

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION

3 TRANSCRIPT OF PROCEEDINGS

4 Hearing

5 June 3rd, 1999
6 Jefferson City, Missouri
Volume 6

7 In the Matter of the Monitoring)
8 of the Experimental Alternative) Case No. EO-96-14
9 Regulation Plan of Union)
Electric Company.)

10 In the Matter of the Application)
11 of Union Electric Company for an)
Order Authorizing: (1) Certain)
12 Merger Transactions Involving) Case No. EM-96-149
Union Electric Company; (2) The)
13 Transfer of Certain Assets, Real)
Estate, Leased Property, Easements)
14 and Contractual Agreements to)
Central Illinois Public Service)
15 Company; and (3) In Connection)
Transactions.)

16 SHELLY A. REGISTER, Presiding,
17 REGULATORY LAW JUDGE.

18 SHEILA LUMPE, Chair,
19 HAROLD CRUMPTON,
CONNIE MURRAY,
20 ROBERT G. SCHEMENAUER,
M. DIANNE DRAINER, Vice-Chair
21 COMMISSIONERS.

22 REPORTED BY:

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P R O C E E D I N G S

JUDGE REGISTER: We are reconvening this morning the hearing in Case No. E0-96-14 and E0-96-149, and we are going to resume the testimony of Robert Schallenberg for examination from the Bench, and we will allow recross and redirect if necessary after the examination from the Bench.

Commissioner Drainer, you have additional questions for Mr. Schallenberg?

VICE-CHAIR DRAINER: Yes.

JUDGE REGISTER: Please proceed.

QUESTIONS BY VICE-CHAIR DRAINER:

Q. Good morning, Mr. Schallenberg.

A. Good morning.

VICE-CHAIR DRAINER: But before I do begin with my questions to you, I guess I would like to ask if what I asked for yesterday is going to be available today from Mr. Brandt?

MR. COOK: Yes, probably later this morning.

VICE-CHAIR DRAINER: And I did think, Mr. Cook, that if no one could type, it was such a short sheet, I really would have accepted it in handwritten form.

MR. COOK: That's kind of you, but it's typed.

1 VICE-CHAIR DRAINER: Okay.

2 MR. COOK: We'll have it for you very soon.

3 VICE-CHAIR DRAINER: Okay. Thank you.

4 Thank you.

5 BY VICE-CHAIR DRAINER:

6 Q. Good morning, Mr. Schallenberg.

7 A. Good morning.

8 Q. I have a few questions that are very basic

9 yes/no-type questions. First, I would like to know,

10 as the division director over the Staff that looked

11 into these issues, can you tell me, does the Staff

12 believe that the terms of the stipulation and

13 agreement by the EARP allow it to bring its current

14 disputed issues to the Commission for resolution?

15 A. Yes.

16 Q. Is it Staff's position then that the current

17 disputed issues in this case can be resolved by this

18 Commission pursuant to the stipulation and agreement

19 by the EARP?

20 A. Yes.

21 Q. If the Commission were to resolve any of

22 these issues in favor of Staff's position, is the

23 Commission operating within the bounds of the

24 conditions of the current stipulation and agreement by

25 the EARP?

1 A. Yes, as I understand it.

2 Q. And by current, I do mean the first one. I
3 know there are two now.

4 Fourth, did you meet with your counsel for
5 its legal opinion to make sure that Staff was not
6 violating in any way the stipulation and agreement by
7 bringing these disputed issues to the Commission for
8 resolution?

9 A. I would say yes, with -- with the exception
10 of the weather piece that has already been settled. I
11 did not discuss the weather piece with our general
12 counsel. But I did all of the accounting adjustments,
13 yes.

14 Q. And through those discussions what was the
15 conclusion?

16 A. There was never a concern that we were
17 operating outside the terms of the stipulation and
18 agreement.

19 Q. And did you and your Staff or any members of
20 your Staff then file any testimony in this case asking
21 for changes to the language in the stipulation and
22 agreement so that you could bring these disputes to
23 us?

24 A. No -- we saw no need to.

25 Q. Because?

1 A. Because we are operating within the terms
2 and conditions of the stipulation and agreement.

3 Q. Thank you. And then finally, yesterday I
4 asked you some questions about the different parts of
5 the stipulation and agreement that allowed you to
6 bring these issues to us, and one of the areas that
7 was mentioned was this paragraph 6, that you stated
8 that you believed it was the Staff's responsibility to
9 bring issues to the Commission so that it was
10 fulfilling its statutory obligation.

11 A. I think I used responsibility and maybe
12 obligation as well, but yes.

13 Q. And is it -- in your opinion, would you
14 agree that it is the Commission's responsibility to
15 protect the public interests for the citizens of
16 Missouri with respect to dealing with regulated
17 utilities?

18 A. I'd say yes with the caveat that the
19 definition of public interest has always been kind of
20 broad and I've seen different interpretations, but I
21 agree with the general concept of the Commission is to
22 protect the public.

23 Q. And isn't the Commission also supposed to
24 assure that consumers -- all consumers, not just
25 residential, but businesses and large users, have just

1 and reasonable rates?

2 A. Yes, that's one of the responsibilities.

3 Q. And doesn't it also have the responsibility
4 to provide the companies an opportunity to receive a
5 fair return on their investment?

6 A. Yes.

7 Q. And do you believe that the disputed issues
8 that you brought before the Commission for resolution
9 in any way are important for the Commission to look at
10 to make sure that it is fulfilling these
11 responsibilities?

12 A. Yes.

13 VICE-CHAIR DRAINER: I have no other
14 questions. Thank you.

15 JUDGE REGISTER: Thank you, Commissioner
16 Drainer.

17 Chair Lumpe, did you have questions for
18 Mr. Schallenberg?

19 CHAIR LUMPE: Yes, Mr. Schallenberg. And I
20 apologize if they're redundant.

21 THE WITNESS: No problem.

22 QUESTIONS BY CHAIR LUMPE:

23 Q. Okay. Looking on page 5 where you discuss
24 what role you may have played in this, would it not
25 appear -- would it not be rational for Staff to

1 consult with someone who had gone through a similar
2 situation or case to ask where the difficulties might
3 have been, so that -- so that we might not end up in
4 contested situations because we would have perhaps
5 ironed out all of those potentialities?

6 A. Yes, that would be true. Our prior
7 experience had never indicated that we had -- we were
8 going to have that problem, but that would be true.

9 Q. Then let me look at page 12. It's at the
10 bottom of page 12 and the top of 13. The question is,
11 Mr. Brandt discussing the necessity for agreed-upon
12 appropriate accounting methodology for calculating
13 earnings.

14 And I think your response that there is no
15 language in the EARP that indicates such an agreement.

16 Have you looked further? Has anyone looked
17 further to see if there is -- was such an agreement
18 on -- or this testimony still stands?

19 A. I still stand by that testimony. Nothing
20 has changed.

21 Q. There were no side agreements on
22 methodology?

23 A. There were no -- I say there were no side
24 agreements. I make that statement based on the
25 representation that the Staff made to the Commission

1 when it presented the EARP which indicated there were
2 no side agreements.

3 Now, to the extent there were side
4 agreements that the Staff counsel didn't know about, I
5 guess that's a possibility. But with that caveat,
6 there were no side agreements.

7 Q. So your answer still stands?

8 A. Yes, it does.

9 Q. That there is no mention anywhere in there
10 of this agreement?

11 A. There is no evidence of any side agreement.

12 Q. Okay. And the last question I have is on
13 page 16, and I think sometime -- the timing of this is
14 of interest to me because some of this occurred prior
15 to my being on the Commission.

16 But as I read your testimony there, earlier
17 I think Mr. Brandt emphasized the company give-ups,
18 and this suggests to me that there were some benefits
19 which I tried to suggest there were also benefits. If
20 I look at the top, at the time you were negotiating
21 this, Staff had been considered -- was considering
22 filing a complaint case on excessive earnings, so that
23 in response to a potential excessive earnings case,
24 there were benefits to be gained by suggesting an
25 alternative regulation plan whereby those excessive

1 earnings may have been shared.

2 Is that correct?

3 A. That would be correct from the Staff's
4 perspective. Normally an incentive earnings grid is
5 one that is added depending on length. A lot of times
6 we'll just settle out a quicker rate reduction,
7 discounting the time period it would take us to get
8 the money. But that would be correct.

9 Q. So within the time frame of 1995, '96 when
10 this agreement went into effect, there was also
11 discussion of an overearnings case within Staff in any
12 event?

13 A. There was -- the answer is yes, there were
14 discussions of overearnings, and in the discussions
15 that took place in the development of EARP, there were
16 discussions that if there was an agreement, the Staff
17 was going to begin formalizing its audit to file its
18 complaint case.

19 Q. And then in 1997, after the first year of
20 this, this agreement was then continued or added --
21 three more years were added on.

22 When were the merger discussions -- when did
23 they start?

24 A. My understanding is, the evidence that the
25 Staff has to date would indicate that the merger

1 discussions started after the stipulation and
2 agreement was signed.

3 Q. The first one?

4 A. The first one. But before the July 19th,
5 1995 presentation to the Commission.

6 Q. So in the time line we have these various
7 factors going on. We have potential overearnings
8 within the context of the first agreement, and then we
9 have a merger within the context of the second
10 agreement, which added onto the first one; is that
11 correct?

12 A. Yes. The second one extends and it makes a
13 provision for a rate reduction as well.

14 Q. And when the second one was proposed, was
15 Staff aware that any merger plans were being
16 discussed?

17 A. The answer would be yes, because the second
18 extension came in the merger case for the application.

19 Q. So if we assume you knew it, we know the
20 company knew it?

21 A. Yes.

22 Q. Okay.

23 A. That would be a valid assumption.

24 CHAIR LUMPE: Thank you. That's all.

25 JUDGE REGISTER: Thank you, Chair.

1 Commissioner Murray, did you have any additional
2 questions for Mr. Schallenberg?
3 COMMISSIONER MURRAY: No, thank you.
4 JUDGE REGISTER: Then I believe that
5 concludes the examination from the Bench.
6 I'm going to just ask if the parties have
7 any recross.
8 Public counsel, Mr. Coffman?
9 MR. COFFMAN: No questions.
10 JUDGE REGISTER: Miss Schmidt?
11 MS. SCHMIDT: No questions.
12 JUDGE REGISTER: Mr. Fulton?
13 MR. FULTON: No, ma'am.
14 JUDGE REGISTER: Mr. Johnson?
15 MR. JOHNSON: No questions.
16 JUDGE REGISTER: Miss Forrest?
17 MS. FORREST: No.
18 JUDGE REGISTER: And, Mr. Krueger?
19 MR. KRUEGER: No, your Honor.
20 JUDGE REGISTER: And Mr. Cynkar?
21 MR. CYNKAR: No, your Honor.
22 JUDGE REGISTER: And then that would lead us
23 to redirect.
24 Did you have anything further, Mr. Dottheim?
25 MR. DOTTHEIM: Nothing further.

1 JUDGE REGISTER: Then you may be excused,
2 Mr. Schallenberg.

3 THE WITNESS: Thank you.

4 JUDGE REGISTER: Our next witness I have
5 listed is Mr. Rackers under the issue of territorial
6 agreements; is that correct?

7 (No response.)

8 JUDGE REGISTER: You may take the stand,
9 Mr. Rackers. You were previously sworn and remain
10 sworn.

11 STEPHEN M. RACKERS testified as follows:

12 JUDGE REGISTER: Do you have any direct
13 examination, Mr. Dottheim?

14 MR. DOTTHEIM: None.

15 JUDGE REGISTER: Cross-examination from
16 Public Counsel, Mr. Coffman?

17 MR. COFFMAN: No, thank you.

18 JUDGE REGISTER: Ms. Schmidt?

19 MS. SCHMIDT: No, no.

20 JUDGE REGISTER: Mr. Fulton?

21 MR. FULTON: I have a couple.

22 JUDGE REGISTER: Okay.

23 CROSS-EXAMINATION BY MR. FULTON:

24 Q. Mr. Rackers, on this issue attached to your
25 testimony, sir -- I believe it's the surrebuttal

1 testimony, is the stipulation and agreement on the --
2 one of the cases.

3 JUDGE REGISTER: It's Exhibit No. 2, is that
4 right, Mr. Fulton?

5 MR. FULTON: Yeah, Exhibit 2, I believe.

6 BY MR. FULTON:

7 Q. On the Macon County location; is that
8 correct?

9 A. Yes.

10 Q. Now, you made some references in your
11 surrebuttal testimony about a similar type of
12 agreement in the Black River case, Black River co-op
13 territorial agreement, but you didn't attach a copy of
14 that language or a copy of any order or stipulation to
15 your testimony.

16 Is there a reason why you didn't?

17 A. There was no stipulation in the case. And
18 in the Commission's order there is not the same
19 language that is in the Macon agreement. I did
20 reserve the right in my testimony and the company
21 never challenged that right.

22 Q. Was there any type of written presentation
23 to the Commission wherein the representation was made
24 by the Staff that that right was being reserved,
25 again, in the Black River territorial agreement?

1 A. Well, you say written representations? It
2 appears in my testimony that was filed in that case.

3 Q. Is that the only place where that written
4 representation is in that case?

5 A. I believe so.

6 Q. Was that case -- was the order in the Black
7 River case entered after the stipulation and agreement
8 was entered in this case, or do you know?

9 A. No, it wasn't.

10 Q. Excuse me?

11 A. I'm sorry. In this -- oh, in this case,
12 yet?

13 Q. Uh-huh.

14 A. I think the Black River order was issued
15 after the order in this case.

16 Q. Okay. Was the Black River case settled by a
17 stipulation and agreement or was the Black River
18 territory agreement proceeded to hearing?

19 A. Initially it went to hearing and the
20 Commission rejected the territorial agreement.
21 Parties made changes to the territorial agreement and
22 asked for a rehearing and the Commission approved it
23 on rehearing.

24 Q. So you actually testified at the trial --
25 at the hearing then, or was your testimony through

1 your prefiled testimony?

2 A. I don't believe I testified at the hearing.

3 The testimony was accepted into the record.

4 Q. All right.

5 MR. FULTON: I have nothing further.

6 JUDGE REGISTER: Thank you, Mr. Fulton.

7 Mr. Johnson, do you have any questions?

8 MR. JOHNSON: No questions.

9 JUDGE REGISTER: Miss Forrest?

10 MS. FORREST: No questions.

11 JUDGE REGISTER: Mr. Cooper?

12 MR. COOPER: No, thank you.

13 JUDGE REGISTER: Mr. Lerner, are you taking
14 questions today?

15 MR. LERNER: Yes, I am.

16 JUDGE REGISTER: Okay.

17 CROSS-EXAMINATION BY MR. LERNER:

18 Q. Good morning.

19 In the late 1980s, the Missouri Legislature
20 enacted a law authorizing this Commission to approve
21 territorial agreements between energy service
22 providers. Correct?

23 A. I'll accept that subject to check.

24 Q. So you don't know?

25 A. I don't know the date. I know that there is

1 a statute that discusses territorial agreements and
2 what the criteria is.

3 Q. Okay. Are you aware that this Commission
4 has stated that the intent of the Missouri Legislature
5 in enacting that law and therefore providing for the
6 possibility of territorial agreements was to prevent
7 costly, wasteful competition and duplication between
8 service providers?

9 A. Those are findings the Commission often
10 makes in its orders for territorial agreements. I'm
11 not specifically aware of what you're saying.

12 Q. So you don't know that the Commission has
13 stated that that was the intent of the Legislature?

14 A. No.

15 Q. Okay. I'm going to read to you from -- this
16 is Case No. EO-91-204. I'm reading from a Lexus
17 printout on page 9, but it looks like the jump site
18 might be 19.

19 Quote, the intent of the General Assembly in
20 providing for territorial agreements is to prevent
21 wasteful and costly competition and duplication by the
22 substitution of negotiated agreements between service
23 providers, period, end quote. Let me show it to you
24 to make sure.

25 JUDGE REGISTER: That's from a Commission

1 order?

2 MR. LERNER: Yes.

3 JUDGE REGISTER: What's the date of that

4 order?

5 MR. LERNER: September 20th, I believe.

6 JUDGE REGISTER: 19--

7 MR. LERNER: Here you go, Steve.

8 MR. DOTTHEIM: Thank you.

9 MR. LERNER: 1991.

10 JUDGE REGISTER: 1991. Thank you.

11 BY MR. LERNER:

12 Q. Did I read that correctly?

13 A. Yes.

14 Q. Okay. Now, territorial agreements in sort
15 of broad terms involve the swath of customers and
16 territories between energy providers; is that correct?

17 A. Correct.

18 Q. Okay. Now, like any business venture, they
19 entail a certain amount of start-up costs. Correct?

20 A. Well, I don't really look at this as a
21 start-up situation. It is not like a utility is
22 offering service for the first time. These service
23 areas are usually in the same general area and you're
24 trading one customer base for another customer base.
25 I don't really look at it as a start-up situation.

1 Q. There are costs attached to territorial
2 agreements; is that correct?

3 A. Yes, there are.

4 Q. And they can be outweighed by benefits; is
5 that correct?

6 A. Correct.

7 Q. The Commission has recognized that they
8 often are, in fact, have to be outweighed by benefits
9 or they won't be approved by this Commission?

10 A. That's true. Those benefits may not be
11 immediate though.

12 Q. Right. But it is true that this Commission
13 has stated that it can only approve a territorial
14 agreement where it is proven that it is not
15 detrimental to the public interest?

16 A. That's correct.

17 Q. Okay. And furthermore, this Commission has
18 stated that where it is shown from the evidence that a
19 territorial agreement is in the public interest, it
20 will exercise its discretion to authorize that
21 territorial agreement.

22 A. I believe that's true. I don't have a
23 cite --

24 Q. Okay.

25 A. -- that I can go to.

1 Q. Now, when you reentered into both of these
2 territorial agreements, you expected that it would
3 reap benefits for both its customers, as well as its
4 shareholders; is that correct?

5 A. I believe it did, yes.

6 Q. Okay. Actually, I'd like to -- I'm
7 presenting before you a document that's Missouri
8 Public Service Commission EO-95-400, direct testimony
9 of Kenneth Schmidt on June 3, 1995.

10 Do you recognize this testimony?

11 A. Yes, I do.

12 Q. This is the testimony filed by the UE
13 witness in the Black River case, is it not?

14 A. Yes, it is.

15 MR. LERNER: I'd like to move this into
16 evidence if I could.

17 JUDGE REGISTER: Have sufficient copies for
18 everyone?

19 MR. LERNER: Yeah.

20 JUDGE REGISTER: I need six for myself and
21 the Commissioners. And then the court reporter gets
22 three.

23 MR. LERNER: I'm also presenting before
24 Mr. Rackers a document that states at the top,
25 rebuttal testimony of Stephen M. Rackers, and the case

1 number EO-95-400.

2 BY MR. LERNER:

3 Q. This is the rebuttal testimony that you
4 filed in the Black River case; is that correct?

5 A. Yes.

6 MR. LERNER: I'd like to move this document
7 into evidence also. Are you ready?

8 JUDGE REGISTER: No. 24, rebuttal testimony
9 of Stephen Rackers in Case No. EO-95-400, EO-95-416
10 and EM-90-66 is Document No. 24.

11 (OFF THE RECORD.)

12 JUDGE REGISTER: Okay. What else you got?

13 MR. LERNER: I've also presented to
14 Mr. Rackers a document that states direct testimony of
15 Ronald Loesch in Case Nos. 97-6 and the date at the
16 bottom is August 30, 1996.

17 BY MR. LERNER:

18 Q. This was the direct testimony filed by the
19 company witness in the Macon case; is that right?

20 A. That's correct.

21 MR. LERNER: Okay. I'd like to move this
22 into evidence, please.

23 JUDGE REGISTER: Let me -- Pat, go off the
24 record for a minute.

25 (DISCUSSION OFF THE RECORD.)

1 (EXHIBIT NOS. 23 THROUGH 28 WERE MARKED FOR
2 IDENTIFICATION.)

3 JUDGE REGISTER: Mr. Lerner, proceed.

4 BY MR. LERNER:

5 Q. Mr. Rackers, the document that's been marked
6 as Exhibit 23, that is the testimony that was filed by
7 Kenneth Schmidt, the company witness, in the Black
8 River case; is that correct?

9 A. That's correct.

10 Q. And you were familiar with this, you've
11 reviewed this, have you not?

12 A. Yes, I have.

13 MR. LERNER: I'd like to move this into
14 evidence, your Honor.

15 JUDGE REGISTER: Exhibit No. 23 has been
16 offered to be admitted into evidence.

17 Are there any objections to Exhibit No. 23?

18 (No response.)

19 JUDGE REGISTER: Hearing no objections,
20 Exhibit No. 23 is admitted into the record.

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

22 JUDGE REGISTER: Please proceed, Mr. Lerner.

23 BY MR. LERNER:

24 Q. Mr. Rackers, the document that's been marked
25 as Exhibit 24, that is the testimony that you filed in

1 the Black River case, the rebuttal testimony that you
2 filed in the Black River case; is that correct?

3 A. That's correct.

4 MR. LERNER: I'd like to move this into
5 evidence, your Honor.

6 JUDGE REGISTER: Okay. Exhibit 24 has been
7 offered into the record. Are there any objections?

8 (No response.)

9 JUDGE REGISTER: Hearing no objection,
10 Exhibit No. 24 is admitted into the record.

11 (EXHIBIT NO. 24 WAS RECEIVED IN EVIDENCE.)

12 JUDGE REGISTER: Proceed, Mr. Lerner.

13 BY MR. LERNER:

14 Q. Mr. Rackers, the document that's been marked
15 as Exhibit 25, that's the testimony that was filed by
16 the company witness, the UE witness in the Macon case,
17 Robert Loesch?

18 A. Yes.

19 Q. You have reviewed this document; is that
20 correct?

21 A. Yes, I have.

22 MR. LERNER: I'd like to move it into
23 evidence, your Honor.

24 JUDGE REGISTER: Exhibit No. 25 has been
25 offered into the record. Are there any objections?

1 (No response.)

2 JUDGE REGISTER: Hearing no objections,
3 No. 25 is admitted into the record.

4 (EXHIBIT NO. 25 WAS RECEIVED INTO EVIDENCE.)

5 BY MR. LERNER:

6 Q. Mr. Rackers, the document that's marked as
7 Exhibit 26, that is the rebuttal testimony that you
8 filed in the Macon case; is that correct?

9 A. Yes, it is.

10 MR. LERNER: I'd like it moved into
11 evidence, your Honor.

12 JUDGE REGISTER: Exhibit No. 26 has been
13 offered into the record. Are there any objections?

14 (No response.)

15 JUDGE REGISTER: Hearing no objections,
16 Exhibit No. 26 is admitted into the record.

17 (EXHIBIT NO. 26 WAS RECEIVED INTO EVIDENCE.)

18 BY MR. LERNER:

19 Q. Mr. Rackers, the document that's been marked
20 as Exhibit 27, are these your work papers for the
21 Black River case?

22 A. This is my summary worksheet that calculates
23 the actual adjustments.

24 Q. So you have prepared this document?

25 A. Yes, I have.

1 MR. LERNER: I'd like to move this into
2 evidence, your Honor.

3 JUDGE REGISTER: Are there any objections to
4 Exhibit No. 27?

5 When was this document prepared,
6 Mr. Rackers?

7 THE WITNESS: I'm not aware of the exact
8 date.

9 JUDGE REGISTER: But you recognize it as a
10 document you prepared?

11 THE WITNESS: Oh, yes. Yes.

12 JUDGE REGISTER: Hearing no objections,
13 Exhibit No. 27 is admitted into the record.

14 (EXHIBIT NO. 27 WAS RECEIVED IN EVIDENCE.)

15 BY MR. LERNER:

16 Q. And, Mr. Rackers, the document that's marked
17 as Exhibit 28, the cover sheet is Mr. Weiss's answers
18 to your data requests, and then attached are various
19 work papers of Mr. Weiss; is that correct?

20 A. Yes.

21 Q. And you have reviewed this document, have
22 you not?

23 A. Yes, I have.

24 MR. LERNER: I'd like to move this into
25 evidence, your Honor.

1 JUDGE REGISTER: Exhibit 28 has been offered
2 into the record. Are there any objections?

3 (No response.)

4 JUDGE REGISTER: Hearing none, Exhibit
5 No. 28 is admitted into the record.

6 (EXHIBIT NO. 28 WAS RECEIVED IN EVIDENCE.)

7 JUDGE REGISTER: Please proceed, Mr. Lerner.

8 BY MR. LERNER:

9 Q. Thank you. Mr. Rackers, I'd like to direct
10 your attention to what's been marked as Exhibit 23.
11 And in particular, I'm going to be going briskly, I
12 hope, through pages 4 through 6 of that document,
13 which is the testimony that was filed by Ken Schmidt
14 in the Black River case.

15 And Mr. Schmidt identifies numerous benefits
16 that he hopes -- he anticipates will flow through to
17 the company as a result of the Black River agreement;
18 isn't that correct?

19 A. He specifically identifies three benefits.

20 Q. Well, let's -- I mean, he has three numbers,
21 but I think within each of those numbers there are
22 numbers of subparts. Let me go quickly through them.

23 He identifies the one benefit, I'm looking
24 on around lines 28 to 29 of page 4. He notes there
25 will be a more consolidated distribution service

1 territory; isn't that correct?

2 A. Yes.

3 Q. Okay. If you'll turn to the next page,
4 page 5 on lines 1 to 2. He identifies another
5 benefit, which will be the company will be able to
6 become more efficient in its maintenance and operation
7 of this more consolidated service territory; isn't
8 that correct?

9 A. That's his statement, yes.

10 Q. Right. On line 4, he identifies another
11 benefit flowing through to the company, that it will
12 be able to obtain a exclusive service territory; isn't
13 that correct?

14 A. Yes.

15 Q. And lines 5 through 6, he notes that this
16 allows the company to improve its ability to do system
17 planning; isn't that correct?

18 A. Yes.

19 Q. Okay. And if you look -- actually
20 lines 20 -- or 18 of page 5 through lines -- line 2 of
21 page 6, he identifies another benefit in the form of
22 avoided cost in terms of UE's -- UE would no longer
23 have a need to do certain substation upgrades as a
24 result of the territorial agreement; isn't that right?

25 A. That's correct.

1 Q. Okay. Now, I'd also like to focus now on
2 lines 11 through 17. Mr. Schmidt poses himself the
3 question, based on a schedule that he has attached to
4 his testimony, Schedule 2, he notes that UE is giving
5 more kilowatts to Black River than it is receiving.

6 Would you please explain the significance of
7 this difference, and his answer is, quote -- this is
8 on lines 13 through 17.

9 JUDGE REGISTER: What page are you on?

10 MR. LERNER: I'm sorry. Page 5.

11 BY MR. LERNER:

12 Q. Quote, the significance of this
13 approximately kilowatt -- 6 million kilowatt-hour
14 difference in kilowatts is relatively small when
15 compared to the benefits I described before. By way
16 of comparison, one significant industrial customer
17 would more than make up the difference in the usage.

18 I believe that we are reserving some
19 significant growth areas to UE by this agreement.
20 Therefore, such load growth is very possible, period,
21 close quote.

22 I have accurately read that, have I not?

23 A. Yes, you have.

24 Q. And it is fair to say on the basis of that
25 statement that Ken Schmidt identified a benefit -- a

1 possible benefit of the Black River agreement that UE
2 would be locking in an exclusive service territory
3 that it hoped would be experiencing load growth in the
4 future; isn't that right?

5 A. Well, you state that as a benefit. I see it
6 as a possible offset to the loss in load revenue.

7 Q. From the company's perspective it's a good
8 thing to make more money; isn't that correct?

9 A. I believe that's an interest the company
10 has.

11 Q. It makes more money when it has more
12 customers. Correct?

13 A. Not necessarily. But it could.

14 Q. It could. It's likely that if it has more
15 customers it would make more money. Correct?

16 A. It would depend on the revenue that's
17 generated from those.

18 Q. Okay. So what Mr. Schmidt is saying here
19 is that he expects or he anticipates that the hope --
20 the possibility of load growth as a result of this
21 territorial agreement; isn't that correct?

22 MR. FULTON: I'm going to object.

23 Mr. Schmidt's testimony stands for what it says and
24 is not to have this witness interpret Mr. Schmidt's
25 testimony, and calls for speculation.

1 That's the fact -- finder of facts
2 determination, not this witness's.

3 MR. LERNER: Your Honor, I don't know what
4 is Mr. Fulton's standing to object. Mr. Rackers is
5 ably represented by counsel in this case. This
6 proceeding is going on for quite some time.
7 Mr. Dottheim has proven his ability to make objection
8 when he feels fit to preserve his witness's rights.

9 JUDGE REGISTER: Mr. Fulton is a party. He
10 has a standing to object. If you want to respond to
11 his objection, you know --

12 MR. LERNER: It goes to the core of this
13 dispute, your Honor, as to whether or not UE perceived
14 and, in fact, experienced benefits as a result of the
15 Black River agreement.

16 So I think it is very important that
17 Mr. Rackers address that perceived -- that perceived
18 fact that I stated in the testimony filed by the
19 company in the Black River case.

20 JUDGE REGISTER: You have the testimony of
21 Mr. Schmidt admitted into evidence here.

22 MR. LERNER: Right.

23 JUDGE REGISTER: Are you asking Mr. Rackers
24 to agree with that?

25 MR. LERNER: I'm asking Mr. Rackers to agree

1 with my statement that the company perceived at the
2 time that it entered into the Black River agreement
3 that it would at least hope to experience load growth
4 after its entry into the territorial agreement.

5 JUDGE REGISTER: I think you are asking him
6 to speculate as to what the company believed or
7 expected. I'm not sure that he has -- you've shown
8 that he has a basis of knowledge other than what is in
9 the testimony, of course, which speaks for itself.

10 For testimony that is already admitted into
11 the record, it's helpful for you to cite to the
12 Commission where you think important passages are and
13 to point out the significance of those passages,
14 but it's not helpful to -- to necessarily have Staff
15 interpret what you think that it should say. So I'm
16 going to sustain the objection and ask you to ask your
17 next question.

18 MR. LERNER: Why don't we move on -- thank
19 you, your Honor.

20 BY MR. LERNER:

21 Q. -- to Exhibit 24, which is the testimony
22 that you filed in this case, Mr. Rackers.

23 A. I have it.

24 Q. Now, on page 2, you pose yourself the
25 question, what benefits have the witnesses for UE and

1 Black River listed in support of this transfer? And
2 then you list a number of benefits in your testimony
3 that you filed in this case; is that correct?

4 A. Yes.

5 Q. Okay. Anywhere in your testimony do you
6 question -- do you bring to the Commission any doubts
7 that you had about the reality of those benefits?

8 A. No.

9 Q. Okay. Thank you.

10 I'll briefly do my next --

11 JUDGE REGISTER: Before you move on from
12 Exhibit No. 24, I don't know if the other parties
13 noted, but the -- my copy of Exhibit 24 has got
14 notations in it.

15 MR. DOTTHEIM: Yes.

16 JUDGE REGISTER: Yes. And those are not
17 part of the rebuttal testimony itself.

18 MR. LERNER: I apologize. That was the
19 exhibit that was given to me by the company. If you'd
20 like, we can withdraw that and I could --

21 MR. DOTTHEIM: Could we have a substitute, a
22 clean copy?

23 MR. LERNER: Yeah.

24 JUDGE REGISTER: Get me a clean copy. That
25 would be fine. And we'll, of course, need nine

1 copies, three for the court reporter and six for the
2 Bench.

3 MR. LERNER: Right.

4 BY MR. LERNER:

5 Q. Briefly, turning to Document 25, this was
6 the company testimony that was filed in the Macon
7 case.

8 And with the court's permission I will do
9 this very briefly.

10 Just looking on pages 6 through 8, the
11 company witness in this case identifies numerous
12 benefits, does he not, that would flow from the Macon
13 territorial agreement?

14 MR. DOTTHEIM: Again, I think the Bench has
15 already addressed this on the basis of Mr. Fulton's
16 objection as to how to treat the testimony of company
17 witnesses.

18 I think we've already had a ruling from the
19 Bench on that.

20 JUDGE REGISTER: I --

21 MR. LERNER: That was my single question on
22 this document.

23 JUDGE REGISTER: I appreciate your
24 testimony. I'm going to allow him to cite to the
25 sections where he thinks that the Commission needs to

1 pay attention to those and then move on, as long as
2 you don't go any further than that, no reading of the
3 testimony into the record, because his testimony is
4 already in the record.

5 MR. LERNER: Okay.

6 JUDGE REGISTER: And not asking the witness
7 to speculate as to what it means, then I'll allow you
8 to proceed. I'll overrule the objection, Mr. Lerner.
9 Proceed with your question.

10 And remind me what pages we're talking
11 about.

12 BY MR. LERNER:

13 Q. Sure. Pages 6 through 8. I don't want to
14 transgress the ones that you've said. So is it fair
15 to say that on pages 6 through 8 of his testimony, on
16 a cursory review, without asking you to interpret it,
17 that the company witness identifies several benefits
18 that he thinks would flow through to the company as a
19 result of the Macon territorial agreement?

20 A. Yes.

21 Q. Okay. Now, let me turn to Document 26 which
22 has been marked -- a document marked 26 which is the
23 rebuttal testimony that you filed in this case. And
24 on page 2 of the testimony that you filed, you asked
25 what benefit that UE expects that it would -- UE and

1 Macon actually would enjoy from this agreement and you
2 list six benefits; is that correct?

3 That's correct, is it not?

4 A. Well, I think I identify the benefit that
5 Mr. Loesch has identified.

6 Q. Do anywhere in your testimony you question
7 the reality of those benefits?

8 A. I don't believe I question the reality. I
9 believe I question the value and the ability to
10 quantify any of those benefits.

11 Q. Right. That's true. You do mention that,
12 that certain of them might not be perfectly
13 quantifiable. Let me repeat my question.

14 Anywhere in your testimony do you question
15 the reality of those benefits?

16 A. No.

17 Q. No. Thank you.

18 Okay. Now, I think this is where you were
19 brought out helpfully by Mr. Fulton. But with regard
20 to the Black River agreement -- with regard to the
21 Black River agreement, there is nothing in the final
22 stipulation and order that reflects any UE agreement
23 with a reservation of right by the Staff to analyze
24 the financial impact of that agreement upon the EARP.
25 Correct?

1 A. There is nothing in the order.

2 Q. Right.

3 Now, let me pause for a moment. Now,
4 with Black River, the Staff thought it necessary to
5 introduce a contractual term in the agreement, making
6 clear that it viewed it as -- itself as having the
7 right to analyze the financial impact of that
8 territorial agreement for purposes of the EARP; is
9 that correct?

10 A. I don't know that I'd characterize it as a
11 contractual term, but Staff reserved the right in its
12 testimony to examine the financial aspects of this
13 agreement during the EARP.

14 Q. Now, under your interpretation of the
15 contract, there was no need for the Staff to do that
16 because it could have done that anyhow; isn't that
17 correct?

18 MR. DOTTHEIM: I object. Mr. Rackers has
19 not testified that there was a contract.

20 BY MR. LERNER:

21 Q. Under your interpretation of the stipulation
22 and agreement --

23 JUDGE REGISTER: Wait a minute. Whoa.

24 Whoa. Do you have a response --

25 MR. LERNER: I'll withdraw the question.

1 JUDGE REGISTER: -- or are you withdrawing
2 the question?

3 Thank you. Withdrawn -- the question is
4 withdrawn. Mr. Lerner may proceed.

5 BY MR. LERNER:

6 Q. Under your interpretation of the stipulation
7 and agreement, there was no need to do any such
8 reservation of right in the Black River agreement
9 because you could have brought that adjustment anyhow;
10 isn't that correct?

11 A. That's correct.

12 Q. Okay. But you did find it necessary to
13 introduce a specific term in the Black River agreement
14 that reserved that right. Isn't that correct?

15 A. I thought it was important, one, to put the
16 company on notice that we intended to --

17 Q. Excuse me, Mr. Rackers. I want to make
18 clear for myself.

19 JUDGE REGISTER: Mr. Rackers, did you finish
20 your answer?

21 THE WITNESS: No. I noticed some confusion
22 going on over here, so . . .

23 JUDGE REGISTER: Finish your answer and
24 ignore the confusion.

25 THE WITNESS: I thought it was important,

1 one, to put the company on notice that we intended to
2 examine this during the sharing periods, during the
3 EARP. And I also think it's important that the
4 company recognize that the Staff has the ability to
5 look at this item.

