated to file it no later than  
11 March 1st, 1997. And I think the 30 days came up that  
12 the Chair had asked about if the Commission had acted  
13 within 30 days.

14           And to reiterate what Mr. Cook said, I don't  
15 think the Commission's action, be it within two weeks,  
16 30 days or 45 days, would influence the filing of  
17 that. We'll do our best efforts to beat March 1st,  
18 but it won't be by a significant amount of months.  
19 It's more like weeks at best.

20           COMMISSIONER DRAINER: Okay. I'm sorry. I  
21 didn't understand that.

22           Well, since I said it was my last question,  
23 this time I'm going to let it be my last question for  
24 now. I'm going to pass on to the other Commissioners.

25           MR. BRANDT: To be more specific on the last

1 one, I wouldn't look for much before February of 1997.

2 COMMISSIONER DRAINER: Okay. Thank you very  
3 much. I appreciate your answers.

4 ALJ DERQUE: Commissioner Kincheloe.

5 COMMISSIONER KINCHELOE: I'd like to remain  
6 on the market power issue for a few minutes. First  
7 let me ask you, Mr. Mills, you said something, I  
8 think, to the effect that if someone has market power  
9 advantage it would be good to have it in a Missouri  
10 company. And I assume that was meant in the context  
11 of current regulation, current retail franchise  
12 monopolies and so forth.

13 From the consumer perspective, it doesn't  
14 make -- how would it make a difference whether it's a  
15 Missouri company or some other company if there were  
16 to be retail competition?

17 MR. MILLS: I suppose that answer was a tad  
18 bit flip. I was really thinking about the way the  
19 Missouri Commission should approach this as opposed to  
20 the Illinois Commerce Commission.

21 Just between those two alternatives, if you  
22 have a -- if you have a company with significant  
23 market power, it would be better to have one based in  
24 Missouri and having advantages flowing to the Missouri  
25 company.

1           But that really isn't a big part of the  
2 picture. I certainly didn't mean to suggest that that  
3 was any -- a significant factor in our examination of  
4 market power.

5           COMMISSIONER KINCHELOE: I'll accept your  
6 initial admission.

7           MR. MILLS: Okay. In fact, I believe if  
8 you'd like to hear some more about market power, I  
9 think our Chief Economist, Ryan Kind, wanted to  
10 address market power questions, if it would be  
11 appropriate to call him forward at this time.

12           COMMISSIONER KINCHELOE: If he cares to do  
13 that.

14           MR. KIND: My name is Ryan Kind. I'm the  
15 Chief Economist with the Office of Public Counsel.

16           Just like Lewis clarified in his comment  
17 about the --

18           COMMISSIONER KINCHELOE: Let me ask you to  
19 pause here, Mr. Kind. I wonder about our procedure  
20 for the remainder of this.

21           COMMISSIONER ZOBRIST: We had thought that  
22 on some questions that required more of a discourse  
23 than perhaps just a clarification, that we prefer to  
24 swear the witnesses just to have a clear record in  
25 case we need to use this for any kind of future

1 proceedings.

2 So, Mr. Kind, if you'd come forward and we  
3 could just briefly swear you. We're certainly  
4 interested in the comments that you have.

5 (Witness sworn.)

6 RYAN KIND testified as follows:

7 QUESTIONS BY COMMISSIONER KINCHELOE:

8 Q. Mr. Kind, have you prefiled testimony in  
9 this matter?

10 A. Yes, I have. My rebuttal testimony had some  
11 comments that directly addressed the market power  
12 issue as well as just a general discussion of the  
13 benefits that UE would be receiving from this merger  
14 in terms of their advantages they'd get in the areas  
15 of increased transmission interconnects, increased  
16 generation assets and an increased customer base.

17 Q. Okay. And I assume that the testimony was  
18 admitted earlier today?

19 ALJ DERQUE: Yes.

20 BY COMMISSIONER KINCHELOE:

21 Q. If you have further comments, go ahead.

22 A. Okay. Yeah. I was just going to sort of  
23 follow up on what Lewis said in terms of, you know,  
24 his comment about UE being a Missouri utility was  
25 not -- that's not that serious of a comment in the

1 sense that that was a major thing that made us think  
2 that there were no market power concerns here  
3 potentially.

4 And I think also I just wanted to clarify a  
5 little bit an earlier response that we gave to, you  
6 know, what degree of concern did our office have with  
7 market power issues in this case.

8 And to sort of clarify that, we really did,  
9 in fact, have some significant concerns, but it was a  
10 significant issue for us. We saw the settlement  
11 agreement in terms of all the benefits that would go  
12 to customers from things like the ratemaking and  
13 treatment, addressing the merger premium issue, the  
14 alternative regulation plan, the provisions in the  
15 settlement regarding retention of Commission  
16 jurisdiction, provision of access to records and  
17 preventing risk of any harm from the systems support  
18 agreement.

19 We saw those agreements as, you know, the  
20 entire package as somewhat being a good package  
21 despite some concerns that we had about the market  
22 power issue.

23 Q. In that analysis in the weighting, what were  
24 your assumptions about the potential for introduction  
25 of retail competition in the state?



1           A.     Really, just the same assumptions that most  
2 industry analysts seem to have, which is that retail  
3 competition is likely to be introduced to some degree  
4 in many parts of the country over the next five or ten  
5 years.

6           Q.     And you certainly accepted that as an equal  
7 potential for the State of Missouri?

8           A.     I think we see Missouri as always being a  
9 little bit slow in movement towards national trends,  
10 and probably in the case of retail wheeling there's an  
11 additional reason for us to have a slow movement,  
12 which is just that our -- we have less pressure from  
13 large industrial customers to get access to low-cost  
14 power because their power is already relatively low  
15 compared to what large industrial customers are paying  
16 in areas like California and New York.

17                   COMMISSIONER KINCHELOE: I'll hold any other  
18 questions I have for others for the time being to save  
19 you from having to jump up and down in case others  
20 have questions for you.

21                   ALJ DERQUE: Commissioner Crumpton?  
22 Chairman Zobrist?

23                   QUESTIONS BY COMMISSIONER ZOBRIST:

24           Q.     One of the concerns that we have in  
25 Missouri, because rates are relatively low here, that

1 we either adopt retail wheeling in whole or in parts  
2 and other states do and we find that our benefits flow  
3 to states like Illinois or other places. We don't get  
4 the benefits like Oklahoma has.

5 I think that's kind of talking a little more  
6 detail about the concerns Commissioner Kincheloe  
7 raised.

8 What about this idea that we adopt something  
9 even on an experimental basis and we end up trying to  
10 benefit not only our companies and often prevent some  
11 potential but our rate payers end up paying higher  
12 rates. Do you have any views on the likelihood of  
13 that occurring and, if it does occur, how do we guard  
14 against that?

15 A. Well, that's really a difficult question and  
16 a really important question to our office. One of the  
17 ways we see is guarding against that is to ensure that  
18 any retail wheeling experiment is going to include a  
19 whole lot of small residential and small commercial  
20 customers so that those people can get their feet wet,  
21 so to speak, and learn how to take advantage of open  
22 access just like other people do.

23 And so that aggregators can get to know the  
24 State of Missouri and hopefully get established here,  
25 so that that would also facilitate small customers

1 being able to take advantage of retail wheeling.

2 But certainly a large part of the question  
3 has to do with how customers who are no longer served  
4 by the existing utility, how they would be able to  
5 exit and what sort of obligations they would have in  
6 terms of paying for any stranded costs.

7 And I think that that's a major, major  
8 policy issue that would have to be addressed in order  
9 to protect small customers.

10 CHAIRMAN ZOBRIST: I appreciate that. I  
11 might just mention to the parties, because you may not  
12 be aware of it, there is a group called the Energy  
13 Futures Coalition which was formed as a result of an  
14 executive order issued by Governor Carnahan that's  
15 meeting here today.

16 And although their issues are much more  
17 related to I guess what we'd call demand side  
18 management types of things and the Public Service  
19 Commission and the Office of Public Counsel are sort  
20 of noticeable by their absence in the draft document  
21 they're preparing, I think the companies as well as  
22 the Commission and Public Counsel ought to be involved  
23 with that group.

24 And I'd be glad to meet with you personally.  
25 Commissioner Crumpton and I are interested in their

1 efforts because the issue of educating the residential  
2 ratepayer is very important to me and I know to this  
3 Commission as a whole.

4 Thank you.

5 ALJ DERQUE: Commissioner Kincheloe.

6 COMMISSIONER KINCHELOE: I have no more.

7 COMMISSIONER CRUMPTON: I'd like to reserve  
8 the right to ask some later if I have any.

9 ALJ DERQUE: Mr. Kind, don't run off. I  
10 believe that was Commissioner Crumpton's message.

11 MR. KIND: Oh, no. I'm not going anywhere.

12 COMMISSIONER KINCHELOE: Let me direct some  
13 questions now to, Mr. Annis, to you or perhaps to your  
14 witness. I'd like to ask from your point of view, the  
15 advantages of the retail wheeling experiment or pilot  
16 to the public.

17 MR. ANNIS: We'll have Mr. Brubaker provide  
18 that information. Would you also like for him to be  
19 sworn?

20 COMMISSIONER KINCHELOE: Yes, please.

21 (Witness sworn.)

22 MORRIS BRUBAKER testified as follows:

23 QUESTIONS BY COMMISSIONER KINCHELOE:

24 Q. Mr. Brubaker, would you state your full name  
25 and your employer.

1           A.     My name is Morris Brubaker.  I'm employed by  
2     Brubaker & Associates in St. Louis, Missouri.

3           Q.     And I believe you also had prefiled  
4     testimony that was admitted in this proceeding?

5           A.     I did, yes.

6           Q.     Now, my initial questions, just from -- if  
7     you can try to adopt our perspective rather than your  
8     client's for a minute, or argue for us what would be  
9     the public interest that might be -- benefit that  
10    might be gained from this experiment?

11          A.     It's always dangerous to agree with Public  
12    Counsel, but I find myself in agreement with Mr. Kind,  
13    at least to the extent of his observations that open  
14    access and competition seems to be the direction that  
15    the electric market is heading throughout the U.S.

16                 And I don't think you can stop it at the  
17    borders of any given state, and it's certainly well  
18    under way at the wholesale level.  It's well under way  
19    in Illinois with pilot programs.

20                 I think there's a lot of things to be  
21    learned about how to operate a pilot, how to operate  
22    in a competitive environment.  And the benefit, I  
23    think, is that the recommendation for the pilot is  
24    that it go across all customer classes, residential,  
25    commercial and industrial.

1           And there are different issues, I think, and  
2 different mechanics with each of those classes that  
3 have to be addressed.

4           So I think it's a way to get to the future  
5 on a very, very limited risk basis. With the amount  
6 of megawatts we're talking about, it's not  
7 significant. And, of course, the Commission will set  
8 the final word on the design parameters. And to the  
9 extent that you have concerns about individual  
10 customer classes, certainly that can be built into the  
11 program rules.

12           So I think that's the advantage. It gets  
13 us -- it's a way to get to the future and start  
14 learning how to play in the new market without just  
15 opening the flood gates.

16           Q.    Do you have an estimate of the number of  
17 states that have retail competition currently under  
18 consideration or under way either in legislative form,  
19 being debated or regulatory form?

20           A.    The surveys I've seen suggest that more than  
21 40 states are looking at competition and open access  
22 at one level or another. Some are obviously more  
23 advanced than others.

24           As you probably know, there are pilots in  
25 Illinois under way, as I mentioned. There are pilots

1 in New Hampshire, Massachusetts that are under way,  
2 and various other states are considering implementing  
3 them.

4 Q. Are you familiar with proposals for federal  
5 legislation on this issue?

6 A. I'm aware that there have been several bills  
7 that have been introduced in Congress that address  
8 retail competition. I'm not an expert on the details  
9 of what they're proposing. Probably could just  
10 respond generally.

11 Q. Do you have any reaction, personal reaction  
12 to the timetable that Mr. Kind posed as likely for  
13 implementation across the country?

14 A. I believe he mentioned five to ten years.

15 Q. Yeah.

16 A. I think it would not be longer than that.  
17 If I had to differ at all, I would suggest it might be  
18 quicker than five to ten years. Who of us would have  
19 predicted two years ago that we'd be where we are  
20 today? Every day brings new evidence that the ball is  
21 rolling forward.

22 Q. Now, if retail competition were to become  
23 the rule today in Missouri, that contemplates that  
24 there is -- they're the end of regulated retail rates  
25 to the extent that it's adopted; is that your

1 understanding?

2 A. You're beyond the pilot now?

3 Q. Yeah. I'm talking not in reference to the  
4 pilot. I'm talking about the broader national  
5 discussion.

6 A. Well, I guess each state will have to set  
7 the specifics on that. But as a general matter, the  
8 competitive market would allow competition to occur  
9 where competition can effectively occur, and that's  
10 primarily at the generation level.

11 There would continue to be regulation of  
12 transmission service and distribution service and  
13 metering, billing, those kinds of customer issues,  
14 with the primary competition being where you have an  
15 ability to have new market entrants and to have a  
16 multitude of suppliers compete effectively.

17 There may be some market power issues there  
18 that have to be addressed if we're going to do that on  
19 a wide-scale basis at the retail level, but that would  
20 be the idea.

21 Q. That's what I'm trying to get to, the market  
22 power issues eventually. I'm just trying to lay out  
23 the reasons why that might be of interest.

24 Is that what you're describing is a  
25 circumstance in which the presence of market power



1 would result in higher rates for consumers than a  
2 scenario of reduced or absence of market power?

3 A. Well, if there's market power in the absence  
4 of regulation, that could happen. And that's --  
5 that's the issue that has to be addressed in any  
6 transformation of the market.

7 I guess we're not thinking about that in  
8 this docket given that the pilot program is relatively  
9 small in scope. We don't see that as being a problem  
10 at all. We think there's plenty of transmission  
11 access. From our experience in other states, there  
12 will be plenty of people wanting to sell power at  
13 rates that will be much below regulated rates.

14 Q. In relation to the scope of this particular  
15 experiment, you're saying?

16 A. Yes. Right.

17 Q. I'm trying to think more broadly. I'm  
18 talking about merger savings estimated over a period  
19 of ten years and so forth. We're talking about a  
20 permanent merger of these companies.

21 I'm trying to think about these  
22 circumstances, the context of Mr. Kind's estimate of  
23 five to ten years for production of retail  
24 competition, your statement that you think that's --  
25 that that may be a cautious estimate, that the

1 transition might come sooner than that. So it's in  
2 that context I'm trying to look at this question.

3 Describe for me the general -- can you  
4 describe for me general circumstances with regard to  
5 the generation concentration or control of  
6 transmission facilities that might give rise to market  
7 power?

8 A. Well --

9 Q. And I'm not talking in reference to this  
10 particular merger, but more theoretically, in general.

11 A. This is the view from 20,000 feet, looking  
12 at not just the merger, but the entire question of  
13 competition and generation market.

14 I think you have to look at the ownership of  
15 generation and control of transmission both together.  
16 Certainly if there is a concentration of ownership of  
17 generation and no ability to move our -- over the  
18 transmission system to be competitive with that  
19 generation, then you have a concern about market  
20 power.

21 If there is an independent or an external  
22 authority that controls the transmission, like an  
23 independent system operator that's being discussed,  
24 that takes out part of the vertical market power  
25 problem because then the generation owner cannot use

1 the transmission to block competition.

2 But that doesn't get away from the  
3 generation concentration issue, and that basically  
4 arises because, for the most part, generation is built  
5 near the load, and the transmission is built to serve  
6 that kind of system configuration.

7 So if you change the structure of the  
8 industry to allow competition, you have to look  
9 specifically at each utility and each market area and  
10 make a determination about whether there is an ability  
11 to have effective generation competition.

12 That's part and parcel of any consideration  
13 of broad-scale retail competition.

14 Q. Now, you referred to the -- that there would  
15 be a constraint upon effective competition to the  
16 extent that there was -- there were not available  
17 transmission facilities or services available.