6 MR. LERNER: Okay.

7 JUDGE REGISTER: With our sound system out,
8 be sure and elevate your voice, Mr. Rackers.

9 BY MR. LERNER:

10 Q. Okay. Now, I'd also like to explore your
11 contention in your testimony that you can bring this
12 adjustment under 3F8, which is the new category, 3F8
13 of the stipulation and agreement and -- and -- but in
14 point of fact, there were Commission orders
15 specifically addressing the Black River and Macon
16 agreements, were there not?

17 A. They were but they were not rate
18 proceedings.

19 Q. Okay. Actually could I direct your
20 attention to your -- I guess what's been marked as
21 Exhibit 2, please?

22 JUDGE REGISTER: Mr. Rackers' surrebuttal?

23 MR. LERNER: Exactly. And I'm the only
24 person that doesn't have a copy.

25 JUDGE REGISTER: Kind of hard to ask

1 questions then, isn't it?

2 MR. LERNER: Thank you. Excuse me.

3 BY MR. LERNER:

4 Q. If I could direct your attention to
5 Schedule 1-1. I'm sorry. Actually, what are we
6 looking at now?

7 A. Surrebuttal testimony.

8 Q. Exhibit 1, please.

9 Now, you say these were not rate
10 proceedings. Right?

11 A. Correct.

12 Q. Black River, on Schedule 1-1, you have
13 attached a rate proceedings that you've participated
14 in; is that correct? That's the title -- that's the
15 caption of that schedule, is it not?

16 A. Yes, it is.

17 Q. If you'll turn to the following page, three
18 lines down, Union Electric, E0-95-400, that was the
19 Black River case, was it not?

20 A. Yes, it was.

21 Q. Okay. And two lines below that, Union
22 Electric, E0-97-6, that was the Macon case, was it
23 not?

24 A. Yes, it was. But in those case the
25 Commission made no determination regarding the

1 company's rates.

2 Q. Sir, you identify those as rate proceedings
3 in this schedule, do you not?

4 A. Yes, I do.

5 Q. Okay. Thank you.

6 Now, I think in your testimony you state
7 that 3F7 -- actually, why don't I -- I'm sorry.

8 Let me direct your attention to page 7,
9 lines 9 through 10 of your direct testimony, and I'll
10 quote the sentence I'm focusing on.

11 Section 3F7 states that the Staff reserves
12 the right to bring issues which are related to the
13 operation or implementation of the EARP to the
14 Commission for resolution, period, closed quote.

15 Did I read that accurately?

16 A. Yes.

17 Q. Okay. The phrase "territorial agreement,"
18 quote, unquote, appears nowhere in the stipulation and
19 agreement; is that correct?

20 A. For the EARP?

21 Q. Yes.

22 A. I believe that's correct.

23 Q. Okay. The phrase "territorial agreement"
24 appears nowhere in Section 2C of the reconciliation
25 procedure in which no fewer than eight adjustments are

1 listed; is that correct?

2 A. I believe that's true, but language similar
3 to 3F7 appears in 2G of the reconciliation procedure.

4 Q. But the phrase "territorial agreement"
5 appears in nowhere anywhere in the reconciliation
6 procedure; is that correct?

7 A. To the best of my knowledge, yes.

8 Q. Okay. And yet the parties to the agreement
9 had in the years immediately previous to the entering
10 into the EARP entered into several territorial -- let
11 me withdraw that and move back.

12 In the years immediately prior to entering
13 into the stipulation and agreement, UE had entered
14 into several territorial agreements; isn't that
15 correct?

16 A. I don't have specific knowledge of that.

17 Q. So you don't know that UE had entered into a
18 territorial agreement before the EARP?

19 A. I think someone mentioned -- might have
20 mentioned it in their testimony as the case, but I
21 don't have any personal knowledge of that.

22 Q. Well, I think Mr. Baxter cited two cases and
23 I'll cite them for you now. I can show them to you,
24 or you can take my word for it subject to check, that
25 in E0-91-204, Union Electric entered into a

1 territorial agreement with Crawford Electric and in
2 EC-93-166 Union Electric entered into a territorial
3 agreement with Quivre River Electric Cooperative.
4 Actually I can show them to you.

5 These appear to be territorial agreements
6 between Union Electric and rural cooperatives; is that
7 correct?

8 A. They are Commission orders dealing with
9 territorial agreements.

10 Q. Right. And they are dated 1993 and 1991.
11 Correct?

12 A. Those are the case numbers.

13 Q. Correct. So --

14 JUDGE REGISTER: And before you go on,
15 Mr. Lerner, what are the case numbers on those orders,
16 Mr. Rackers?

17 MR. LERNER: It's EO-91-204 and EC-93-166.

18 JUDGE REGISTER: That's fine.

19 BY MR. LERNER:

20 Q. Now, despite the fact that the territorial
21 agreements were in the immediate consciousness of the
22 persons who entered into the territorial agreement,
23 the parties that entered into the territorial
24 agreement, they provided nowhere in the stipulation
25 and agreement for territorial agreements; is that

1 correct?

2 A. I'm not sure I understood your question.

3 Q. Okay. Despite the fact that in the years
4 immediately preceding the entry into the stipulation
5 and agreement, nowhere in the stipulation and
6 agreement is there any mention of the phrase
7 "territorial agreement"?

8 A. I believe that's correct.

9 Q. Okay. But your proposition is, sir, that
10 because territorial agreements have an impact on
11 earnings, they therefore trigger the Staff's right to
12 bring this to the Commission under the first sense of
13 3F7, among other provisions, which references the
14 operation or implementation of plan; isn't that right?

15 A. Yes.

16 Q. Okay. So -- and the reason you state that
17 is because it is your view that a territorial
18 agreement can have an impact on earnings which flows
19 through to an impact on the customer credit, which
20 is -- which relates somehow to the operation or
21 implementation of the plan; isn't that right?

22 A. Yes. And it would -- and that flow-through
23 to rate payers would be a detriment, which is a
24 finding the Commission must make in a territorial
25 agreement, that there is no detriment.

1 Q. Okay. If you were to buy a box of tissues,
2 under your view that would trigger the Staff's right
3 to initiate -- to bring an adjustment before this
4 commission, isn't that right, because that \$1.29 that
5 it would pay, let's say, you know, per month would buy
6 an extra box of tissues per month.

7 That would relate to the operation or
8 implementation of the plan and, therefore, could
9 supply the grounds for a Staff adjustment. Isn't that
10 right?

11 A. Any cost categories that the company has,
12 items within those cost categories could trigger
13 adjustments.

14 Q. Well, I appreciate that. Please answer my
15 question though.

16 UE --

17 JUDGE REGISTER: I -- I'm sorry.

18 MR. DOTTHEIM: I object in general to
19 Mr. Lerner racing through his questions and racing
20 through Mr. Rackers' responses.

21 If Mr. Lerner would slow down and give
22 Mr. Rackers an opportunity to respond and not, again,
23 run over him in Mr. Rackers' responses. So I object
24 to the form of the questions that Mr. Lerner is posing
25 at this point.

1 MR. LERNER: Your Honor, I can --

2 JUDGE REGISTER: Wait just a minute. Let me
3 see if there are any other objections.

4 Mr. Coffman?

5 MR. COFFMAN: Yeah, I would just object to
6 the line of questioning regarding interpretation of
7 the stip. We just spent two days asking legal
8 questions of nonlegal witnesses about this
9 stipulation. And I just think that Union Electric had
10 their opportunity with this witness yesterday on
11 matters of interpretation of the stip.

12 JUDGE REGISTER: Any other objections?

13 Mr. Lerner?

14 MR. LERNER: I'm going to be very brief on
15 this. It really just -- I'm really focused on a
16 sentence in Mr. Rackers' testimony which related to
17 territorial agreements, and I'm trying to understand
18 how a territorial agreement, you know, flows through
19 to 3F7 to us being here today.

20 I'm really going to ask two questions. As
21 to Mr. Dottheim's objections, I plead guilty and I'm
22 trying to do this fast responding to your message
23 yesterday, but I'll slow down. Sometimes I get
24 excited and move too fast. I'm going to go more
25 slowly.

1 JUDGE REGISTER: I appreciate it. From the
2 form of the question I appreciate you're trying to
3 help us move along, but be sure to let the witness
4 answer your question and you can speak as quickly as
5 the court reporter doesn't object to.

6 MR. LERNER: Okay.

7 JUDGE REGISTER: And as to Mr. Coffman, I
8 have a tendency to agree, that we do seem to be
9 covering testimony in areas we covered for two days.

10 MR. LERNER: Uh-huh.

11 JUDGE REGISTER: So I would ask you to limit
12 the questions that go back to the stipulation and
13 agreement or we'll never get done. I do have Monday
14 open too if you gentlemen would like to stay in
15 Missouri for another weekend.

16 MR. LERNER: I think that's incentive enough
17 for me.

18 JUDGE REGISTER: So I'll sustain the
19 objections and ask you to move on today, and I do
20 believe he answered that question. But go ahead and
21 ask your next question.

22 MR. LERNER: The next question having to do
23 with --

24 JUDGE REGISTER: If you want to follow up
25 the last question, fine, but I believe he answered the

1 last one.

2 MR. LERNER: But, I mean, I just would like
3 a yes or no, now.

4 JUDGE REGISTER: No.

5 BY MR. LERNER:

6 Q. If UE purchased a box of tissues under your
7 reading of Section 3F7, the Staff could bring a
8 adjustment before this Commission; is that correct?

9 A. I don't think the purchase of tissues in and
10 of itself would trigger an adjustment. I think that
11 Staff can examine any category of cost or any item,
12 and as it judges it to be appropriate for inclusion in
13 a sharing period, it can propose an adjustment.

14 JUDGE REGISTER: Okay.

15 MR. LERNER: Moving on.

16 JUDGE REGISTER: Thank you.

17 BY MR. LERNER:

18 Q. On page 6, if I could direct you to your
19 testimony, please --

20 MR. DOTTHEIM: Which exhibit?

21 MR. LERNER: Exhibit 1, which is
22 Mr. Rackers' direct testimony.

23 JUDGE REGISTER: Page 6?

24 MR. LERNER: Page 6, lines 15 through 16.

25 BY MR. LERNER:

1 Q. And you note there that if there were a
2 decline in revenues as a result of territorial
3 agreements, and then the quote is, quote, this
4 situation would constitute detriment to ratepayers,
5 period, close quotes.

6 Isn't that correct?

7 A. I think I say decline in earnings, but then
8 you said revenues, but --

9 Q. I'm sorry. With that correction is that
10 accurate?

11 A. Yes.

12 Q. Okay. Now, assuming there were -- there was
13 an increase in earnings as a result of a territorial
14 agreement, there could easily be a net benefit to
15 customers; isn't that correct?

16 A. Yes, there could.

17 Q. Okay. Because if revenues were to
18 increase or -- earnings were to increase, that would
19 increase the customer sharing credit if UE were over
20 12.61 percent; isn't that right?

21 A. Yes.

22 Q. Now, I'd like to explore an example with you
23 to clarify what the Staff methodology is here
24 proposing this adjustment.

25 Let's say that in the third sharing period

1 of the first EARP, the company were to lose revenue --
2 lose earnings in the amount of \$100,000, and let's say
3 that in each of the three sharing periods of the
4 second EARP, the company as a result of the
5 territorial agreement had increased earnings of
6 \$100,000 in each of those years. And let's further
7 assume that for each of these years UE was in the
8 50 percent sharing bracket.

9 Now, exploring that, without the -- without
10 the Staff methodology, just taking it as it is, the
11 customers are hurt \$50,000 in the third sharing period
12 of the first EARP in terms of depressed earnings, but
13 they're benefited \$50,000 in each of the three sharing
14 periods of the second EARP in the amount of \$150,000.
15 So the net benefit to ratepayers would be \$100,000;
16 isn't that right?

17 A. Yes.

18 Q. And, sir, can I assume that some symmetry,
19 at least, some fairness in your adjustment, in that
20 you both allow -- you both require the company to back
21 out any decrease in earnings when such decreases flow
22 from any territorial agreements, and I assume some
23 symmetry in fairness that you would also allow UE to
24 back out any increase in earnings in terms of
25 calculating sharing under the EARP.

1 Is that fair to say?

2 A. Well, such is not the case with these two
3 territorial agreements. But I don't think that's
4 necessarily correct. I think that with the
5 territorial agreement there should be no detriment.
6 There should be benefits.

7 Ideally there would be benefits from
8 entering into the territorial agreement. And under
9 your scenario, even backing out the adjustment in the
10 third sharing period, the company would still share a
11 portion of the benefits -- the company would still
12 realize benefit from that situation in later years --

13 Q. Sorry.

14 A. -- through sharing.

15 Q. I'm sorry. I just want to understand that
16 the Staff will not allow UE to back out any increase
17 in earnings that it enjoys as a result of territorial
18 agreement; is that correct?

19 A. I don't necessarily think that would be
20 appropriate. But it's not -- it's not even the case
21 in either one of these territorial agreements.

22 Q. Okay. I consider the answer yes?

23 A. No. I think I said that's not necessarily
24 the case. I really haven't been presented with that
25 situation where there are detriments in one year and

1 immediate benefits in the following three.

2 Q. Okay.

3 MR. LERNER: If you'll wait a moment,
4 please. Sorry.

5 JUDGE REGISTER: Subject to your
6 explanation, the answer is no? No, not necessarily?

7 THE WITNESS: No, not necessarily.

8 JUDGE REGISTER: Thank you.

9 BY MR. LERNER:

10 Q. Let me read to you from your deposition.
11 I'm afraid it's a fairly long thing but I think it's
12 important. It's on page -- on page 184 of your
13 deposition transcript, I pose to you, and I think you
14 can check on page 184, lines 17 through 185, line 6, I
15 pose you the precise hypothetical I have raised here.

16 And then on -- following through, I say on
17 line 11, beginning on line 11 of page 185, quoting
18 myself, I was saying, I was looking at saying \$50,000
19 hit in the year three of the EARP 1 if there is a
20 \$100,000 loss. I'm saying there is a \$50,000 gain to
21 ratepayers in terms of sharing credits in years 1, 2
22 and 3.

23 So 150 minus 50, and I come up with 100.
24 I'm saying over the four-year period does that seem
25 like a fair -- Answer: Right. Under that example

1 ratepayers over the four-year span would be better off
2 by \$100,000.

3 Question, I guess would you allow UE to your
4 proposed adjustment now says whatever the numbers are,
5 let's say \$100,000, of the territorial agreement
6 decrease revenue by \$100,000, as a consequence
7 resulted in whatever "X" amount of decrease sharing
8 credit with customers. Not too articulate, I'm
9 afraid, but coming up.

10 Question, would you allow -- would you allow
11 UE to remove the revenue that generated that caused
12 the territorial agreements, its calculation of its
13 earnings in years 1, 2 and 3 of the second EARP under
14 my calculations? Answer: No. So your answer then
15 was that you would not allow UE to back out any
16 increase in earnings. Correct?

17 A. Correct.

18 Q. Okay. Is that your testimony today?

19 A. Yes, it is. I think I previously responded
20 to a question in which I said no.

21 Q. Okay. Now, if you'll look on page 6 of
22 your testimony -- your direct testimony in this case,
23 lines 19 through 20, and I'll read the sentence into
24 the record.

25 A. Tell me the page again, please.

1 Q. I'm sorry. Page 6.

2 MR. DOTTHEIM: Which exhibit? I'm sorry.

3 MR. LERNER: One.

4 THE WITNESS: Page 6.

5 BY MR. LERNER:

6 Q. Okay. Line 19. Quote, by reversing the net
7 reduction in earnings, the effect of the territorial
8 agreement on the sharing credits and the permanent
9 rate reduction is eliminated, period, closed quote.

10 Did I read that accurately?

11 A. Yes.

12 Q. Now, the effect of a territorial agreement
13 on sharing credit can be both positive and negative;
14 isn't that right?

15 A. The effect of the territorial agreement?

16 Q. On sharing credits could be both positive
17 and negative?

18 A. Yes, it could.

19 Q. And when the effect of territorial
20 agreements is to decrease revenue, your proposal would
21 eliminate that effect upon the EARP calculation.
22 Correct?

23 A. That is what I've done in this adjustment.

24 Q. Right.

25 But the effect could also be the opposite

1 and your adjustment does not eliminate that impact
2 upon the permanent rate reduction; is that correct?

3 A. Well, I don't believe that there is an
4 opposite effect, that there is no need to eliminate.

5 Q. In this case but there could be; is that
6 right?

7 A. It would be possible for a territorial
8 agreement to have an increase in revenue.

9 Q. And your adjustments would not eliminate
10 that effect. Correct?

11 A. That's correct.

12 Q. Okay.

13 JUDGE REGISTER: I think we've covered that
14 area, Mr. Lerner. Are you getting ready to move on?

15 MR. LERNER: Moving on.

16 BY MR. LERNER:

17 Q. I'd like to turn now to Mr. Weiss's work
18 papers which have been marked as Exhibit 28. Now,
19 Mr. Weiss's work papers -- and I'm -- actually if you
20 can turn to the very last page of the answers to that
21 request, the last page of the document.

22 MR. DOTTHEIM: We are at the very last page?

23 MR. LERNER: Yes.

24 MR. DOTTHEIM: Excuse me.

25 BY MR. LERNER:

1 Q. Now, what Mr. Weiss did here was compare
2 certain variables, customers kilowatt hours and amount
3 of revenue, for the total service territories: isn't
4 that correct?

5 A. I think you need to give me more explanation
6 about what you mean by total service territories.

7 Q. All of the counties in which customers were
8 swapped, that is what this -- this page reflects;
9 isn't that right?

10 A. I think the counties may be the same
11 counties, but we're not talking about all of the same
12 customers, because in those agreements, only 2,000 or
13 3,000 customers were shifted.

14 Q. Right. In this worksheet we're looking at
15 an area that includes 10,000 customers. Now, the
16 customers that were shifted might be a subset of these
17 10,000 customers, but this sheet doesn't isolate those
18 customers in any way.

19 Q. Right. I would say -- would you agree that
20 the customers that were swapped are a subset of the
21 exhibit -- this document?

22 JUDGE REGISTER: That's what he just said.

23 THE WITNESS: Right.

24 BY MR. LERNER:

25 Q. Now, Mr. Weiss compared the first sharing

1 period which is July '95 to June '86 to the third
2 sharing period which is July '97 to June '98.

3 Correct?

4 A. Yes.

5 Q. Okay. The first sharing period was before
6 the territorial agreement; isn't that right?

7 A. I believe that's true. I'm not sure exactly
8 when that territorial agreement became effective.

9 Q. I can show you if you'd like.

10 A. It's the report and order on --

11 Q. Yeah, it should be in the report and order.

12 JUDGE REGISTER: I think Mr. Rackers was
13 pointing you to a page.

14 MR. LERNER: I think it was June.

15 JUDGE REGISTER: What are we looking at now?

16 MR. LERNER: I think off the top of my head
17 it was June, but Mr. Rackers has the document in front
18 of him.

19 JUDGE REGISTER: What are we looking at?
20 What are we looking at?

21 MR. LERNER: The question is -- Mr. Rackers
22 asked me -- he said he wasn't sure when the
23 territorial agreement in Black River closed, and
24 that's what I'm trying --

25 JUDGE REGISTER: That's at the back of

1 Attachment 2, isn't it?

2 MR. LERNER: I don't think so.

3 JUDGE REGISTER: Well, that's just the
4 stipulation and agreement for Macon.

5 MR. LERNER: Right. Oh, I know where.

6 Actually I'll withdraw the question for now.

7 JUDGE REGISTER: Thank you.

8 BY MR. LERNER:

9 Q. Mr. Rackers' work papers reflect --
10 Mr. Weiss's work papers reflect comparing sharing
11 period 1 to sharing period 3. Okay?

12 A. Yes.

13 Q. And he shows that there have been an
14 increase in customers in the total service territory
15 as we've talked about from 10,461 to 10,785; isn't
16 that right?

17 A. That's what the work paper shows.

18 Q. It shows an increase in kilowatt hours from
19 roughly 448 million to 470 million; isn't that right?

20 A. Yes.

21 Q. Okay. And most importantly, it shows
22 that there has been an increase in revenues from
23 22.1 million to about 23.4 million; isn't that
24 correct?

25 A. Yes, associated with these over 10,000

1 customers.

2 Q. Right. Now, you have no basis in terms of
3 current, up-to-date information to question the
4 numbers -- and this is a very narrow question -- to
5 question the numbers in this work paper; isn't that
6 right?

7 A. Correct.

8 Q. Okay. Thank you.

9 Now, let me move on to your work papers
10 which I think have been marked as Exhibit 27. Now,
11 you're not sure when you prepared this document; isn't
12 that right?

13 I think that the judge asked you that
14 already.

15 A. Well, I -- I prepared it as part of Staff's
16 analysis during the third sharing period.

17 Q. Okay. Thanks.

18 Now, your focus was on the customers that
19 were swapped in the territorial agreement. Right?

20 A. Yes.

21 Q. Okay. Now, looking on the left column you
22 have AmerenUE revenues prior to exchange, and you
23 identify about 3 million there; isn't that right?

24 A. Yes.

25 Q. Okay. You have Black River revenues prior

1 to exchange, you have 2.6 million. Correct?

2 A. Correct.

3 Q. Okay. Then you come up with an answer of
4 roughly 404 million; isn't that right?

5 A. Yes.

6 Q. Anywhere in this document does the phrase
7 "after the exchange" appear?

8 A. No.

9 Q. Okay. Now, the numbers that -- from
10 your summary work papers, they are drawn, are they
11 not, from Schedule 2 to what has been marked as
12 Document 23; isn't that right?

13 If you'll look, it's the direct testimony of
14 Kenneth Schmidt.

15 A. Yes.

16 Q. Okay.

17 MR. LERNER: If you'd like, your Honor, if
18 you can just -- this is what I'm looking at. It's
19 Schedule 2 to Exhibit 23.

20 JUDGE REGISTER: Thank you.

21 BY MR. LERNER:

22 Q. Now, we know the date on the bottom right
23 apparently is June 22nd, '95. Is that right?

24 A. Correct.

25 Q. Okay. And these numbers as makes clear in

1 the first footnote are based on totals for the year
2 1994. Correct?

3 A. Correct.

4 Q. So turning to your work papers again, that
5 \$3 million figure, that's based on 1994 data.
6 Correct?

7 A. Yes.

8 Q. Okay. And the \$2.6 million figure, that's
9 based on 1994 data. Correct?

10 A. Yes.

11 Q. Okay. And the \$434,000 figure, that's the
12 result of 1994 data. Right?

13 A. Yes.

14 Q. Okay. Now, you state in your surrebuttal
15 testimony, on page 10, lines 18 through 19, quote,
16 Mr. Weiss's calculations are simply incorrect and
17 are not reflective of the circumstances in Case
18 No. E0-95-400, et al, period, closed quote; is that
19 correct?

20 A. Yes.

21 Q. Okay. Now, Mr. Weiss's work papers were a
22 comparison of data comparing certain variables for the
23 year 1995/96 and '96/97. And your statement that that
24 is incorrect is based on 1994 data. Yes or no?

25 A. I'm not sure you characterized Mr. Weiss's

1 work paper correctly. I think his work paper compares
2 '95/96 to '97/98.

3 Q. Yes. And I just want a yes or no. Your
4 statement that those work papers are incorrect -- it's
5 your word -- are based on 1994 data. Correct?

6 MR. DOTTHEIM: I object. Mr. Rackers can
7 answer with a yes or no if he can. But if he needs to
8 explain, he should be permitted to explain his answer.

9 JUDGE REGISTER: Mr. Lerner?

10 MR. LERNER: I'm happy to have a yes or no
11 and then an explanation. It's a very simple question,
12 I think.

13 THE WITNESS: Let me hear it again.

14 MR. LERNER: Your statement --

15 JUDGE REGISTER: Wait a minute. Wait a
16 minute, Mr. Rackers.

17 I'll overrule the objection, but if the
18 question isn't answered yes or no, he can start it
19 with, you know, yes, if he wants to explain, and if it
20 needs a broader explanation, Mr. Dottheim can go back
21 and redirect it.

22 Go ahead, Mr. Lerner.

23 BY MR. LERNER:

24 Q. Your statement that Mr. Weiss's calculations
25 are simply incorrect is based on 1994 data?

1 A. No.

2 Q. Mr. Rackers, if -- what document can you
3 point to other than that schedule attached to 1995
4 testimony that reflected 1994 data, what document can
5 you point to to support your testimony here today with
6 regard to Black River? Any document.

7 A. We can use the document that you've
8 introduced, Mr. Weiss's work paper.

9 JUDGE REGISTER: That's Exhibit No. 28; is
10 that correct?

11 MR. LERNER: Right.

12 BY MR. LERNER:

13 Q. And what that reflects is an increase in
14 revenue from the first sharing period to the third
15 sharing period for the total service territory.

16 Now, using these documents, please explain
17 to me how you can support an adjustment for the Black
18 River territorial agreement.

19 A. There is nothing in this document,
20 Mr. Weiss's work paper, that shows that the customers
21 that were exchanged with Black River increased or
22 decreased. And I've also sought to find work papers
23 from that specific case and some were provided to me.
24 I provided those to Mr. Weiss and it discusses load
25 growth and in my opinion characterizes it as very

1 speculative that there would be any at all.

2 Q. I'm going to come back to that.

3 But this document reflects an increase in
4 the revenue in total service territory. Now, it's
5 entirely possible, is it not, sir, that a portion of
6 that increase came from the customers that were
7 swapped with Black River; isn't that right?

8 A. It's possible.

9 Q. It's possible that \$1 out of the \$276,000
10 increase in the total service territory came from the
11 customers that were swapped?

12 A. It's possible. I don't think it's very
13 likely --

14 Q. It's possible?

15 A. -- but it's possible.

16 Q. And if UE made even \$1 as a result of the
17 customer swap, we wouldn't be here today, at least as
18 regards Black River; isn't that right?

19 A. No.

20 Q. Well, if UE made even \$1 with regard to the
21 customers that were swapped, it would not have
22 suffered a decrease in earnings as a result of the
23 customer swap involved in the Black River territorial
24 agreement; isn't that right?

25 A. Well, I think the answer to your question is

1 no, but I'm not sure you've asked me it right. What
2 I'm getting out of your question is, if they would
3 have through customer increases or changes in load
4 added a dollar to that specific area or group of
5 customers that they exchanged, then you could reduce
6 my loss revenue calculation by a dollar, but there
7 still wouldn't be a net benefit.

8 Q. If -- I'd like to turn to your testimony
9 that you filed in the Black River case, sir.

10 JUDGE REGISTER: Exhibit number?

11 MR. LERNER: 24.

12 JUDGE REGISTER: Thank you.

13 BY MR. LERNER:

14 Q. And if I could turn your attention, please,
15 to Schedule 2 of your testimony.

16 JUDGE REGISTER: Schedule 2?

17 MR. LERNER: Yes. Of Exhibit 24.

18 JUDGE REGISTER: Right. Got you.

19 BY MR. LERNER:

20 Q. Now, this was obviously a speculative
21 document that you prepared, but year 1 of your
22 document -- year 1 of this reflects 1994; isn't that
23 right?

24 A. Actually I think the amount that says
25 current Black River area has been escalated by

1 2 percent, so it would probably reflect whatever year
2 followed the approval or the effective date of the
3 territorial agreement.

4 Q. Okay. Let me actually turn your attention
5 now to --

6 MR. LERNER: Actually, I'm going to move on.

7 JUDGE REGISTER: Thank you.

8 BY MR. LERNER:

9 Q. If UE were to lose a customer, it would have
10 excess capacity; isn't that right?

11 A. I don't know.

12 Q. You don't know.

13 If UE were to -- if UE has a certain amount
14 of generation capacity; isn't that right?

15 A. Yes.

16 Q. Okay. If it doesn't have to service one of
17 those customers that it previously had to service, it
18 has a certain amount of excess capacity; isn't that
19 right?

20 MR. DOTTHEIM: I object. I think the
21 question has been asked and answered.

22 JUDGE REGISTER: I think you're asking him
23 to speculate.

24 MR. LERNER: I think I'm asking --

25 BY MR. LERNER:

1 Q. If UE were to lose --

2 JUDGE REGISTER: I'm going to sustain the
3 objection and ask you to ask your question
4 differently.

5 MR. LERNER: Okay.

6 JUDGE REGISTER: I think if you think it
7 through, you can understand what he's already answered
8 here.

9 BY MR. LERNER:

10 Q. Okay. If UE were to lose a large customer,
11 what would be the effect on its abilities to -- would
12 there be excess -- there would be extra energy that it
13 could have at its disposal to use in some way or
14 another; isn't that right?

15 A. I don't know.

16 Q. Okay. Now, is it possible?

17 A. I would agree it's possible.

18 Q. Okay. And if it actually did have that
19 energy that it would have, that it had because it lost
20 a large customer, do you not think that UE would make
21 its best efforts to utilize that in some way?

22 A. Again, I don't know.

23 Q. So you think -- is it possible?

24 MR. DOTTHEIM: Excuse me. I think I object.

25 Mr. Lerner is asking for speculation on the part of

1 Mr. Rackers.

2 JUDGE REGISTER: Mr. Lerner?

3 MR. LERNER: This deception goes to the
4 core. The Macon dispute is all about whether or not
5 UE had an economic benefit from excess capacity that
6 was at its disposal because it lost a certain number
7 of customers. That's really what this dispute is all
8 about, your Honor.

9 JUDGE REGISTER: I think your first question
10 did ask him to speculate what UE thinks. Be careful
11 about asking what UE thinks. He doesn't know.

12 MR. LERNER: Okay.

13 JUDGE REGISTER: But you asked him if it was
14 possible. I'll overrule the objection that -- on the
15 possibility and he can respond. And if he doesn't
16 know, he doesn't know, but it's the possibility I'll
17 allow.

18 BY MR. LERNER:

19 Q. Is it possible that if you lost the large
20 customer, it would use that excess capacity that it
21 might have to sell it on the interchange market, for
22 example?

23 A. I would agree it's possible.

24 Q. Is it possible that UE would use any excess
25 capacity that it might have after it lost a large

1 customer to purchase -- to avoid purchasing other more
2 expensive power on the interchange market?

3 A. I believe it's possible.

4 Q. Okay. So you agree that if UE has excess
5 energy capacity, that holds forth the potential of a
6 certain economic benefit?

7 A. I believe it's possible.

8 Q. Okay. In the Macon territorial agreement
9 UE had a net loss to the customers. Correct?

10 A. Yes.

11 Q. Now it's capacity to generate electricity
12 was unaffected by the Macon territorial agreement; is
13 that right?

14 A. I know of no impairment that was caused by
15 that agreement, specifically on UE's ability to
16 generate capacity.

17 Q. Okay.

18 A. Excuse me. Generating capacity.

19 Q. And you don't know if UE, if it had any
20 excess capacity as a result of the Macon agreement,
21 did anything with it?

22 A. I don't know that.

23 Q. Okay. Let me explore the things you don't
24 know.

25 JUDGE REGISTER: How about asking him some

1 things he does know?

2 MR. LERNER: Well, I think it's important to
3 establish what he doesn't know, your Honor. I think
4 you'll see in determining economic benefit of the
5 agreement, Mr. Rackers didn't frankly do his due
6 diligence, as will become clear.

7 JUDGE REGISTER: All right. Please proceed.

8 MR. LERNER: All right.

9 BY MR. LERNER:

10 Q. You don't know that the market for energy
11 last summer was at an all-time high; isn't that right?

12 A. That's correct.

13 Q. And precisely, you didn't know when you
14 sponsored your adjustments that the price for energy
15 in June of 1998 had skyrocketed to the all-time high
16 of \$7,000 a megawatt?

17 A. I didn't know that.

18 Q. And you wouldn't think that relevant in
19 determining whether or not UE would sell any excess
20 capacity that it might have had as a result of the
21 Macon territorial agreement?

22 A. I don't necessarily believe UE has excess
23 capacity available to it to sell.

24 Q. But to be clear, you don't know?

25 A. That's correct.

1 Q. Okay. Now, given the stream demand for
2 electricity last summer -- actually I'll withdraw
3 that.

4 Now, just for the court's clarification, if
5 I could just turn to Mr. Weiss's work papers which
6 have been marked as Document 28. And it's the second
7 page or the third page in that document.

8 The --

9 JUDGE REGISTER: Marked Schedule 6 at the
10 bottom?

11 MR. LERNER: Yeah, that's right.

12 BY MR. LERNER:

13 Q. The entire dispute in this Macon case
14 revolves around the third line there, excess energy
15 sales; isn't that right?

16 A. I'm not sure that's the entire dispute.
17 That's the item that I discussed in my testimony.

18 Q. Right. Because you questioned whether UE
19 had -- was able to enjoy a \$1.3 million benefit from
20 excess energy sales as a result of the Macon
21 territorial agreement; isn't that right?

22 A. Yes.

23 Q. Okay. Are you aware of the term capacity
24 reserve margin or excess capacity reserve?

25 A. Yes.

1 Q. Okay. And that is, just so we're on the
2 same page, the percentage of total electricity being
3 generated or being purchased that is not being either
4 sold or used; isn't that right?

5 A. You said capacity reserve. I believe --

6 Q. Okay. Well, let me -- what I mean is the
7 percentage of total electricity that UE is generating
8 or purchasing that it is not selling or using, in
9 other words, if the portion of electricity that it's
10 holding in reserve for various contingencies.

11 A. I probably wouldn't characterize it that
12 way, no.

13 Q. How would you characterize it?

14 A. Well, I think UE has certain capacity over
15 and above what it needs to serve its customers. It
16 doesn't -- doesn't necessarily generate -- use that
17 capacity to generate energy in holding reserve. It
18 has the ability to use that excess capacity if
19 necessary.

20 Q. Okay.

21 JUDGE REGISTER: How much longer do you
22 think you're going to have, Mr. Lerner?

23 MR. LERNER: Two minutes.

24 One second, sir.

25 I'm done.

1 JUDGE REGISTER: Okay. It's ten o'clock.
2 Let's take a break at this point in time and come back
3 for my questions.
4 Off the record, please.
5 (A recess was taken.)
6 JUDGE REGISTER: We are ready for
7 examination from the Bench.
8 QUESTIONS BY JUDGE REGISTER:
9 Q. I just have a few questions for you,
10 Mr. Rackers.
11 I wanted to look at Exhibit 27 and 28.
12 Actually I don't need 28 at all.
13 My question was, looking at Exhibit 27, on
14 the left side that says revenues. I understood
15 somewhere in that question or response that the sum
16 there was 434,921 in millions.
17 Are these actual dollars or are they
18 representing thousands?
19 A. Actual dollars.
20 Q. So that is 434,921?
21 A. Correct.
22 Q. Okay. Okay. And if I understand it,
23 nothing in the information -- it was your testimony
24 that nothing in the information that was provided by
25 Union Electric either through Exhibit 28 or other

1 information changed the information you had about this
2 loss that is shown here to Missouri revenues between
3 the exchange of revenues, when this exchange of
4 territories occurred between AmerenUE and Black River?

5 A. That's correct.

6 Q. And that they showed you revenue increases
7 but did not relate them back specifically to the
8 parties -- or use -- I'm sorry -- the customers that
9 were involved in this exchange?

10 A. That's correct.

11 Q. And so you have nothing specific except for
12 the 1994 information that was provided to you in the
13 Black River case that -- to rely upon because no
14 information was given to you that updates this 1994
15 information; is that correct?

16 A. Yes. And I -- I asked for that information.
17 I tried to discover if they had had customer growth.

18 Q. And did they tell you that they couldn't or
19 could or could not produce this separated information
20 or was there any response to this?

21 A. The response I received was that there had
22 been no customer growth. Excuse me. Substantial
23 customer growth.

24 Q. No substantial customer growth.

25 Okay. And at the risk of finding that you

1 might have been padding your resume, Mr. Rackers, I
2 just want to clarify on your Exhibit No. -- no, it
3 would be Exhibit No. 1, your Schedule 1.

4 A. Which testimony?

5 Q. Exhibit No. 1 is your direct testimony. And
6 where you have entitled this document "rate
7 proceedings participation."

8 Would it be fair -- would it be accurate to
9 say that the documents that are under the case numbers
10 that have an R in the title are the rate cases?

11 A. That's correct.

12 Q. And that if you had included the other cases
13 that are EC or TC, that they may have had some impact
14 on your experience, but they are not rate cases, is
15 that right, as much as you'd like to consider them
16 rate cases?