18 If those services are available at prices  
19 that result in the transmitted power being  
20 uneconomical on a bundled basis at the load, and  
21 that's equivalent in terms of the competitive  
22 economics, isn't it, to the lack of available  
23 services?

24 A. It's similar. I guess I was assuming that  
25 given the transmission as a monopoly, there will be

1 some effective cost-based regulation of the  
2 transmission system and independent decisions being  
3 made about use of the system which would take any  
4 unnatural market power away from the owner of the  
5 transmission.

6 But you're correct. If it should -- if it  
7 should turn out that there's an ability to overcharge  
8 for transmission, then it would have the same effect  
9 as overcharging for generation.

10 COMMISSIONER KINCHELOE: I think that's all  
11 the questions I have. I'll see if the other  
12 Commissioners want to enquire of you.

13 COMMISSIONER CRUMPTON: I'd like to wade in  
14 here a little bit. I think we're kind of changing our  
15 system of questioning the witnesses, and I'm going to  
16 have to adjust to this.

17 QUESTIONS BY COMMISSIONER CRUMPTON:

18 Q. Mr. Brubaker, should other consumer  
19 advocates be solicited for input to the design of this  
20 pilot?

21 A. Certainly I think the Office of the Public  
22 Counsel would intend to participate in this, and I  
23 think anybody that has a serious interest in the  
24 subject ought to have an opportunity for input.

25 I don't think this should be looked at or

1 put together in a closet, if you will. I think it's  
2 too important than to give that impression or to have  
3 that little input.

4 Q. How should the 100 megawatts be allocated  
5 across customer classes?

6 A. We actually had not developed a  
7 recommendation on that, Commissioner. We thought that  
8 would come out of the discussions and the filing that  
9 UE would make. We thought it should be effectively  
10 certainly so that there would be reasonable  
11 participation by all major classes, but we don't have  
12 a specific recommendation at this point.

13 Q. Why such a small amount of power? How did  
14 you arrive at the -- or maybe you're not the witness  
15 to answer this.

16 A. I think I can say that was the product of  
17 the negotiations that led to the stipulation among the  
18 parties.

19 Q. Were you a party to the stipulation? Were  
20 you a party to the discussions?

21 A. I was not directly involved. I was involved  
22 in a consulting role to the attorneys for the MIC  
23 group who were actually participating.

24 Q. Did the attorneys ask you that question?

25 A. No. I don't recall that they did.

1 Q. Had they asked you, what would your response  
2 have been?

3 MR. ANNIS: I'm sorry. Is the  
4 Commissioner's question what he would have recommended  
5 the amount?

6 COMMISSIONER KINCHELOE: Yes.

7 MR. BRUBAKER: I don't really know how far I  
8 can go in responding because part of this was part and  
9 parcel of the negotiations, and I don't want to  
10 inadvertently say things or make comments that would  
11 be inappropriate in that context.

12 ALJ DERQUE: That would be up to you and  
13 Mr. Annis.

14 MR. BRUBAKER: Again, it was looked at as a  
15 part of the package for negotiations, and a number of  
16 100 megawatts, you know, it's small in one respect,  
17 but in the context of getting a pilot program started,  
18 it's something larger than 1 percent of the system  
19 peak, which is not out of line with some other  
20 programs.

21 BY COMMISSIONER CRUMPTON:

22 Q. But what percent of the system peak does  
23 that represent?

24 A. It's about one and -- one and a quarter, one  
25 and a third percent of system peak.

1           Q.     Should the area covered by the pilot be  
2 identified before we approve this merger or this  
3 Stipulation and Agreement?

4           A.     I guess I -- I would not think that would be  
5 a necessary pre-condition because the Commission will  
6 have the ultimate decision-making authority as to what  
7 that pilot program looks like.

8                     In other words, if the Commission felt that  
9 it needed to have a certain geographic spread, that  
10 would be certainly something that we could address in  
11 those hearings.

12          Q.     I think you mentioned that it should cut  
13 across customer classes. Could you describe to me how  
14 you would distribute this hundred megawatts across  
15 customer classes? How would that work?

16          A.     I guess that would be part of the program  
17 design, and we haven't really sat down and tried to  
18 devise a specific recommendation. But you can think  
19 of it in terms that it might have some relationship to  
20 how the energy sales or how the peak demands spread  
21 out among customer classes.

22                     In other words, it wouldn't be in proportion  
23 to the number of customers. It would be more in  
24 proportion to the use of electricity.

25          Q.     So if the large industrial users used 14

1 percent of the peak capacity, then in this pilot they  
2 would have an opportunity to use 14 percent of this  
3 100 megawatts?

4 A. That would be one basis that could be  
5 applied, yes.

6 COMMISSIONER CRUMPTON: Thank you. I don't  
7 have anything else right now.

8 ALJ DERQUE: Commissioner Kincheloe?

9 COMMISSIONER KINCHELOE: No further  
10 questions for Mr. Brubaker.

11 ALJ DERQUE: Thank you, Mr. Brubaker.

12 COMMISSIONER KINCHELOE: I would like to go  
13 to the Company now, and it's my impression that with  
14 regard again to the market power issues, that there  
15 are efforts under way by the Company on some fronts  
16 that, to the extent that there might be a concern  
17 there that might mitigate those concerns, and I'm  
18 thinking particularly of discussions of a midwest  
19 independent system operator organization.

20 I'd like to enquire about the status of that  
21 and the extent to which you could suggest to us  
22 whether that is going in a direction that would bear  
23 on that issue of market power.

24 MR. COOK: We are participating in the  
25 review of and the potential development of the midwest



1 ISO. We have various people in the company on several  
2 different committees that have been set up with the 12  
3 or 15 or so utilities that are involved.

4 Our participation at this point is to be in  
5 the game, to be there to see what is being done, to  
6 have our input into what is being done, to protect the  
7 concerns that we believe need protecting, including  
8 reliability of the transmission system, including the  
9 protection of our customers and the investment that  
10 they make. And we will continue to monitor and to  
11 participate in that organization.

12 I think it is -- I don't know if I can  
13 describe at what point we -- they are at in the  
14 development of a final program. We're well beyond the  
15 start, but I don't think we're quite yet near the  
16 finish. Probably in the middle of it.

17 We have frankly not decided, made a final  
18 determination whether we will eventually participate  
19 in that or not. It will, of course, depend on what  
20 the final outcome of that organization turns out to  
21 be.

22 COMMISSIONER KINCHELOE: Is there anyone  
23 here who can advise us as to the anticipated timetable  
24 for completing those discussions?

25 MR. COOK: Mr. Rainwater, our Vice President

1 of Corporate Planning, may be able to answer some of  
2 your questions on that. Would you like him to come  
3 forward and be sworn?

4 COMMISSIONER KINCHELOE: I guess for sake of  
5 consistency.

6 (Witness sworn.)

7 GARY L. RAINWATER testified as follows:

8 ALJ DERQUE: Thank you, sir. Have a seat.  
9 State your name and employer.

10 MR. RAINWATER: Gary L. Rainwater, and I  
11 work for Union Electric.

12 QUESTIONS BY COMMISSIONER KINCHELOE:

13 Q. Could you enlighten us, please?

14 A. To characterize where the ISO is, I would  
15 say we are just a bit behind the original schedule  
16 that was set, which really isn't surprising given how  
17 contentious some of the issues are.

18 The original schedule was to have agreement  
19 among all the parties, and there are 21 companies  
20 involved in the ISO, by the end of September, and to  
21 have a final agreement filed by the end of this year.

22 The issue that relates directly to market  
23 power really is the transmission, terms of  
24 transmission access and transmission pricing.

25 And some of the terms that had been

1 considered were a problem for some companies. They  
2 were clearly proposals that would benefit some of the  
3 larger, higher-cost companies to the detriment of some  
4 of the lower-cost companies.

5 Where that stands right now is they're --  
6 the last proposal that was considered did not go  
7 anywhere. There's another proposal that is about to  
8 be considered at the next meeting of the pricing  
9 committee, which is next week.

10 And that proposal would call for a single  
11 grid-wide transmission tariff which would open up  
12 transmission on a postage-stamp-type rate for the 21  
13 companies that could potentially be involved in the  
14 ISO.