17 A. Well, you said EC and TC. Those are
18 complaint cases.

19 Q. They're complaint cases.

20 A. Okay.

21 Q. They're not rate proceedings per se, rate
22 increase?

23 A. They're not rate increase. I would consider
24 them rate proceedings.

25 Q. Okay. When you talk about reserving

1 ratemaking authority or ratemaking treatment in your
2 stipulation and agreement and other orders that come
3 out, are you talking about ratemaking treatment in a
4 complaint case?

5 A. I'm speaking to a proceeding where rates are
6 addressed.

7 Q. Okay. And so that could include both the
8 rate increase proceedings that are marked with an R in
9 the case number title and those that include the C in
10 the case number title?

11 A. Correct.

12 Q. Because they would -- the Cs, the
13 complaints, are an attempt to decrease the rates?

14 A. That's correct.

15 Q. Okay.

16 A. I would also say that they could be
17 addressed in both R and C cases in this proceeding
18 regarding sharing credits.

19 Q. And -- okay. Because these are cases
20 established out of ER-95-411, the original rate case?

21 A. In part, yes.

22 Q. And are any rates usually addressed in
23 territorial agreement cases?

24 A. No, they are not.

25 Q. Okay. And so a territorial case is not a

1 rate case?

2 A. Correct.

3 Q. So despite your inclusion of those in what
4 you have entitled rate proceeding participation, that
5 does not change the character of the territorial
6 agreement cases as nonrate cases?

7 A. That's correct.

8 Q. Okay.

9 JUDGE REGISTER: Okay. I don't have any
10 further questions. So we would proceed to -- and I
11 don't have any questions that the Commissioners have
12 provided to me, so we'll proceed to recross.

13 And, Public Counsel?

14 MR. COFFMAN: No questions.

15 JUDGE REGISTER: Thank you, Mr. Coffman.
16 Intervenors, Ms. Schmidt?

17 MS. SCHMIDT: No questions.

18 JUDGE REGISTER: Mr. Fulton?

19 MR. FULTON: No, your Honor.

20 JUDGE REGISTER: Mr. Johnson?

21 MR. JOHNSON: No.

22 JUDGE REGISTER: Miss Forrest?

23 MS. FORREST: No, your Honor.

24 JUDGE REGISTER: And, Mr. Lerner, recross?

25 RE-CROSS-EXAMINATION BY MR. LERNER:

1 Q. I just want to ask, you said that you were
2 told by the company that it did not experience
3 substantial growth in terms of customer swapped in
4 Black River; is that correct?

5 A. That's correct.

6 Q. Who told you that, or where was that answer?

7 A. That was part of information that I
8 received. I asked that question of a Mr. Bodner, who
9 is an attorney for the company, and he provided me
10 with some documents from the company's files, and part
11 of what I asked him was, do you have any documents or
12 company files?

13 And an additional question was, have you
14 experienced any changes in those territories, like
15 increased customers, and the response to the customers
16 was no. And -- well, he said, I will check with
17 Mr. Schmidt, and he got back to me and then he
18 provided me with these documents from -- and said
19 that's all the company had in the file.

20 Q. I just want to be clear. What he said was
21 there was no substantial growth; is that right?

22 A. Yes.

23 Q. And --

24 A. Well, substantial change in customers.

25 Q. Okay. Is it possible for the company to

1 track customers that it's given up, as far as you
2 know?

3 A. The customers were specifically identified
4 as to who the -- the actual names and residences of
5 the customers UE was receiving.

6 Q. But isn't one of the benefits of a
7 territorial agreement is that you're locking in a
8 service area; isn't that right?

9 A. I think that was a benefit that UE believed
10 they would gain.

11 Q. So it's possible that it could have actually
12 lost customers that it previously had prior to the
13 territorial agreement; isn't that right?

14 A. Some of the customers that it gained in the
15 territorial agreement could have dropped off. They
16 could have lost some of those same customers, yes,
17 that's possible.

18 Q. Actually let me now direct your attention
19 to, just very quickly -- it's the last question --
20 your testimony in the Black River case. I think it's
21 exhibit --

22 JUDGE REGISTER: 24, rebuttal testimony?

23 MR. LERNER: Right.

24 Actually I'm not going to -- I'm going to
25 withdraw the question. I'm done.

1 JUDGE REGISTER: Nothing further,
2 Mr. Lerner?
3 MR. LERNER: No.
4 JUDGE REGISTER: Thank you.
5 That completes recross. And redirect,
6 Mr. Dottheim?
7 MR. DOTTHEIM: Yes, I have a few questions.
8 JUDGE REGISTER: Okay.
9 REDIRECT EXAMINATION BY MR. DOTTHEIM:
10 Q. Mr. Rackers, if you could take a look at
11 Exhibit 28.
12 A. Yes.
13 Q. And also Exhibit 23.
14 A. Yes.
15 Q. Okay. Exhibit 23 being the direct testimony
16 of Kenneth L. Schmidt?
17 A. Correct.
18 Q. And Exhibit 28 being Mr. Weiss's work
19 papers?
20 A. Yes.
21 Q. At the top of page 2, Mr. Schmidt identifies
22 what counties are covered by the territorial
23 agreement.
24 A. Correct.
25 Q. Okay. Do those counties match up

1 with counties that are shown on the last page of
2 Mr. Weiss's work paper?

3 A. No, they do not.

4 Q. In order to perform the analysis which
5 you've done or which anyone might care to do as far as
6 the effect of swapping service territories, would the
7 counties that are compared need to be matched up?

8 A. I believe they would. At the least that
9 would have to occur.

10 Q. Mr. Rackers, you were asked about the
11 Commission's orders in the Black River Cooperative and
12 the Macon case also.

13 Do you recall whether there is anything in
14 the Commission's orders wherein the Commission
15 rejected the Staff's reservation of right to look at
16 the exchange of service territories in the context of
17 the EARP?

18 A. No, there was not.

19 Q. If I could ask you about Mr. Lerner's
20 box-of-tissues questions, the \$1.29 box of tissues
21 that were purchased and purchased in subsequent years.

22 Is that an item alone, the purchase of a box
23 of tissues, that would determine whether the --
24 whether the Staff would propose an adjustment?

25 A. No, it would not.

1 Q. What are other factors that the Staff might
2 look at?

3 A. Well, the Staff would not only do an
4 analysis of that type of cost or any type of cost to
5 determine whether it rose to the level of concern in
6 terms of materiality of something that we'd even want
7 to bring to the Commission attention.

8 In addition, we would seek an explanation
9 for any increase in cost that any item might cause.

10 Q. Do you still have a copy of the transcript
11 of your deposition?

12 A. Yes.

13 Q. I'd like to ask you to turn to page 186. On
14 page 184, 185 there's a hypothetical which Mr. Lerner
15 earlier this morning directed you to. I think what
16 was read into the record ended with the answer "no" on
17 line 10 of page 186.

18 There is an additional question, why not,
19 and then a response by you. Would you please read
20 into the record what your response was that's on
21 186 and carries over to 187?

22 A. Yes.

23 My answer as to why not is, I think that it
24 would be incumbent upon the Commission to ensure that
25 ratepayers -- that there was no detriment to the

1 ratepayer.

2 Now, I don't think -- think the whole idea
3 that if the company is going to enter into a
4 territorial agreement, there could be benefits, and
5 there is no reason that those benefits should flow
6 exclusively to the company. It can be shared as part
7 of this agreement or they can be reflected in a rate
8 case, but the fact that there is detriment, I think
9 that needs to be eliminated.

10 It doesn't necessarily have to be offset in
11 the future just because now there are benefits. I
12 mean, hopefully there will be benefits. That's the
13 idea behind the territorial agreement.

14 Q. In determining whether there is a detriment,
15 do you look only at revenues?

16 A. No. You would look at other components that
17 would determine earnings, such as expenses and
18 investment.

19 MR. DOTTHEIM: One moment, please.

20 JUDGE REGISTER: Thank you.

21 BY MR. DOTTHEIM:

22 Mr. Rackers, is there any guarantee of
23 benefits to ratepayers guaranteed by these territorial
24 agreements for years 4 to 6, which would be the second
25 EARP?

1 A. No, there is not.
2 MR. DOTTHEIM: One moment.
3 I have no further questions.
4 JUDGE REGISTER: Thank you, Mr. Dottheim.
5 That should conclude the examination of this
6 witness on this issue.
7 Mr. Rackers, you may step down.
8 My list shows that we have Mr. Brandt. Is
9 his testimony still -- is cross-examination still
10 required?
11 MR. DOTTHEIM: I have no questions for the
12 company witnesses on this issue. I don't know if
13 anybody else does.
14 JUDGE REGISTER: I have some for Mr. Weiss,
15 but I don't have anything for Brandt, Baxter or
16 McKnight. Anybody else have any for Brandt, Baxter or
17 McKnight?
18 I'm sorry. You can go off the record.
19 (Off the record.)
20 JUDGE REGISTER: Give Pat here a moment to
21 relax a little bit and go ahead and call Mr. Weiss
22 then.
23 MR. LERNER: Calling Mr. Weiss to the stand.
24 JUDGE REGISTER: Mr. Weiss, whenever you're
25 ready.

1 (Witness sworn.)
2 JUDGE REGISTER: Please be seated and state
3 and spell your name for the court reporter, please.
4 GARY S. WEISS testified as follows:
5 THE WITNESS: My name is Gary S. Weiss.
6 It's W-e-i-s-s.
7 JUDGE REGISTER: Please proceed.
8 MR. LERNER: What document number is --
9 JUDGE REGISTER: No. 16, Exhibit No. 16.
10 DIRECT EXAMINATION BY MR. LERNER:
11 Q. Mr. Weiss, are you the Gary Weiss that
12 prepared the document that's been marked as
13 Exhibit 16?
14 A. Yes, I am.
15 Q. Do you have any corrections to make to that
16 document?
17 A. Yes, I do.
18 JUDGE REGISTER: I have filed your document,
19 which is revised rebuttal testimony of Gary Weiss.
20 MR. LERNER: Right.
21 JUDGE REGISTER: Is this one of the
22 documents you're also going to be --
23 MR. LERNER: Do you want to mark it as --
24 JUDGE REGISTER: No. Let's make the
25 corrections -- I mean, just submit it in writing that

1 these are corrections to the file.

2 THE WITNESS: So I don't need to go over
3 these corrections?

4 BY MR. LERNER:

5 Q. Are there any corrections to the
6 corrections, Mr. Weiss?

7 A. Unfortunately, I did my own typing on
8 Revised Schedule 5 and I transposed some numbers.

9 On the fifth line down, the 3,989 should
10 read 3,898.

11 JUDGE REGISTER: I'm sorry. We're on the
12 second page of your revised rebuttal testimony; is
13 that correct?

14 THE WITNESS: It's on revised Schedule 5,
15 page 2 of 2.

16 JUDGE REGISTER: Page 2 of 2.

17 THE WITNESS: Yeah.

18 JUDGE REGISTER: Schedule 5. Okay. That's
19 the third page of the corrections?

20 THE WITNESS: That is correct.

21 JUDGE REGISTER: And tell me again where
22 we're at here. Third line down?

23 THE WITNESS: Fifth line down.

24 JUDGE REGISTER: Fifth line down.

25 THE WITNESS: You see the number dollars,

1 3,989,425. That should read 3,898,425.

2 JUDGE REGISTER: 3,898 --

3 THE WITNESS: 425.

4 It did not impact the calculation on that
5 schedule, just a transposition of numbers on my part.

6 JUDGE REGISTER: All right. Are there any
7 other corrections then?

8 THE WITNESS: Yes. I have a couple other
9 typographical changes here.

10 On page 3 of my direct testimony, lines 17,
11 the achieved return on common equity is 13.694. It
12 should be 13.964.

13 JUDGE REGISTER: Can me the line on that one
14 again.

15 THE WITNESS: Line 17.

16 JUDGE REGISTER: Got you.

17 It's two lines up is the corrected version?

18 THE WITNESS: Right.

19 JUDGE REGISTER: 13.964.

20 Then we do want to for the record show that
21 the pages that were submitted are correcting your
22 original transcript, page 8, line 10, and ending on
23 page 8, line 23, and that you have submitted in
24 writing that and the Schedule 5 as being corrected by
25 this submission.

1 MR. LERNER: There are also some corrections
2 that Mr. Weiss could make to the weather calculations.
3 Would you like him to make those also? Even though
4 it's fallen out of this case, we're going to go ahead
5 and make them.

6 JUDGE REGISTER: Yeah.

7 MR. LERNER: If you have the numbers.

8 JUDGE REGISTER: For the record it's
9 probably a good idea.

10 THE WITNESS: Okay. Page 5, line 5 of my
11 rebuttal testimony, the number of 13,710,000 is now
12 14,619,000.

13 JUDGE REGISTER: Okay. Any other
14 corrections?

15 THE WITNESS: If you will turn to page 9,
16 line 13, I'd like to change the revenue impact of
17 216,504 to 196,847.

18 JUDGE REGISTER: 847.

19 THE WITNESS: That is correct.

20 JUDGE REGISTER: All right. 6847.

21 Are there any other corrections?

22 THE WITNESS: Do I need to change all of the
23 numbers on the weather schedule that gave rise to that
24 new number?

25 JUDGE REGISTER: Schedule 5, you mean?

1 THE WITNESS: On Schedule 2.
2 JUDGE REGISTER: Schedule 2.
3 THE WITNESS: It shows how we got to the
4 total weather variation.
5 JUDGE REGISTER: Yes, you should tell us on
6 that schedule what to change.
7 THE WITNESS: Okay. It would be the second
8 column, which reads, weather normalized revenue
9 credits for 12 months ending June 30th, 1996, and
10 should now read 12,041.
11 JUDGE REGISTER: Okay.
12 THE WITNESS: 12 months ended June 30th,
13 1997, 22,916.
14 JUDGE REGISTER: All right.
15 THE WITNESS: 12 months ended June 30th,
16 1998, 8,900.
17 JUDGE REGISTER: All right.
18 THE WITNESS: The total would be 43,857, and
19 then the three-year average and the rate decrease
20 would be 14,619.
21 JUDGE REGISTER: Are there any other
22 changes?
23 THE WITNESS: Then if we turn to Schedule 6
24 is where I change the other number.
25 JUDGE REGISTER: The total additional net

1 revenue?

2 THE WITNESS: Right. Let's go to line 2,
3 energy savings, that number would now be 262,438.

4 JUDGE REGISTER: All right.

5 THE WITNESS: And then the total of
6 additional net revenue would be 196,847.

7 JUDGE REGISTER: 196,847.

8 Any other corrections that need to be made?

9 THE WITNESS: That's all I have.

10 MR. LERNER: Did you make a correction on
11 page 9, line 19? I'm sorry. Line 13 of page 9.

12 JUDGE REGISTER: Yes.

13 MR. LERNER: Okay. Sorry.

14 BY MR. LERNER:

15 Q. Mr. Weiss, you prepared this testimony or
16 other persons under your direction; is that correct?

17 A. That's correct.

18 Q. Are the statements in it true and correct to
19 the best of your knowledge?

20 A. Yes, they are.

21 MR. LERNER: I'd like to move that into
22 evidence, your Honor.

23 JUDGE REGISTER: Are there any objections to
24 Exhibit No. 16 being admitted into evidence as
25 corrected?

1 (No response.)
2 JUDGE REGISTER: Hearing no objection,
3 Exhibit No. 16 is admitted into the record.
4 (EXHIBIT NO. 16 WAS RECEIVED INTO EVIDENCE.)
5 JUDGE REGISTER: Are you tendering this
6 witness for cross-examination?
7 MR. LERNER: Yes, I am.
8 JUDGE REGISTER: Thank you, Mr. Lerner.
9 For cross-examination, we go to the
10 Intervenors first.
11 Mr. Fulton, do you have any questions for
12 Mr. Weiss?
13 MR. FULTON: No.
14 JUDGE REGISTER: Okay.
15 Miss Forrest?
16 MS. FORREST: No, thank you.
17 JUDGE REGISTER: Mr. Johnson?
18 MS. LANGENECKERT: (Shakes head.)
19 JUDGE REGISTER: Staff, do you have any
20 questions, Mr. Dottheim?
21 MR. DOTTHEIM: No questions.
22 JUDGE REGISTER: Public counsel?
23 MR. COFFMAN: No questions.
24 JUDGE REGISTER: Then we move to cross from
25 the Bench.

1 QUESTIONS BY JUDGE REGISTER:

2 Q. Mr. Weiss, you were here for Mr. Rackers'
3 testimony just previously; is that right?

4 A. That is correct.

5 Q. Okay. Let me ask you to look -- do you have
6 a copy of Exhibit No. 27?

7 A. Okay.

8 Q. Can you break out the revenues that are
9 reflected as they are here on the left under revenues
10 which shows a loss in 1994, can they now break out the
11 revenues that affect that -- those customers involved
12 in the Black River territorial agreement?

13 A. No, we cannot. The Black River customers
14 that -- the customers that we gave to Black River, we
15 no longer have any records on those customers, so it
16 would be impossible to calculate the revenue impact of
17 those customers. Plus also it would be very difficult
18 to go back and trace each individual customer that we
19 received from Black River and calculate their current
20 revenues.

21 Q. Can you show the revenues as received from
22 those customers that AmerenUE received in this
23 exchange of territories to show what revenues were
24 earned from those customers?

25 A. That's what I have attempted to do in my

1 schedules is to take a comparison of the territories
2 and included the customers traded before and after the
3 trade, to show that the total revenues for that area
4 had increased after the trade.

5 Q. Okay. Walk me through that, what you have
6 in your -- would that be Exhibit 28, those schedules
7 be in Exhibit 28, or are they in your testimony?

8 A. No. It's in Exhibit 28, the last page.

9 Q. All right.

10 A. On this schedule here, the work paper of
11 mine, Mr. Schmidt, who is in charge of the area that
12 was traded, provided the schedule.

13 Q. I'm sorry. Let me get Mr. Schmidt's full
14 name.

15 A. Kenneth R. Schmidt.

16 Q. Oh, Mr. Schmidt. Okay. Please proceed.

17 A. He provided a comparison schedule here
18 showing the counties and areas where we had customers
19 that we traded with Black River. He shows the actual
20 trade took some -- took time someplace after June of
21 1996. It took place in '97 past the midyear.

22 So the last -- so the first sharing period,
23 the 12 months ending June of 1996, reflected the
24 territories before the trade with the customers as we
25 had them. Then --

1 Q. The number of customers, the kilowatt hour
2 that they used from those customers in the counties
3 identified and the amounts that they used; is that
4 correct?

5 A. Yes, that is correct.

6 Q. Am I reading that correctly?

7 A. That is the number of customers, the
8 kilowatt hour of sales and the revenues received from
9 all of the customers in that -- in those areas that
10 included all of the customers that we were going to
11 trade with Black River.

12 Q. Okay.

13 A. And then we also, after the trade, the third
14 sharing period, the 12 months ending June of 1998, we
15 did a calculation of the territory as it now appears
16 after the trade. As you can see, some of the areas
17 down here now have zero customers and zero revenues.

18 Q. Are those the areas that you traded to Black
19 River?

20 A. That is correct.

21 Q. Okay. So you show no persons in those areas
22 because you traded those off to Black River?

23 A. Right.

24 Q. Okay.

25 A. And you also see up in the first line, Iron

1 County where we increased customers, because that was
2 some of the customers we received from Black River who
3 were in Iron County.

4 Q. Okay.

5 A. So the 12 months ending June of 1998 reflect
6 those areas the way they are now after the trade. And
7 so then we compare the number of customers we now
8 have, kilowatt hour sales and the revenues to what we
9 had before the trade, and it shows that we have
10 increased our customers, our sales and our revenues.

11 Q. Okay. Now, there was a question about -- in
12 Mr. Rackers' testimony, I think it was page 2, where
13 he identified the counties in his testimony that were
14 involved in the Black River trade -- or I'm sorry.
15 That was not Exhibit No. 1. It was Exhibit 24.

16 MR. DOTTHEIM: It's Exhibit 23.

17 JUDGE REGISTER: 23.

18 MR. DOTTHEIM: Mr. Schmidt's --

19 JUDGE REGISTER: It's Mr. Schmidt's
20 testimony that identifies the county. Thank you very
21 much, Mr. Dottheim.

22 BY JUDGE REGISTER:

23 Q. So I'll find my 23 here.

24 Where Mr. Schmidt identifies the counties on
25 page 2 of Exhibit 23, beginning on line 14, and there

1 are some question that those counties are not the same
2 as the counties that appear on Exhibit 28's last page.

3 A. I was not aware of that discrepancy until it
4 was pointed out on testimony. The only thing that is
5 missing would be a small piece of St. Francois County
6 which states here, St. Francois County except for a
7 small area near Bismarck, so we already serve the vast
8 majority of St. Francois County.

9 So I suspect that this was left off of the
10 schedule not to distort the schedule since we already
11 served almost all of the customers in St. Francois
12 County before and after the trade. There was not an
13 increase in customers.

14 Q. So the difference that you see would just be
15 adding some more of the customers in St. Francois
16 County to UE's customer base?

17 A. That is correct.

18 Q. Okay. And do you see any other difference
19 there from your Exhibit 28's last page between the two
20 exhibits?

21 A. I think everything else is included that I
22 can see.

23 Q. Okay. I accept that this probably can't be
24 done before the end of the hearing, but could you have
25 prepared a corrected version of the last page and we

1 can file it as a new exhibit to the last page of
2 Exhibit 28 so that it accurately reflects all of the
3 customers that are involved in that exchange --

4 A. Yes, I can.

5 Q. -- in the same version?

6 And just to make things easier, I'm going to
7 reserve that exhibit number for that exhibit. And I'm
8 going to make it Exhibit 29. And we'll call it Black
9 River Cooperative trade comparison, just to be
10 somewhat different.

11 A. For clarification, your Honor, I will tell
12 Mr. Schmidt to include every single customer before
13 and afterwards and make sure we are not missing any
14 other pieces of the trade.

15 JUDGE REGISTER: Okay. I appreciate that.
16 Is that okay, Mr. Lerner? You can have it
17 done?

18 MR. LERNER: Yes.

19 JUDGE REGISTER: Okay. I believe that is
20 all of my questions for Mr. Weiss.

21 MR. LERNER: Weiss.

22 JUDGE REGISTER: I'm never going to get that
23 right, Mr. Weiss.

24 So returning to recross.

25 Intervenors, Ms. Schmidt?

1 MS. SCHMIDT: No questions.
2 JUDGE REGISTER: Mr. Fulton?
3 MR. FULTON: No, your Honor.
4 JUDGE REGISTER: Mr. Johnson?
5 MR. JOHNSON: (Shakes head.)
6 JUDGE REGISTER: Miss Forrest?
7 MS. FORREST: No, your Honor.
8 JUDGE REGISTER: And, Mr. Dottheim, do you
9 have any recross questions?
10 MR. DOTTHEIM: Yes. Yes, I do.
11 JUDGE REGISTER: Okay.
12 RECROSS-EXAMINATION BY MR. DOTTHEIM:
13 Q. Mr. Weiss, if I could direct you in
14 Exhibit 23 to the last schedule, Schedule 2.
15 A. I have that.
16 Q. And then back again to Exhibit 28.
17 A. Yes.
18 Q. I'd like to refer you to the number of
19 customers that are shown -- excuse me -- on Schedule 2
20 in Exhibit 23 in the column number of customers of
21 Union Electric. Also Black River Electric Coop is
22 shown.
23 And the instance of Union Electric Company
24 is 2,961, and the instance of Black River Electric
25 Coop, it's 2,992, is that correct, as I've indicated?

1 A. That's correct.

2 Q. Okay. And then if we go to Exhibit 28,
3 which are your work papers on the last page, and we go
4 to the column "customers," and we have two columns for
5 customers, one each for the two sharing periods, the
6 total in both instances is in excess of 10,000
7 customers, is it not?

8 A. That is correct.

9 Q. So in your work paper, there are more
10 customers than the customers that were actually
11 exchanged between Black River and Union Electric; is
12 that correct?

13 A. That's correct. I've explained that to the
14 judge, and also page 1 of Exhibit 28 explains what
15 those numbers represent.

16 Q. Although in the aggregate for the 10,000
17 customers, there is an increase in kilowatt hours for
18 a subset of those 10,000 customers, it is possible, is
19 it not, that there would be no increase or even a
20 decrease?

21 A. It's possible. It's also possible it could
22 be a large increase in that same subset.

23 Q. But your answer is it's possible --

24 A. It's possible.

25 Q. -- it could be a decrease?

1 A. It could be a decrease or an increase.

2 Q. I'm sorry. I don't mean to talk over you.

3 A. Right. I mean, it goes both directions.

4 Q. And it's possible it could be no increase or
5 decrease either, a wash?

6 A. Possible. Not likely but possible.

7 MR. DOTTHEIM: No further questions.

8 JUDGE REGISTER: Thank you, Mr. Dottheim.

9 QUESTIONS BY JUDGE REGISTER:

10 Q. I'm going to stop real quick, though, and
11 give myself another chance. I guess that just -- when
12 we do Exhibit 29, can we just show in the areas that
13 are being traded, not the -- not the customers that UE
14 already had in the areas they already had, and just
15 show the increases in those areas.

16 Is that possible?

17 A. I think you're asking me to calculate
18 revenues for 2,992 customers individually, is what
19 you're asking. I don't think that's feasible. I
20 guess it could be done, but it would be a very
21 difficult task.

22 Q. Maybe I didn't state that right. Let me see
23 if what I'm asking is, you know, for instance, you
24 didn't have any customers before the exchange in
25 Viburnum, but in these other areas you did have

1 customers; is that correct?

2 A. That's correct. But if you look in the
3 second period, we picked up customers in Viburnum.

4 Q. Right. Okay.

5 And so what I'm asking to see is -- is what
6 you had before in the areas that were affected by the
7 exchange. I suppose the -- what we're talking about
8 is what you sent to Black River before and what you
9 received from Black River afterwards and just that.

10 Is it possible to separate that out?

11 A. There again, you're asking for the ones we
12 sent the Black River, 2,961 customers. You're asking
13 for individual dollar amounts that go with those
14 customers that we gave away, and then you're asking
15 for the revenues received from the -- the 2,992, or
16 vice versa 2,992 away and receive 2,961.

17 So to do what you're asking would require a
18 calculation by individual customer.

19 Q. Okay. I'm not wanting it by individual
20 customer but you're indicating that that's what would
21 be required?

22 A. Right. These customers, once the trade was
23 made, the customers we gave away are no longer on our
24 system. We cannot calculate what their revenues are
25 or would be now.

1 Q. But we know what they had then, what they
2 produced then?

3 A. That's correct.

4 Q. And we can compare it to the people that you
5 received and what you make from them now to show
6 whether there's an increase or decrease in what you
7 gave -- from what you gave away?

8 A. That's what I'm saying. It would require us
9 to do it customer by customer. I also would like to
10 point out that we are trading territories, not
11 individual customers, that we are expecting to get
12 growth from the territory we received. So that's why
13 we have more customers.

14 When you compare it, we have a larger growth
15 in customers than just the difference of 31 that we
16 gave away. We have over 300 growth in customers and
17 that's because we picked up new territory and there's
18 been growth in that new territory. So I --

19 JUDGE REGISTER: All right. Leave your
20 chart 29 as you've done the last page of 28 and just
21 correct it for the -- covering the appropriate
22 counties. I just wanted to make sure I understood
23 that, those calculations.

24 THE WITNESS: Thank you.

25 JUDGE REGISTER: Thank you, Mr. Weiss.

1 Did you have anything else, Mr. Dottheim?

2 MR. DOTTHEIM: Any follow-up to your
3 questions?

4 JUDGE REGISTER: To my cross?

5 MR. DOTTHEIM: Yeah.

6 JUDGE REGISTER: Do you want follow-up to my
7 cross?

8 MR. DOTTHEIM: Just, I think, one.

9 JUDGE REGISTER: Please proceed.

10 FURTHER RECROSS-EXAMINATION BY MR. DOTTHEIM:

11 Q. Mr. Weiss, if I understood you correctly,
12 you've indicated that you no longer have records or
13 access to records for the usage of customers that you
14 gave up in the exchange as far as any subsequent
15 hearing -- as regarding any subsequent history?

16 A. That's correct. We have no current numbers
17 on those customers.

18 Q. You also have no numbers, do you, for new
19 customers in those areas that you gave up; is that
20 correct?

21 A. That would be correct. They're not our
22 customers, so we would have no information on those
23 new customers.

24 Q. So you would have no records on customer
25 growth in those areas that you gave up in the exchange

1 of service territories?

2 A. That is correct.

3 MR. DOTTHEIM: Thank you. I have nothing
4 further.

5 JUDGE REGISTER: Thank you, Mr. Dottheim.

6 Let's see. Then Public Counsel.

7 Mr. Coffman, any cross?

8 MR. COFFMAN: No recross. No, thank you.

9 JUDGE REGISTER: Mr. Lerner, any redirect?

10 MR. LERNER: Just very briefly.

11 JUDGE REGISTER: Thank you.

12 REDIRECT EXAMINATION BY MR. LERNER:

13 Q. The numbers in the table, I'm not sure
14 what -- the Black River table from your work papers,
15 Mr. Weiss, what do those numbers come from?

16 A. That's --

17 JUDGE REGISTER: Exhibit 28?

18 THE WITNESS: Exhibit 28.

19 BY MR. LERNER:

20 Q. Yes.

21 A. Those numbers come from what we call our
22 sales by area report. It's a revenue report that
23 shows customers, kilowatt hour sales and revenues by
24 areas within our territories. And so the area 675
25 like it shows here is Iron County, that shows all of

1 the customers in Iron County and their related sales
2 and revenues.

3 Q. In terms of the benefit -- the last
4 question -- in terms of benefits that UE expected from
5 Black River, actually could you list the variety of
6 benefits that you think UE anticipated from entering
7 into the Black River agreement?

8 A. There was one --

9 MR. DOTTHEIM: I object. I think the
10 question is beyond the scope of the cross-examination
11 and the recross.

12 MR. LERNER: I think the cross-examination,
13 your Honor, has explored some of the things like load
14 growth, exclusive rights of a service territory, and I
15 was just curious without asking a leading question
16 whether there are any others that Mr. Weiss can
17 identify.

18 MR. COFFMAN: I --

19 JUDGE REGISTER: I'm sorry.

20 MR. COFFMAN: I was going to agree with
21 Mr. Dottheim. I think his question was too broad.
22 It's beyond the scope of cross.

23 JUDGE REGISTER: Thank you, Mr. Coffman.

24 Any other comments on the first objection?

25 MR. FULTON: No.

1 JUDGE REGISTER: We didn't have any direct
2 that really went that far. I'll overrule the
3 objection and allow limited examination in that area.

4 BY MR. LERNER:

5 Q. I think you mentioned in response to Judge
6 Register about the benefit of an exclusive right over
7 a service territory; is that correct?

8 A. That's correct.

9 Q. Can you describe that benefit, Mr. Weiss?

10 A. Prior to the trade with Black River, they
11 had a line running up the middle of our territory and
12 they were -- they had the ability to take away
13 existing customers of ours or any new customers that
14 wanted to locate in an area, they had the ability to
15 offer special deals to those customers and get them,
16 versus the customer being served by Union Electric.

17 One of the main benefits of this coop trade
18 was to get our territory exclusively our territory and
19 not have to worry about competing with the coop for
20 individual customers.

21 MR. LERNER: Thank you.

22 JUDGE REGISTER: That completes redirect.
23 Then that should complete the testimony of Mr. Weiss
24 on this topic. You may step down, Mr. Weiss.

25 MR. DOTTHEIM: I --

1 JUDGE REGISTER: Do you want to be on the
2 record, Mr. Dottheim?

3 MR. DOTTHEIM: I don't know that there is a
4 need for that, but I could just stay on the record.

5 JUDGE REGISTER: That's fine.

6 MR. DOTTHEIM: The exhibit that Mr. Lerner
7 had marked, Mr. Rackers' testimony in the -- I'm not
8 finding.

9 JUDGE REGISTER: Exhibit 24, the rebuttal
10 testimony of Mr. Rackers in 95-400?

11 MR. DOTTHEIM: It's the testimony of
12 Mr. Rackers that had comments hand-written on it.

13 Yes, that is Exhibit 24.

14 The Staff can provide a clean copy of that.
15 It would be a microfilm copy. It is not ideal but it
16 doesn't have any annotations on it.

17 JUDGE REGISTER: That would be preferable.

18 MR. DOTTHEIM: And we could provide that
19 today.

20 JUDGE REGISTER: Thank you, Mr. Dottheim. I
21 appreciate that.

22 MR. LERNER: It would save me the trouble,
23 so, yes, I appreciate it.

24 JUDGE REGISTER: Thank you, Mr. Lerner.
25 Okay.

1 So we're ready to proceed to the next issue,
2 Y2K cross, and the first witness is identified as
3 Staff's, Ms. Westerfield.

4 MR. DOTTHEIM: Yes.

5 JUDGE REGISTER: I'm assuming there are
6 still cross-examination questions for Ms. Westerfield?

7 MR. CYNKAR: Yes, yes.

8 JUDGE REGISTER: Good morning,
9 Ms. Westerfield.

10 THE WITNESS: Good morning.

11 (Witness affirmed.)

12 JUDGE REGISTER: Thank you. Please be
13 seated. Would you state and spell your name for the
14 court reporter, please.

15 ARLENE S. WESTERFIELD testified as follows:

16 THE WITNESS: Yes. My name is Arlene S.
17 Westerfield, W-e-s-t-e-r-f-i-e-l-d.

18 JUDGE REGISTER: Mr. Dottheim, please
19 proceed.

20 DIRECT EXAMINATION BY MR. DOTTHEIM:

21 Q. Ms. Westerfield, would you please state your
22 physical address.

23 A. 815 Charter Commons, Suite 100B,
24 Chesterfield, Missouri.

25 Q. And your employer?

1 A. Missouri Public Service Commission.

2 Q. Do you have a copy of what's been marked as
3 Exhibits 4, 5NP, 5HC, 6NP and 6HC?

4 A. Yes, I do.

5 Q. Is Exhibit 4 your direct testimony?

6 A. Yes, it is.

7 Q. Is Exhibit 5NP and 5HC your surrebuttal
8 testimony in this proceeding?

9 A. Yes.

10 Q. And also, as part of 6HC and 6NP, there are
11 schedules that are separately done?

12 A. That is correct.

13 Q. Okay. At this time do you have any changes
14 or corrections to make to your direct or surrebuttal
15 testimony?

16 A. Yes, I do. Beginning with my direct
17 testimony, Schedule 2. It's in about the middle of
18 this page where it says, Anderson Consulting.
19 Anderson should be spelled with an E instead of an O.

20 JUDGE REGISTER: Under which sub-letter is
21 this?

22 THE WITNESS: It's in Footnote No. 1.

23 JUDGE REGISTER: No. 1? Okay.

24 THE WITNESS: Schedule No. 3, the heading of
25 this schedule which now reads, rate base reduction for

1 outstanding decommissioning fund deposits, should be
2 changed to, expense adjustments for outstanding
3 decommissioning funds deposits.

4 JUDGE REGISTER: Expense?

5 THE WITNESS: Adjustment.

6 JUDGE REGISTER: Adjustment?

7 THE WITNESS: Uh-huh.

8 JUDGE REGISTER: Deleting the words rate
9 base reduction; is that correct?

10 THE WITNESS: Yes, ma'am.

11 JUDGE REGISTER: All right. Please proceed.

12 THE WITNESS: Turning to my surrebuttal
13 testimony, page 11, line 21, after the words UE's
14 reference, insert the word "to," t-o.

15 JUDGE REGISTER: Please proceed.

16 THE WITNESS: On page 13 there are several
17 adjustments. I'll begin with line 3, where it states,
18 the company responded that, quote, capital I, for
19 initial purchases. That should be a lower case.

20 JUDGE REGISTER: I'm sorry. Take me back to
21 the line number.

22 THE WITNESS: Yes, ma'am. Line 3, where it
23 states, the company responded that, quote, initial
24 purchases. Right now, "initial purchases" is
25 capitalized I. It should be a lower case.