15 So in terms of market power, if that -- if  
16 that proposal were implemented, it really mitigates  
17 any market power to a much greater extent than the  
18 transmission proposal as it stands now, which would  
19 simply provide a single postage stamp rate for UE and  
20 CIPS combined.

21 Q. Is that proposal one that you expect or  
22 understand that Union Electric will be able to  
23 support?

24 A. We can support it. Well, I can't say for  
25 sure because we haven't seen the details of it, but we

1 are more likely to support that than the previous  
2 proposal.

3 The previous proposal would have required  
4 all companies as part of the ISO to pay essentially an  
5 average transmission rate based on the average cost  
6 for all companies in the ISO, which for us would have  
7 increased our cost by about \$40 million per year for  
8 just Union Electric and by another 10 to \$15 million  
9 per year for CIPS.

10 So I think I can safely say we would not  
11 have supported that proposal.

12 The other proposal, we really need to see  
13 the detail of it. And I guess the direction that  
14 we're headed on this is that we would like to be a  
15 part of the ISO if we can agree to the terms simply  
16 because we have concluded, as many others have, that  
17 some broader scale control is required.

18 Working out the terms of that are very, very  
19 difficult. And if you followed any of the discussions  
20 on transmission access at retail, we get into very  
21 much the same kind of arguments in trying to work out  
22 the terms that are acceptable to everyone at wholesale  
23 because inevitably some terms benefit certain parties  
24 more than they do others, and inevitably some parties  
25 are harmed in some cases.

1           But I think all of us would agree that some  
2 broader control is necessary.

3           Q.     When you refer to broader control, can you  
4 tell us, for those who are proponents of the trend  
5 toward ISOs around the country, what is the case that  
6 has been made for the "I", the independents of the  
7 operation?

8           A.     When I refer to broader control, I'm  
9 thinking of broader control in terms of the blackout  
10 that occurred on the west coast just a few weeks ago  
11 where in that case, if there had been better  
12 coordination or control -- and I guess I put it in  
13 terms of options. Control may be not absolutely  
14 necessary. Better coordination among companies in  
15 that case could have prevented that outage.

16                   We have a system in the United States, the  
17 NERC operating regions, where within each region there  
18 is pretty good coordination of transmission  
19 transactions. Between the regions there is much less  
20 coordination. The communication breaks down  
21 sometimes.

22                   And if that could be improved, that could  
23 improve the reliability or mitigate some of the  
24 potential problems that might happen with more  
25 transmission access.

1           The IS-- when I think about that, there are  
2 a couple of alternative ways to solve that. One is  
3 the ISO. Another is better coordination between the  
4 NERC regions, which has been less publicized, but that  
5 effort is going on as well in that there are  
6 discussions between the NERC regions and how NERC may  
7 change its procedures to really get at the same issues  
8 that the ISO is struggling with.

9           Q.     With regard not to the reliability issues  
10 but with the market power issue, isn't there a case  
11 that's made for ISOs that must provide a basis for  
12 greater confidence in the -- in the availability of  
13 transmission services on an equitable basis?

14          A.     Well, that is the prime case for the ISO.

15          Q.     I think there was a public meeting a month  
16 or so ago, a series of public meetings, by those  
17 sponsoring the midwest ISO effort, and some Commission  
18 staff attended one of those.

19                 There was material handed out, and I'm  
20 looking at a resolution not attributed to anyone. I  
21 don't know where this fits in to the status of the  
22 project, whether that's something that's been adopted,  
23 whether that's something still under consideration.

24                 How far -- you say there has not been  
25 agreement on a pricing methodology. How far in

1 concept has there been any?

2 A. Well, the discussions in the ISO are divided  
3 among about six different committees, and the only one  
4 that I really have followed is the pricing. So I  
5 can't tell you how close to agreement we are in other  
6 committees.

7 In the pricing, I know that the proposal  
8 that was considered is one that essentially fell  
9 apart, could not be agreed to, and we are about to  
10 consider another. That's the one I referenced a  
11 minute ago that is going to be taken up in a meeting  
12 next week.

13 COMMISSIONER KINCHELOE: Those are all the  
14 questions I have. Thank you.

15 COMMISSIONER CRUMPTON: Do you have any for  
16 any of the other?

17 COMMISSIONER KINCHELOE: I don't think so.

18 COMMISSIONER CRUMPTON: I'll start with the  
19 man in the --

20 COMMISSIONER ZOBRIST: Can I ask a few  
21 questions of him?

22 COMMISSIONER CRUMPTON: Go right ahead.

23 QUESTIONS BY COMMISSIONER ZOBRIST:

24 Q. Mr. Rainwater, there appears to be somewhat  
25 of a consensus, if I'm evaluating the comments right,

1 that if the transmission constraints are solved so  
2 that the -- there is free and open transmission under  
3 some kind of governance, that issues of market power  
4 then become less of a concern. Is that a fair  
5 generalization?

6 A. I'd say that is a good characterization.

7 Q. We hear not just utility, electric utility  
8 executives, but consultants of other folks saying that  
9 the trend here that we're going to see in the United  
10 States is that we're going to end up with a dozen to  
11 15 major electric utilities. We hear comments about  
12 the UEs and coops.

13 But assuming that's where we're headed and  
14 that we're in it in some form because one of those  
15 survivors, what is your feeling about the questions of  
16 market power if we get to that kind of a situation in  
17 the United States?

18 If transmission is kept open, you know, in  
19 line with what we see developing at FERC, are there  
20 other issues out there that PSCs need to be concerned  
21 about beyond transmission if we end up with a group of  
22 mega-companies like that?

23 A. Personally, I don't see the market power  
24 issue, the other aspect of that you're referring to is  
25 concentration of generation in just a few companies,



1 and I don't see that being really a problem.

2 I think the way Don, Mr. Brandt  
3 characterized that a few minutes ago, if you look at  
4 our system and look at the companies around us, UE and  
5 CIPS together will own and control approximately 10 or  
6 11,000 megawatts of generation.

7 All of the companies that we're tied to  
8 directly through our transmission system, there's well  
9 over 100,000 megawatts, and there are four or five  
10 companies substantially larger than us directly tied.

11 Your question really gets to how many  
12 effective competitors do you need in a market to have  
13 effective competition. And the way I see that, and  
14 I'm sure some would disagree with me, if you look at  
15 the telephone industry and the analogy there, in  
16 telephones we have three major competitors, AT&T, MCI  
17 and Sprint, and maybe a couple smaller competitors.

18 And there is vigorous competition in the  
19 telephone industry, and I would say the same could  
20 happen in the power generation business.

21 The other factor in the power generation  
22 business that makes that comment, I think, even more  
23 accurate is the power marketers and power aggregators  
24 acting as middlemen that effectively remove any market  
25 power from the power generators.

1           As long as they're in that market, it -- to  
2 me, it just is a real stretch to argue that any  
3 company will have market power by concentration and  
4 generation.

5           Q.     I might just comment, of course, the  
6 companies you're talking about are the interexchange  
7 carriers, the long distance carriers, and we have  
8 other markets to deal with in that industry.

9           A.     That's right.

10           COMMISSIONER ZOBRIST: Thank you.

11           QUESTIONS BY COMMISSIONER KINCHELOE:

12           Q.     Let me just jump back in for a second. Your  
13 last comment, though, assumed that the -- that the  
14 cost of transmission services to reach a customer are  
15 less than the margin of difference in the cost of the  
16 generation?

17           A.     Well, my comments really assume that there  
18 is open access at the correct price, whatever the  
19 correct price may be. And I'm not sure that anyone  
20 knows really how to price transmission correctly.

21                     The direction we seem to be headed is toward  
22 one transmission rate to cover a very large area. And  
23 to me, transmission rates, however they're structured,  
24 need to be distance sensitive simply because it costs  
25 more money to build transmission to move power for a

1 longer distance.

2 We seem to be headed toward rates that are  
3 like a single postage stamp to cover the entire  
4 eastern interconnect of the United States, and I don't  
5 think that's the correct way to price it.

6 But, of course, your point is right, that  
7 transmission rates are going to be a factor in  
8 determining how open the market is, how fluid it is,  
9 but the objective should not be to get the rate as low  
10 as possible. The objective should be to price it  
11 correctly, whatever that method is.

12 Q. I don't have any interest in arguing that  
13 with you. I'm just saying the effect of that is that  
14 if you have effective competition, if you have 12, 15  
15 big companies in the country and you don't have all of  
16 them competing for a load in Memphis if the cost of  
17 their -- their cost of generation plus the cost of  
18 whatever transmission services they have to provide to  
19 get there amounts to a total larger price than the  
20 cost of whoever's generating power locally in Memphis?

21 A. That's right.

22 MR. COOK: Could I follow up just a bit on  
23 what Gary said? I think, just to clarify the  
24 Company's position, that the ISO we do not believe is  
25 necessarily the only way to go, unless FERC tells us

1 that. I suppose it is a possibility.

2 But we believe that between the open access  
3 and the tight FERC regulation of transmission rates,  
4 that there really is no market power issue for us, at  
5 least in transmission. So you don't have to go to an  
6 ISO to mitigate that market power.

7 It may be that if there's an ISO out there,  
8 that it would be to our company and our customers'  
9 advantage to be a part of that, and that's why we're  
10 participating, to make sure that it's an appropriate  
11 type of organization.

12 But should we determine that we do not  
13 believe that it is appropriate, we don't think that  
14 that leaves us in necessarily a market power dominant  
15 position over transmission.

16 COMMISSIONER KINCHELOE: Are you assuming  
17 then, Mr. Cook, that FERC's transmission pricing  
18 policy will be built on the assumption of a need to  
19 maximize the effectiveness of competition in the  
20 generation market?

21 MR. COOK: I'm not sure that it -- as long  
22 as FERC has an oversight on the transmission rates,  
23 then I'm not sure that -- from a market power  
24 standpoint, I'm not sure that makes a difference.

25 COMMISSIONER KINCHELOE: If it designs a

1 rate to mitigate market power?

2 MR. COOK: Yes.

3 COMMISSIONER KINCHELOE: Okay.

4 MR. COOK: Thank you. Thank you,  
5 Mr. Rainwater.

6 ALJ DERQUE: I assume Mr. Rainwater may step  
7 down.

8 COMMISSIONER CRUMPTON: I may call him back  
9 later, but he can leave for now.

10 ALJ DERQUE: Commissioner Crumpton, is that  
11 where we are?

12 COMMISSIONER CRUMPTON: I'm not sure.

13 COMMISSIONER DRAINER: Yes.

14 COMMISSIONER CRUMPTON: I've waited  
15 patiently for this opportunity.

16 In agreeing to this merger, it appears to me  
17 that the Commission is foregoing control over some  
18 significant regulatory responsibilities, and it seems  
19 to me that we ought to build in some safeguards to be  
20 sure that the public interest standards are properly  
21 served. I think that safety issues are part of that  
22 public safety or that public service standard.

23 Should the new company be required to  
24 propose an emergency cooling program for seniors  
25 during extended heat waves such as we've had in

1 Chicago? I'd like to address that to the parties.

2 MR. COOK: On behalf of the Company, it  
3 seems to me that once this merger -- whether or not  
4 this merger is approved, this Commission still will be  
5 regulating Union Electric Company as a public utility  
6 company in the State of Missouri.

7 And to the extent that it believes that  
8 certain safety regulations are required, there would  
9 be no effect on the Commission's authority to do  
10 something about that.

11 COMMISSIONER CRUMPTON: I think my question  
12 was, should the new company be required to propose an  
13 emergency cooling program? And what's your answer?

14 MR. COOK: I don't believe that it's  
15 necessary, no.

16 COMMISSIONER CRUMPTON: Okay. Office of  
17 Public Counsel?

18 MR. MILLS: I can see that question really  
19 involving two questions. One is, should all electric  
20 utilities be required to propose such a program? And  
21 in the absence of other electric utilities, should UE  
22 simply as a condition of merging be required to  
23 propose one?

24 In answer to the second question, it doesn't  
25 seem to me that it's appropriate to require Ameren to

1 require an emergency cooling program by itself without  
2 requiring the same of other utilities similarly  
3 situated in the state.

4           And as to whether it's necessary for all  
5 electric utilities, I don't know. I haven't really  
6 investigated that. Certainly there was a disaster in  
7 Chicago that I'm sure you're all aware of. I don't  
8 know that we've had that same kind of problem in  
9 Missouri, and I don't know if that's simply due to  
10 good luck or what.

11           COMMISSIONER CRUMPTON: Staff?

12           MR. DOTTHEIM: Commissioner, obviously I'm  
13 not aware that the Staff has proposed such a program,  
14 but my not being aware of it doesn't mean that there  
15 hasn't been some work on the part of the Staff in that  
16 area.

17           As Mr. Mills was indicating, I think whether  
18 there should be such a program can be a very different  
19 question as to whether the conditions have occurred in  
20 the past that have forced that question to be  
21 addressed. It's something certainly that should be  
22 under review.

23           COMMISSIONER CRUMPTON: The agreement on the  
24 new experimental alternative regulation plan, in your  
25 opinion, is that a lawful agreement? And I'll address

1 it to the Office of Public Counsel.

2 MR. MILLS: Is the new experimental  
3 alternative regulation plan lawful?

4 COMMISSIONER CRUMPTON: Yes.

5 MR. MILLS: In my opinion, yes.

6 COMMISSIONER CRUMPTON: Can you explain that  
7 agreement to me?

8 MR. MILLS: The new agreement is very  
9 similar to the old agreement. It covers a different  
10 time frame, and it has a different -- it has an  
11 additional sharing block.

12 But in general concept, it's very similar to  
13 the current agreement. And that agreement in turn was  
14 based on the original Southwestern Bell sharing  
15 program to a large extent.

16 COMMISSIONER CRUMPTON: Is that lawful,  
17 Southwestern Bell's sharing program?

18 MR. MILLS: The one that has been concluded?  
19 Yes, I believe it was.

20 COMMISSIONER CRUMPTON: Is that being  
21 addressed by one of the District Courts now?

22 MR. MILLS: I'm not intimately familiar with  
23 that. It's my understanding that there was an appeal  
24 taken from the Commission's decision which essentially  
25 invited Bell to enter into a plan. Bell declined to



1 take that invitation.

2 And it's my recollection that either the  
3 Circuit Court or the District Court found that the  
4 question was moot simply because Southwestern Bell  
5 decided not to -- not to put into -- not to put such a  
6 plan into effect. And it may be that Staff counsel  
7 could address that.

8 COMMISSIONER CRUMPTON: What are the terms  
9 of the agreement, Mr. Dottheim?

10 MR. DOTTHEIM: Are they lawful?

11 COMMISSIONER CRUMPTON: What are the terms  
12 of the new experimental alternative regulation plan?  
13 And don't explain it to me in terms of the old one.  
14 I'd like for you to tell me what the Company's going  
15 to do and what the Commission's going to do and what  
16 the signatories to the agreement are bound to do.

17 MR. DOTTHEIM: Okay. There is a sharing  
18 grid. There is a -- and there are four ranges  
19 involved. And at the initial range, which is up to  
20 and including a return on equity of 12.61 percent,  
21 Union Electric Company keeps those earnings. There's  
22 no sharing involved. The earnings go 100 percent to  
23 Union Electric Company.

24 Commissioner, is this what you're looking  
25 for? I'm sorry. I just --

1                   COMMISSIONER CRUMPTON:  You're going into a  
2                   little more detail.  But the Company is agreeing to  
3                   share its profits beyond a certain range up to an  
4                   upper limit with the customers of the Company?

5                   MR. DOTTHEIM:  Yes, that is correct.  And  
6                   the upper limit being in this case earnings greater  
7                   than -- or return on equity of 16 percent.  Above that  
8                   level, all earnings above that level will go to the  
9                   customers of the company in the form of credits, and  
10                  that is reviewed on an annual basis.

11                  COMMISSIONER CRUMPTON:  And for that, what  
12                  is the Commission bound to do?

13                  MR. DOTTHEIM:  The Commission is bound to  
14                  monitor that procedure and to see that it functions as  
15                  the parties have suggested.