1 JUDGE REGISTER: Okay.

2 THE WITNESS: Line 4, after the words "and
3 replacements" should be three dots.

4 JUDGE REGISTER: Proceed.

5 THE WITNESS: Line 5 after the word "harbor
6 enhancement" should be three dots.

7 JUDGE REGISTER: Proceed.

8 THE WITNESS: The same line after the word
9 "design" should be a comma.

10 JUDGE REGISTER: Design, comma?

11 THE WITNESS: Yes, ma'am. After the word
12 "development," comma.

13 JUDGE REGISTER: Okay.

14 THE WITNESS: Line 18 by the Staff does not
15 believe the company, delete the word "it. "

16 JUDGE REGISTER: All right.

17 THE WITNESS: Turning -- that was a lot on
18 one page.

19 Turning to page 19, line 17.

20 JUDGE REGISTER: Page 19, line 17?

21 THE WITNESS: Page 19, line 17, where it
22 reads, suggest reducing residential customers credits,
23 delete the S.

24 JUDGE REGISTER: All right.

25 THE WITNESS: And finally, to page 22,

1 line 17, available to them for most of, delete the
2 word "in." And then I have one additional change.

3 JUDGE REGISTER: In this same document?

4 THE WITNESS: No, ma'am. It's to my
5 schedules, to my surrebuttal testimony.

6 JUDGE REGISTER: Exhibit 6?

7 THE WITNESS: Yes. Schedule 2.

8 JUDGE REGISTER: What page?

9 THE WITNESS: Schedule 2-1.

10 JUDGE REGISTER: All right.

11 THE WITNESS: It was pointed out to me that
12 when this document was copied, some of the copies were
13 not legible. So I probably need to just read this.

14 JUDGE REGISTER: Mine says, this is a
15 year 2000 readiness disclosure under the United States
16 Year 2000 Information and Readiness Disclosure Act.

17 THE WITNESS: Yes, ma'am.

18 JUDGE REGISTER: Is there anything else on
19 there?

20 THE WITNESS: No.

21 JUDGE REGISTER: Besides at the top it says
22 Ameren and the year 2000?

23 THE WITNESS: Yes, ma'am.

24 JUDGE REGISTER: The copy is legible.

25 THE WITNESS: Okay.

1 JUDGE REGISTER: Some of the copies other
2 than ours are not. Somewhere.

3 THE WITNESS: Some of them are very dark and
4 you couldn't really read the -- but you did what I was
5 going to do. So thank you.

6 JUDGE REGISTER: That's fine.

7 THE WITNESS: That's all I had. Thank you.

8 JUDGE REGISTER: Okay. All right.

9 Mr. Dottheim?

10 BY MR. DOTTHEIM:

11 Q. Miss Westerfield, if I ask you the same
12 questions that are contained in your direct and
13 surrebuttal testimony, Exhibits 5 and 6HC and 6NP
14 today, as you've corrected them, would your answers be
15 the same?

16 A. Yes, they would.

17 Q. Is the information contained therein true
18 and correct to the best of your knowledge and belief?

19 A. Yes, it is.

20 Q. And you adopt Exhibit 5 as your direct
21 testimony and Exhibit 6HC and 6NP as your -- excuse
22 me.

23 Do you adopt Exhibit 5 as your direct
24 testimony in this proceeding and Exhibits 6NP and
25 6HC as your surrebuttal testimony?

1 A. Yes, I do.

2 MR. DOTTHEIM: I tender Miss Westerfield for
3 cross-examination and I would offer Exhibits 5 and
4 6NP and 6HC.

5 JUDGE REGISTER: Exhibit 4?

6 MR. DOTTHEIM: Yes, if I stated that.

7 JUDGE REGISTER: And I also wanted to note,
8 my original listing did not have a 5NP or HC, but
9 there is -- that is one that I've corrected. There's
10 a 5HC and an NP.

11 MR. DOTTHEIM: I'm sorry. I'm really sorry
12 about that.

13 JUDGE REGISTER: That's not a problem. Have
14 it corrected.

15 MR. DOTTHEIM: Yeah, it would be Exhibit 4
16 is the direct testimony, Exhibit 5 is the surrebuttal,
17 and there's a 6HC and 6NP schedules, but there's also
18 a 5HC version of the surrebuttal testimony.

19 JUDGE REGISTER: Okay. Are there any
20 objections to Exhibits 4, 5HC and 5NP, 6HC and
21 6NP?

22 (No response.)

23 JUDGE REGISTER: Hearing none, Exhibit 4,
24 5HC, 5NP, 6HC and 6NP are all admitted into the
25 record.

1 (EXHIBIT NOS. 4, 5HC, 5NP, 6HC AND 6NP WERE
2 RECEIVED INTO EVIDENCE.)

3 JUDGE REGISTER: And Mr. Dottheim has
4 tendered his witness. So we move to cross.

5 Public counsel, Mr. Coffman, do you have any
6 questions for Miss Westerfield?

7 MR. COFFMAN: No. No, thank you.

8 JUDGE REGISTER: Okay. Thank you,
9 Mr. Coffman.

10 Intervenors, Ms. Schmidt?

11 MS. SCHMIDT: No, thank you.

12 JUDGE REGISTER: Mr. Fulton?

13 MR. FULTON: Just a few.

14 JUDGE REGISTER: Okay.

15 CROSS-EXAMINATION BY MR. FULTON:

16 Q. Miss Westerfield, if I understand your
17 testimony correctly, what you're recommending to this
18 Commission is that all of the costs of the Y2K
19 programs be deferred?

20 A. That's correct.

21 Q. So you are recommending there not be any
22 recognition of those costs?

23 A. Not in the current --

24 Q. At the current --

25 A. -- at this time.

1 Q. In the current sharing period?

2 A. That's correct.

3 Q. And that's because of Commission order
4 investigating the Y2K costs as far as prudence; is
5 that correct?

6 A. It's based on -- there are several different
7 reasons why we've come to that conclusion. We believe
8 that the magnitude of the Y2K costs which Union
9 Electric has estimated between \$10 and \$15 million.
10 The fact that we considered it to be an extraordinary
11 expense, something that is unusual, would be
12 nonrecurring, should be treated in an extraordinary
13 matter, and in the Staff's opinion all of these costs
14 should be accumulated and deferred.

15 Q. Is treatment of these Y2K costs or expenses
16 consistent with what the Staff has done in other
17 cases?

18 A. Yes, it is. I can refer you to two other
19 cases where Laclede Gas Company has asked for an AAO
20 to defer these costs and also Missouri Gas Energy, I
21 think, is in the process of asking for a deferral of
22 the costs.

23 JUDGE REGISTER: Those are the ones that are
24 referred to in your direct testimony?

25 THE WITNESS: Yes, ma'am.

1 BY MR. FULTON:

2 Q. It appears to me that that's the utilities
3 asking them to treat them in that manner. What's the
4 Staff's attitude been?

5 A. The Staff is -- has agreed to that in
6 Laclede Gas and has also agreed to that based on --
7 with MGE, based on the fact that the Staff considers
8 the costs to be extraordinary.

9 Q. Is there a level at which you consider
10 computer costs, a dollar level where you begin to
11 consider a cost to be extraordinary?

12 A. I would say that there are several tests
13 that can be used to determine what that level of costs
14 might be. We haven't actually made any comparisons,
15 but based on the fact of the \$10 to \$15 million at our
16 discretion, we believe that that was a substantial
17 amount and enough to consider this.

18 Q. Do you know what the initial, let's say,
19 year zero before this sharing program, this EARP
20 program started, do you know if there was any Y2 costs
21 computer software costs being incurred by UE?

22 A. It's been indicated in earlier testimony, I
23 think by Mr. Baxter, that there were costs in a prior
24 credit period. However, based on information that
25 we've received, the company wasn't really segregating

1 any of those costs. So I'm not sure that there
2 appeared or could be identified, I should say, prior
3 to this credit period.

4 Early on, when we first began our
5 investigation for monitoring of this current year, we
6 were aware of the Y2K because of the docket in this
7 Commission. And when we initially asked what the
8 costs would be, Union Electric had budgeted \$10 to
9 \$15 million, but they actually had no records to
10 provide to us what the actual costs were up to that
11 point.

12 MR. FULTON: Nothing further.

13 JUDGE REGISTER: Thank you, Mr. Fulton.

14 Miss Forrest?

15 MS. FORREST: No, thank you.

16 JUDGE REGISTER: UE, Mr. Cynkar?

17 MR. CYNKAR: Yes, your Honor. I'm back over
18 here in the corner.

19 CROSS-EXAMINATION BY MR. CYNKAR:

20 Q. Good morning, Miss Westerfield.

21 A. Good morning, Mr. Cynkar.

22 Q. The -- just following up on the question
23 Mr. Fulton was asking you --

24 A. Uh-huh.

25 Q. -- it's true, isn't it, that Union Electric

1 did not segregate the costs for Y2K before the
2 SEC-mandated disclosure in 1997; isn't that true?

3 A. The information was furnished to me that
4 that was the point in time that they started to
5 actually segregate the costs, but I have several
6 different dates that I've actually been given.

7 In the response to that data request
8 regarding the SEC, indicated they started segregating
9 the costs in August of 1997. However, in my DR
10 No. 20, which was dated May of 1998, at that time UE
11 indicated that the costs were not being tracked.

12 JUDGE REGISTER: I'm sorry. I missed the
13 date.

14 THE WITNESS: May of 1998.

15 JUDGE REGISTER: Proceed, Mr. Cynkar.

16 BY MR. CYNKAR:

17 Q. So then you're unclear whether UE's has even
18 segregated those costs right now?

19 A. I've been furnished some dollars of expense
20 related to the Y2K. I haven't really looked at any
21 books and records. But based on that, I would say
22 that they are tracking costs. But I am a little
23 unclear as to the date when they actually started
24 doing that.

25 Q. So you don't know if they were tracking or

1 separating out Y2K costs for reporting purposes before
2 the SEC required disclosure in '97?

3 A. Well, according to what they told me, they
4 weren't.

5 Q. And do you have any reason to doubt that?

6 A. No.

7 Q. And you don't know what the practice of
8 other companies was with respect to segregating out
9 Y2K disclosures -- Y2K costs before the SEC acted in
10 '97. True?

11 A. I haven't examined it. No, I haven't.

12 Q. Now, your proposed deferral of Y2K costs
13 here is not an adjustment set out in the
14 reconciliation procedure. Correct?

15 A. That's correct.

16 Q. Now, in doing your analysis to support that
17 deferral, my understanding in your deposition is that
18 you only looked at information with respect to
19 computer software expenses for the third credit
20 period. Correct?

21 A. That's correct.

22 Q. Okay. And that was because that was the
23 scope of your audit. True?

24 A. That's true.

25 Q. Okay. And that your task was to strictly

1 look at the 12 months of that third sharing period; is
2 that fair?

3 A. Correct.

4 Q. Okay. And as a result of that, you never
5 looked at how Union Electric handled computer expenses
6 before the EARP. True?

7 A. That's true.

8 Q. And in our discussion in that deposition,
9 you told me that you didn't think how the company had
10 handled computer software expenses before was relevant
11 to your analysis here. Is that true?

12 A. Could you re-- you want me to look where
13 you're saying I said that in my deposition?

14 Q. If you'd be more comfortable doing that, I'd
15 be happy to refer you to page 3 of your deposition.

16 A. Okay. That's true.

17 Q. And also in the context of the scope of your
18 work for your testimony here, you did not do an
19 analysis comparing other kinds of computer maintenance
20 expenses that UE had with their Y2K expenses; isn't
21 that true?

22 A. That's true.

23 Q. Okay. And also, you did not compare the Y2K
24 expenses in the third sharing period to the income of
25 the company in that period. True?

1 A. I never made that analysis, that's correct.

2 Q. All right. And you don't know if Union
3 Electric had computer maintenance expenses at least as
4 significant as the Y2K expenses. True?

5 A. The actual expenses for the Y2K appearing in
6 the 12 months ending June of this credit period, I can
7 only -- the only thing I look at other than the
8 information that I was furnished for the Y2K and the
9 other computer costs were the actual charts showing
10 the maintenance expenses and computer-related expenses
11 that appeared in Mr. Baxter's testimony.

12 Q. So the answer to my question -- my question
13 was whether -- was that you don't know if Union
14 Electric has had computer maintenance expenses during
15 that same period that were as significant as their Y2K
16 expenses, and your answer is --

17 A. Based on what I looked at, no.

18 Q. Okay. And we both agreed you're not a
19 computer expert. Is that true?

20 A. That's true.

21 Q. Okay. And in the context of Y2K, it's your
22 view that you know a little bit about the actual tasks
23 and activities that a programmer is undertaking in
24 fixing the Y2K problem; is that fair?

25 A. Yes.

1 Q. Okay. And I'm going to read this -- a
2 little bit from -- it's a sentence from your
3 deposition. It's on page 105, just so you know where
4 I'm reading --

5 A. Okay.

6 Q. -- and make sure that I read it correctly.
7 This is on lines 14 through 16. You said,
8 the programmers have to go in and change the lines and
9 the programs. That's as much as I can tell you.
10 That's true, isn't it?

11 A. Uh-huh. That's correct.

12 Q. Okay. Now, beyond that you don't know any
13 of the details of the various tasks to correct
14 software in the context of the Y2K problem. True?

15 A. Well, I do know about the scope of what was
16 entailed in the Y2K project.

17 Q. Right. But my question is, is in terms of
18 the actual tasks of fixing Y2K problems and computer
19 systems, beyond what we just discussed, you don't
20 really know what people do?

21 A. Talking about in terms of what the
22 programmers do, no, I don't.

23 Q. So that you don't know, for example, for an
24 embedded chip, whether the fix to the Y2K problem is
25 to replace the chip or to go in and change something

1 in that chip. True?

2 A. No. I don't know the details of what they
3 would have to do. On a technical level I don't know
4 what they would have to do.

5 Q. Okay. And similarly, you don't know if this
6 activity to correct the Y2K problem would vary based
7 on different types of computer systems. True?

8 A. No, I don't.

9 Q. Okay. And you also don't know how many
10 different types of computer systems are used at Union
11 Electric; isn't that true?

12 A. That's true.

13 Q. Okay. And also, you do not know how many
14 mission-critical systems, computer systems, at UE have
15 date dependent software, do you?

16 A. I believe that I've seen that number, but it
17 would probably take me some time to find it. But I
18 know that there are a lot.

19 Q. But you haven't studied what those systems
20 are or how they're different?

21 A. No. And I will say, though, probably all of
22 the systems would be mission critical, I would think.
23 But, no, I haven't studied it.

24 Q. You have no basis for that to surmise on
25 your part. Correct?

1 A. That's correct.

2 Q. So, for example, at Callaway alone, you're
3 not familiar with how computers work in anything
4 ranging from the health physics system through the
5 security system to the work management system or any
6 of those systems at Callaway. True?

7 A. That's correct.

8 Q. Now, you would agree, as I think we've
9 talked about before --

10 A. Uh-huh.

11 Q. -- that the problems that a computer virus
12 could cause for a nuclear facility like Callaway could
13 be quite significant. Isn't that fair?

14 A. Assume that it could be, yes.

15 Q. And --

16 A. However, I believe that the Y2K project is
17 much broader in scope and is far more reaching than
18 any computer virus program could be to Union Electric.

19 Q. Now --

20 JUDGE REGISTER: Mr. Cynkar, I'm going to
21 ask you before we go on, in terms of the details of
22 which programs are affected, et cetera, how much more
23 do you intend to go into that level and how is it
24 relevant to whether Y2K should be included or not?

25 MR. CYNKAR: Well, your Honor, as you heard

1 with Mr. Fulton's question, the basis of the Staff's
2 proposal here is a characterization of these expenses
3 of being extraordinary going to their unusual and
4 infrequent attributes. And I think my questions are
5 directly relevant to that characterization and the
6 basis for it.

7 JUDGE REGISTER: Any other party have a
8 comment to that?

9 If you could make that point quickly, I'd
10 appreciate it. How much depth you need to go in to
11 make that point, I appreciate it.

12 MR. CYNKAR: Well, I've pretty much gone
13 into the depth that -- with respect to that. I think
14 we've established what the scope of Ms. Westerfield's
15 analysis is, but I do need to follow up on the answer
16 she just gave.

17 JUDGE REGISTER: Go right ahead.

18 BY MR. CYNKAR:

19 Q. But you have not studied or even know of all
20 of the different computer systems that could be
21 affected by Y2K at UE. True?

22 A. True.

23 Q. And similarly, you don't know all of the
24 different systems, computer systems at UE that could
25 be affected by a computer virus. Correct?

1 A. That's true.

2 Q. So as you sit here, you have no basis for
3 making a judgment that Y2K is more significant than
4 the impact of a computer virus on those systems.
5 True?

6 A. Mr. Cynkar, I would say from a
7 businessperson's point of view, looking at the
8 information that I've looked at for Y2K, the scope of
9 the project, the man-hours involved, to begin with,
10 with Y2K, there was an assessment that had to be made
11 on what had to be done. And I know even from a
12 layperson with computers, if a virus was to happen, I
13 don't think that the company would sit around and
14 spend many, many man-hours trying to figure out what
15 needed to be done.

16 And the Y2K in my opinion is more of a
17 compliance issue and a public interest issue than
18 comparing it to something like a computer virus.

19 Q. Now --

20 A. So I view them as being significantly
21 different.

22 Q. I realize you do. But we have established
23 that you're not a computer expert. Correct?

24 MR. FULTON: That's been asked and answered.
25 Objection.

1 JUDGE REGISTER: Sustained.

2 BY MR. CYNKAR:

3 Q. You have no expertise on which to make -- to
4 offer that opinion, true?

5 A. I think I can make the -- I can make the
6 judgment based on information that's been furnished to
7 me, not only by the company, by the Commission itself,
8 by presentations that have been made to the Commission
9 and also based on the fact that I have a folder full
10 of information on Y2K that I take out of the USA Today
11 almost on a daily basis.

12 Y2K is a huge national issue. When Union
13 Electric has a computer virus, I'm sure that the other
14 people in this room would not even be aware of it, but
15 we're all I think aware of Y2K. Maybe I said more
16 than you wanted me to.

17 Q. No. I want to hear what you have to say,
18 but I also want to ask you, though, it's true, though,
19 if you have all of that information on Y2K, you have
20 no information on how -- on any virus problem at UE,
21 you have no information on how UE prevent viruses from
22 getting into its computer programs and you have no
23 information on the significance of what a virus could
24 do, for example, at the Callaway plant.

25 Isn't that fair?

1 A. That's true. And I also think I told you in
2 my deposition that -- that I did have some familiarity
3 with computer viruses.

4 Q. From your home PC?

5 A. Yes.

6 Q. Okay. Now, you have already mentioned, I
7 believe, in response to Mr. Fulton's question, that
8 the total cost for Y2K is estimated to be between
9 \$10 and \$15 million. Correct?

10 A. Yes. That's the budgeted number that I've
11 been given by the company.

12 Q. Okay. Now, that is both -- that's the full
13 company. That's not just the Missouri jurisdictional
14 amount. True?

15 A. That's correct.

16 Q. Okay. And so if the Missouri jurisdictional
17 amount, as I understand it would be approximately
18 70 percent of that; is that right?

19 A. I don't really know.

20 Q. Okay. And do you know what -- and in that
21 \$10 to \$15 million is also hardware. True?

22 A. I don't really know all of the components of
23 the \$10 to \$15 million. I've never been given any
24 kind of a breakdown from Union Electric.

25 Q. Well, do you happen to have Exhibit 13,

1 which is Mr. Brandt's appendices. I wanted to refer
2 to the first EARP. Do you happen to have a copy?

3 A. Yes.

4 Q. And if you go to the first EARP and to
5 Attachment A, page 6 of 23 pages.

6 A. Uh-huh.

7 Q. Okay. Now, in paragraph E, which is the
8 monitoring provisions, if you go down about three
9 quarters of the way, there is a sentence that says:
10 Staff, OPC and other signatories participating in the
11 monitoring of the plan may follow up with data
12 requests, meetings and interviews as required, to
13 which UE will respond in a timely basis, and goes on
14 with the whole list of data and so forth.

15 Now, you never asked for any meetings or
16 interviews with respect to Y2K. Correct?

17 A. I really don't recall whether we discussed
18 Y2K. We only had a limited number of meetings with
19 people from the company. And I don't -- I don't
20 recall whether we discussed the Y2K issue.

21 Q. So when you say you were given information
22 from the company and that's what you have based your
23 testimony on, it is also true that the very least --
24 you don't know whether you also availed yourself after
25 having been given that information to have meetings or

1 interviews with other knowledgeable people at UE;
2 isn't that fair?

3 A. I think I can say that I relied on the
4 information that was given to me by the company as I
5 have in all of the adjustments that I have made in
6 this case. And part of the reason for that is because
7 we had a different approach with the monitoring of
8 this plan than we did if it was a rate case.

9 Had it been a rate case, I would have gone
10 into the company and spent some time there and looked
11 at their ledgers and looked at a lot of information,
12 which because of the limited scope of the sharing
13 period, we just did not do.

14 Q. Now, but that being said, the fact is, is
15 that one of the important features of the EARP are
16 these monitoring provisions; isn't that true?

17 A. That's true.

18 Q. And nothing stopped you from availing
19 yourself of the opportunity to have meetings or
20 interviews with UE personnel. True?

21 A. That's true.

22 Q. Again, when we got together before for your
23 deposition, we were talking about the uniform system
24 of accounts.

25 A. Yes.

1 Q. Do you recall?

2 And I'm referring to page 29 now.

3 A. All right.

4 JUDGE REGISTER: Are you using this for
5 impeachment purposes at this time?

6 MR. CYNKAR: I'm sorry?

7 JUDGE REGISTER: Are you --

8 MR. CYNKAR: I'm just -- I'm going to ask
9 her a question, but I just want to be sure if she
10 wants to check what I'm saying. I just want to let
11 her know where I am.

12 JUDGE REGISTER: Okay.

13 BY MR. CYNKAR:

14 Q. In the right at the top of the page, we
15 agreed that the uniform system of accounts is the
16 accounting system prescribed by commissions for
17 utilities companies that they regulate. I'm sorry.

18 A. No, I'm there. I'm there.

19 Q. That's fair, isn't it?

20 A. Yes.

21 Q. And later on, in fact, as you put it on the
22 top of page 31, uniform system of accounts actually
23 tells the regulated industry how to account on its
24 books and records; is that correct?

25 A. Yes.

1 Q. Okay. And you also explained to me in that
2 deposition on page 35 that the uniform system of
3 accounts provides for the treatment of extraordinary
4 expenses?

5 A. That's true.

6 Q. That's true. And that your proposed
7 adjustments as you testified earlier is based on that
8 conclusion that this is an extraordinary expense under
9 USOA; is that fair?

10 A. That's correct. And we don't believe that
11 it should be expensed currently.

12 Q. Okay. Now, you just said it shouldn't be
13 expensed currently. In that answer were you making a
14 distinction between expensing an item and
15 capitalizing?

16 A. No, I wasn't.

17 Q. Okay. I just wanted to be sure where we
18 were.

19 I'm going to --

20 JUDGE REGISTER: Are you going to mark a new
21 document, Mr. Cynkar?

22 MR. CYNKAR: This will be my only exhibit,
23 your Honor, for this witness. And I'm afraid I don't
24 have the full six copies here, but I can get that for
25 you after lunch, but I do have the three.

1 JUDGE REGISTER: Let's go off the record.

2 (EXHIBIT NO. 30 WAS MARKED FOR
3 IDENTIFICATION.)

4 JUDGE REGISTER: Then we may go back on the
5 record, and please proceed, Mr. Cynkar.

6 Can you identify the document for us?

7 MR. CYNKAR: Yes.

8 BY MR. CYNKAR:

9 Q. The document that has been marked for
10 Exhibit 30 is two Xeroxed pages from the uniform
11 system of accounts, pages 11511 and 11512. Is that
12 accurate?

13 A. Yes.

14 Q. Okay. And this -- directing your attention
15 to paragraph 15017, is that the provision of the USOA
16 that deals with extraordinary expenses?

17 A. Yes, it is.

18 Q. Okay. And that's --

19 A. Extraordinary items.

20 Q. -- extraordinary items?

21 A. Uh-huh.

22 Q. Thank you.

23 And that is the provision of the USOA that
24 you were referring to moments ago that was the basis
25 for your judgment in this case concerning Y2K costs.

1 True?

2 A. Yes.

3 MR. CYNKAR: With that, your Honor, I would
4 move Exhibit 30 into evidence.

5 JUDGE REGISTER: Are there any objections to
6 Exhibit 30 being admitted into the record?

7 MR. FULTON: No objections.

8 JUDGE REGISTER: Hearing none, Exhibit 30
9 will be admitted into the record.

10 (EXHIBIT NO. 30 WAS RECEIVED INTO EVIDENCE.)

11 MR. CYNKAR: And this will actually make it
12 easier for people who don't have copies, but we
13 brought up the language.

14 Try to vary things so people can stay awake
15 here.

16 JUDGE REGISTER: For the record, Mr. Cynkar
17 has produced a copy of the Extraordinary Items No. 7
18 on a large display.

19 MR. CYNKAR: The reality is that with this
20 quality of print, I'm not sure it's easier with this
21 or the piece of paper you have in front of you, but in
22 any event.

23 BY MR. CYNKAR:

24 Q. Now, in looking at the text of this
25 provision, is it fair to say that the aspects of an

1 item that trigger this provision, make it
2 extraordinary are their unusual nature and infrequent
3 occurrence; is that true?

4 A. Yes, I would say so.

5 Q. Okay. And you need both of those attributes
6 for an item to be extraordinary?

7 A. Yes.

8 Q. Okay. And this definition is not keyed to
9 an amount of money; is that true?

10 A. That's the definition, yes.

11 Q. And that's the standard you apply in making
12 the judgment that the Y2K costs are extraordinary?

13 A. Yes. And I think as I stated in my
14 deposition and I think I've stated in my testimony,
15 also based on the materiality. Because obviously if
16 there was an extraordinary item that had no material
17 impact on a rate case or in this case, I don't think
18 the Staff would be coming forward to the Commission
19 proposing an adjustment.

20 Q. So --

21 A. It's also based on the magnitude of the
22 issue.

23 Q. And so in what you just said, the cost is
24 relevant in the sense that if it was a de minimis
25 cost, it wouldn't be an issue?

1 A. That's correct.

2 Q. That's true. Now, did you also say then
3 that the size upward is significant in this analysis?

4 A. I don't know what you mean by the size
5 upward.

6 Q. Well, it's big cost. Is that important in
7 the USOA definition of extraordinary cost?

8 A. Yes. Because I think it has to have an
9 impact. If it doesn't have to have some kind of
10 impact, then it would be irrelevant, as I said a
11 moment ago.

12 Q. Okay. Fine. So that's just another way of
13 saying if it's small it doesn't -- it's not going to
14 worry anybody; is that fair?

15 A. That's right. I'm trying to speak to him
16 but also have you hear me.

17 Q. Now, if you look to the -- it looks like
18 third sentence, which says -- which in explaining the
19 first part here it says, accordingly, they --
20 referring to extraordinary items that are of unusual
21 nature and infrequent occurrence -- they will be
22 events and transactions of significant effect which
23 are abnormal and significantly different from the
24 ordinary and typical activities of the company and
25 which would not reasonably be expected to recur in the

1 foreseeable future.

2 Now, significant effect is the first
3 component of that explanation. Correct?

4 A. Yes.

5 Q. Okay.

6 A. Uh-huh.

7 Q. And it is -- is it your testimony then that
8 the Y2K costs have a significant effect?

9 A. Yes.

10 Q. Okay. And -- but you did not compare the
11 Y2K costs to any other computer-related costs that the
12 company has had, did you?

13 A. No, because I just viewed Y2K in and of
14 itself an item that was significantly different from
15 the ordinary activities that would be taking place in
16 the company.

17 Q. But you didn't compare the Y2K costs to the
18 ordinary activities that took place in the company;
19 isn't that true?

20 A. I think normally when we come up against an
21 item in our estimation that's extraordinary, it stands
22 out by itself, like the flood of 1993. And I'm not
23 sure that I would have to, you know, compare that to
24 something else.

25 Q. Well --

1 A. I realize that -- go ahead. Excuse me.

2 Q. The Y2K costs -- in fact, with the flood --

3 A. Uh-huh.

4 Q. -- you are in a sense comparing it to the
5 fact that there are not very often floods in the
6 recent history that had the same impact that that
7 flood did. Correct?

8 A. Well, I think that's what we're saying with
9 the Y2K. This is not --

10 Q. Let me -- just answer my question one more
11 time and Mr. Dottheim will be able to redirect you.

12 And so with respect to Y2K, though, you
13 didn't compare the Y2K computer-related expense which
14 is all computer expenses to any other computer
15 expenses that the company has had. Isn't that true?

16 A. That's true.

17 Q. Okay. And so your judgment that this was
18 significant was just based on your view that Y2K was
19 significant. True?

20 A. Yes. And I would have to qualify it by
21 saying that I base that also on my 20 years of
22 experience making these kind of adjustments and my
23 experience working for the Public Service Commission
24 with extraordinary items.

25 Q. But it's also true that your 20 years of

1 experience does not include either computer expertise
2 or an analysis or even knowledge of all of the other
3 computer systems of Union Electric; isn't that true?

4 MR. FULTON: That's been asked and answered.

5 MR. CYNKAR: That is a fair
6 cross-examination question in the context of that
7 answer, your Honor.

8 JUDGE REGISTER: But I believe it has been
9 asked and answered.

10 MR. CYNKAR: Well, asked and answered, your
11 Honor, is one of those discretionary objections. I
12 think in the context of this it's appropriate to
13 remind the witness of that testimony if this dialogue
14 is to continue and be productive. I think it's a fair
15 cross-examination question.

16 JUDGE REGISTER: I'll sustain the objection
17 and allow you to ask her if she didn't testify earlier
18 that she didn't have the experience in those areas, if
19 you want to remind her of that testimony.

20 MR. CYNKAR: Fine.

21 BY MR. CYNKAR:

22 Q. Isn't it true that you testified a moment
23 ago that you did not have computer expertise, nor had
24 you done any analysis of the other computer systems at
25 Union Electric?

1 A. That's correct.

2 Q. Now, also you testified, did you not, that
3 you did not compare these expenses to the income of
4 Union Electric at this time. True?

5 A. I did not make that analysis, that is
6 correct.

7 Q. Now, if we go down farther to the
8 parenthetical and actually below -- right below the
9 parenthetical to what is the last sentence of this
10 provision, it says, to be considered as extraordinary
11 under the above guidelines, an item should be more
12 than approximately 5 percent of income computed before
13 extraordinary items.

14 Commission approval must be obtained to
15 treat an item of less than 5 percent as extraordinary.
16 So did you did not perform that analysis. True?

17 A. I think I already -- I just said a moment
18 ago that I did not perform that analysis regarding the
19 5 percent of income.

20 Q. So you do not know indeed whether the Y2K
21 costs are extraordinary within there sense of being
22 5 percent of income. True?

23 A. That's true. But I also relied on the last
24 line which says, Commission approval must be obtained
25 to treat an item of less than 5 percent as

1 extraordinary. And I believe that is what we're doing
2 by bringing this issue before the Commission.

3 Q. But you're also not in a position to advise
4 the Commission that this is, in fact, an item that is
5 less than 5 percent of the income of UE, and so their
6 permission is explicitly needed in this context of
7 USAO (sic). True?

8 A. Not necessarily. Because I think even
9 though this is what we're reading in this paragraph,
10 it's still the discretion of the Commission. Even
11 with something that's written in the USOA, the final
12 judgment about it would be up to the Commission, and
13 so we're bringing the information to them, and based
14 on our experience we're saying the \$10 to \$15 million
15 is a significant amount. And it would be up to them
16 to decide whether they agreed with us or not.

17 MR. CYNKAR: If I could have a second, your
18 Honor.

19 JUDGE REGISTER: Certainly.

20 MR. CYNKAR: Just a couple more questions,
21 your Honor, and I can wrap up.

22 JUDGE REGISTER: Thank you, Mr. Cynkar.

23 Please proceed.

24 BY MR. CYNKAR:

25 Q. As we talked about during your deposition,

1 the sharing period is not designed to be a test year;
2 is that correct?

3 A. That's correct.

4 Q. Okay. And in terms of justifying this
5 proposed adjustment under the reconciliation
6 agreement, if I recall, you had two bases for that:
7 one was the 3F7 language, the disputes with respect to
8 the operation or implementation of the plan, and the
9 other was the 3F8 language with respect to new
10 category of costs?

11 A. That's correct.

12 Q. And is it still your testimony as you said
13 in your deposition on page 127 that in making the
14 judgment that this was a new category of cost, you did
15 not compare these costs to anything else? You said,
16 quote, Staff believes this was something new, closed
17 quote?

18 A. That's on page 127, Mr. Cynkar?

19 Q. I believe so. Right there on lines
20 5 through 7 is where I read the quote from.

21 A. That's correct.

22 Q. Okay.

23 MR. CYNKAR: I have nothing further, your
24 Honor.

25 JUDGE REGISTER: Thank you, Mr. Cynkar.

1 There are just a few minutes before noon, so let's --
2 is that cross or recross?

3 MR. FULTON: That was cross.

4 JUDGE REGISTER: I don't have any questions.
5 So that knocks out recross. Right? Or does anybody
6 have anything they need recross?

7 That would take us right to redirect.

8 Mr. Dottheim, will you have questions for
9 this witness?

10 MR. DOTTHEIM: Yes.

11 JUDGE REGISTER: Okay. Do you think they'll
12 take very long?

13 MR. DOTTHEIM: No.

14 JUDGE REGISTER: Okay. Do you want to go
15 ahead and finish this witness before we leave for
16 lunch or do you want to break now?

17 MR. DOTTHEIM: It makes no difference to me.

18 JUDGE REGISTER: Let's finish the redirect
19 and then we'll break.

20 Please proceed, Mr. Dottheim.

21 REDIRECT EXAMINATION BY MR. DOTTHEIM:

22 Q. Mr. Cynkar has asked you a number of
23 questions about the USOA and the last sentence under
24 extraordinary items.

25 Are utilities precluded from seeking

1 extraordinary treatment of items that are less than
2 5 percent of net income?

3 A. No, they're not.

4 Q. Is this Commission precluded from granting
5 extraordinary status to items worth less than
6 5 percent of net income?

7 A. Not to my knowledge.

8 Q. Has the Missouri Commission in the past
9 granted extraordinary status to items smaller than
10 5 percent of net income?

11 A. I have no specific knowledge. I would
12 assume that they have but I cannot quote any cases.
13 I'm sorry.

14 Q. Do you know whether the Missouri Commission
15 has adopted the USOA for ratemaking purposes?

16 A. Yes, they have.

17 Q. Has the Missouri Commission adopted the USOA
18 for bookkeeping purposes?

19 A. For bookkeeping, and it's at the discretion
20 of the Commission if it chooses to have variants from
21 the USOA.

22 Q. By that answer would you -- were you
23 indicating or are you indicating that the Missouri
24 Commission has discretion regarding for ratemaking
25 purposes of being consistent or taking some approach

1 other than consistency with the USOA?

2 A. Yes, Mr. Dottheim, that's what I was saying.

3 MR. DOTTHEIM: One moment, please.

4 JUDGE REGISTER: Certainly.

5 MR. DOTTHEIM: Thank you. I have no further
6 questions.

7 JUDGE REGISTER: Thank you, Mr. Dottheim.

8 And with Mr. Dottheim's completion of his redirect, we
9 are finished with this witness on the issue of Y2K
10 costs.

11 We will take a break now for lunch and we'll
12 reconvene -- I'm sorry.

13 Ms. Forrest?

14 MS. FORREST: I just want to say as we break
15 for lunch, I would like to ask to be excused for the
16 afternoon, and in the event that the hearing concludes
17 today, I would, of course, want to preserve the
18 opportunity to brief any issues.

19 JUDGE REGISTER: We'll recognize that you
20 might not be present this afternoon, but you will
21 reserve the right to file a brief.

22 MS. FORREST: Thank you.

23 JUDGE REGISTER: And we'll assume you have
24 arrangements with someone to notify you if we don't
25 finish today.

1 MS. FORREST: I will make those
2 arrangements, your Honor.

3 MR. COOK: Your Honor?

4 JUDGE REGISTER: Yes, Mr. Cook?

5 MR. COOK: Before we break for lunch, I
6 would like the record to reflect that we have the
7 exhibit that Commissioner Drainer had requested, and
8 if you want to mark it now so she can see it over the
9 lunch hour or if you want to wait until later,
10 whichever is your preference.

11 JUDGE REGISTER: Why don't we go ahead and
12 mark that so I can go ahead and give that to them.
13 Let me see, that's Exhibit No. 31. And we'll mark
14 that as we go off the record.