16                  And if the Commission accepts the  
17                  Stipulation and Agreement as the Commission would  
18                  accept that the alternative regulation plan should  
19                  function, there are other elements involved that are  
20                  not necessarily involved literally with the  
21                  functioning of that plan, but there are facets, there  
22                  are terms of the agreement which puts that plan in  
23                  place, such as the company not seeking to recover any  
24                  asserted purported merger premium relating to its  
25                  merger with CIPSCO, Incorporated.

1                   COMMISSIONER CRUMPTON:  And the Commission  
2                   agreeing to what?  Has the Commission in this  
3                   agreement -- by signing this agreement, will the  
4                   Commission then agree on this particular plan that it  
5                   will not pursue or be a party of a complaint on rates  
6                   with reference to this company?

7                   MR. DOTTHEIM:  Some party other than a  
8                   signatory to the Stipulation and Agreement can file a  
9                   complaint with the Commission, and I think the  
10                  Commission would have to consider that complaint as  
11                  filed.

12                  COMMISSIONER CRUMPTON:  Would the Commission  
13                  by signing this agreement not be in a position to  
14                  order Staff to file a complaint before the three years  
15                  are up?

16                  MR. DOTTHEIM:  There are certain parameters  
17                  within which I think that is possible.  There are  
18                  provisions for or regulatory out clause such as an  
19                  example which is given, changes in legislation that  
20                  are material.

21                  That would be a situation where I think a  
22                  rate investigation could be initiated.  The plan could  
23                  terminate under circumstances that are covered in  
24                  that -- in that provision of the Stipulation and  
25                  Agreement.

1           And what I'm looking at is on, I believe  
2           it's page 9 of the Stipulation and Agreement. It's  
3           not the only out provision of the Stipulation and  
4           Agreement, but it is one that applies to parties other  
5           than the company itself.

6           For example, at the top of the page, small  
7           i, there is a regulatory out provision for the company  
8           that it could file a rate increase case of its return  
9           on common equity falls below 10 percent for a 12-month  
10          sharing period.

11          And there are provisions for other parties  
12          under small ii directly below it to initiate, file an  
13          investigation or a rate reduction case.

14          COMMISSIONER CRUMPTON: Okay. The last  
15          sentence on page 8, can you explain that to me? Does  
16          it say that Staff and Office of Public Counsel and  
17          other signatories may not file, encourage or assist?

18          MR. DOTTHEIM: Yes. But then it ends  
19          unless.

20          COMMISSIONER CRUMPTON: Yes. I understand.  
21          So you think that those two conditions make this a  
22          lawful agreement? It appears to me on the surface  
23          that, without those two, that -- or unless those two  
24          are met, Staff is saying -- Office of Public Counsel  
25          and others are saying that they will not encourage or

1 assist others or even file a complaint.

2 MR. DOTTHEIM: That is -- that is correct.  
3 And I don't know that the Staff would under conditions  
4 other than, for example, ii, which just provides some  
5 examples. I don't believe it's an all-inclusive  
6 listing of a situation where a party can extricate  
7 itself from the Stipulation and Agreement.

8 I don't know that other -- under other  
9 circumstances that the Staff would on its own file a  
10 rate reduction case without direction from the  
11 Commission.

12 COMMISSIONER CRUMPTON: I'd like to turn to  
13 the retail wheeling trial and ask the questions that I  
14 asked of the earlier witness, and I'd like for the  
15 Office of Public Counsel and Staff and the Company, if  
16 it desires, to respond.

17 The first question is, should other consumer  
18 advocates be solicited for input to the design of the  
19 pilot program?

20 MR. DOTTHEIM: Commissioner, I don't know  
21 why there would be any reason to exclude other  
22 entities that have an interest in participating.

23 COMMISSIONER CRUMPTON: So your answer is  
24 yes or no?

25 MR. DOTTHEIM: Yes.

1                   COMMISSIONER CRUMPTON: Office of the Public  
2 Counsel?

3                   MR. MILLS: I agree.

4                   COMMISSIONER CRUMPTON: And I guess the  
5 Company?

6                   MR. COOK: Not necessarily.

7                   COMMISSIONER CRUMPTON: Okay. Why don't you  
8 explain?

9                   MR. COOK: One of the reasons that the  
10 Company believes that this particular plan which  
11 allows it to file a proposal is a wise one is that it  
12 frankly gives the company some control over what it is  
13 that it presents to the Commission with appropriate  
14 concerns for reliability, appropriate concerns for  
15 cost recovery, frankly, all those other concerns.

16                   And that although we certainly are going to  
17 seek input from a variety of sources, particularly  
18 those who have been active in this case, I don't think  
19 it is wise to open it up to a large roundtable  
20 discussion of perhaps dozens of consumer advocates or  
21 other interests.

22                   It is anticipated that we would then file  
23 this proposal, and then those other parties could  
24 certainly come in and have their input into the  
25 consideration of that proposal by the Commission.

1           But we believe that rather than have this  
2 plan designed by this huge committee, that a more  
3 focused group would come up with a better plan,  
4 frankly.

5           COMMISSIONER CRUMPTON: Mr. Cook, are you  
6 aware that we use committees, and, in fact, there is  
7 is an electric roundtable committee, I believe, and we  
8 use those very well? Are you saying that they're  
9 inefficient or what?

10           MR. COOK: Certainly not. I think, however,  
11 that in this particular case, we believe that, given  
12 the fact that it is going to be a retail wheeling  
13 proposal that we specifically are going to be living  
14 with, that it will frankly be to our advantage to have  
15 some significant say on what it's going to look like  
16 as it gets to the Commission. The Commission then can  
17 certainly do what it thinks is appropriate.

18           COMMISSIONER CRUMPTON: I was impressed with  
19 the Staff's chart showing how beneficial this merger  
20 agreement is even in the discussion stage to the  
21 owners of the company. The customers of the company,  
22 the citizens of Missouri have an interest in this,  
23 too.

24           MR. COOK: Certainly they do.

25           COMMISSIONER CRUMPTON: And don't you think

1 that they should be offered an opportunity to  
2 participate --

3 MR. COOK: They --

4 COMMISSIONER CRUMPTON: -- in the design of  
5 this program?

6 MR. COOK: Well, certainly the Office of  
7 Public Counsel is going to have an opportunity to  
8 participate. The Missouri Retailers Association,  
9 which represents small commercial establishments, will  
10 be participating. The industrials will be  
11 participating. So I think we will be well represented  
12 as far as participation.

13 But I do not think it is necessarily wise to  
14 have an open door for this particular level of  
15 preparation. Certainly the open door should be there  
16 and, of course, will be there for the approval and  
17 review of our plan.

18 COMMISSIONER CRUMPTON: Okay. I would like  
19 to ask the Company about the 100 megawatts that will  
20 be allocated in this pilot. How did you arrive at the  
21 100 megawatts?

22 MR. COOK: Through negotiation is the simple  
23 but probably not very informative answer. It does  
24 seem to be a number that is manageable from the  
25 standpoint of potential financial loss, potential



1 revenue loss that is there in any such plan.

2 It is one that we thought is big enough to  
3 have some meaningful results flowing from such a  
4 pilot, but also small enough that it can be managed  
5 efficiently to do the proper monitoring, metering,  
6 reviewing, surveying.

7 COMMISSIONER CRUMPTON: Is this 1 percent of  
8 your peak load?

9 MR. COOK: I believe Mr. Brubaker was  
10 correct when he said it was about 1 and a quarter  
11 percent.

12 COMMISSIONER CRUMPTON: What is your peak  
13 load?

14 MR. COOK: 8,000 megawatts.

15 COMMISSIONER CRUMPTON: Has the Company  
16 given any thought to the Missouri area that would be  
17 covered by this pilot?

18 MR. COOK: No, we have not. Although I  
19 think it's -- in discussions that we've had so far, it  
20 is clearly in mind that it should be a representative  
21 area.

22 COMMISSIONER CRUMPTON: How would you  
23 describe a representative area?

24 MR. COOK: The first thing that comes to  
25 mind, which really is not territorial, would be across

1 the class lines. But I think also to a certain extent  
2 we would want the urban and rural areas, to get some  
3 feel for whether there's a difference in those types  
4 of situations.

5 COMMISSIONER CRUMPTON: Is Clayton -- would  
6 Clayton meet the standard?

7 MR. COOK: For urban, I think. By urban  
8 versus rural I mean a tightly compacted distribution  
9 area versus a more loosely compacted distribution  
10 area, to see if that has any effect.

11 I'm not sure that there's a significant  
12 effect on the difference of load between a house in  
13 Columbia or Hermann, Missouri or in St. Louis.  
14 Certainly there's differences in getting power to  
15 those localities.

16 COMMISSIONER CRUMPTON: Would it be on the  
17 western side of the state or -- I'm sorry -- the  
18 eastern side of the state or central part of the  
19 state? Where do you see this happening?

20 MR. COOK: I'm speculating at this time. We  
21 really have not gone into that detailed an analysis.

22 MR. BRANDT: I could jump in at this point  
23 and add a little bit of flavor to it. We've just  
24 begun, the idea is only 45 days old, to put the retail  
25 wheeling, I think, in a little bit of perspective.

1           As part of the merger, both the Company's  
2 position, Staff, Office of Public Counsel, industrial  
3 intervenors, all the other parties, no one brought up  
4 the issue of retail wheeling. It was something that  
5 was tacked on in the overall global settlement  
6 package. It's 100 megawatts.

7           We've begun to compile information on what  
8 other pilot programs around the country have utilized.  
9 Size-wise, 100 megawatts is a ballpark. The one and a  
10 quarter percent is very comparable to what some of the  
11 other sized pilot programs have been, those in  
12 Illinois, closest to us, and in other parts of the  
13 country.

14           But as far as geographic areas, allocation  
15 of customer classes, we, quite frankly, have not done  
16 anything of that. We're still at the information  
17 compilation stage of trying to find out what has been  
18 successful in other areas, beneficial to the company  
19 and its customers, what hasn't worked so well, to try  
20 and not repeat the mistakes that others have done, try  
21 to learn from their mistakes.

22           So to get back to my earlier comment to  
23 Judge Drainer about I wouldn't expect anything earlier  
24 than February, we're at the very, very early stages of  
25 developing.

1           And the questions you bring up, Judge, are  
2           very important and will be addressed, but, quite  
3           honestly, they have not even been thought of at this  
4           time.

5           COMMISSIONER CRUMPTON: To find their way  
6           into this agreement, you're asking us to agree to  
7           something that you haven't thought out. And I don't  
8           mean this as any dispersion on you because I know  
9           you're an honorable person and you've done an  
10          outstanding job before this Commission.

11          But the problem that a Commissioner has is  
12          that he has very little evidence, and he foregoes the  
13          opportunity to have the parties to cross-examine each  
14          other and bring out hidden facts.

15          So we have to ask questions that go beyond  
16          what you're presenting to us, and that's why I'm  
17          asking these questions.

18          MR. COOK: Let me be clear on what we  
19          believe the stipulation calls for in this area. It  
20          really commits only one thing. That is that the  
21          company commits to file a retail wheeling plan, and  
22          the Commission is free to kick it back out the door 30  
23          seconds after it hits the table for whatever reason it  
24          deems appropriate.

25          There is no, it seems to me, no reason for

1 the Commission to be concerned by that approving this  
2 stipulation it has approved or given any indication of  
3 its view for the appropriateness of retail wheeling or  
4 the lawfulness of retail wheeling, the wisdom of a  
5 particular plan or the wisdom even of our method of  
6 devising our plan.

7 The only -- the only commitment is on the  
8 company to file.

9 COMMISSIONER CRUMPTON: So you would  
10 describe this as a sort of sweetener on the deal to  
11 make it more palatable to the Commission?

12 MR. COOK: No.

13 COMMISSIONER CRUMPTON: Do you think this is  
14 something that we wanted to see and that's why it's in  
15 here?

16 MR. COOK: No. I would characterize it more  
17 as our attention was somewhat concentrated at this  
18 particular time, and our willingness to react positive  
19 to certain suggestions by other parties was.

20 COMMISSIONER CRUMPTON: Okay. Let me throw  
21 a couple sweeteners in that I think would make it  
22 sweeter to me. Are you familiar with the Committee to  
23 keep Missourians Warm?

24 MR. COOK: I am not personally, no.

25 COMMISSIONER CRUMPTON: Is anyone from your

1 company here who's familiar with that committee?

2 MR. COOK: Not that I'm aware of.

3 COMMISSIONER CRUMPTON: It's an advocacy  
4 group that has spent a lot of time in the past year  
5 working to secure funding for the LIHEP Program that  
6 I'm sure you-all are familiar with.

7 MR. COOK: Yeah.

8 COMMISSIONER CRUMPTON: And that committee  
9 has proposed on several occasions State funding  
10 mechanisms, and your company has taken an active part  
11 in those discussions and in those efforts.

12 Do you think your company would be willing  
13 to support some form of LIHEP funding that is  
14 different from their previous effort, which was to  
15 take control over escheat funds, I believe? Have I  
16 said that right? Unclaimed funds.

17 MR. COOK: Well, let me address it this way.  
18 I think Mr. Mueller is here and can address what we  
19 have done, and I'm not sure that that's responsive to  
20 your specific question.

21 So rather than ask him to do that right now,  
22 I will say that I'm sure we would be willing to  
23 consider alternatives. I don't think that we have, to  
24 my knowledge, been presented, at least recently, with  
25 that specific proposal, at least that I'm aware of.

1 I'm sure we would be willing to consider that.

2 COMMISSIONER CRUMPTON: Where does that  
3 leave you?

4 MR. COOK: That leaves you with me saying  
5 that I can't commit at this time without checking with  
6 my client further.

7 COMMISSIONER CRUMPTON: Well, why don't you?  
8 Is your client here?

9 MR. COOK: Oh, yes.

10 COMMISSIONER CRUMPTON: Ask him.

11 MR. COOK: Could I have it read back, what  
12 you asked, please?

13 ALJ DERQUE: We'll go off the record.

14 (Discussion off the record.)

15 ALJ DERQUE: We're back on the record.

16 Commissioner Crumpton.

17 COMMISSIONER CRUMPTON: I think it's  
18 Mr. Cook's turn.

19 MR. COOK: I believe it is. For the second  
20 but probably not the last time today, I'll correct  
21 myself. Union Electric, if we're talking about the  
22 same organization, we are a member of the Committee to  
23 Keep Missourians Warm. In fact, they meet in our  
24 Union Electric office in Jefferson City.

25 COMMISSIONER CRUMPTON: I'd like to on the

1 record compliment your company for that.

2 MR. COOK: Thank you. We attempted to have  
3 the appropriate technical people here today, but we  
4 did not have that group here.

5 We were assisted by other members of the  
6 audience, and they have verified that, that we are  
7 part of that group and have been, and have been  
8 actively involved in that group and others in looking  
9 for alternative ways to fund LIHEP, and we have  
10 considered to and would plan on supporting other  
11 alternative ways, reasonable ways that may come up in  
12 the future, in addition to our own Energy Plus  
13 Programs which I'm sure familiar with which we  
14 participate in on our own.

15 COMMISSIONER CRUMPTON: Mr. Cook, would your  
16 client commit to work with the Committee to Keep  
17 Missourians Warm and other interested parties in the  
18 legislature to find a solution to this problem?

19 MR. COOK: Yes.

20 COMMISSIONER CRUMPTON: And if there --  
21 would your client commit to not oppose new legislation  
22 if your company finds that it can't support it?

23 MR. COOK: I think the stand that we  
24 would -- well, let me do this. I think on legislative  
25 matters I'd like to ask Mr. Jaudes to address that,



1 please.

2 MR. JAUDES: Commissioner Crumpton, we're at  
3 a little loss here. As you know, Joe Burk has  
4 retired. So we're -- on a legislative matter, Pat  
5 Straiter is taking care of all the state matters now  
6 for us.

7 It's a little difficult to say we won't  
8 oppose something without knowing specifically what  
9 that is. But unless it's something that we think is  
10 specifically detrimental to us, I would anticipate  
11 that we would not oppose anything just because we  
12 weren't in a position to support it.