15 Does anybody want to -- any more than
16 one o'clock? I know it's a little less than an hour,
17 but we can get something to eat here in the building
18 and be back.

19 Okay. We'll be back and reconvene at
20 one o'clock. And we can go off the record, Pat.

21 (EXHIBIT NOS. 17 AND 31 WERE MARKED FOR
22 IDENTIFICATION.)

23 (A lunch break was taken.)

24 JUDGE REGISTER: Before we go to the next
25 witness, there are a few housekeeping matters as we

1 broke for lunch just prior to this break.

2 Mr. Cook, you provided me with the document
3 that Commissioner Drainer had requested yesterday and
4 we marked that as Exhibit 31.

5 Did you want to offer that, since all of the
6 parties have had a chance to look at that over the
7 break?

8 MR. COOK: Yes, your Honor. This Exhibit 31
9 is entitled Union Electric Company 1994 to 1998 actual
10 financial results, and I would ask that that be
11 admitted into evidence at this time.

12 JUDGE REGISTER: Any objection to Exhibit 31
13 being admitted into the record?

14 Mr. Dottheim?

15 MR. DOTTHEIM: Not necessarily an objection.
16 One person I wanted to have take a look at it and I
17 wasn't able to catch up with.

18 JUDGE REGISTER: So you're not necessarily
19 objecting to the authenticity of the document --

20 MR. DOTTHEIM: No.

21 JUDGE REGISTER: -- but you may have
22 questions?

23 MR. DOTTHEIM: Or if I can reserve the
24 opportunity to raise questions or --

25 JUDGE REGISTER: Have an objection to the

1 document?

2 MR. DOTTHEIM: An objection or even submit
3 something --

4 JUDGE REGISTER: Okay.

5 MR. DOTTHEIM: -- respecting it.

6 JUDGE REGISTER: Would you like me to defer
7 in making my judgment on admitting that at this time
8 until you have had that opportunity?

9 MR. DOTTHEIM: Yes, I think that would
10 probably be the easiest.

11 MR. COOK: That's fine.

12 JUDGE REGISTER: Okay. We'll do that then.
13 I'll mark it offered.

14 MR. FULTON: What testimony was that on?

15 JUDGE REGISTER: Exhibit 31?

16 MR. COOK: It was an update of the -- as I
17 recall, an attachment to Mr. Brandt's letter, wasn't
18 it?

19 MR. BRANDT: It was an Attachment A to my
20 letter of --

21 MR. FULTON: I think it was Exhibit 21 or
22 something like that.

23 JUDGE REGISTER: 21, I think that's right.

24 MR. BRANDT: Okay.

25 JUDGE REGISTER: 22 was the other case.

1 MR. FULTON: Thank you.
2 MR. COOK: Yes.
3 JUDGE REGISTER: So that is an update to
4 Exhibit No. 21.
5 MR. FULTON: All right.
6 JUDGE REGISTER: All right. So we'll
7 reserve the decision on admission of that exhibit
8 admitted. And so you have another Exhibit No. 32?
9 MR. COOK: Yes.
10 JUDGE REGISTER: Mr. Cook?
11 MR. COOK: Yes. Well, first, if the record
12 could reflect that I have provided copies of -- for
13 the court reporter of the Exhibit 17.
14 JUDGE REGISTER: Thank you. Yes.
15 MR. COOK: Which was the supplemental
16 rebuttal testimony of Gregory L. Nelson. I did not
17 have copies of those earlier. Those have been
18 presented to the reporter.
19 JUDGE REGISTER: This was prefiled on May 14
20 and the parties all received a copy.
21 MR. COOK: Yes, that's correct.
22 JUDGE REGISTER: Okay.
23 MR. COOK: So I would ask that that be
24 admitted into evidence, please.
25 JUDGE REGISTER: Are there any objections to

1 Exhibit No. 17 being admitted into the record?

2 Are we all together?

3 (No response.)

4 JUDGE REGISTER: Okay. Hearing no
5 objections, Exhibit No. 17 has been admitted into
6 evidence.

7 (EXHIBIT NO. 17 WAS RECEIVED IN EVIDENCE.)

8 (EXHIBIT NO. 32 WAS MARKED FOR
9 IDENTIFICATION.)

10 MR. COOK: Thank you. Then I have had
11 marked as Exhibit 32, supplemental surrebuttal
12 testimony of Gregory L. Nelson.

13 As soon as I'm freed up here, I will be
14 filing that with the clerk, the clerk's office as
15 well. This testimony has previously been seen by
16 Staff. I don't think anybody else has.

17 It's four pages. And this testimony is all
18 on the tax issue that has been settled, and the
19 company has asked the Staff if they would have any
20 objection to the company putting in kind of a
21 tidying-up piece of testimony, that the bottom line
22 indicates that the company agrees with Staff's
23 position on this case, on this issue and explains why.

24 JUDGE REGISTER: Okay.

25 MR. COOK: So I would ask that Exhibit

1 No. 32 be -- it's being offered, and ask that it be
2 received. Although the other parties have just now
3 seen it, if any of them have time to look at it before
4 they are asked to object or not, I have no problem
5 with that.

6 JUDGE REGISTER: Objections to Exhibit
7 No. 32 being filed and offered?

8 Has everybody seen that document? Nobody
9 needs any additional time?

10 (No response.)

11 JUDGE REGISTER: Hearing no objections,
12 Exhibit No. 32 will be admitted into evidence.

13 (EXHIBIT NO. 32 WAS RECEIVED INTO EVIDENCE.)

14 MR. COOK: Thank you very much. And Steve
15 and I will try to keep in touch on what we're going to
16 do with 31.

17 JUDGE REGISTER: Okay. And so are there any
18 other matters we need to take care of before we
19 proceed to Mr. Robertson's testimony?

20 (No response.)

21 JUDGE REGISTER: Okay. Then I believe that
22 I'm ready to swear Mr. Robertson in.

23 (Witness sworn.)

24 JUDGE REGISTER: Thank you, sir.

25 Please be seated and state and spell your

1 name for the court reporter.

2 TED ROBERTSON testified as follows:

3 THE WITNESS: My name is Ted Robertson,
4 R-o-b-e-r-t-s-o-n.

5 JUDGE REGISTER: Okay. Mr. Coffman,
6 proceed.

7 MR. COFFMAN: Thank you.

8 DIRECT EXAMINATION BY MR. COFFMAN:

9 Q. Are you the same Mr. Ted Robertson that has
10 caused to be filed in this case prepared direct and
11 surrebuttal testimony pre-marked as Exhibits 10 and 11
12 respectively?

13 A. Yes.

14 Q. Do you have any changes or additions to
15 those prepared testimonies?

16 A. I do. I have a number of changes. Most of
17 them just actually relate to numbers. But I do need
18 to go through them.

19 Q. Why don't you proceed, and if I have trouble
20 following you, I'll tell you.

21 A. In Exhibit 10, my direct testimony, page 5,
22 line 2, I want to strike the -- starting with the
23 comma after \$1,042,799, starting with the comma after
24 that, strike that sentence, the rest of that sentence.

25 JUDGE REGISTER: Which says, and internal

1 cost, strike all the rest of that?

2 THE WITNESS: And internal cost of dollars
3 towards information. And on line 3 below that, strike
4 technology department, the first two words.

5 JUDGE REGISTER: Okay.

6 THE WITNESS: Okay.

7 JUDGE REGISTER: So it should read, external
8 cost of \$1,042,799 during the test period.

9 THE WITNESS: That is correct.

10 BY MR. COFFMAN:

11 Q. Please proceed with your corrections.

12 A. On page 14 of the same testimony, line 3, in
13 the middle of the sentence it says, stipulation and
14 agreement. You should strike that and replace it with
15 report and order.

16 JUDGE REGISTER: All right. Proceed.

17 THE WITNESS: On page 21, line 8, at the end
18 of the sentence I have a double "that." Strike the
19 second "that."

20 JUDGE REGISTER: Proceed.

21 THE WITNESS: On page 25, lines 2
22 through 5 --

23 JUDGE REGISTER: Page 25, line what?

24 THE WITNESS: Lines 2 through 5 on page 25.

25 JUDGE REGISTER: 2 through 5?

1 THE WITNESS: You'll see where I have
2 April 11th, 1998 four times?
3 JUDGE REGISTER: Uh-huh.
4 THE WITNESS: That should actually state
5 March 11th, 1998 four times.
6 JUDGE REGISTER: All of the Aprils should be
7 March.
8 THE WITNESS: Yes, they should.
9 JUDGE REGISTER: Okay.
10 THE WITNESS: And that's where the number
11 changes will come in, the rest of the changes.
12 BY MR. COFFMAN:
13 Q. Do you have any further corrections on this
14 exhibit?
15 A. I do.
16 Q. Okay. One more on this exhibit and then
17 we'll move to the next.
18 JUDGE REGISTER: Okay.
19 THE WITNESS: The following page, page 26,
20 line 7, that dollar amount should be replaced with
21 \$300,398.
22 JUDGE REGISTER: Let me ask you to repeat
23 that.
24 THE WITNESS: \$300,398.
25 JUDGE REGISTER: So it would be 3-0-0,

1 comma, 3-9-8?

2 THE WITNESS: That's correct.

3 JUDGE REGISTER: Okay.

4 THE WITNESS: On line 18, the same page, the
5 dollar amount at the very end should be changed to the
6 same 300,398.

7 JUDGE REGISTER: Okay. Please proceed.

8 THE WITNESS: And Exhibit No. 11, my
9 surrebuttal testimony, sorry about this, but it's
10 going to be the same numbers. That one change will
11 change the number all of the way through the
12 testimony.

13 On page 18 of Exhibit 11, page 18, line 18,
14 we will also replace that 349,000 with the 300,398 we
15 just discussed.

16 JUDGE REGISTER: All right. Page 18,
17 line 18, 300,398.

18 Okay.

19 THE WITNESS: The danger of putting numbers
20 in testimony.

21 On page 26 --

22 JUDGE REGISTER: Line 10?

23 THE WITNESS: That's correct. Line 10 will
24 change to the 300,398. Line 15, the 349,000 will
25 change to the 300,398. And just past that where it

1 says \$62,079, that will change to \$13,559.
2 JUDGE REGISTER: 13,559.
3 THE WITNESS: That's correct.
4 On the next page, page 27, line 17, the
5 349,000, we would change that to \$300,398.
6 JUDGE REGISTER: All right.
7 THE WITNESS: Line 21, we will again change
8 the 349 to \$300,378 or -- excuse me -- \$98.
9 JUDGE REGISTER: Okay.
10 THE WITNESS: 398. Just past that where it
11 says 318,218, we'll change that to 269,398. 269,398.
12 JUDGE REGISTER: All right.
13 THE WITNESS: On the next page, page 28,
14 line 1, we will again change the 318,000 to 269,398.
15 JUDGE REGISTER: All right.
16 THE WITNESS: Just two more changes.
17 JUDGE REGISTER: Okay.
18 THE WITNESS: Page 29, line 21 --
19 JUDGE REGISTER: All right.
20 THE WITNESS: -- where I have underlined 351
21 days -- or excuse me, 351, we will change the 51 to
22 the word 20.
23 JUDGE REGISTER: So it should read 320?
24 THE WITNESS: That's correct.
25 And the final change is on the next page,

1 page 30, line 4, again, we will change the 349,000 to
2 300,398.

3 And I believe that's it.

4 JUDGE REGISTER: 398?

5 THE WITNESS: That's correct.

6 BY MR. COFFMAN:

7 Q. With the corrections that you have just
8 given us, is the testimony in Exhibits 10 and 11 true
9 and accurate to your best information and belief?

10 A. It is.

11 Q. And if you were asked those same questions
12 today, would your answers be the same?

13 A. Yes, they would.

14 MR. COFFMAN: I now tender Mr. Robertson for
15 cross-examination.

16 JUDGE REGISTER: Thank you, Mr. Coffman.

17 Did you want to offer 10 and 11 into the
18 record?

19 MR. COFFMAN: Yes, I would. Also offer into
20 the record Exhibits 10 and 11.

21 JUDGE REGISTER: Okay. Are there any
22 objections to Exhibit 10 or 11 being admitted into the
23 record at this time?

24 (No response.)

25 JUDGE REGISTER: Hearing no objections,

1 Exhibits 10 and 11 will be admitted into evidence.

2 (EXHIBIT NOS. 10 AND 11 WERE RECEIVED INTO
3 EVIDENCE.)

4 JUDGE REGISTER: And we move to
5 cross-examination.

6 Mr. Dottheim, my list shows that you're
7 first.

8 MR. DOTTHEIM: No questions.

9 JUDGE REGISTER: And then to Intervenors,
10 Ms. Schmidt?

11 MS. SCHMIDT: No questions.

12 JUDGE REGISTER: Mr. Fulton?

13 MR. FULTON: No questions.

14 JUDGE REGISTER: Mr. Johnson?

15 MR. JOHNSON: No questions.

16 JUDGE REGISTER: Miss Forrest left.

17 Then that takes us to Union Electric.

18 Mr. Cynkar?

19 MR. CYNKAR: No questions.

20 JUDGE REGISTER: I have no questions. No
21 need for recross.

22 Mr. Coffman, any redirect?

23 MR. COFFMAN: I wouldn't think so.

24 JUDGE REGISTER: Now, before I let you go
25 here, I know that we're in the topic of Y2K costs, but

1 Commissioner Drainer did give me some questions that
2 she wanted Mr. Robertson to answer. And they take us
3 back to the stipulation and agreement.

4 So given that it's Commissioner Drainer, I
5 will ask her questions at this time. And I'm sorry.
6 I will go back to recross and redirect then to allow
7 the parties to --

8 MR. CYNKAR: Your Honor, can I just ask a
9 question?

10 This witness is not being tendered as having
11 any particular testimony with respect to the
12 stipulation and agreement per se. It's not that --
13 the contract issue is that what we're talking about
14 there.

15 JUDGE REGISTER: Right.

16 MR. CYNKAR: Well, for the record, let me
17 just suggest an objection to that then because this
18 witness is not being offered for that purpose.

19 JUDGE REGISTER: Okay. The parties did not
20 expect -- in their list of issues to expect -- to ask
21 any questions and the witness didn't have any
22 questions or testimony on this issue.

23 But given the Commission -- that this is the
24 one witness that Public Counsel offers in all of this
25 case, I think it's appropriate for the Commission to

1 be given the opportunity to inquire of Public Counsel.
2 And so I am taking some leave at this point to inquire
3 for Commissioner -- on behalf of Commissioner Drainer.

4 MR. CYNKAR: I didn't really expect you to
5 sustain my objection, but I thought I'd do my job.

6 JUDGE REGISTER: I know. Just for the
7 record.

8 MR. COFFMAN: I think Mr. Robertson does
9 actually have a page or so where he does refer to the
10 stipulation. And we are planning, I believe, to file
11 a statement of Mr. Trippensee who does have more
12 knowledge of the stipulation and negotiation and
13 implementation.

14 But we certainly have no problem answering
15 questions to the extent that Mr. Robertson can answer
16 those.

17 JUDGE REGISTER: That's fine. In fact, that
18 may be part of the testimony that you would expect to
19 illicit from --

20 MR. COFFMAN: Trippensee.

21 JUDGE REGISTER: -- Mr. Trippensee.

22 So I'll ask these as I've been requested to
23 and we'll go from there.

24 Mr. Robertson, if you're not able to answer
25 these, then please just let us know and your counsel

1 can pursue it otherwise. Okay?

2 QUESTIONS BY JUDGE REGISTER:

3 Q. Is it OPC's position that the current
4 disputed issues in this case can be resolved by the
5 Commission pursuant to the stipulation and agreement
6 for EARP?

7 A. As I understand it, yes.

8 Q. Does Public Counsel believe the terms of the
9 stipulation and agreement for this EARP allow it to
10 bring the Commission -- current disputed issues to the
11 Commission?

12 A. Yes.

13 Q. I'm sorry. For resolution?

14 A. Yes.

15 Q. Okay. If the Commission were to resolve any
16 of these issues in favor of Public Counsel or Staff,
17 is the Commission then operating within the
18 stipulation and agreement, in your opinion?

19 A. I believe that they are.

20 Q. Did you ask for your counsel's legal opinion
21 that you were not violating the stipulation and
22 agreement by bringing these disputed issues to the
23 Commission for resolution?

24 A. Many times, yes.

25 Q. And did Public Counsel file any testimony

1 asking for changes to the stipulation and agreement?

2 A. We did not.

3 Q. And the question is, if not, then why not
4 because -- why not? Was it because you believe that
5 the stipulation and agreement is adequate as it's
6 written?

7 A. I believe that it is adequate to -- to --
8 the process is good for what it's intended to do. It
9 works. We go in, we look at what it tells us to look
10 at. We have the option of looking at other elements,
11 doing investigation, and I think it works according to
12 the way the parties intended to set it up.

13 Q. Okay. And the Commission's statutory
14 obligation, I believe, is referred to in paragraph 6
15 of the stipulation and agreement.

16 Is it to protect the public interest?

17 A. You're referring to their mission statement?

18 Q. No. I believe in the -- I'll go to Union
19 Electric's Exhibit No. 13, and yesterday they referred
20 us -- actually Mr. Schallenberg's testimony. I'm not
21 sure which day that was anymore.

22 It would be page 17 of 23. Do you have a
23 copy of that?

24 A. I don't believe so.

25 Q. Okay.

1 Let me hand you mine. It's what is
2 titled -- it's page 17 of 23 and it's paragraph 6,
3 Commission rights.

4 A. You're referring to Commission rights?

5 Q. Yes, sir.

6 A. Nothing in this stipulation and agreement is
7 intended to impinge or restrict?

8 Q. That's the paragraph that --

9 A. Okay.

10 Q. And under that paragraph to ensure that the
11 Commission meets its statutory obligation.

12 A. Sure.

13 Q. Is it the Commission's obligation to protect
14 the public interest?

15 A. I think that's one of their -- their
16 requirements of the Commission, yes.

17 Q. And does the Commission also require to
18 provide for the opportunity of a fair return on the
19 investment for the company?

20 A. Yes.

21 Q. And not just the individual members of the
22 public but for all customers of the utility, it's the
23 Commission's responsibility to ensure that they are
24 just and reasonable rates; is that correct?

25 A. I think the company has a lot of

1 stakeholders that includes its own employees. In
2 addition, it has the responsibility to look out for
3 all parties as best as it sees fit.

4 JUDGE REGISTER: That is all of the
5 questions I have for Commissioner Drainer. And so I
6 will go back to cross.

7 Mr. Dottheim, did you have any cross -- or
8 recross rather?

9 MR. DOTTHEIM: No. No questions.

10 JUDGE REGISTER: And to the Intervenors,
11 are there any recross questions?

12 MS. SCHMIDT: No questions.

13 JUDGE REGISTER: And for Mr. Cynkar for UE?

14 MR. CYNKAR: None, your Honor.

15 JUDGE REGISTER: Thank you.

16 And redirect, Mr. Coffman?

17 MR. COFFMAN: Yes, just one.

18 REDIRECT EXAMINATION BY MR. COFFMAN:

19 Q. A question from the Bench that you were
20 asked, Mr. Robertson, asked you if the Commission had
21 an obligation to ensure that utilities receive a fair
22 return on investment.

23 Wouldn't it be more accurate to say that the
24 Commission has an obligation to ensure --

25 MR. CYNKAR: Objection, leading.

1 JUDGE REGISTER: Don't answer the question.

2 Let him finish the question and then we'll hear your
3 objection.

4 BY MR. COFFMAN:

5 Q. Wouldn't it be more accurate to say that the
6 Commission has an obligation to ensure that utilities
7 have an opportunity to earn a fair return on
8 investment?

9 MR. CYNKAR: Objection, leading.

10 JUDGE REGISTER: Do you have a response,
11 Mr. Coffman?

12 MR. COFFMAN: I'll try to rephrase it.

13 JUDGE REGISTER: Okay.

14 BY MR. COFFMAN:

15 Q. Is there a more accurate way to state that
16 obligation, Mr. Robertson?

17 JUDGE REGISTER: Any objection, Mr. Cynkar?

18 MR. CYNKAR: Surprise, surprise. I can give
19 the answer now, your Honor.

20 JUDGE REGISTER: Oh, the games of lawyers.

21 MR. CYNKAR: Touche.

22 JUDGE REGISTER: Mr. Robertson, I think you
23 can answer that question now.

24 THE WITNESS: The Commission sets
25 what it believes to be an appropriate return and

1 cost-of-service recovery cost. Whether or not the
2 company actually achieves those returns or recovery
3 cost of services, there's going to be no guarantees.

4 So it's just an opportunity that allows them
5 the opportunity to -- to achieve those specified
6 returns.

7 MR. COFFMAN: Thank you very much.

8 JUDGE REGISTER: Nothing further,
9 Mr. Coffman?

10 MR. COFFMAN: No, thank you.

11 JUDGE REGISTER: I believe we are finished
12 with Mr. Robertson. And this concludes your
13 testimonies on this issue.

14 Mr. Robertson, thank you. You may step
15 down.

16 Then on Y2K costs, do we have any
17 cross-examination for Brandt, Baxter or McKnight?

18 MR. DOTTHEIM: Yes, for Mr. Baxter.

19 JUDGE REGISTER: Any others?

20 Mr. Cynkar, I'll let you call Mr. Baxter and
21 we'll not need Mr. Grant or Mr. McKnight.

22 MR. CYNKAR: Okay.

23 Union Electric calls Mr. Warner Baxter.

24 JUDGE REGISTER: And we have Mr. Baxter's
25 testimony in Exhibit 14; is that right?

1 MR. CYNKAR: That sounds right, your Honor.

2 Yes.

3 JUDGE REGISTER: You're still sworn from
4 your first time, Mr. Baxter, and your testimony
5 remains sworn.

6 Did you have anything else or are you ready
7 to tender the witness for cross-examination?

8 MR. CYNKAR: We are able to tender the
9 witness right now, your Honor.

10 JUDGE REGISTER: Thank you.

11 We are first going to Intervenors.

12 Ms. Schmidt?

13 MS. SCHMIDT: No.

14 JUDGE REGISTER: Mr. Fulton?

15 MR. FULTON: No questions.

16 JUDGE REGISTER: Thank you.

17 Mr. Johnson?

18 MR. JOHNSON: No questions. Thank you.

19 JUDGE REGISTER: Staff, Mr. Dottheim?

20 MR. DOTTHEIM: Yes, thank you.

21 WARNER BAXTER testified as follows:

22 CROSS-EXAMINATION BY MR. DOTTHEIM:

23 Q. Good afternoon, Mr. Baxter.

24 A. Good afternoon, Mr. Dottheim.

25 Q. Mr. Baxter, do you know whether Andersen

1 Consulting assisted Union Electric Company in the
2 initial development of UE's plans and procedures to
3 address the Y2K problem?

4 A. No, I do not.

5 Q. I'd like to refer you to page 2 of your
6 testimony, where on lines 20 and 21 you identify that
7 you're vice-chairman of the Accounting Executive
8 Advisory Committee of Edison Electric Institute.

9 As vice-chairman of the Accounting Executive
10 Advisory Committee of Edison Electric Institute, has
11 any of your time been spent on the Y2K problem?

12 A. The issue has been discussed as part of our
13 committee meetings.

14 Q. Okay. Is it -- has your activity as the
15 vice-chairman on Y2K problems been limited to
16 committee meetings?

17 A. No.

18 Q. What activities have you engaged in in that
19 regard?

20 A. Several different types of activities
21 actually. One type of activity clearly would be in
22 having conferences, not just for those members on the
23 committee but for other chief accounting officers that
24 we would attend to discuss a variety of both county
25 and operational matters.

1 Other things that we do is that we meet with
2 annually the Financial Accounting Standards Board, and
3 we meet with other representatives of the accounting
4 profession and other operational people to do two
5 things: From the accounting profession standpoint,
6 when we, for instance, with other individuals from
7 either some of the big four accounting firms, I
8 believe it is now, and maybe five -- as the last
9 counts I can't keep track of them all -- as well with
10 other individuals that operate in the utility
11 industry, to understand operational issues which could
12 affect our companies.

13 Q. During the third sharing period can you give
14 an approximation as to how much time you spent in
15 those activities?

16 A. Off the top of my head, Mr. Dottheim, I do
17 not know for certain.

18 Q. Can you give an approximation? Not with any
19 certainty, of course.

20 A. Sure. Probably in the course of my
21 activities in attending some of the conferences as
22 either an attendee or as vice chairman, I would
23 suggest maybe in total, maybe anywhere from -- when
24 you -- if you include the conference, you might say
25 that would be 60 to 80 hours which would be CE and

1 then other things would just be committee activities
2 and the like.

3 Q. And that's during the course of that
4 third-year sharing period?

5 A. That would be a fair approximation probably.

6 Q. Is it the position of Union Electric Company
7 that GAAP pronouncements issued after the first EARP
8 was approved are binding upon the signatories of the
9 Commission for sharing credit calculation purposes?

10 A. If your question was GAAP pronouncements
11 issued after the entering of the plan --

12 Q. The first EARP?

13 A. -- or the third sharing period?

14 Q. Well, after the first EARP was approved,
15 which would go back to 1995. Okay.

16 A. Your question then again, I'm sorry, is, are
17 they binding?

18 Q. Yes. If they're binding upon the
19 signatories to the stipulation and agreement and the
20 Commission for the purposes of calculating the sharing
21 credits for each of the three years of the first EARP.

22 A. No.

23 Q. Are the pronouncements of the emerging
24 issues task force considered to be GAAP?

25 A. Yes.

1 Q. Mr. Baxter, would you have a copy of
2 Mr. McKnight's testimony?

3 A. Yes, I would.

4 Q. Okay. I'd like to refer you to page 4,
5 lines 12 to 15.

6 JUDGE REGISTER: Page 4, lines 12 to 15?

7 MR. DOTTHEIM: Yes.

8 JUDGE REGISTER: And that's Exhibit No. 15?
9 McKnight's testimony?

10 MR. CYNKAR: Yes, your Honor, it is 15.

11 JUDGE REGISTER: Thank you.

12 BY MR. DOTTHEIM:

13 Q. Mr. McKnight states on lines 12 to 15, the
14 SEC's chief accountant will challenge any accounting
15 that differs from the consensus of the EITF as not
16 being in accordance with GAAP because the consensus
17 position represents the best thinking on areas for
18 which there are no specific standards.

19 Did I read that sentence correctly?

20 A. Yes, you did.

21 Q. Okay. Do you agree with that statement of
22 Mr. McKnight's?

23 A. Yes.

24 Q. Can you identify what is EITF of the
25 Emerging Issues Task Force consensus position on

1 financial reporting treatment of Y2K costs?

2 A. The EITF's position on -- I'm sorry. Did
3 you say reporting or --

4 Q. Financial reporting treatment of Y2K costs.

5 A. EITF's position is to expense those costs as
6 incurred.

7 Q. And is that contained in EITF issue
8 No. 96-14?

9 A. I believe that is true and correct.

10 Q. And do you recall when EITF Issue No. 96-14
11 was issued?

12 A. Off the top of my head, I do not, but I can
13 certainly find the references to when that would be
14 done, if you would like me to.

15 Q. Yes, if you wouldn't mind.

16 A. Mr. Dottheim, from the copy I have, which
17 isn't from the original text, it appears as though
18 that that consensus was reached in July of 1986, but
19 again, this is a copy. This is not the original text.
20 And so I --

21 Q. Okay. Thank you.

22 Would it be accurate to state that prior to
23 the issuance of EITF Issue No. 96-14, financial
24 reporting for Y2K costs was not a settled issue?

25 A. In what regard do you mean a settled issue?

1 Q. Settled from the perspective of a position
2 as to how Y2K costs should be treated for accounting
3 purposes.

4 A. If I may, Mr. Dottheim, just to clarify,
5 settled from whose perspective?

6 Q. First the company's perspective.

7 A. From the company's perspective, they
8 believed that they were treating Y2K costs
9 appropriately under generally accepted accounting
10 principals, as well as the FERC uniform system of
11 accounts, and other -- and it's frankly their
12 established past practices for software maintenance
13 costs.

14 So from that perspective, yes.

15 Q. And was it a settled item as far as the
16 financial reporting community was concerned?

17 A. I don't know if I understand specifically
18 what you mean by "settled."

19 I would say that there existed the
20 possibility that there was diverse practice with
21 regard to the treatment of Y2K costs. How diverse,
22 that I'm not sure.

23 Q. Mr. Baxter, do you know when UE started to
24 address in a formal manner the Y2K problems?

25 A. What do you mean by a formal manner,

1 Mr. Dottheim?

2 Q. As far as organizing a committee or
3 committees within the company and delegating a task
4 and --

5 A. Let me try it this way then.

6 I'm not sure -- formal obviously is somewhat
7 of a subjective. It is my understanding -- and I
8 believe that it is even contained in some of the
9 documents of Ms. Westerfield, that the company had
10 been engaging in dealing with Y2K or year 2000 issues
11 for some period of time, potentially even as early as
12 the '80s. So there had been certainly some activities
13 going on for some period of time. Whether that's
14 formal or not, I'm not sure.

15 Certainly there has been documents that have
16 been provided to the Staff whereby there were
17 committees established later in the '90s as well.

18 So the company has been addressing in
19 various forms and fashion the Y2K for some period of
20 time.

21 Q. Do you recall when the Y2K project
22 management team was formed?

23 A. When you refer to the Y2K project management
24 team, specifically whom might you be referring to.

25 Q. I believe it was comprised of six members of

1 senior management.

2 A. There was a Y2K project management team
3 formed that -- I believe it was in -- if you can
4 excuse me for a moment.

5 Q. Certainly, please.

6 A. Off the top of my head, I guess,
7 Mr. Dottheim, that I'm not certain I know specifically
8 when that committee was formed. I've seen documents
9 and I believe Ms. Westerfield has some of those
10 documents where there was -- there was some committee
11 meetings.

12 Whether there are other formulations of
13 committees addressing the Y2K problem part of that
14 time, my suspicion is, yes, there was. In speaking
15 with our chief information officer, I know that
16 certainly Y2K activities and members of his staff had
17 been addressing the issue, frankly, prior to the
18 merger. So I'm not sure.

19 Q. Yeah. Mr. Baxter, if you could answer my
20 question yes or no.

21 A. Well, I'm trying to respond. When you're
22 saying the senior management committee, I don't know
23 if Mr. Bremmer (phonetic sp.) had another committee
24 subsequent or in earlier 1990s. That I don't know.

25 Q. Would you be willing to accept, subject to

1 check, August of 1997?

2 A. Yeah, that's what I was looking for. I
3 think, Mr. Dottheim, there was a document maybe in
4 Ms. Westerfield's testimony that there was a time line
5 and August 1997 seems to stick in my mind.

6 That's what I saw there.

7 Q. Is there an overall Y2K project coordinator
8 at Union Electric Company?

9 A. To the best of my knowledge, yes, there is.

10 Q. And do you know who that person is?

11 A. The answer is yes, and his name totally
12 escapes me right now.

13 He is under the direction of Mr. Chuck
14 Bremmer.

15 Q. Do you know how much time that individual
16 devotes to the Y2K project?

17 A. No, I do not.

18 Q. Were operating teams formed at UE subsequent
19 to the project management team to address the various
20 aspects of a Y2K problem?

21 A. Yes. It is my understanding that is true.

22 Q. Do you know approximately how many teams
23 were formed?

24 A. No, I don't know how many teams
25 specifically, no, but there are several.

1 Q. Would you be willing to accept, subject to
2 check, approximately 30?

3 A. Sure.

4 Q. Okay. Do you know or have any approximation
5 as to how many man-hours, or maybe it's more
6 appropriate to say person-hours, have been devoted by
7 UE employees to date to address Y2K concerns?

8 A. To date, to date, through today?

9 Q. Yes.

10 A. Starting at what point in time?

11 JUDGE REGISTER: Would the relevant period
12 be during a sharing period?

13 MR. DOTTHEIM: That would be one of the
14 relevant periods.

15 JUDGE REGISTER: Okay. Go ahead.

16 BY MR. DOTTHEIM:

17 Q. Well, in general since the formation of the
18 project management team in August of 1997.

19 A. I believe, Mr. Dottheim, we provided in
20 either data requests or information to the Staff,
21 which I don't recall off the top of my head,
22 information about internal costs that we've incurred,
23 and I'm not sure if those internal costs that we've
24 incurred commenced as of August of 1997, say, or I
25 think that's probably generally about the time that

1 that's when we started tracking the information.

2 JUDGE REGISTER: Do you know what those are?

3 THE WITNESS: Off the top of my head, I do
4 not.

5 JUDGE REGISTER: That's fine.

6 You don't have to explain any further.

7 Mr. Dottheim?

8 THE WITNESS: I believe, Mr. Dottheim,
9 though, it was in the hundreds of thousands of
10 dollars, but I can't say for sure.

11 BY MR. DOTTHEIM:

12 Q. And you're referring to cost, not to
13 number -- numbers of hours worked by Union Electric
14 employees addressing the Y2K concerns?

15 A. Yeah. The numbers that I'm referring to are
16 dollars.

17 Q. All right. Do you know when Union Electric
18 Company started specifically segregating Y2K costs?

19 A. Yeah. We starting segregating Y2K costs
20 soon after the SEC required us to begin recording year
21 2000 costs for our financial reporting.

22 Prior to that time we saw really no need in
23 doing so.

24 Q. Okay. Were unquantifiable Y2K costs
25 incurred before that time?

1 A. Yes. My suspicion is yes.

2 Q. In your experience at Union Electric
3 Company, has there been a computer maintenance project
4 with a scope and magnitude of Y2K?

5 A. In my experience at Union Electric Company,
6 which is merely three years, if you're referring
7 to maintenance activities, certainly with regard to
8 the -- what we've gone through to date, you know, I
9 think, Mr. Dottheim, I think it is potentially, we do
10 maintenance activities for a fairly large bit of our
11 systems which are fairly significant.

12 Certainly on some of our operating systems
13 which take place at our power plants, we have people
14 basically devoted to make sure that those systems are
15 well maintained. Similarly we have people devoted to
16 the Callaway plant to make sure that their operating
17 systems are maintained, which are, you know,
18 obviously very critical systems, not only to -- really
19 to the operation of our company and others. So I
20 guess it is -- it is possible.

21 Q. People at the production facilities that
22 you've just described, they are also engaged in
23 spending time on the Y2K problem?

24 A. Yes, that is correct.

25 Q. Would failure by Union Electric Company to

1 properly address the Y2K concerns run the risk of
2 jeopardizing service continuity?

3 A. Yes, that is possible.

4 Q. You earlier mentioned the SEC reporting
5 requirements.

6 Can you describe what those reporting
7 requirements are?

8 A. They're actually fairly extensive. Those
9 reporting requirements include -- and in our annual
10 report, frankly, we comply with those reporting
11 requirements. In there we discuss the various aspects
12 of the year 2000 project which we are engaging in. We
13 talk about potential contingency plans. We talk
14 about, certainly, our cost estimates and costs
15 incurred to date, among other things.

16 I mean, I could -- if you would -- you could
17 go through the annual report. But in general it's
18 those types of things basically outlining the planning
19 stage, as well as the -- as I said, the contingency
20 plan which may be taking place.

21 Q. Well, you've mentioned the company's annual
22 report and the listing of the Y2K activities that are
23 contained therein. I have copies that I'd like to
24 have marked as an exhibit.

25 JUDGE REGISTER: We can go off the record

1 for a moment, Pat.

2 (EXHIBIT NO. 33 WAS MARKED FOR
3 IDENTIFICATION.)

4 JUDGE REGISTER: Please proceed,
5 Mr. Dottheim.

6 BY MR. DOTTHEIM:

7 Q. Mr. Baxter, I've handed you what's been
8 marked as Exhibit 33, which are pages 19, 20 and 21
9 from AmerenUE 1998 annual report.

10 A. Uh-huh.

11 Q. Do you recognize those three pages?

12 A. Yes, I do.

13 Q. Okay. And your prior reference to the
14 annual report which contains information on Y2K, is
15 this the document?

16 A. Yes, it is.

17 Q. Again, you've indicated your length of time
18 at Union Electric Company is somewhat limited. But in
19 that expanse of time, isn't there a computer
20 maintenance project that has received as much space in
21 the companies, whether it was Union Electric Company
22 or AmerenUE, as Y2K has received in the 1998 annual
23 report of AmerenUE?