13 Those are not the choices we make. We don't  
14 say, "Hey, we can't support this, so we're going to  
15 oppose it." We look at it. And I would not  
16 anticipate that, unless we saw something that was  
17 specifically detrimental to Union Electric Company,  
18 that we would oppose any legislation.

19 COMMISSIONER CRUMPTON: Thank you,  
20 Mr. Jaudes. That's the end of my questions.

21 ALJ DERQUE: Any further questions?  
22 Chair Zobrist.

23 COMMISSIONER ZOBRIST: I wanted to clarify  
24 the status of the Illinois Commerce Commission docket.  
25 I had understood from press releases earlier this year

1 the Illinois staff had recommended against the merger,  
2 and then I just had heard rumors that they had taken a  
3 different position.

4 I had assumed from your description that  
5 this was still in a contested case mode. So I'd like  
6 that clarified.

7 MR. COOK: It is still in a contested case  
8 mode. I think it is fair to say that the Illinois  
9 staff's position really is not that different from the  
10 Missouri staff's position except they phrased it in  
11 the negative. In other words, that they -- given the  
12 filing that we made, they were opposed to the merger.

13 But then during the processing of the case  
14 and in their testimony, it became obvious that the  
15 reasons they were opposed to the merger was because  
16 they were opposed to specific parts of the merger, the  
17 savings sharing plan, the premium recovery, those  
18 sorts of things.

19 So we have gotten them to state it in the  
20 reverse, which is that should certain conditions be  
21 met by the regulator, they would not be opposed to the  
22 merger. We have also indicated that we would be  
23 willing to consider some alternatives other than our  
24 original filing, somewhat similar to what we've  
25 actually settled on or stipulated to here.

1           So if I may continue just for a moment, it  
2           is contested in a few of the issues. The question of  
3           the sharing plan is still there because we have not  
4           actually entered into a stipulation, although we have  
5           indicated our willingness to accept some conditions or  
6           some alternatives for recovery.

7           The transfer of the Illinois territories is  
8           something that the staff is still opposed to. So  
9           that's one of the major issues.

10           A few of the other issues that we have  
11           resolved in our Stipulation are still an issue there.  
12           But we do not -- we do not have active opposition of  
13           the staff to the merger itself.

14           COMMISSIONER ZOBRIST: All right. Have the  
15           points of the agreement been made a matter of record?

16           MR. COOK: In Illinois?

17           COMMISSIONER ZOBRIST: Correct.

18           MR. COOK: Only to the extent that they can  
19           be gleaned from reading all the testimony. There's  
20           not one document that does that.

21           COMMISSIONER ZOBRIST: I would just like to  
22           make a final comment that when you do address any  
23           retail wheeling issues, and this is really addressed  
24           to all parties, it would help the Commissioners if,  
25           you know, a good broad view of the issues being taken

1 in whatever you do present to us, either in a docket,  
2 assuming there is approval of this merger, in a Union  
3 Electric case or in another type of proceeding.

4 Because we're engaged in collecting pilot  
5 programs and tariffs from other jurisdictions and  
6 studying them, and I've looked at the New Hampshire  
7 program myself. I find it very interesting. Of  
8 course, that's a statewide pilot program, a fairly  
9 small dimension considering the size of New Hampshire.  
10 There were at least some things in that program that I  
11 would appreciate comment by all parties on.

12 And I know we've looked at the Illinois  
13 Power and tariffs that have been filed, and those  
14 would be helpful, too.

15 But I guess what I'm saying is that if a  
16 proposal is made, it would help us to compare it with  
17 other things that are occurring in other states just  
18 so we have a basis of comparison to revisit with the  
19 fellow commissioners and fellow staff members across  
20 the country on.

21 It just helps us enlarge our frame work and  
22 gives us confidence that whatever decision we make is  
23 the right decision.

24 MR. COOK: Certainly. Thank you.

25 ALJ DERQUE: Vice Chair?

1                   COMMISSIONER DRAINER: No, I have no other  
2 questions. I wish to thank all of you for being  
3 responsive to us today and answering our questions.  
4 We appreciate it. Mr. Dottheim?

5                   MR. DOTTHEIM: Excuse me. I don't mean to  
6 prolong this, but then in an effort to be forthcoming,  
7 Commissioner Crumpton asked a number of questions that  
8 were -- such as the new proposed experimental  
9 alternative regulation plan, views on that, whether  
10 that's legal or not.

11                   Staff does view that as being lawful. We  
12 view that situation as being different than the retail  
13 wheeling proposal. We wouldn't be submitting to the  
14 Commission a Stipulation and Agreement with a new  
15 literal experimental alternative regulation plan that  
16 we're suggesting to the Commission that it adopt  
17 without believing that it is lawful.

18                   Mr. Mills in response to a question of yours  
19 regarding the alternative regulation plan, the  
20 settlement in the last Staff complaint case against  
21 Southwestern Bell, you are correct. There was a  
22 challenge to the accelerated modernization plan, which  
23 Southwestern Bell rejected, but it was challenged.

24                   It was taken up on a writ of review  
25 regardless by a couple of parties, and my recollection

1 is, as Mr. Mills indicated, the Western District Court  
2 of Appeals found it to be moot, no issue ripe for  
3 determination.

4 And that was kind of a bifurcated appeal.  
5 The Commission was reversed in regards to the  
6 settlement in general, but it didn't reach -- it  
7 didn't -- my recollection is it didn't reach any  
8 question as to the lawfulness of the alternative  
9 regulation plan. So there's been no judicial  
10 determination of that matter as yet.

11 Commissioner, you had a question on retail  
12 wheeling, how I think in part it appears in the -- in  
13 the settlement. If there had not been a settlement,  
14 the Staff's position if this case had gone to hearing  
15 would have been as it appears in the Stipulation --  
16 excuse me -- in the Hearing Memorandum.

17 And in the Hearing Memorandum, the Staff set  
18 out its position that there was no testimony filed on  
19 a retail wheeling proposal. It's a matter that the  
20 Missouri Industrial Energy Consumers had raised really  
21 in the context of the Hearing Memorandum more than  
22 anything else. And the Staff would have sought to  
23 have that issue not considered if the case had gone to  
24 hearing.

25 But in the context of reaching a Stipulation

1 and Agreement, the Staff was willing to present before  
2 the Commission an agreement that the Staff amongst  
3 others would not oppose the presentation to the  
4 Commission of a retail wheeling pilot program, which  
5 left all the parties and the Commission free to make  
6 their own determination or take a position as to the  
7 lawfulness of a proposal or even submit alternative  
8 proposals.

9 So I just thought I might go into those  
10 matters to more fully address some of the questions.

11 COMMISSIONER CRUMPTON: So you're saying  
12 that you identified for me the parties that proposed  
13 the retail wheeling pilot, did you not?

14 MR. DOTTHEIM: If you -- and it's -- if you  
15 refer to the Hearing Memorandum, that was proposed by  
16 the industrial intervenors, the MIEC, Missouri  
17 Industrial Energy Consumers.

18 COMMISSIONER CRUMPTON: And I did read it.

19 MR. DOTTHEIM: Yes. I know you did.

20 COMMISSIONER CRUMPTON: Thank you.

21 ALJ DERQUE: Any further questions?

22 COMMISSIONER CRUMPTON: No.

23 COMMISSIONER DRAINER: Then once again I  
24 want to thank you for your responsiveness,  
25 Mr. Dottheim, and all other parties.

1           MR. DOTTHEIM: And I wanted to say there was  
2           some very kind words about the Staff memorandum. That  
3           was a joint effort, and I will accept those kind words  
4           on behalf of the Staff in general. Thank you.

5           ALJ DERQUE: Any further comment by Union  
6           Electric?

7           MR. COOK: None at this time, thank you.

8           ALJ DERQUE: By the Staff?

9           MR. DOTTHEIM: Not at this time.

10          ALJ DERQUE: Mr. Mills?

11          MR. MILLS: Nothing further, thank you.

12          ALJ DERQUE: Any further comment by any  
13          intervenor? Seeing none, the on-the-record portion of  
14          this matter will be closed.

15          WHEREUPON, the hearing of this case was  
16          concluded.

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