24 A. To the best of my knowledge, no.

25 Q. Okay. Has the SEC required disclosure

1 regarding any other computer maintenance projects
2 other than Y2K?

3 A. The SEC, as part of their management
4 discussion and analysis, would require disclosures in
5 general for potential computer maintenance projects to
6 the extent that a company deemed it appropriate.

7 Q. But there are specific SEC reporting
8 requirements regarding Y2K?

9 A. Yes, there are.

10 Q. And to your knowledge have there been any
11 other specific computer maintenance projects that have
12 received the attention that they have been singled out
13 for requirements regarding reporting to the SEC?

14 A. Are you referring specifically to Union
15 Electric Company or enterprises in general,
16 Mr. Dottheim?

17 Q. Both. If you could answer the question for
18 both instances.

19 A. I would say with regard to both, it is
20 possible for those in the software industry, which I'm
21 familiar with all of their specific accounting
22 requirements, that the SEC would require some specific
23 disclosures which may be computer-maintenance driven.
24 That is possible. I can't cite you any specific
25 cites.

1 With regard to Union Electric Company in
2 particular, no, this is -- this is the one that
3 requires specific disclosures.

4 MR. DOTTHEIM: If I can have a moment,
5 please?

6 JUDGE REGISTER: Certainly.

7 BY MR. DOTTHEIM:

8 Q. I think just one other question that I have,
9 Mr. Baxter. And I'm not -- I don't think that's
10 asking you to state a legal conclusion or a legal
11 pronouncement other than what you've otherwise put in
12 your rebuttal testimony and what your understanding of
13 the Union Electric Company position is regarding the
14 first EARP. But to your knowledge is it Union
15 Electric Company's position that the Commission is
16 contractually required to accept UE's proposed
17 accounting for Y2K costs in the third sharing period?

18 A. It is our position that the Commission shall
19 apply the terms of the agreement appropriately and
20 that that appropriate application should be considered
21 with the company's position, which would be to expense
22 those costs as incurred and in the third shared
23 period.

24 MR. DOTTHEIM: Excuse me again. Just one
25 moment.

1 JUDGE REGISTER: And before you complete,
2 Mr. Dottheim, do you want to offer 33 into the record?

3 MR. DOTTHEIM: Yes.

4 BY MR. DOTTHEIM:

5 Q. Mr. Baxter, I think just one other question.
6 Pardon me. I don't think I've asked you this, but I
7 might have.

8 Has UE surveyed its vendors respecting the
9 Y2K problem?

10 A. Mr. Dottheim, if I may refer you to our
11 annual report, on page 20, the third paragraph says,
12 with respect to third parties, the areas that
13 interface directly -- it's on page 20, the third full
14 paragraph.

15 JUDGE REGISTER: Of Exhibit 33?

16 THE WITNESS: Thank you, Exhibit 33 of the
17 annual report.

18 I believe in that paragraph we discuss your
19 question, so the basis of my conclusion to answer your
20 question would be contained in there.

21 JUDGE REGISTER: And your answer would be
22 what?

23 THE WITNESS: Would be, yes, we say here we
24 have inventoried vendors and major suppliers and
25 currently are assessing their year 2000 readiness

1 through surveys, websites and personal contact.
2 JUDGE REGISTER: Okay.
3 MR. DOTTHEIM: Thank you, Mr. Baxter.
4 JUDGE REGISTER: Anything further,
5 Mr. Dottheim?
6 MR. DOTTHEIM: No further questions and I'd
7 like to offer Exhibit 33.
8 JUDGE REGISTER: Okay. Are there any
9 objections to Exhibit 33 being admitted into the
10 record?
11 (No response.)
12 JUDGE REGISTER: Hearing no objections,
13 Exhibit 33 is admitted into the record.
14 (EXHIBIT NO. 33 WAS RECEIVED INTO EVIDENCE.)
15 JUDGE REGISTER: Next on cross is Public
16 Counsel, Mr. Coffman?
17 MR. COFFMAN: Thank you. I just have a few.
18 CROSS-EXAMINATION BY MR. COFFMAN:
19 Q. Good afternoon, Mr. Baxter.
20 A. Good afternoon, Mr. Coffman.
21 Q. Are you holding yourself out as an expert on
22 computers?
23 A. No, I hold myself out as a person who is an
24 officer of the company who has met with and attended
25 several meetings dealing with computer-related issues,

1 including the year 2000. So -- but not as an expert
2 on personal computers per se.

3 Q. In other words, you have some expertise in
4 the accounting for computer items?

5 A. Expertise certainly in the accounting and
6 knowledge as you would expect an officer of a company
7 our size to have knowledge of computer-related matters
8 associated with the operations of our company.

9 Q. Okay. If the various Y2K modifications that
10 are at issue here were not made, would those systems
11 have failed when we reached the year 2000?

12 If the modifications -- I'm sorry. Maybe I
13 stated that wrong. Let me restate it.

14 If the various Y2K modifications that Union
15 Electric is making were not made, would those systems
16 fail come the year 2000?

17 A. Which systems are you referring to,
18 Mr. Coffman?

19 Q. Well, I know that there are various systems.
20 Could you identify for me systems that you believe
21 would or would not fail, or do you know?

22 A. I know of some systems which -- when you say
23 fail, I believe we would have some operational
24 difficulties, certainly, with some systems. To say
25 that they would fail, not all components of systems to

1 the best of my knowledge are fully date dependent.

2 Including, for instance, one example that I
3 can give you would be our billing system. Our billing
4 system would not fail. We may have delays in getting
5 some bills out and, in fact, we may have problems with
6 a particular cycle, but in the bigger picture, our --
7 what we would end up having would be inappropriate
8 dates on bills but the right dollar amounts.

9 So that would be one example where I'm not
10 sure if you'd define that as a failure. We would have
11 some operational difficulties.

12 Q. Would these -- would the difficulties for
13 some systems affect the useful life of those systems
14 if these modifications were not made?

15 A. What do you mean by the useful life?

16 Q. Would the useful life of those systems be
17 shortened if these modifications were not made?

18 A. If you're asking me whether a particular
19 system that would fall in disrepair and you should
20 choose to let it fall in disrepair and not fix it, I
21 guess that system could have some operational
22 difficulties.

23 But if you're asking me whether the year
24 2000 extends the use -- the year 2000 repair extends
25 the useful life of a system that, say, prior to the

1 year 2000 fix had a 5-year life and after the year
2 2000 remedy or whatever work that you would have to do
3 to correct that problem, it would still have a 5-year.

4 So, no, it doesn't extend the useful life of
5 a system.

6 The year 2000 repairs, as is the case when
7 you repair a piece of equipment in a fossil plant, all
8 it merely does is restore the piece of equipment, or
9 in this case the computer, back to the original state
10 than what it was before. It gains no more
11 functionality as a result of this.

12 Q. Mr. Baxter, who establishes the appropriate
13 useful life of these programs that are being modified?

14 A. I'm not sure I understand.

15 Q. How do you know what the useful life of a
16 particular program is?

17 A. A particular program?

18 Q. Yes. I mean, is it the computer program
19 that the computer programmer, do they tell you what a
20 useful -- the useful life of the program they wrote
21 is, or is it some depreciation expert?

22 I mean, what is -- how is the useful life of
23 a particular program determined?

24 A. If you're asking your question in the course
25 of this particular proceeding, the useful life of a

1 maintenance project or computer program, two things:
2 One, we are compelled to follow the stipulation which
3 says that we are to follow certain depreciation rates
4 from 1994.

5 And secondly, we expense all of our computer
6 software costs as incurred, as we've said here. And
7 similarly with maintenance we do the same. So if
8 you're asking in those terms, that's my answer.

9 JUDGE REGISTER: So that means you never --
10 if you expense something, you never have to determine
11 the useful life?

12 THE WITNESS: From an accounting standpoint
13 it's not pertinent.

14 JUDGE REGISTER: Sorry for the interruption,
15 Mr. Coffman.

16 Please go ahead.

17 BY MR. COFFMAN:

18 Q. Okay. Let me ask you about your general
19 ledger system.

20 A. Okay.

21 Q. Can you tell me when that was put into
22 service?

23 A. The general ledger system was put into
24 service in the early '90s.

25 Q. And do you know when it was put in, how long

1 it was expected to be in service?

2 A. The studies back at that time, I'm not sure
3 what they -- what they had said, how long that system
4 would be in -- would be put in service or how long it
5 was expected to be in service.

6 Q. And the general ledger system is -- the
7 service that you're referring to is in service now.
8 Correct?

9 A. We have a general ledger system in service
10 now.

11 Q. And when do you expect to retire that
12 system?

13 A. Um, there is nothing on -- when you say
14 retire, what do you mean by retire, Mr. Coffman?

15 Q. When would the system be completely placed,
16 the system that is --

17 A. Completely replaced?

18 Q. Yes.

19 A. I'm not sure when the system would be
20 completely replaced. As you may know, when you have
21 software systems, what you often do is make upgrades
22 to those systems and you continually update them. So
23 oftentimes when you implement a system in one year,
24 that system five years later may not look, frankly,
25 very much like the system that you had implemented in

1 year 1.

2 Which just could very well be the case to
3 our general ledger system, because since that time
4 we've been making to the code block and we've made
5 other modifications. So to say when a system is
6 completely replaced, you may continue to have certain
7 pieces of the system which remain, but it's not the
8 same system that you have at the end of the day. It's
9 significantly changed.

10 Q. When is your next major improvement plan for
11 the general ledger system?

12 A. We are in the process right now of
13 evaluating improvements to our current general ledger
14 system and making modifications.

15 Q. Right now?

16 A. This moment as we speak.

17 Q. Okay.

18 A. Whether that entire general ledger system is
19 being replaced, that's a different issue.

20 Q. But you're continually improving?

21 A. We're making expenditures to continually
22 modify and upgrade not only -- well, the functionality
23 of those systems as our needs change.

24 Q. You continue to extend the life of the
25 program?

1 A. No. We continue to have -- frankly, I'm not
2 sure what you mean by extending the life of the
3 program. We continue to modify the system to meet our
4 needs.

5 Q. But I guess given your understanding that
6 there are continual upgrades, you can't really tell me
7 when the system will ultimately be retired. Correct?

8 A. Yeah. That's part of the -- the challenge,
9 frankly, with other computer costs, is just because of
10 the rapid changes and technology an obsolescence,
11 oftentimes it is very difficult, and I think I've even
12 set that forth in my testimony.

13 It's difficult to determine the useful life,
14 which is one of the primary reasons why we've adopted
15 the accounting policy that we did was to expense those
16 costs as incurred.

17 Q. Well, going back to my earlier question
18 about what would happen if, you know, God forbid these
19 modifications were not made.

20 If these modifications were not made, can
21 you or anyone here guarantee that there would not
22 be -- that there wouldn't be a problem, that one of
23 these systems wouldn't crash and completely become
24 inoperable?

25 A. Mr. Coffman, I'm sure you know I can't

1 possibly guarantee that and, in fact, I think we state
2 as much in our annual report.

3 JUDGE REGISTER: I'm sorry. I want to ask
4 you just to speak up a little bit of volume --

5 THE WITNESS: I'm sorry.

6 JUDGE REGISTER: -- of our lack of sound
7 system. Thank you.

8 THE WITNESS: I'm sorry. Thank you, your
9 Honor.

10 BY MR. COFFMAN:

11 Q. The Y2K modifications that we have been
12 talking about, are these modifications expected to
13 last through the life of the various software programs
14 that they're being applied to?

15 A. I don't see that the Y2K modifications,
16 those specific expenditures, have a useful life to
17 them at all, because we have repair and maintenance.

18 Q. Okay. Did you say that the software
19 programs that are being modified have no useful lives?

20 A. No, I did not say that. I said that the
21 expenditures for the Y2K fix do not have a useful
22 life.

23 Q. Okay. I was asking you about the useful
24 life of the programs that were being modified with the
25 Y2K.

1 A. Okay. I'm sorry. I misunderstood your
2 question.

3 Q. In other words -- okay. After these
4 modifications are made, do you anticipate in the
5 foreseeable future any similar-type modifications that
6 would be necessary, date-dependent-type modifications?

7 A. I think it is possible that you could have
8 date-dependent-type issues associated with billing,
9 among other things. I'm not sure what you mean by
10 date dependent.

11 Q. Well --

12 A. I mean, I guess the answer to your question
13 with regard to all of our systems, I don't know
14 whether there would be other date-dependent-type
15 issues.

16 Q. Okay. Maybe I should step back and ask you
17 about the functionality of these Y2K modifications.

18 Do they involve more than simply adding the
19 ability to recognize two more digits on the yearly
20 dates, these programs?

21 A. I would suggest generally no. I think the
22 Y2K modifications, I think as I say in my testimony,
23 are like modifications that we make when we're going
24 to have to implement changes to our payroll for a new
25 labor contract, whatever the case may be.

1 If I may? You start with the modification
2 in that you look at the particular system which may be
3 affected and you say, okay, well, what do we have to
4 change to code to take care of that? And to the
5 extent that you do, then you make the design changes
6 for the code.

7 Once you've done that, then you make sure
8 that the changes that you hope that you have designed,
9 you actually put those into the system and say, okay,
10 does the system work? Do the changes that I propose
11 to make actually take care of what I thought?

12 And then, as you know, certain systems have
13 other different functions. And then you make sure
14 that the logical sequences of those other functions
15 aren't affected by your code changes. Then you look
16 at your interfaces, and then once you have your
17 interfaces, you make sure that the changes that you
18 made to that particular system have not been -- do not
19 affect those various interfaces, and then you actually
20 put the system into production.

21 Those are the same types of things we would
22 do and we do do whenever we have to either upgrade a
23 particular version of software or we have to make
24 modifications for a labor contract or potentially even
25 change the tariff. Those are the same types of

1 things.

2 Q. That answers my question. Thank you.

3 MR. COFFMAN: Those are all of the questions
4 that I have.

5 JUDGE REGISTER: Thank you, Mr. Coffman.

6 That brings us to questions from the Bench.
7 I don't believe I have very many.

8 QUESTIONS BY JUDGE REGISTER:

9 Q. Under the process of accounting that you use
10 now, your Y2K costs would be included with the other
11 computer costs and they would be expensed; is that
12 correct?

13 A. That is correct.

14 Q. Okay.

15 A. Excuse me, Judge, if I may. They would --
16 they do have the same acting policy, but the Y2K, the
17 year 2000 are considered computer maintenance
18 expenses.

19 Q. Okay.

20 A. The same accounting answer. I just wanted
21 to clarify it.

22 Q. That's fine. I appreciate that.

23 And if the Commission decided to vary on the
24 Y2K costs for the computer maintenance -- is that the
25 term you just gave me?

1 A. Yes.

2 Q. -- from the USOA, the Commission -- and they
3 decided to ask you to defer those and put them in the
4 accounting, I think your testimony recommended a
5 shorter period -- life of the assets if that's --

6 A. If I may, your Honor, clarify that.

7 My testimony related to computer software
8 maintenance, never suggested that deferral or
9 amortization was appropriate. What you may have seen
10 with regard to other computer costs, the issue that we
11 may be talking about still later this afternoon with
12 regard to the CSS and some of the other issues, those
13 I did set forth to the extent that while we would not
14 believe under the terms of the agreement it would be
15 appropriate, but if ultimately that was the case, I
16 did put in testimonies to what I thought might be an
17 appropriate life for those expenditures.

18 But with regard to the year 2000
19 expenditures on -- and I believe fairly -- I am
20 consistent in my testimony that those costs should
21 always no matter what the expense is incurred.

22 Q. Okay. And if the Commission would decide
23 that they think that those should be phased in account
24 and there would need to be a decision made on the life
25 of that, would your testimony for the other computer

1 costs also apply then?

2 A. I'd have to give that a little thought, your
3 Honor, but certainly to the extent that there would be
4 deferral and amortization we would recommend a very
5 short life. And so I would -- the other testimony I
6 believe said five years. I think with regard to year
7 2000, three years could be just as appropriate,
8 without giving it any more study.

9 Q. And that was based on -- that would be based
10 on your earlier testimony about the fact that software
11 changes so quickly?

12 A. That's exactly right.

13 Q. And Mr. Coffman was asking you about the
14 operational failure if Y2K modifications were not
15 implemented, and you said there were some systems that
16 were date dependent and some that were not.

17 A. That's correct.

18 Q. And I think you-all went on to discuss those
19 that were not. I'd like for you to identify those
20 that are date dependent.

21 A. I don't have sort of a listing of all of
22 those. I cited an example that I was familiar with.

23 I believe there are certain systems which
24 are date dependent. Some of those are even contained
25 in our power plants. The names of those I can't spew

1 off to you. But generally speaking, your Honor, when
2 I step back and I look at the year 2000 issue and I
3 look at date dependency and mission critical, we
4 certainly, year 2000 issue is not something that we
5 take very lightly, as you can understand.

6 But when you look at mission critical and I
7 step back from where I sit at least, there are a lot
8 of mission critical things that we do frankly on a
9 very daily basis to make sure our systems are
10 operating correctly, including making sure that the
11 power plant operating systems are functioning
12 appropriately and the emission monitoring systems,
13 whether they be at Callaway as you might expect with
14 regard to radiation and those types of things, are
15 operating properly, as well as security things.

16 So putting those in that kind of context
17 when we talk about sort of mission critical, that is
18 certainly what we were referring to with the Y2K,
19 those are some of the things that I think about, but I
20 don't have a list.

21 Q. So you don't know exactly which ones are
22 date dependent?

23 A. I couldn't give you all of the list of
24 those, no, I couldn't.

25 Q. And you can't give me any of them

1 specifically except for -- did you mention one,
2 emissions? Is that date dependent?

3 A. Yes, that one is.

4 Q. And plant?

5 A. Well, there are certain components of the
6 plant operating systems, which I couldn't give you the
7 names of those.

8 Q. Would generation of --

9 A. Yes.

10 Q. -- the electricity be involved?

11 A. That would be a component, I believe.

12 Q. Which in my layman's language would mean, if
13 it's date dependent, it stops operating if we don't
14 fix it?

15 A. I'm not sure. Again, as I was trying to
16 explain to Mr. Coffman, to say it's date dependent is
17 one thing. To say that it just shuts off and doesn't
18 operate after that, that's probably beyond my ability
19 really to discuss with you.

20 Q. And we were talking earlier -- I think we
21 talked a couple of times about the SEC perspective and
22 what the reporting requirements are and what they
23 require you to do in terms of Y2K.

24 And would it be fair to say that the SEC's
25 perspective is a different one? In fact, its overall

1 mission is a different one than the Public Service
2 Commission?

3 A. Yes, I would agree that to be true.
4 Certainly, the SEC when they deal with the year 2000
5 issue, they don't just focus on electric utilities
6 either. They obviously have to deal with the year
7 2000 issue and they have to promulgate standards,
8 especially reporting standards, which apply fairly and
9 equitably to all.

10 And so they don't look at this industry and
11 say, now, you don't have to worry about this standard
12 in this industry, this is important for you. They
13 promulgate a standard and then we do -- from a
14 reporting standpoint we do the best we can to comply
15 with that.

16 Q. And to the Public Service Commission it's
17 more of a narrow regulatory utility issue?

18 A. Certainly theirs is much narrower than the
19 SECs, absolutely and certainly. They get into more
20 regulatory -- regulatory from the standpoint -- I
21 mean, obviously the SEC is a regulatory body and their
22 mission statement I would suspect, they have obviously
23 many of the same -- same constituency. They are
24 obviously looking out for shareholders. They don't
25 have in their mission statement ratepayers or

1 customers.

2 Q. Of utilities?

3 A. That's exactly right. You would not find
4 that in the SEC statement.

5 JUDGE REGISTER: Okay. I think, Mr. Baxter,
6 that that is all of the questions that I have for you.

7 Nope. Let me stop.

8 BY JUDGE REGISTER:

9 Q. These operating teams and the types of
10 things that have been put together for the year 2000
11 issues, are any of that done for computer viruses?

12 A. Oh, I believe when we -- today, this very
13 minute, I believe whenever --

14 Q. When one pops up?

15 A. Yeah. I think whenever we have a computer
16 virus, and certainly the time when computer viruses
17 came into being, I'm sure that it wasn't just one
18 person saying go out and contract a computer virus
19 problem.

20 I would assume, I can't say with absolute
21 certainty. But I know that to the extent that we have
22 to combat computer viruses in the office now, then
23 some obviously arise even today, there are teams to
24 address that particular situation.

25 Q. Okay. And you testified earlier, I

1 think, that Mr. Dottheim had asked you about the
2 EITF's 96-14, what are those called?

3 A. Yes, that's emergent issues task force.

4 Q. And the position they issued referred to as
5 96-14?

6 A. That is correct.

7 Q. Okay. And I think after that he said that
8 was issued in July of '96, and so the reporting
9 financial community was not really settled on that
10 issue. And I believe your response -- and correct me
11 if I'm wrong here, was that -- that there existed a
12 diverse practice that the EITF recognized; is that
13 correct?

14 A. That is certainly one of the rules of the
15 EITF. Whenever there may be diversity in practice,
16 they are then to take the existing accounting
17 standards which have been out there and to try and
18 provide interpretive guidance.

19 So in many respects the EITF confirmed
20 what -- what the appropriate accounting would have
21 been. Certainly in our view they confirmed that the
22 appropriate accounting was to expense those costs as
23 incurred. But it is their role to -- to help
24 companies whenever there are issues which arise to --
25 to help apply the accounting standard.

1 Q. That was exactly the question I had for you.
2 You answered that. Thank you.

3 JUDGE REGISTER: I don't have any other
4 further questions for Mr. Baxter. That takes us back
5 to recross.

6 And Intervenors, Miss Schmidt?

7 MS. SCHMIDT: No.

8 JUDGE REGISTER: Mr. Fulton?

9 MR. FULTON: No, your Honor.

10 JUDGE REGISTER: Mr. Johnson?

11 MR. JOHNSON: (Shakes head.)

12 JUDGE REGISTER: And then we go to
13 Mr. Dottheim?

14 MR. DOTTHEIM: No questions.

15 JUDGE REGISTER: Thank you.

16 Mr. Coffman?

17 MR. COFFMAN: Yes, just a couple.

18 RE CROSS-EXAMINATION BY MR. COFFMAN:

19 Q. Mr. Baxter, you were talking about ETIF
20 statements. I'm sorry --

21 A. EITF. I'm sorry. I wanted to make sure I
22 understood you.

23 Q. Between EITF statement and an FASB
24 statement, which generally trumps, if there is a
25 conflict?

1 A. If there is a conflict, generally under -- I
2 believe it says 69, a financial accounting standard,
3 is on a higher hierarchy than the EITF.

4 Q. Thank you.

5 Judge Register asked you about systems
6 failing and what may or may not fail.

7 Are you familiar with a computer problem
8 often referred to as "garbage in/garbage out," where a
9 system would continue to work but the output would be
10 unintelligible?

11 A. I'm not sure if that's -- if that's a
12 technical computer term you're throwing at me,
13 "garbage in/garbage out." We use that in the
14 accounting world quite a bit too.

15 We put something garbage in my computer, it
16 could be garbage out, not my computer, my calculator.
17 If I don't put good numbers in, I'm not going to have
18 good numbers coming back at me.

19 Q. Couldn't the Y2K problem create difficulties
20 of that sort if modifications are not made, where
21 output would be --

22 A. Garbage in/garbage out.

23 Q. -- would be garbage or unintelligible
24 information?

25 A. Let me get away from the garbage thing. I

1 think that the Y2K clearly can, without fixing the
2 problem can create operational difficulties which
3 could result in the output from certain computer
4 systems in not being appropriate.

5 Q. So yes, that -- you are saying that yes,
6 that is a possibility if the modifications UE is
7 attempting to make now were not made?

8 A. Yes. I would assume that would be a
9 possibility.

10 MR. COFFMAN: That's all I have on this
11 particular issue.

12 JUDGE REGISTER: Thank you, Mr. Coffman.

13 That brings us back to redirect then.

14 Mr. Cynkar?

15 MR. CYNKAR: I do have some questions, your
16 Honor.

17 JUDGE REGISTER: Okay. Thank you.

18 REDIRECT EXAMINATION BY MR. CYNKAR:

19 Q. First, Mr. Baxter, if I could direct your
20 attention to Exhibit 6, which is the schedules to the
21 surrebuttal testimony of Ms. Westerfield.

22 A. If you could hold on a moment, please.

23 Mr. Cynkar, is Exhibit 6 her surrebuttal
24 or --

25 Q. Surrebuttal exhibits.

1 JUDGE REGISTER: The big one.

2 THE WITNESS: Thank you.

3 Yes, sir.

4 BY MR. CYNKAR:

5 Q. And if I could direct your attention to
6 Schedule 2, page 10.

7 A. Yes.

8 Q. And could I ask you to explain what that
9 page describes?

10 A. This page describes some of Callaway's
11 activities associated with the year 2000 and when, in
12 fact, some of their activities began.

13 Q. So you were asked earlier about when Y2K
14 activities began, at then UE, what -- does this at all
15 change your answer?

16 A. Um, it probably clarifies an answer. I
17 believe my response was that it has been occurring for
18 some time in the early '90s and '80s, suggested in the
19 late '80s in here. What this says is that Callaway's
20 Year 2000 project became software remediation in 1986.

21 Q. Now, if I could ask you to move to page 19
22 of that same schedule.

23 JUDGE REGISTER: 2-19?

24 MR. CYNKAR: Yes, ma'am.

25 THE WITNESS: Yes.

1 BY MR. CYNKAR:

2 Q. Now, you see there's a time line there which
3 begins around September of 1997. Could you explain
4 this page with the one we just looked at, this one
5 shows activities beginning September of '97, the other
6 one as you just testified talked about Callaway
7 beginning activities in '86?

8 A. Well, I think what this suggests is that as
9 this title suggested, project phased approach. And
10 what Union Electric has done has been working on year
11 2000 for some period of time. And so in the previous
12 page it suggests that some of that work began as early
13 as 1986.

14 And then there was another group that was
15 put together to then finish up the year 2000 issues,
16 and that is where the suggested project phase
17 approach -- where it began in September of 1997, with
18 it commencing sometime in the year 2000.

19 Q. The first page of this schedule, 2-1 --
20 Schedule 2, page 1 --

21 A. Yes.

22 Q. -- refers to a particular Federal statute,
23 directing your attention to that title -- I'm sorry --
24 to read it.

25 A. It is very difficult to read.

1 Q. I can read my copy. Let me just hand you
2 mine.

3 JUDGE REGISTER: This is one that was read
4 into the record?

5 MR. CYNKAR: Yes, exactly.

6 JUDGE REGISTER: Are you going to read it
7 again?

8 MR. CYNKAR: Yeah, I guess --

9 THE WITNESS: I can read this.

10 MR. CYNKAR: Mine is clearer, your Honor.

11 JUDGE REGISTER: Miss Westerfield already
12 read it into the record.

13 MR. CYNKAR: Right. Exactly.

14 JUDGE REGISTER: Are you going to have him
15 read it again?

16 MR. CYNKAR: No, no, no, no. I'm sorry.

17 THE WITNESS: I'm sorry. Can I read it to
18 myself?

19 JUDGE REGISTER: You can please review that,
20 yes.

21 THE WITNESS: Yes, sir.

22 BY MR. CYNKAR:

23 Q. Now, that statute there, how does that
24 relate to the work we were just talking about on
25 Schedule 2-19?

1 A. I believe there is -- this schedule on 2-19
2 shows that the company is making its best efforts to
3 comply with the statutes.

4 Q. Was that prepared in response to that
5 statute?

6 A. Yes, it is currently continuing.

7 Q. Okay. I also want to take my exhibit back.
8 Before the EITF that we've been discussing
9 came into existence, did you have a policy concerning
10 computer software accounting for computer software
11 expenses?

12 A. We had a policy for accounting for computer
13 software expenses, as well as a policy for accounting
14 computer software maintenance expenses.

15 Q. Okay. And what was that policy?

16 A. To expense those costs as incurred.

17 Q. And did the EITF change that?

18 A. Absolutely not.

19 Q. Now, you had many questions concerning the
20 efforts and resources directed to Y2K. And in
21 Ms. Westerfield's testimonies, she related to the \$10
22 to \$15 million estimate of Y2K expenses.

23 Do you know what different kinds of costs
24 those numbers represent?

25 A. Those numbers represent several different

1 types of costs. Certainly they represent internal
2 labor costs embedded in those numbers. Those numbers
3 also include costs that we incur for consultants to
4 help us with a project. And they also include costs
5 for hardware.

6 Q. Now, well, what, if any, part of that \$10 to
7 \$15 million relates to the -- to the jurisdiction of
8 Missouri?

9 A. \$10 to \$15 million is the AmerenUE total
10 amount. The Missouri jurisdictional portion, it would
11 be approximately 70 percent of that amount, and then
12 if you look at the electric portion, you take about
13 90-some-odd percent of that. So generally speaking,
14 if you did the math, it's about \$6 to \$10 million.

15 Q. Now, do you know, of that \$6 to \$10 million,
16 what portion of those expenses would be hardware?

17 A. Approximately about a million and a half.

18 Q. And that hardware expense, would you have
19 capitalized that?

20 A. Yes.

21 Q. And so do the math for me. After you take
22 that what is left?

23 A. I believe if I do it right, it's
24 4 1/2 million to 8 1/2 million.

25 Q. And that still is not just limited to

1 computer software expenses?

2 A. No. That is -- as I said before, that
3 includes internal labor costs, it includes consultants
4 expenses, as well as software modification.

5 Q. So that was \$4 1/2 to \$8 1/2 million?

6 A. (Nods head.)

7 Q. Over what period of time would that money be
8 expended?

9 A. Generally two to three years.

10 Q. And so per year what kinds of Y2K
11 nonhardware expenses in Missouri are you looking
12 for -- looking to in your electric business?

13 A. Well, certainly if the -- as -- if you took
14 the simple math, you divide it by two or three, you
15 can get anywhere from -- say if you divide that by
16 two, it would be two. It would be two and a quarter
17 to four and a quarter.

18 Q. Million dollars?

19 A. Yes. Excuse me. Thank you.

20 Q. Now, do you know of other computer
21 maintenance expenses that UE has had, let's say in the
22 last ten years?

23 A. Yes.

24 Q. And can you give us an example of one?

25 A. Well, I think we talked earlier about

1 computer viruses. That certainly would be an example.
2 And certainly I spoke earlier about maintenance
3 activities that we do either at the power plants,
4 which would include Callaway, and that relates to
5 their operating systems.

6 We do maintenance on emissions. We do
7 maintenance on security systems. So those are
8 constant maintenance activities, including certainly
9 the areas that we do quite a bit of maintenance on,
10 just the financial suite of systems, financial suite
11 of computer systems.

12 JUDGE REGISTER: Watch your volume for me,
13 please.

14 THE WITNESS: I'm sorry.

15 JUDGE REGISTER: That's all right.

16 BY MR. CYNKAR:

17 Q. Do you know how the cost of those activities
18 that you just described compare to the numbers for Y2K
19 we just discussed?

20 A. Well, I would suggest that when you step
21 back in a company of our size with the number of
22 systems that we have, which number certainly in the
23 dozens, probably 30 to 50 mission-critical systems, if
24 not more, I don't know if I call it mission but
25 certainly important systems, projects which on an

1 annual basis would be \$2 to \$4 million are frankly not
2 that significant.

3 Q. Directing your attention to Exhibit 30,
4 which for our purposes here is blown up on that chart
5 behind you, during the third sharing period, do you
6 know what level Y2K expenses would have to reach to be
7 5 percent of income at that period?

8 A. It would --

9 MR. DOTTHEIM: I object. I believe this is
10 beyond the scope of the cross-examination.

11 JUDGE REGISTER: Any other comments to that
12 objection? Response?

13 MR. CYNKAR: Your Honor, the counsel on
14 cross asked many questions about the efforts being put
15 into Y2K, and I think it's very relevant, given the
16 issue with respect to its extraordinary nature to ask
17 Mr. Brandt if he knows how those Y2K efforts compare
18 to other similar efforts in the company, and it's
19 quite relevant to the issue of whether this is indeed
20 an extraordinary expense.

21 JUDGE REGISTER: I'll overrule the
22 objection. Please proceed but, of course --

23 MR. CYNKAR: Yeah, I'll move along.

24 THE WITNESS: Mr. Cynkar, I believe you
25 asked me how much the Y2K expense would have to be

1 during the third sharing period to meet the 5 percent
2 of net income. Is that what you're asking me?

3 BY MR. CYNKAR:

4 Q. 5 percent of income, correct.

5 A. Yes. On a pre-tax basis, that would have to
6 exceed over \$20 million.

7 Q. For that one-year period?

8 A. For that one year. And as you know, in
9 total, our year 2000 expenses as we disclose in our
10 annual report for the total company is only \$10 to
11 \$15 million and that's over two to three years.

12 Q. Now, speaking of your annual report, if I
13 could direct your attention to Exhibit 33, could you
14 explain why you put so much discussion of the Y2K
15 issue in your report?

16 A. It was as an SEC registrant, we're required
17 to file the rules and regulations of the SEC. And so
18 we comply with those rules and regulations.

19 Q. Okay. You had several different questions
20 about what would happen if you didn't do whatever you
21 do to deal with the Y2K problem.

22 In a slightly different context, when the
23 Public Service Commission approves a change in rates,
24 what, if anything, do you have to do to your computer
25 systems?

1 A. We have to modify them. And to be more
2 explicit, we change our tariffs. We have to go in and
3 modify our billing system to comply with that. And in
4 so doing, we have to do many of the same things that I
5 discussed previously with -- I can't recall if it was
6 Mr. Dottheim or Mr. Coffman -- whereby we have to make
7 appropriate changes, design the code changes,
8 incorporate those code changes in there, and then once
9 we have done that, we do it with the billing system
10 and we make sure that the changes that we want to make
11 with the tariffs are actually being done
12 appropriately.

13 Then, as you know, a billing system has
14 several other functions to it. We have to make sure
15 that those other functions aren't distracted or
16 affected by some of the modifications that we make.
17 And then obviously the billing system interfaces with
18 many other systems, including general ledger system
19 among other things. And so we have to ensure that all
20 of those other systems which are interfaced with that
21 system are not going to be adversely affected by the
22 change that we made and perhaps have to make some
23 other coding changes.

24 Then once we do all of that, we make sure
25 that the testing is done, we put it into production.

1 MR. CYNKAR: If I could have one second,
2 your Honor.

3 JUDGE REGISTER: Let's go off the record for
4 a moment.

5 (Off the record.)

6 JUDGE REGISTER: Proceed.

7 BY MR. CYNKAR:

8 Q. Again, directing your attention to the issue
9 of the consequences of, if not a failure, a -- a
10 failure of a computer system to operate correctly, are
11 there things other than the Y2K problem that could,
12 for example, cause systems at Callaway to not operate
13 properly?

14 A. Certainly.

15 Q. And do you have a sense of the range of
16 those kinds of problems?

17 A. Oh, I think there are multitudes of
18 problems. We've talked about one, the computer virus.
19 It certainly could be a very significant one. But I
20 think, Mr. Cynkar, there are several issues. In fact,
21 that's why we have staff on site at Callaway, for
22 example, to take care of those issues immediately.

23 Q. And do you have a sense of the number of
24 computer systems that are involved in the operations
25 of Callaway?

1 A. Oh, I think they number over a dozen.

2 Q. And what are the consequences of the --
3 either failure of those systems or their failure to
4 operate correctly as a result of any of these other
5 problems?

6 A. Oh, certainly when you're talking about a
7 nuclear plant, there is always the terrible problem
8 where you have, in accountant's vernacular, I wouldn't
9 say nuclear meltdown, but there are issues that are
10 very terrible, especially potentially the emissions of
11 radiation into the air. Certainly issues associated
12 with just the reliability of our system, because
13 Callaway obviously is a big operating, generating
14 plant for us.

15 It could have very adverse consequences too.

16 Q. And finally, directing your attention not to
17 a particular document, but to the reconciliation
18 procedure.

19 A. Uh-huh.

20 Q. Now, what is the company's position with
21 respect to the consistent -- the consistency of its
22 treatment of Y2K costs with that reconciliation
23 procedure?

24 A. I'm sorry. Would you ask that question
25 again, please?

1 Q. What's the company's position with respect
2 to whether its accounting treatment for Y2K costs
3 complies with the reconciliation procedure?

4 A. Well, the company's position is that it
5 is -- it's established accounting practice for
6 computer software maintenance which includes Y2K
7 should be as expensed as incurred and in accordance
8 with the terms of the agreement.

9 Q. And if someone challenged that, was of the
10 view that you didn't do that correctly under the
11 reconciliation procedure, could that dispute be
12 brought to the Commission?

13 A. Certainly.

14 MR. CYNKAR: I have no further questions.

15 JUDGE REGISTER: Thank you, Mr. Cynkar.

16 That should end our redirect of Mr. Baxter
17 in relation to the Y2K costs. You may step down,
18 Mr. Baxter.

19 The next topic I have, do we have
20 cross-examination questions for Miss Westerfield on
21 other computer costs?

22 MR. CYNKAR: Yes.

23 JUDGE REGISTER: Okay.

24 (A recess was taken.)

25 JUDGE REGISTER: Let's have the record

1 reflect Mr. Dottheim has passed out clean copies of
2 Exhibit No. 24 and he's going to give me six of them.

3 And then we have discussed off of the
4 record, there is some questions that we've missed on
5 some prior witnesses. Mr. Weiss who is back on the
6 stand, he is still sworn and Mr. Lerner will ask his
7 question.

8 MR. LERNER: One question.

9 GARY S. WEISS testified as follows:

10 REDIRECT EXAMINATION BY MR. LERNER:

11 Q. Mr. Weiss, you made a correction on page 9
12 of your rebuttal testimony, line 13, you changed the
13 dollar on that line from 216,504 to what figure,
14 Mr. Weiss?

15 A. It was 196,847.

16 Q. And can you explain why you made that
17 correction?

18 A. Yes. In response to Mr. Rackers'
19 surrebuttal testimony, page 11, lines 10 through
20 lines 13, he pointed out that in pricing up my fuel
21 savings, since I was also pricing up the sale of the
22 excess generation during the summer months, I should
23 price my fuel savings at the average of the fuel costs
24 excluding the summer months. So I recalculated my
25 fuel savings and that's where I came up with a number

1 changed to 196,847 on page 9 of my testimony.

2 JUDGE REGISTER: Okay. That was Exhibit 15,
3 is your testimony?

4 No. I'm sorry. That is Mr. McKnight's
5 testimony. Yours is 16. Thank you. And that's
6 page 9 of your testimony on line 13.

7 THE WITNESS: That is correct.

8 MR. DOTTHEIM: May we see a work paper on
9 that, Mr. Weiss? Would that be acceptable?

10 THE WITNESS: Yes.

11 MR. LERNER: I can produce that either today
12 or tomorrow. I can produce it today.

13 MR. DOTTHEIM: Well, I don't know whether
14 we'll finish up today, but -- depending on that work
15 paper.

16 JUDGE REGISTER: I'm planning on it. You
17 may have some cross-examination based on this
18 question.

19 MR. DOTTHEIM: Yes, once we see the work
20 paper.

21 MR. LERNER: Well, your Honor, if I had
22 raised this on redirect, there would have been no
23 opportunity for cross after that.

24 MR. DOTTHEIM: But I think if he was making
25 a correction to his testimony, he would have done that

1 when he would have first taken the stand, and I think
2 I then on direct would have had an opportunity to ask
3 Mr. Weiss about that correction. So . . .

4 JUDGE REGISTER: That's correct.

5 Mr. Lerner, if we can find that, it's not
6 necessary to find it now because Mr. Weiss will be
7 back on the stand later or will be subject for later
8 testimony. So in the meantime if he can find that and
9 it will give you an opportunity to have that looked
10 over, is that correct, Mr. Dottheim?

11 MR. DOTTHEIM: Well --

12 JUDGE REGISTER: And we'll leave this topic
13 open for recross later. Okay? And we can move on
14 then. Is that --

15 MR. DOTTHEIM: Yes. Well, I'm hoping -- I'm
16 hoping once seeing the work paper that won't provide
17 us enough time (sic). But not having seen the work
18 paper --

19 JUDGE REGISTER: Right. And you may get --
20 once seeing the work paper, you may not have questions
21 at all.

22 MR. DOTTHEIM: Well, that's true.

23 JUDGE REGISTER: Then we will -- do you have
24 any other questions, Mr. Lerner?

25 MR. LERNER: None.

1 JUDGE REGISTER: Thank you, Mr. Weiss. You
2 are now excused again and Miss Westerfield will return
3 to the stand for the topic of other computer costs.

4 (Off the record.)

5 JUDGE REGISTER: Okay. Mr. Dottheim, are
6 you ready to proceed with Miss Westerfield on other
7 computer costs?

8 MR. DOTTHEIM: Yes.

9 JUDGE REGISTER: Please go ahead.

10 MR. DOTTHEIM: Yes, the Staff calls as its
11 witness on other computer costs Miss Arlene
12 Westerfield.

13 JUDGE REGISTER: And you are still sworn,
14 Miss Westerfield. You may proceed with your
15 testimony.

16 Mr. Dottheim, did you have any?

17 ARLENE S. WESTERFIELD testified as follows:

18 DIRECT EXAMINATION BY MR. DOTTHEIM:

19 Q. Ms. Westerfield, I previously asked you if
20 you had any changes or corrections to your testimony.
21 You have nothing additional at this time, do you?

22 A. No, I do not.

23 MR. DOTTHEIM: Okay. I tender
24 Ms. Westerfield for cross-examination.

25 JUDGE REGISTER: Public Counsel,

1 Mr. Coffman?

2 MR. COFFMAN: No questions.

3 JUDGE REGISTER: Miss Schmidt?

4 MS. SCHMIDT: No questions.

5 JUDGE REGISTER: Mr. Fulton?

6 MR. FULTON: No, no questions.

7 JUDGE REGISTER: Thank you, Mr. Fulton.

8 Mr. Johnson?

9 MR. JOHNSON: (Shakes head.)

10 JUDGE REGISTER: And then we're back to

11 Mr. Cynkar, UE.

12 MR. CYNKAR: Thank you, your Honor.

13 CROSS-EXAMINATION BY MR. CYNKAR:

14 Q. Miss Westerfield, it is true, is it not,

15 that you do not know whether productivity is important

16 to any company?

17 A. I haven't really done any studies.

18 Q. So the answer is yes.

19 A. No.

20 Q. You don't know whether it's important?

21 A. That's right.

22 Q. And so is it fair to say that you don't

23 offer your proposed adjustments with any thought to

24 the consequences for any incentives that might be

25 created by the EARP; is that fair?

1 A. Yes.

2 Q. During the 1994/1997 period computer
3 expenses at UE went up; isn't that true?

4 A. Yes, they did.

5 Q. Okay. Now, at the same time are you aware
6 that UE reduced staff positions significantly without
7 lay-offs?

8 A. In what period of time are we talking?

9 Q. The same period, 1994 to 1997.

10 A. No, I don't. I don't know.

11 Q. So you don't know whether those computer
12 expenses resulted in UE automating clerical work and
13 in other ways creating efficiencies through the use of
14 computer technology as opposed to human beings; is
15 that fair?

16 A. No, I don't.

17 Q. It's true, is it not, that in accounting for
18 labor costs, one expenses that?

19 A. Not all of it. It would depend.

20 Q. What does it depend on?

21 A. It would depend on what the labor was
22 related to. If it was related to a construction
23 project, then some of it would be capitalized.

24 Q. If it wasn't related it a construction
25 project, would it then be expensed?

1 A. Yes.

2 Q. Okay. Similarly, training costs are
3 expensed?

4 A. I would say that would depend.

5 Q. On what?

6 A. On an individual basis. I would have to
7 look at it and see what it was.

8 Q. What?

9 A. I would say generally.

10 Q. Generally it is?

11 A. Uh-huh.

12 Q. Can you give me an example of a situation of
13 when training costs are capitalized?

14 A. I can't give you a specific example. I
15 don't know if there might be some training that might
16 be related to a construction project that might be
17 capitalized.

18 Q. Outside of a relationship to a construction
19 project, in your view would it be safe to say that in
20 all other situations training would be expensed?

21 A. Generally I would say yes.

22 Q. Okay. And would the same be true for
23 research and development costs?

24 A. I think generally, yes.

25 Q. Okay. Is it fair to say that research and

1 development costs create benefits beyond the period in
2 which they are incurred?

3 A. I guess it depends on what they are, whether
4 they would provide future benefit or not. I really
5 don't know the answer to that.

6 Q. Would it be fair to say that training
7 expenses provide benefits beyond the period in which
8 they are incurred?

9 A. It would be really hard for me to answer yes
10 to that as well.

11 Q. Because you don't know or because you
12 disagree?

13 A. I really don't know.

14 Q. Okay. Are you aware of the training
15 programs that UE has for its employees at the Callaway
16 plant?

17 A. No, I'm not.

18 MR. CYNKAR: Your Honor, if I could have a
19 second.

20 JUDGE REGISTER: Certainly.

21 MR. CYNKAR: That's all I have, your Honor.

22 JUDGE REGISTER: Thank you, Mr. Cynkar.

23 So that completes cross-examination.

24 Examination from the Bench?

25 Chair Lumpe, did you have any questions?

1 CHAIR LUMPE: I just want to refresh my
2 memory.

3 QUESTIONS BY CHAIR LUMPE:

4 Q. Miss Westerfield, the other computer items,
5 are they all software or do they include some
6 hardware?

7 A. From the information that I've been provided
8 by the company, there is very little hardware
9 associated with any of the three projects.

10 Q. It's mostly software?

11 A. That's correct.

12 Q. And on one of the computer items, is the
13 testimony that it is not in place yet or it's not
14 being used at this point?

15 A. That's correct.

16 Q. On the CSS?

17 A. That's right.

18 Q. All right.

19 A. It was not in what we would call in service
20 and serving customers during the third credit period.

21 Q. Okay. Thank you.

22 CHAIR LUMPE: That's all I have.

23 JUDGE REGISTER: And I don't have any
24 questions. So that concludes the questions from the
25 Bench.

1 Recross. Public Counsel, Mr. Coffman?
2 MR. COFFMAN: No questions.
3 JUDGE REGISTER: Thank you, Mr. Coffman.
4 Intervenor, Miss Schmidt?
5 MS. SCHMIDT: No.
6 JUDGE REGISTER: Thank you.
7 Mr. Fulton?
8 MR. FULTON: No.
9 JUDGE REGISTER: Mr. Johnson is not
10 available.
11 MR. JOHNSON: No questions.
12 JUDGE REGISTER: Oh, you are there. Thank
13 you.
14 Okay. No questions from Mr. Johnson.
15 And redirect then? I'm sorry.
16 UE? Did I --
17 MR. CYNKAR: No questions.
18 JUDGE REGISTER: And then redirect.
19 Mr. Dottheim?
20 REDIRECT EXAMINATION BY MR. DOTTHEIM:
21 Q. Miss Westerfield, Union Electric Company
22 performed a cost benefit analysis for CSS?
23 A. Not to my knowledge.
24 Q. Thank you.
25 MR. DOTTHEIM: I have no further questions.

1 JUDGE REGISTER: Thank you, Mr. Dottheim.

2 That should conclude Miss Westerfield's
3 testimony on other computer costs.

4 You may step down, Miss Westerfield. I
5 think if you have -- you can take your goodies with
6 you.

7 Mr. Robertson, are there cross-examination
8 questions?

9 MR. CYNKAR: We have no questions, your
10 Honor.

11 JUDGE REGISTER: Okay. Mr. Robertson, you
12 are free on this one.

13 And on to UE's witnesses. Any questions for
14 Mr. Brandt on other computer costs?

15 MR. DOTTHEIM: One moment.

16 JUDGE REGISTER: Okay. While Mr. Dottheim
17 is conferring, Public Counsel or Intervenors?

18 MR. FULTON: For Mr. Brandt?

19 JUDGE REGISTER: For Mr. Brandt.

20 MR. FULTON: No. He was on the stand too
21 long already.

22 JUDGE REGISTER: We exhausted him
23 altogether.

24 MR. FULTON: Actually he exhausted us.

25 JUDGE REGISTER: Mr. Dottheim?

1 MR. DOTTHEIM: I have just a handful of
2 questions.

3 JUDGE REGISTER: Mr. Brandt, you're up.

4 Mr. Cynkar, you're tendering for
5 cross-examination?

6 MR. CYNKAR: Yes, your Honor, I do so.

7 JUDGE REGISTER: And we've got a UE witness
8 here.

9 Intervenors go first.

10 Ms. Schmidt?

11 MS. SCHMIDT: No, thank you.

12 JUDGE REGISTER: Mr. Fulton?

13 MR. FULTON: Um --

14 JUDGE REGISTER: Are you going to change
15 your mind?

16 MR. FULTON: No. I don't have any questions
17 at this point.

18 JUDGE REGISTER: Thank you, Mr. Fulton.

19 Mr. Johnson?

20 MR. JOHNSON: No questions, your Honor.

21 JUDGE REGISTER: Mr. Dottheim?

22 MR. DOTTHEIM: Yes.

23 DONALD E. BRANDT testified as follows:

24 CROSS-EXAMINATION BY MR. DOTTHEIM:

25 Q. Good afternoon, Mr. Brandt.

1 A. Good afternoon.

2 Q. Mr. Brandt, when was FAS 87 issued?

3 A. I missed that.

4 Q. FAS 87.

5 A. I don't recall the specific date.

6 JUDGE REGISTER: For the court reporter

7 that's F-A-S, FAS.

8 MR. DOTTHEIM: I'm sorry.

9 BY MR. DOTTHEIM:

10 Q. Would you accept subject to check 1986?

11 A. Yes.

12 Q. Okay. And what subject matter did it cover?

13 A. I don't recall that either.

14 Q. Will you accept pension subject to check?

15 A. I would.

16 MR. CYNKAR: Your Honor, I object. I think

17 we essentially have Mr. Dottheim testifying through

18 this witness. He's already said he doesn't recall

19 FAS 87 or whatever it was and doesn't recall the

20 subject matter. I object to this line of questioning.

21 JUDGE REGISTER: Got a response?

22 MR. DOTTHEIM: Yes. Well, I assume that

23 Mr. Brandt -- obviously I assumed that he would as, I

24 think, Mr. Baxter's predecessor. I can try

25 Mr. Baxter. I don't know that he'll be able to

1 respond.

2 But if Mr. Brandt has no recollection
3 regarding FAS 87 and whether it required accrual
4 accounting or contribution method or what have you,
5 then I'll withdraw the question.

6 JUDGE REGISTER: All right. Before you
7 withdraw the question, do you have any knowledge of
8 FAS 87 or what is referred to as FAS 87, accrual
9 accounting for pensions, Mr. Brandt?

10 THE WITNESS: Well, I didn't know it was
11 pensions. There's 100-and-some-odd, you know.

12 JUDGE REGISTER: Once we get past that --

13 THE WITNESS: FAS is --

14 JUDGE REGISTER: FAS 87 as pension, then you
15 have no knowledge?

16 THE WITNESS: I know there's a FAS on
17 pensions and it's been a long time since I've looked
18 at it, and I know it requires accrual accounting.
19 Beyond that, the specifics, I would ask --

20 JUDGE REGISTER: Any other comment on that
21 objection?

22 MR. CYNKAR: I've got another objection when
23 we're done with this. The objection is, I don't see
24 the relevance to the computer issues that
25 we're -- that is in front of the Commission right now

1 of a FAS statement on accounting for pensions.

2 JUDGE REGISTER: Okay. I'm going to
3 overrule your objection. Foundational questions. He
4 can lead him because it's cross anyway.

5 Please proceed, Mr. Dottheim, and, of
6 course, we'll keep it limited to the weight it's worth
7 anyway. Right?

8 MR. DOTTHEIM: Yes, I will.

9 BY MR. DOTTHEIM:

10 Q. Mr. Brandt, my questions go to the matter of
11 the company's adoption of FAS 87 as it relates to
12 whether it received an order from this Commission
13 directing it to change its accounting methodology.

14 On the other hand the change in accounting
15 for other computer costs and testimony, that an order
16 from this Commission is required before the company
17 can change its accounting methodology, so that's -- I
18 mean, foundationally that's the -- that's the tie-in.

19 If Mr. Cynkar is inquiring or objecting on
20 the grounds of relevance or what have you, I think it
21 is relevant.

22 MR. CYNKAR: I'm not sure I understood what
23 Mr. Dottheim just said.

24 JUDGE REGISTER: I'm sorry. I think he was
25 responding to your second objection. I thought I just

1 already ruled on it and we were going on to a
2 question.

3 MR. CYNKAR: I thought so too, your Honor.

4 JUDGE REGISTER: All right. We'll accept
5 your response under that and I'm going to rule on it.

6 I've overruled his objections, and go ahead
7 and ask your next question or restate the question you
8 were -- I think we now know that it's -- FAS 87 is two
9 pensions. And you accept that, Mr. Brandt?

10 THE WITNESS: Yes.

11 JUDGE REGISTER: Subject to check.

12 Next question, Mr. Dottheim.

13 BY MR. DOTTHEIM:

14 Q. Mr. Brandt, do you recall how FAS 87
15 generally directs companies to account for pensions?

16 A. Generally on an accrual basis.

17 Q. Do you recall how Union Electric accounted
18 for pensions prior to FAS 87?

19 A. On an accrual basis.

20 MR. DOTTHEIM: Thank you, Mr. Brandt. I
21 have no further questions.

22 JUDGE REGISTER: Mr. Coffman?

23 MR. COFFMAN: Yes?

24 JUDGE REGISTER: Are you ready for cross on
25 Mr. Brandt?

1 MR. COFFMAN: I have no questions for
2 Mr. Brandt. Thank you.
3 JUDGE REGISTER: Thank you.
4 And so that concludes our cross on the issue
5 of other computer costs for Mr. Brandt. We'll go to
6 questions from the Bench.
7 Chair Lumpe, did you have any questions of
8 Mr. Brandt?
9 CHAIR LUMPE: No.
10 JUDGE REGISTER: And, Commissioner Crumpton,
11 did you have any questions for Mr. Brandt?
12 COMMISSIONER CRUMPTON: On this issue, I
13 think I've questioned him thoroughly earlier.
14 JUDGE REGISTER: Okay. Thank you,
15 Commissioner Crumpton.
16 I have no questions for Mr. Brandt. And
17 that takes us back to recross.
18 Intervenors, Miss Schmidt?
19 MS. SCHMIDT: No.
20 JUDGE REGISTER: Mr. Fulton?
21 MR. FULTON: No, your Honor.
22 JUDGE REGISTER: Mr. Johnson?
23 MR. JOHNSON: No questions.
24 JUDGE REGISTER: Mr. Dottheim, I guess there
25 haven't been any other questions, so we'll go to

1 redirect.

2 MR. CYNKAR: No questions, your Honor.

3 JUDGE REGISTER: And, Mr. Brandt, you are
4 excused at this time for this issue.

5 THE WITNESS: Thank you.

6 JUDGE REGISTER: All right. So the next
7 person on the list is Mr. Baxter. And I believe we
8 will need him to testify, is that right, Mr. Dottheim?

9 MR. DOTTHEIM: Yes.

10 JUDGE REGISTER: And, Mr. Baxter, you are
11 still sworn in.

12 And so do you tender this witness?

13 MR. CYNKAR: I do so, your Honor.

14 JUDGE REGISTER: And beginning
15 cross-examination.

16 Intervenors, Miss Schmidt?

17 MS. SCHMIDT: No cross. Thank you.

18 JUDGE REGISTER: Mr. Fulton?

19 MR. FULTON: Just a couple.

20 WARNER L. BAXTER testified as follows:

21 CROSS-EXAMINATION BY MR. FULTON:

22 Q. Mr. --

23 A. Mr. Fulton, if you could wait one moment
24 until I get my testimony. I pulled out the wrong one.
25 Excuse me.

1 Thank you.

2 Q. Not a problem.

3 Mr. Baxter, when you testified previously
4 you amended -- you made a change to page 14 of your
5 testimony consisting of fiscal years by adding fiscal
6 year 1998, computer maintenance expenses, or someone
7 did. Maybe you didn't.

8 But in any event, it would be supplied with
9 a number of \$24,000 now; is that correct?

10 A. I believe you said it was 24,000. Actually
11 it represents 24,439,000.

12 Q. \$24,000 is what I should have said.

13 A. Okay.

14 Q. Now, going to page 25, you've got a similar
15 chart through fiscal year 1997 for computer software
16 development expenses.

17 Do you have an update? Do you have a number
18 that you can supply this Commission as to the cost in
19 thousands of dollars through fiscal year 1998?

20 A. Yes, I do. And I believe we provided,
21 certainly, with the Staff, but for the record, that
22 number for 1998 is 18,481,000.

23 JUDGE REGISTER: 18,481,000?

24 THE WITNESS: Correct.

25 BY MR. FULTON:

1 Q. And do I understand correctly from your
2 testimony and the testimony of Staff witness and the
3 Public Counsel's witness, that a large amount of those
4 costs includes these three computer systems?

5 A. That would be correct.

6 Q. The primary one, the primary costing one
7 would be the CSS system?

8 A. That would be correct.

9 Q. Do I also understand that your -- the CSS
10 system is not in use at this point in time?

11 A. If you're asking about today, it went
12 into -- as Miss Westerfield stated, into service, if
13 you want to use those terms, in December of 1998.

14 Q. So it is being utilized at this point in
15 time?

16 A. That's correct.

17 Q. Has it been fully installed?

18 A. What do you mean by "fully installed"?

19 Q. Well, in reviewing some of the literature
20 from -- can I go off the record for a minute and have
21 a brief conversation with counsel --

22 JUDGE REGISTER: Certainly.

23 Off the record.

24 MR. FULTON: -- for UE?

25 (Off the record.)

1 BY MR. FULTON:

2 Q. Mr. Baxter, do you have the Exhibit 6HC, the
3 schedule to surrebuttal testimony of Miss Westerfield?

4 A. I do.

5 Q. I'd call your attention to Schedule 11.

6 JUDGE REGISTER: Page number? 11 dash --

7 MR. FULTON: I'm working on that.

8 JUDGE REGISTER: Oh.

9 BY MR. FULTON:

10 Q. In essence, the 11 -- Schedule 11 provides a
11 plan or a system by which this project -- CSS project
12 will be implemented and installed at your facility; is
13 that true?

14 A. Yes, it does.

15 Q. And have all of the steps been undertaken to
16 implement the CSS system or to install it?

17 A. For the particular phase of CSS that we plan
18 to have implemented, yes. This project that was
19 discussed here is a total CSS project, and we are
20 doing it in a phased manner.

21 And so to answer your question, I'm not sure
22 if all of the things which are listed on here have
23 been fully done, but the CSS system that we have
24 implemented is indeed operational.

25 Q. Okay. Let me call your attention to

1 Schedule 11-9. Has the complete cost been incurred at
2 this point in time or paid for at this point in time
3 by UE?

4 A. The phase that we have completed is indeed
5 done. As we move forward with regard to the CSS
6 project for the company as a whole, we continue to
7 evaluate how we will continue to implement CSS,
8 whether and if, again, it's a phased approach.

9 Q. Does UE have a contract to continue that
10 with the programming company?

11 A. I don't know if the contract requires full
12 implementation of CSS or not, of CSS as it's written
13 in Schedule 1.

14 Q. Is there continuing concurrence -- a
15 continuing incurring of costs with regards to CSS
16 despite the fact that it was implemented back in
17 December?

18 A. With regard to any subsequent phase, I'm not
19 sure as we sit here today there are continuing
20 development costs for another phase. Certainly with
21 regard to CSS, what we've implemented there are
22 certainly costs of just running that system.

23 Q. Is this the largest-costing computer system
24 that UE has implemented, or has installed or whatever
25 the right word is, because I'm not a computer expert

1 either?

2 A. I'll be honest with you. I don't know.
3 Because, again, my limit of time certainly at UE has
4 been within three years. I'm sure what the computer
5 systems say, for instance, at Callaway, what some of
6 those costs could have been. I really don't know.

7 Q. Well, at least in the three years prior to
8 1997 the costs for this one system is in excess of the
9 annual costs for computer software. True?

10 A. According to the chart on page 25.

11 Q. Well, if the entire project would be
12 implemented -- and as I said earlier, it's not
13 confirmed within the company that the entire project
14 as set forth in Schedule 11 will be implemented. CSS
15 as we've expended costs today is not the number that
16 you see on this particular schedule. So . . .

17 A. It's my understanding that the adjustments
18 being made by the Staff and Public Counsel is in the
19 neighborhood of \$8 million.

20 Am I wrong about that?

21 Q. No, you're not wrong about that.

22 A. Okay. Well, again drawing your attention to
23 charts on page 25 of your testimony, it would appear
24 that that one cost --

25 Q. Excuse me. You said prior to 1997. I was

1 looking at 1997, so prior to that I was in error.

2 Q. Okay.

3 A. You're correct.

4 Q. Okay. Now, do I understand that there is
5 some sort of change in accounting systems whereby
6 beginning in January 1999 you're required to amortize
7 or capitalize software costs?

8 A. I believe your question was, was there a
9 change in the accounting systems? You mean was there
10 a change in the accounting --

11 Q. Go ahead.

12 A. Are you asking me whether there was a change
13 in the accounting standard?

14 Q. Yes. That's what I meant to say. Thank
15 you.

16 A. There was an accounting standard which was
17 issued which would require the capitalization of
18 computer software costs effective January 1st, 1999,
19 for enterprises in general.

20 Q. That would not be just in regards to
21 utilities?

22 A. That is correct.

23 Q. So beginning -- and it's my understanding
24 that the accounting standard that set forth -- that
25 made this change could suggest a voluntary move prior

1 to January 1 of 1999?

2 A. I don't believe suggested is the right word.
3 I believe the appropriate word is encouraged, but not
4 required.

5 Q. Notwithstanding that encour-- strike that.

6 Given that encouragement in that standard as
7 far as the voluntary compliance prior to January 1,
8 1999, did UE voluntarily utilize that methodology?

9 A. No, we could not.

10 Q. Why is that?

11 A. The reason is really twofold: One, under
12 FAS 71, we were required to file the historical
13 ratemaking practice for computer software expenses,
14 which is to expense those as incurred. So to be in
15 compliance with GAAP, we had to do so. And certainly
16 under the terms of this agreement, we are required to
17 expense those costs as incurred as well.

18 Q. So is it my understanding that even
19 following January 1 of 1999, as long as the second
20 EARP was in place, that UE will change the results so
21 as to not capitalize those costs?

22 A. Well, I don't believe UE will change the
23 results at all. UE will continue to expense those
24 costs as incurred and they'll be reflected on the
25 books and records of the company.

1 Q. But you'll have another set of books and
2 records where those costs will be capitalized?

3 A. Absolutely not. Our books and records will
4 be consistent.

5 Q. So you will not be complying with this new
6 accounting standard beginning January 1, 1999?

7 A. That standard will be implemented, but we'll
8 be complying with GAAP, of which FAS 71 would require
9 us -- despite the issuance of SOP 98-1, FAS 71 would
10 require us to continue our current practice of
11 accounting.

12 MR. FULTON: Nothing further.

13 JUDGE REGISTER: Mr. Johnson, any questions?

14 MR. JOHNSON: No questions.

15 JUDGE REGISTER: Mr. Dottheim?

16 MR. DOTTHEIM: Thank you.

17 CROSS-EXAMINATION BY MR. DOTTHEIM:

18 Q. Mr. Baxter, would you have a copy of the
19 company's response to Staff Data Request No. 96?

20 A. I did at one point. But I believe that
21 Mr. Cynkar has it.

22 I do now.

23 JUDGE REGISTER: The record shows that
24 Mr. Cynkar just handed a copy of that to Mr. Baxter.

25 Thank you, Mr. Cynkar.

1 You may proceed, Mr. Dottheim.

2 BY MR. DOTTHEIM:

3 Q. Staff Data Request No. 96 submitted to the
4 company asks, provide a copy of all reference material
5 relating to the policies of the company prior to 1986
6 entailing back to the mid 1960s, close paren, relating
7 to treatment of computer software costs.

8 Did I read the question correctly?

9 A. That's correct.

10 Q. Okay. And the data request was from
11 Miss Westerfield and it's dated April 6th, 1999, is it
12 not?

13 A. That is correct.

14 Q. And do you have the cover letter which
15 accompanied --

16 A. I do not.

17 Q. -- the data request?

18 Well, I've got that the company sent that
19 data request response to the Staff on May 27, 1999; is
20 that correct?

21 A. Yes. Yes.

22 Q. At least that's what the cover letter from
23 Mr. Cook indicates?

24 A. That's correct.

25 Q. Okay. I'd like for you to turn to the

1 seventh page from the last in that packet. The pages
2 aren't numbered.

3 A. I'll make sure that I have the same page,
4 because hopefully we didn't get them out of order.

5 Is this --

6 Q. Well, in my copy I'm showing you what is the
7 seventh page from the last.

8 A. I believe it's this one. Is this the same?

9 Q. Oh, and you have an original. Is that it?

10 A. Yeah.

11 Q. Okay. And we received what looked like was
12 a copy of a copy and we asked for a clearer copy and
13 we were given another copy which we've copied.

14 A. I apologize. We'd be happy to provide you
15 with a copy of this if you would like, Mr. Dottheim.

16 Q. Well, why don't I ask you to read that page
17 into the record and then that won't be necessary.

18 A. It says, computer software, generally, if
19 purchased with hardware, dash, separately stated or
20 not, capitalized with equipment in 39, slash, account,
21 if purchased separately charged to expense.

22 I did not denote A but it did say A. And
23 then B, PC Displaywriter and other similar software,
24 if cost is less than \$1,000 charged to expense account
25 whether purchased, whether separately equipment, and

1 then it's -- there is a -- a notation on there and
2 dates and other references.

3 Q. The notation, is that somebody's signature
4 or initials?

5 A. Initials.

6 Q. Do you know who that might be?

7 A. As you know, I wasn't in the employ, but
8 what I am told, those are the initials of an
9 individual named Marty Wyka (phonetic sp.), I believe.

10 Q. Okay. And there is a date after the
11 initials?

12 A. 3/21/86.

13 Q. Okay. And there is some more notations on
14 the page. Would you please read those?

15 A. Discussed with supervisors, 3/24/86, JGP, R,
16 JP, CSS, JFS, and then again with the -- what appears
17 to be Mr. Wyka's initials.

18 JUDGE REGISTER: Now before you go on, that
19 sounded to me just like a bunch of initials.

20 MR. DOTTHEIM: Yes.

21 JUDGE REGISTER: If they're grouped in --
22 can you identify those for us so that it will look
23 like something on the record other than a string of
24 initials?

25 MR. DOTTHEIM: I'm sorry.

1 THE WITNESS: Did I not set them off?

2 I would be happy to do so, your Honor.

3 JUDGE REGISTER: Would you do that?

4 THE WITNESS: Hopefully, I'll get the
5 initials right again. It's JGP, R -- let's see, JP,
6 CSS, JFS.

7 JUDGE REGISTER: Thank you.

8 BY MR. DOTTHEIM:

9 Q. And do you know who any of those initials
10 might represent?

11 A. Um, I'll speculate that some of those
12 individuals are supervisors that were in the
13 accounting department at that time.

14 Q. And on that page there is a discussion of a
15 policy for capitalizing software?

16 A. Excuse me, Mr. Dottheim. I did make a
17 mistake on when I was characterizing that.

18 After A, there was a notation that says,
19 main frame, which is written on the side. So I
20 apologize. I just noticed that.

21 Q. Okay. And my question is, there is a
22 discussion on that page of a company policy for
23 capitalizing software, is there not?

24 A. There is a company policy addressing the
25 capitalization of software which is associated with

1 the main frame. And in particular, it is the policy
2 that says that to the extent that hardware is
3 purchased and embodied in that hardware is some
4 software, for instance, an operating system, then that
5 software is -- since it is not distinguishable from
6 the entire purchase price for a main frame, is
7 capitalized, because the company was not able to make
8 a good estimate or a reasonable estimate of that
9 software which is part of the -- whatever the dollar
10 amounts were back then.

11 Q. Could the company have allocated the costs?

12 A. Um, Mr. Dottheim, I certainly wasn't an
13 employee of the company. From -- to the best of my
14 knowledge, when you purchase the main frame, and this
15 was at a time when we were probably updating our main
16 frame and, frankly, probably moving in and out rather
17 frequently because, as you know, our computer needs
18 continued to escalate as time went on.

19 We used to do this every 18 to 24 months.
20 It was my understanding it came in one big package and
21 you paid one big dollar amount, and so the company
22 made a determination that it was not possible to break
23 that software out because it was embodied in the
24 entire system and so they chose to capitalize that.

25 Q. Not possible or chose not to attempt to do

1 so?

2 A. Well, to be honest with you, I wasn't there.

3 Mr. Brandt certainly was there and could probably

4 speak to that better than I could.

5 Q. Mr. Baxter, I'd like to refer you to your

6 rebuttal testimony, which I believe is Exhibit 14.

7 JUDGE REGISTER: Thank you, Mr. Dottheim.

8 BY MR. DOTTHEIM:

9 Q. And I'd like to direct you to page 28,

10 lines 20 and 21, which continues over the discussion

11 to the next page, on page 29, line 1.

12 JUDGE REGISTER: Beginning on line 18 on

13 page 28?

14 MR. DOTTHEIM: Yes, the paragraph that is

15 contained in which the references are contained and

16 the discussion occurs is -- starts at line 18.

17 JUDGE REGISTER: Thank you.

18 BY MR. DOTTHEIM:

19 Q. The survey conducted by Price Waterhouse

20 Coopers that you refer to in your testimony, did you

21 supervise at that survey?

22 A. No, I did not.

23 Q. Okay. Did you have any role in that survey?

24 A. No, I did not.

25 Q. I'd like to ask you to turn in Exhibit 14,

1 your surrebuttal testimony, to page 26. I'd like to
2 refer you to lines 18 and 19.

3 You make the statement that the fact that
4 these expenditures are intended to provide future
5 benefit is also irrelevant. To you, does that
6 statement indicate that the computer projects are
7 intended to provide future benefit to UE?

8 A. That statement was made -- let me see if I
9 can try to answer your question, Mr. Dottheim.

10 The context of that statement was made in
11 the context that we expense our costs as incurred.

12 And so Miss Westerfield was saying in her
13 testimony, if I can paraphrase, that these systems
14 were providing XYZ benefits. And so, therefore, the
15 basis for her conclusion was that there should be
16 capitalization, and my view was that our consistent
17 accounting policy for those software expenses has been
18 to expense those as incurred.

19 Q. Mr. Baxter, I don't think you're responding
20 to my question.

21 A. I'm sorry. Please present it again.

22 Q. All right. I'm asking how I should
23 understand that sentence which states, the fact that
24 these expenditures are intended to provide future
25 benefit is also irrelevant.

1 And my question is, are you indicating that
2 those computer projects are intended to provide future
3 benefits to Union Electric Company?

4 A. If your question is whether I believe the
5 computer projects that are at issue in this particular
6 proceeding are expected to provide future benefits to
7 Union Electric Company, I would say yes.

8 Q. Mr. Baxter, you generally agree with the
9 findings contained in SOP 98-1?

10 A. Yes, as an accounting practitioner, I
11 understand the basis for their conclusion and I accept
12 that.

13 Q. Okay. I believe you have a copy of
14 Ms. Westerfield's schedules, Exhibit 6, I believe, if
15 I could direct you to it.

16 A. Yes, I do.

17 Q. In this instance I'd like to direct you to a
18 schedule which is not highly confidential, so it
19 wouldn't make any difference if the copy you had was
20 6HC or 6NP.

21 A. Mr. Dottheim, are you referring to
22 surrebuttal testimony?

23 Q. Yes.

24 A. And I'm sorry. Your particular page?

25 Q. Yes. I'd like to direct you to

1 Schedule 10-25. And I'd like to direct you to
2 Paragraph No. 61 at the top of the page, which states,
3 ACSEC considered all of these views. ACSEC believes
4 that entities developed or obtained internal use
5 computer software often for the same end purposes that
6 they developed or obtained other assets.

7 Examples are to reduce costs, operate more
8 efficiently, improve internal controls, service
9 customers better and gain competitive advantages.

10 Did I read that paragraph accurately?

11 A. Yes, you did.

12 Q. What is ACSEC?

13 A. It stands for ACSEC. It is an accounting
14 authoritative accounting body that -- if I could get
15 the specific name of the AICPA, which promulgates
16 accounting standards -- I'm sorry -- which promulgates
17 accounting standards.

18 Q. Right. And you were going to get, I think,
19 the correct title for the acronym. You might also
20 identify what --

21 A. It's the accounting --

22 Q. -- AICPA?

23 A. I'm sorry. Excuse me, Mr. Dottheim.

24 Q. You also might also identify what AICPA
25 stands for.

1 A. AICPA stands for the American Institute of
2 Certified Public Accountants, and ACSEC, which is the
3 acronym, stands for Accounting Standards Executive
4 Committee.

5 Q. Okay. And referring you again to
6 paragraph 61.

7 A. Yes.

8 Q. Do you agree with that statement that is
9 contained therein?

10 A. Yes.

11 Q. Do you agree with that statement as it
12 applies to used computer programs at issue here?

13 A. Yeah, I believe that statement is a fair
14 statement.

15 Q. If I understood correctly and in response to
16 a question from Mr. Fulton, I think you indicated that
17 Union Electric Company is not -- it is not currently
18 accounting for software costs in accordance with
19 SOP 98-1; is that correct?

20 A. Did you ask whether it was UE -- is that
21 your question?

22 Q. Yes.

23 A. UE is not accounting -- let me make
24 sure I can state this. It's somewhat complicated,
25 Mr. Dottheim.

1 SOP 98-1 is effective for the company and
2 certainly the provisions. However, FAS 71, when you
3 look at hierarchy in accounting, which I believe we
4 talked a little bit earlier, FAS 71 requires the
5 company to account for its computer software costs as
6 it is, which is to expense those costs as incurred.

7 FAS 71, as I'm sure you know, is the
8 accounting standard -- the primary accounting standard
9 for regulated entities and the economic effects of
10 regulation, we are required to reflect those in our
11 financial statements.

12 And in this particular case the economic
13 effects of regulations, since we have -- for
14 ratemaking purposes we've expensed these costs as
15 incurred for software development costs, we're
16 required under FAS 71, which is a higher level in the
17 GAAP hierarchy to expense those costs.

18 So from a financial accounting standpoint,
19 if, for instance, someone would ask me, are we in
20 compliance with GAAP, I would certainly say
21 absolutely. And when someone says, well, you're not
22 following SOP 98-1, well, I just explained why we
23 aren't.

24 Q. Would a Commission order directing UE
25 that -- excuse me.

1 Would a Commission order directing UE
2 credits, that is the third-year sharing credits, be
3 calculated under the Staff's proposal for treatment of
4 computer software costs be sufficient for the company
5 to capitalize these costs under GAAP?

6 A. Make sure I'm understanding your question
7 correctly.

8 If at the end of this proceeding, despite
9 the legal arguments which we've talked about, about
10 what is appropriate under of the terms of the contract
11 with regard to expensing and capitalizing, and if at
12 the end of the day the Commission came to the
13 conclusion that we were to capitalize certain computer
14 software costs, then we would, for financial
15 accounting purposes, then capitalize those same costs.

16 Q. And if you would do so, would you then be
17 consistent with GAAP?

18 A. You know, we may not be, frankly,
19 Mr. Dottheim, because embodied in some -- when I say
20 that, now we're saying SOP 98-1 reflects GAAP for
21 enterprises in general, which is what we're talking
22 about.

23 There is a possibility that certain costs
24 which the Staff has proposed for us to capitalize
25 would not be appropriately capitalized under SOP 98-1.

1 For instance, when you look at some of those computer
2 projects which we talked about, CSS, AMRAPs and
3 improved, embodied in some of those expenses are
4 training costs. And it's very specifically set forth
5 in SOP 98-1 that training costs are not to be
6 capitalized.

7 So if you're asking me whether we would be
8 following GAAP for the capitalization of computer
9 software costs under SOP 98-1 and we're required then
10 to capitalize everything which the Staff has proposed
11 here, there may be some inconsistencies with SOP 98-1.

12 Q. Barring a Commission order directing Union
13 Electric Company to capitalize the costs which are at
14 issue, would Union Electric Company on a going-forward
15 basis with software -- computer software costs, ever
16 adopt SOP 98-1?

17 A. Well, I believe I testified -- I believe it
18 was yesterday -- on this very same issue. As we've
19 said, we have an agreement here. And in the company's
20 view this agreement requires us to expense these costs
21 as incurred.

22 Certainly all of the parties to the
23 agreement can come together and decide to amend that
24 agreement. And if at the end of the day the parties
25 did come together and we decided to amend the

1 agreement because we thought it was in the best
2 interests of ratepayers among all of our other
3 constituencies, then we could do that.

4 If we would decide then that really the best
5 way to do it would be in accordance with SOP 98-1 and
6 say implement that effective January 1st, 1999, we
7 could do all of those things if all of the parties
8 agreed to do so.

9 Q. I realize I'm asking you a question which
10 those three years has or maybe now we're approaching
11 two years has, but at the end of a second EARP, does
12 Union Electric Company have any intention to adopt
13 SOP 98-1?

14 A. Well, going -- I'm sorry. Are you finished?

15 Q. Yes.

16 A. Going forward subject to that to the extent
17 that regulation in -- from a ratemaking standpoint, we
18 are still expensing computer software costs as
19 incurred to be in compliance with FAS 71, we must
20 continue to expense those costs as incurred,
21 subsequent to the EARP, unless there would be a change
22 in our ratemaking practices for those costs.

23 Q. And the change in the ratemaking practices
24 that you're referring to, would that be a Commission
25 order?

1 A. Certainly, for instance, at the end of this
2 EARP, if there was any other proceeding that we
3 addressed a multitude of things, including the
4 computer software costs, and at end of that the
5 Commission decided to require us to capitalize
6 computer software costs, then at that point in time
7 the company then would capitalize those costs.

8 Q. Did Union Electric Company incur any
9 re-engineering costs in the third sharing period which
10 would be accounted for under EITF No. 97-13?

11 A. You know, Mr. Dottheim, to the best of my
12 knowledge I really don't know. Under either
13 circumstance the accounting is the same. We would
14 expense those as incurred. So we haven't separately
15 segregated those. I believe, if I'm not mistaken, I
16 responded in similar fashion in a data request to the
17 Staff.

18 Q. Is there any plan for the CSS project to be
19 placed in service for Missouri residential customers?

20 A. Is there a plan which has been agreed to by
21 senior management? At this point in time to the best
22 of my knowledge, no, not at this point in time.

23 Excuse me. If I may complete. I know there
24 have been discussions about that, so to say that it's
25 off the radar screen would not be appropriate. But I

1 do not know -- I do know to the best of my knowledge
2 that there hasn't been a decision by senior management
3 on that.

4 Q. Are there plans for Illinois residential
5 customers to be covered in the next phase of the CSS
6 project?

7 A. In many of the -- the document that we
8 referred to a little bit earlier, the game plan was to
9 take care of the average industrial -- to address with
10 regard to CSS the large industrial customers and then
11 to a phased project.

12 Included in that phased project for the
13 Illinois residential customers, to the best of my
14 knowledge, the game plan is today to complete that
15 effort to go to the residential customers. But it is
16 also to the best of my knowledge that that is being
17 phased in.

18 And so I'm not sure exactly when, and
19 potentially there could be a decision that would --
20 would suggest that we would change our mind on that.
21 But at this point in time that has not been done.

22 Q. Is the CSS project presently in effect -- in
23 place for commercial and industrial customers in
24 Illinois?

25 A. Not in their entirety. For the large

1 commercial industrial customers it is in place. And
2 then the next phase is then to bring in the rest of
3 the commercial industrial customers. So it is in
4 place, though, for a component of customers.

5 Q. Will the CSS project aid Union Electric in
6 the future in unbundling electric rates?

7 A. I'm not so sure. I guess, Mr. Dottheim, I
8 can't say I'm sure if that particular project will aid
9 in the unbundling of rates.

10 Q. Will that project assist UE in marketing new
11 unregulated services to customers?

12 A. Mr. Dottheim, I'm not certain of that
13 either.

14 Q. Will the CSS project aid Union Electric
15 Company in offering real-time rates to large
16 customers?

17 A. Um, it is possible because some of the
18 functionality of the system has increased from
19 potential that we had before. So I believe that is
20 possible, but I can't say with absolute certainty.

21 Q. I'd like to refer you back to your surr--
22 excuse me -- your rebuttal testimony, Exhibit 14,
23 page 26. And I'd like in particular to refer you to
24 lines 7 through 12.

25 JUDGE REGISTER: Which page that was,

1 Mr. Dottheim?

2 MR. DOTTHEIM: Page 26.

3 JUDGE REGISTER: 26. Thank you. Lines 1
4 through 9?

5 MR. DOTTHEIM: 7 through 12.

6 JUDGE REGISTER: 7 through 12. Well, I was
7 close.

8 BY MR. DOTTHEIM:

9 Q. You indicate in that via the company's new
10 general ledger system, that is, at the time it was
11 referred to, is referenced in the stipulation and
12 agreement in ER-95-411.

13 Do you know the reason for the reference to
14 the new general ledger system in the stipulation and
15 agreement?

16 A. As you know, Mr. Dottheim, I was not there
17 at the time the agreement was entered into, but I
18 believe there was a parenthetical in there that
19 discussed about some potentially code block changes,
20 if I could refer to the agreement.

21 JUDGE REGISTER: I'll need you to repeat
22 that.

23 THE WITNESS: It referred to code block
24 changes in or changes in a code block, which is --

25 JUDGE REGISTER: Code block.

1 THE WITNESS: The accounting codes that we
2 use to identify particular transactions and make sure
3 those transactions get put in the appropriate
4 accounting buckets, if you will.

5 JUDGE REGISTER: C-o-d-e, code?

6 THE WITNESS: Code, c-o-d-e, yes.

7 JUDGE REGISTER: Okay.

8 THE WITNESS: Section. It --

9 BY MR. DOTTHEIM:

10 Q. I believe you have it identified.

11 A. Yes. It says, the current chart of accounts
12 revised, updated in 1994 when new general ledger
13 system installed, 29 digit account numbers adopted.

14 That is the code that I was referring to.

15 So in that particular section it's talking
16 about monitoring, I believe. And it talks about the
17 kinds of reports that are going to be provided. And
18 so it was certainly in that context that the Staff was
19 interested in what our general ledger system would be
20 able to produce for them, I assume.

21 Q. Is there any reference in the stipulation
22 and agreement as to whether the system was expensed or
23 capitalized?

24 A. No. No, it is not. Not to the best of my
25 knowledge.

1 Q. I'd like to refer you in general to pages 26
2 and 27 of your surrebuttal testimony where you discuss
3 the short computer -- the short lives of computer
4 software.

5 Do you know whether in discussions with the
6 Staff, UE personnel indicated that 5 to 15 service
7 lives for these computer software projects?

8 A. I'm sorry, Mr. Dottheim. In which
9 discussions are you referring to?

10 Q. Discussions that the Staff had with UE
11 personnel.

12 A. At what point?

13 Q. During the Staff's audit, its monitoring
14 audit. You're not -- I think you're indicating that
15 you're not aware of any discussions of that nature?

16 A. No. I guess I just wanted to understand if
17 we're talking about at the time the agreement was
18 being entered into or if we're talking about during
19 one of the sharing periods or if we're talking about
20 the third sharing period.

21 Q. We're talking about the third sharing
22 period.

23 A. No, sir, I don't recall that. I don't
24 believe that issue was discussed with me, and if it
25 was, I don't recall that.

1 Q. Do you know how long the company treats
2 automobiles, that service lives as being?

3 A. With regard to automobiles, frankly, we have
4 very few, if any, left. We've changed that policy.
5 So I don't even know, frankly, if we have any.

6 Q. Do you know whether the company expensed or
7 capitalized?

8 A. Automobiles in the past?

9 Q. Yes.

10 A. I'm assuming -- I don't know. I do not know
11 for sure. I would assume that we did capitalize those
12 automobiles.

13 When you say automobiles, Mr. Dottheim, are
14 you referring to, like, line trucks? Are you talking
15 about, like, cars that we might use, like, pool cars?

16 Q. Pool cars.

17 A. Yeah, I really don't know what we did in the
18 past. I think generally right now we -- we don't have
19 a pool car inventory per se. We changed that policy.

20 Q. Do you know what the company's policy was
21 for line trucks?

22 A. Line trucks, was to capitalize those.

23 MR. DOTTHEIM: At this time I'd like to have
24 an exhibit marked.

25 JUDGE REGISTER: Okay.

1 MR. DOTTHEIM: Exhibit -- is it 34?
2 JUDGE REGISTER: Exhibit 34. That's my last
3 number. We'll go off the record, Pat.
4 (Off the record.)
5 (EXHIBIT NO. 34 WAS MARKED FOR
6 IDENTIFICATION.)
7 JUDGE REGISTER: Back on the record.
8 Please proceed, Mr. Dottheim.
9 BY MR. DOTTHEIM:
10 Q. Mr. Baxter, I in particular would like to
11 direct you to the third question that appears on Staff
12 Data Request No. 45 to the company.
13 JUDGE REGISTER: Before you proceed,
14 Mr. Baxter, do you want to identify the document for
15 the record that's been marked as Exhibit No. 34,
16 Mr. Dottheim.
17 We weren't on the record earlier when he
18 marked it.
19 MR. DOTTHEIM: Oh, I'm sorry.
20 JUDGE REGISTER: Do you want to identify it
21 for the record?
22 MR. DOTTHEIM: Yes. I'm sorry.
23 It's -- what has been marked as Exhibit 34
24 is the company's response to Staff Data Request No. 45
25 in the pending case E0-96-14. And it's a two-page

1 document.

2 JUDGE REGISTER: The cover page, plus two
3 pages?

4 MR. DOTTHEIM: Yes. Excuse me. It's a --
5 I'm sorry. It's a three-page document with a cover
6 page that contains the three questions from the
7 Staff, the company's responses and then a two-page
8 document attached to the cover page.

9 JUDGE REGISTER: Are you going to have
10 Mr. Baxter do any foundation on that or are you going
11 to offer it?

12 MR. DOTTHEIM: I'm going to offer it.
13 I'm going to ask Mr. Baxter a question or
14 two.

15 JUDGE REGISTER: From it?

16 MR. DOTTHEIM: Yes.

17 JUDGE REGISTER: So you're offering at this
18 time?

19 MR. DOTTHEIM: Yes.

20 JUDGE REGISTER: And are there any
21 objections to Exhibit 34 being admitted into the
22 record?

23 MR. CYNKAR: No.

24 JUDGE REGISTER: Hearing no objections,
25 Exhibit 34 will be admitted into the record.

1 (EXHIBIT NO. 34 WAS RECEIVED INTO EVIDENCE.)

2 JUDGE REGISTER: You may proceed,

3 Mr. Dottheim.

4 BY MR. DOTTHEIM:

5 Q. Mr. Baxter, I'd like to direct you to take a
6 look at Question No. 3.

7 A. Uh-huh.

8 Q. Which requests, please provide internal
9 reports, studies, analysis justifying the expenditure
10 of dollars on AMRAPs, period, and AMRAPs is the
11 acronym that the letters are that are capitalized
12 AMRAPs.

13 Would you identify what AMRAPs is?

14 A. The AMRAPs is the acronym for the human
15 resource/payroll system that we implemented recently.

16 Q. And the response to the Question No. 3 is, a
17 detailed study or analysis was not fully documented;
18 however, the need for such a system was identified in
19 a November 1994 internal audit report which is
20 attached.

21 Did I read that accurately?

22 A. Yes, you did.

23 Q. Okay. And you were not otherwise aware of
24 any internal reports, studies, analysis justifying the
25 expenditure of dollars on AMRAPs?

1 A. No, I am not.

2 MR. DOTTHEIM: If I could have a minute,
3 please.

4 JUDGE REGISTER: All right.

5 BY MR. DOTTHEIM:

6 Q. Mr. Baxter, are you familiar with the
7 company's form 10K for 1998?

8 A. Yes.

9 Q. Okay. Is there a discussion therein
10 regarding the company's practices for expensing
11 computer software costs?

12 A. Uh, are you referring to Union Electric
13 Form 10K?

14 Q. Yes.

15 A. I believe there is, which is -- it should --
16 yeah, my answer on the question is yes. I do not have
17 the 10K, I don't believe, with me. I might have that.
18 I believe there is a discussion in there, yes,
19 Mr. Dottheim.

20 JUDGE REGISTER: That was his response,
21 Mr. Dottheim. Do you have another question?

22 MR. DOTTHEIM: Question. I didn't know
23 whether Mr. Baxter was --

24 THE WITNESS: I do have one.

25 MR. DOTTHEIM: -- the document and I was

1 going to wait.

2 THE WITNESS: I have the document now,
3 Mr. Dottheim.

4 BY MR. DOTTHEIM:

5 Q. Now, Mr. Baxter, do you know or can you
6 check that document to see if there is any reference
7 therein about SOP 98-1 being superseded by FAS 71?

8 A. No, there is no discussion, Mr. Dottheim,
9 because SOP 98-1 can't supersede FAS 71. Because as I
10 said, in the GAAP hierarchy, FAS 71 takes precedence
11 over SOP 98-1.

12 So it would be inconsistent for us to say
13 that.

14 Q. Okay. I'm sorry. I may be -- maybe
15 misstated that. If I did, I meant to say FAS 71
16 superseded SOP 98-1.

17 A. If you could -- with regard to your
18 specific question, whether there was a specific
19 statement in our annual report that says FAS 71
20 supersedes SOP 98-1, no.

21 Q. And when you said in your annual report,
22 you're referring to both the form 10K and the annual
23 report to shareholders?

24 If not, let me ask you from the other docket
25 also whether there is any reference in the 1998

1 annual -- the 1998 report to the shareholders about
2 FAS 71 superseding SOP 98-1.

3 A. No. Mr. Dottheim, we would never put that
4 in our annual report, to be perfectly frank with you,
5 because FAS 71 in many respects supersedes many
6 GAAP -- some other GAAP pronouncements because it is
7 indeed the pronouncement which requires us to file the
8 economic effects of regulation.

9 So, no, we wouldn't go through each
10 particular stance, does FAS 71 does this and FAS 71
11 does that?

12 I would hearken to say that in my
13 experience, I've never seen a utility ever do that
14 when a new accounting standard has been issued. It
15 goes without saying, practitioners in the industry and
16 certainly those who follow the industry understand
17 that to be true.

18 Q. That is your opinion?

19 A. That's my opinion based upon over 15 years
20 of experience, including working in the national
21 office of Price Waterhouse, principally working on
22 public utilities, yes, that's my opinion.

23 MR. DOTTHEIM: Thank you.

24 Did the -- just a moment, please -- I'm
25 sorry.

1 THE WITNESS: Mr. Dottheim, if I may. In
2 note 1, we do say regulation. And we see in addition
3 to the SEC, the registrant is regulated by the
4 Missouri Public Service Commission, Illinois Commerce
5 Commission and FERC.

6 The accounting principles of the registrant
7 conform to generally accepted accounting principles.
8 And so when I stated to you before, we are in
9 conformance with generally accepted accounting
10 principles with FAS said -- as you say supersedes SOP
11 98-1.

12 BY MR. DOTTHEIM:

13 Q. I'd like to direct you once again to
14 Ms. Westerfield's schedules to her surrebuttal
15 testimony which is Exhibit 6.

16 A. If you could give me a moment, Mr. Dottheim.

17 Q. Certainly, of course.

18 A. I'm sorry. Again, Mr. Dottheim.

19 Q. I'd like to direct you to Schedule 9, which
20 it is not indicated that it's highly confidential as
21 are some documents in Exhibit 6. And Schedule 9
22 comprises the Staff's Data Request No. 76 to UE. And
23 in particular, I'd like to refer you to the first
24 question. The question being if the first statement,
25 in March 1998, the accounting standards executive

1 committee of the AICPA issued a statement of position,
2 paren, SOP, close paren, 98-1, accounting for the
3 costs --

4 A. I'm sorry, Mr. Dottheim. Which -- you said
5 Schedule 9? I was looking at a different one.

6 Q. I'm sorry.

7 A. It's 9-2?

8 I understand. I'm sorry. I'm with you now.
9 Excuse me.

10 Q. Okay. Okay.

11 And if I could -- yes, refer you
12 particularly to 9-2.

13 And again, I'm sorry to read the question.
14 In March 1998 the accounting standards executive
15 committee of the AICPA issued statements of position,
16 paren, SOP, close paren, 98-1, end quotations,
17 accounting for the cost of computer software developed
18 or contained for internal use, closed quotation marks,
19 end of sentence.

20 This SOP will require capitalization of
21 qualifying costs related to internal use software. In
22 light of this SOP, respond to the filing -- to the
23 following: One, what are the company's plans for
24 treatment of these costs prospectively?

25 And I'd like to ask you to look at the

1 company's response to that question, which states, the
2 company intends to adopt SOP 98-1 on January 1, 1999,
3 resulting in the capitalization of qualifying costs
4 related to internal use software incurred after that
5 date.

6 Did I read that accurately?

7 A. You did.

8 Q. Okay. Is there some inconsistency with your
9 prior responses regarding the company's intentions
10 regarding SOP 98-1?

11 A. No.

12 Q. Could you please provide an explanation?

13 A. Union Electric, as you know, has
14 nonregulated operations with regard to Union Electric
15 development company. And so a nonregulated operation
16 has to follow SOP 98-1 as enterprises in general do.
17 So certainly for that component we would, to the
18 extent that UEDC would have computer software costs,
19 we would have to do that.

20 And then secondly, certainly the company as
21 a whole. When you deal with Ameren, we do have to
22 follow SOP 98-1 for certainly our nonregulated
23 operations or things which do not fall under
24 regulation, so that -- that's the response.

25 Q. Is there anywhere in the company's response

1 on 9-3 an explanation that that applies only to the
2 company's nonregulated operations?

3 A. No. Because that wasn't the question that
4 was posed to us.

5 Q. And what do you view as the question that
6 was posed?

7 A. Well, whether Union Electric company's plans
8 for SOP 98-1 and Union Electric Company, which
9 includes the regulated and a piece of our
10 nonregulated, is to adopt SOP 98-1.

11 And as I said before, with regard to the
12 regulated operations, we are following FAS 71.

13 Q. You don't believe it would have been a more
14 accurate response to indicate that the company was
15 going to account differently for its regulated and its
16 nonregulated operations regarding SOP 98-1?

17 A. In retrospect, Mr. Dottheim, maybe we could
18 have made that clearer, so I do apologize if that was
19 the case. But my testimony that I filed in this case
20 and certainly my responses to date I think have been
21 consistent.

22 So, yes, if it would have been more helpful
23 to the Staff to have made that clear, I apologize.

24 JUDGE REGISTER: Just so I can be clear and
25 the record is clear, the regulated company, Union

1 Electric Company, that's regulated by this Commission
2 is going to adopt standard -- no -- statement of
3 position 98-1 after or -- on or after January 1, 1999.

4 THE WITNESS: No, your Honor.

5 JUDGE REGISTER: Okay.

6 THE WITNESS: The regulated company --

7 JUDGE REGISTER: Yes.

8 THE WITNESS: -- will not be able to adopt
9 SOP 98-1. We still have to continue to comply with
10 FAS 71, the regulated company, which FAS 71, as I said
11 before, is the accounting for regulated enterprises.
12 And so FAS 71 requires us to continue to expense these
13 costs as incurred, because that is what our ratemaking
14 practices have been.

15 JUDGE REGISTER: Have been in the past.

16 THE WITNESS: That's right.

17 JUDGE REGISTER: So you actually need the
18 Commission to order you to change to 98-1 in order to
19 be able to change to that?

20 THE WITNESS: That is correct. Absolutely.

21 Now, for our nonregulated operations, which
22 we have a piece for Union Electric, they will adopt
23 SOP 98-1 effective 1/1/99.

24 JUDGE REGISTER: No disrespect intended, but
25 we're not dealing --

1 THE WITNESS: No, I understand.

2 JUDGE REGISTER: -- with nonregulated
3 companies. Right?

4 THE WITNESS: But I want to clarify it for
5 you in the context of your question.

6 JUDGE REGISTER: Right. Okay.

7 THE WITNESS: Yes.

8 JUDGE REGISTER: That does clarify things
9 for me.

10 Mr. Dottheim, I'll return the time to you.
11 I'm sorry.

12 MR. DOTTHEIM: Thank you.

13 BY MR. DOTTHEIM:

14 Q. I think Mr. Baxter, in closing this phase, I
15 will ask you some of the questions I was attempting to
16 ask Mr. Brandt. And I realize your tenure at the
17 company is limited, but maybe you may know the answers
18 regardless.

19 Are you familiar with FAS 87?

20 A. Yes.

21 Q. Okay. Do you know when FAS 71 was issued?

22 A. I'll accept what you said earlier. I
23 believe, Mr. Dottheim, you said it was adopted in
24 1986. I believe -- in fact, I don't have it with me,
25 but there was a data request and I responded as such.

1 I believe I may have said 1986 on that data request.

2 Q. And the subject matter which FAS 87 covered
3 is what?

4 A. Accounting for pensions.

5 Q. Do you know how the company accounted for
6 pensions prior to 1987?

7 A. I'm sorry, Mr. Dottheim. I don't.

8 Q. Okay. You don't know if it was the
9 contribution method?

10 A. No.

11 JUDGE REGISTER: Just to be clear: In the
12 record when we refer to the company, are we talking
13 about the regulated part of this company?

14 THE WITNESS: Yes.

15 JUDGE REGISTER: Okay. So all answers in
16 the future and I'm assuming in the past, when we asked
17 questions about the company, we want to know about the
18 regulated part of the company.

19 THE WITNESS: I apologize, your Honor, if I
20 was confusing.

21 JUDGE REGISTER: That's quite all right.
22 It's confusing anyway.

23 MR. CYNKAR: Your Honor, I still have
24 questions about the relevance of all of this, but it
25 would be helpful if I have FAS 87 here, if I can give

1 it to the witness, if it would help move things along.

2 THE WITNESS: I'm not sure Mr. Dottheim has
3 any more questions.

4 MR. DOTTHEIM: I don't know that I'm going
5 to ask Mr. Baxter to assume a series of items. So I
6 think if you just give me a moment, I think I may be
7 at an end.

8 JUDGE REGISTER: You've withdrawn that
9 category?

10 MR. DOTTHEIM: Yes.

11 MR. JOHNSON: Your Honor, if I could
12 interject a second here.

13 May I be excused from the hearing? We've
14 completed our -- the few questions we've had, and my
15 law clerk, Miss Langeneckert, will remain with the --
16 with you-all and can represent our office.

17 JUDGE REGISTER: All right. Thank you,
18 Mr. Johnson. I'll let the record reflect that you'll
19 be excusing yourself at this point in time, and if we
20 have any questions or Miss Langeneckert has any
21 concerns, she can reach you and you can get back to
22 us.

23 MR. JOHNSON: Thank you very much.

24 MR. DOTTHEIM: Thank you, Mr. Baxter. Those
25 are all of the questions that I have and I withdraw

1 that last question.

2 JUDGE REGISTER: Thank you, Mr. Dottheim.

3 Mr. Coffman, do you have any questions for
4 Mr. Baxter?

5 MR. COFFMAN: Yes, I do. Thank you very
6 much.

7 CROSS-EXAMINATION BY MR. COFFMAN:

8 Q. Mr. Baxter, you've mentioned FAS 71 several
9 times and your belief that it supersedes SOP 98-1 with
10 regard to their use.

11 A. That's correct.

12 Q. Am I fair in generalizing FAS 71, that it
13 generally requires the company to account for things
14 in ways that the Commission so orders you to?

15 A. It requires us to account for the effects of
16 regulation, whatever those effects may be, which could
17 include Commission orders.

18 Q. Okay. What we've been calling the CSS,
19 customer service system, that system was not used and
20 useful during the shared period, was it?

21 A. Used and useful. It was -- our work on CSS
22 was not completed during the third sharing period. It
23 was not -- if used and useful, if you're saying the
24 same thing, as I think I've said in my testimony, was
25 not placed in service until September of 1978.

1 So if we're saying the same thing, then yes.

2 Q. Okay. You are familiar with the term used
3 and useful?

4 A. Yes.

5 Q. And your answer is yes -- or rather, no, it
6 was not in service during the sharing period?

7 A. It was not in service during the sharing
8 period, was my answer.

9 Q. Thank you.

10 Oh, let me ask you a couple questions more
11 about the system.

12 Is the customer service system considered an
13 addition to your customer info system, the CIS system,
14 or is it a separate, independent system?

15 A. I believe we continue to have both systems.

16 Q. So in other words the CSS system did not
17 completely replace the CIS?

18 A. That is correct. The CIS system is still in
19 place.

20 Q. And hasn't the CIS system been in effect for
21 approximately 30 years?

22 A. The CIS system, what is called the CIS
23 system, has been around for 30 years. I would suggest
24 to you that the CIS system today would not resemble
25 the system that was maybe called CIS 30 years ago. So

1 the CIS system that we have in place today, all of the
2 modifications that we've had to make over the years to
3 comply with various needs of the company does not
4 resemble the CIS system that you talked about 30 years
5 ago.

6 Q. It did originate from something back --

7 A. Well, we continue to call something CIS.
8 Now, whether -- over 30 years ago, whether that system
9 for all practicalities went away, my sense is that
10 with the changes in technology, that that system that
11 you put in place 30 years ago probably isn't there
12 anymore.

13 Q. Okay. The CSS system which went in to place
14 in December --

15 A. Uh-huh.

16 Q. -- does the company have in its budget
17 projections any plan to replace that system?

18 A. Not to the best of my knowledge, no.

19 Q. Not within the next five years?

20 A. Um, there are plans already in place to make
21 modifications to the system as needs change. So there
22 are plans to make modifications to its system.

23 Q. In any specific year?

24 A. Yes.

25 Q. How soon?

1 A. This year.

2 Q. Okay.

3 Were you -- during the course of this case,
4 were you someone who reviewed the data requests from
5 the various parties regarding computer systems?

6 A. In what regard?

7 Q. Let me -- if I may approach the witness?

8 JUDGE REGISTER: Please do.

9 BY MR. COFFMAN:

10 Q. Let me hand you a copy of a Public Counsel
11 Data Request 1058.

12 Do you recognize that? Have you seen that
13 before?

14 A. I have not.

15 Q. Okay. Any witness -- is there any witness
16 that the company is sponsoring on this issue that
17 would be familiar with that data request?

18 A. I don't believe so.

19 Q. Neither Mr. Brandt, yourself, nor
20 Mr. McKnight were familiar or responsible for
21 preparing responses to data requests regarding
22 computer systems?

23 A. No. You asked about this specific data
24 request I thought.

25 The answer to your question is, yes, I

1 have prepared responses today, requests related to
2 computer -- whatever you want to call this issue we're
3 talking about, computer system costs.

4 I thought you were asking me whether I
5 prepared this particular data request and whether I
6 reviewed it before it went out. I did not.

7 Q. Have you seen it before today?

8 A. I have not.

9 Q. Do you know who I could ask about that
10 particular data request?

11 A. I believe it was requested from Mr. Gary
12 Weiss. My assumption is he would be an appropriate
13 individual.

14 Q. Okay. Mr. Weiss is not scheduled to testify
15 on this particular item.

16 JUDGE REGISTER: He can be called.

17 MR. COFFMAN: If the company could call
18 Mr. Weiss and I could ask those questions about --

19 THE WITNESS: I do -- we can certainly talk
20 to Mr. Weiss. I can give you anecdotally and now that
21 I've read it and I've seen Mr. Robertson's testimony
22 which implies that the company deleted information.

23 BY MR. COFFMAN:

24 Q. Okay.

25 A. Is that the source?

1 Q. So you're familiar with the facts
2 surrounding that information --

3 A. I would say --

4 Q. -- being legitimate?

5 A. I would say generally familiar, yes.

6 Q. Okay. Can you tell me when that -- well,
7 first of all, would you mind reading the question and
8 response to Data Request 1058 --

9 A. Certainly.

10 Q. -- for the record?

11 A. Information requested -- I'm sorry. I can
12 start at the top if you'd like me to -- requested from
13 Gary Weiss. Requested by Ted Robertson. Date
14 requested, January 4th, 1999. Information requested:
15 please provide OPC with copies of all consultant time
16 cards with computer software projects identified in
17 the consulting documents reviewed by OPC on your
18 premises on December 22nd, 1998.

19 The company's response was, the year 2000
20 project includes some time sheets for the consultants
21 and they are included with the invoices in response to
22 Data Request No. 1059.

23 The other projects were used in a
24 computer-based cost tracking system that the
25 consultants entered their time into.

1 Before the invoice was paid, the hours were
2 verified back to the tracking system and if they did
3 not agree, a corrected invoice was requested.

4 Unfortunately, the -- it says, the
5 computer-based cost tracking system experienced
6 problems and the detail for the projects was lost.

7 Q. Okay. Thank you.

8 May I have that back?

9 JUDGE REGISTER: Does that reference
10 Mr. Robertson's testimony?

11 MR. COFFMAN: I believe it is.

12 JUDGE REGISTER: I thought I had seen
13 something to that effect.

14 MR. COFFMAN: Would you like me to refer to
15 a certain page?

16 JUDGE REGISTER: Yes. Is it an attachment?

17 MR. COFFMAN: I believe it's discussed in
18 the body of his testimonies.

19 JUDGE REGISTER: No, that's all right. If
20 it's in there I just wanted to see if it's an
21 attachment.

22 If it's not, it's just discussed in there.

23 MR. COFFMAN: No. I believe there is one Q
24 and A regarding it.

25 BY MR. COFFMAN:

1 Q. So, Mr. Baxter, you've discussed this
2 incident with other individuals of the company
3 familiar with what happened here?

4 A. I've discussed it with -- with Mr. Weiss,
5 and it was in connection with me reading
6 Mr. Robertson's testimony.

7 Q. Okay. Okay. And this response says that
8 the detailed information that is the time cards
9 regarding the work on these projects were lost, and is
10 it your understanding that that information was
11 deleted from the company's computers?

12 A. Yes. Yes. In fact, I do understand that to
13 be the case. And let me try to give the appropriate
14 context.

15 The reason why -- the reason why I raised
16 this question with Mr. Weiss was that I was troubled
17 by a statement Mr. Robertson made in his surrebuttal
18 testimony on page 5, your Honor.

19 JUDGE REGISTER: What line are we at?

20 THE WITNESS: On lines 5 through 7. I
21 believe I haven't discussed this frankly with
22 Mr. Cook, our associate general counsel.

23 In there it says -- I believe the issue that
24 was being discussed was the need for obtaining data on
25 computer software, I'm assuming.

1 And it says, however, on April 8, 1999,
2 Public Counsel received a letter from the company's
3 managing associate general counsel, Mr. James J. Cook,
4 which stated, among other things, that the information
5 contained in the database had been intentionally
6 deleted during January 1999.

7 Obviously that troubled me, being an officer
8 of the company. And so I spoke to both of those
9 individuals. And it was my understanding -- and I
10 believe it was expressed this way to Mr. Robertson,
11 that the information was deleted because the database
12 which contained that information became overloaded and
13 there was no need for that individual who maintained
14 the database to keep it. And, in fact, it was my
15 understanding that the deletion of that database came
16 before any requests for that information came.

17 Q. Do you know the date that that happened?

18 A. That was what was explained to me. So the
19 context that I provided to you, Mr. Coffman, is what
20 was explained to me. So I don't have the dates.

21 Q. You're not sure if it was in January of '99?

22 A. When the information was deleted?

23 Q. Yes.

24 A. It says here that it was deleted during
25 January of 1999. When was your data request?

1 Q. The data request was sent on January 4th,
2 '99.

3 A. To the best of my knowledge, that
4 information was deleted by an individual at Union
5 Electric certainly without the knowledge that any of
6 that information contained in that database was being
7 requested.

8 And so, yes, the information was
9 intentionally deleted, but it was unintentional not to
10 avoid providing information to the Office of Public
11 Counsel. That is my understanding.

12 Q. Okay. And were you aware that Mr. Robertson
13 had asked for detailed information verifying the --
14 this information back in September of '98?

15 A. No, I was not.

16 Q. Okay. Was this just an unfortunate
17 miscommunication from the company that caused this
18 information to be deleted, or is there not any, I
19 guess, policy about retaining such information?

20 A. There is certainly a record retention
21 policy. I'm not sure, to be honest with you,
22 Mr. Coffman, whether this followed our record
23 retention policy.

24 I think it became -- it's my
25 understanding -- and you certainly have the ability to

1 talk to Mr. Weiss and --

2 Q. Okay.

3 A. It's my understanding that this was just a
4 practical issue that a person said, I really don't
5 need this information, it does me no -- there's no use
6 and I need more room on my database and they did what
7 they did.

8 It was not done with any specific purpose to
9 avoid providing information to the Office of Public
10 Counsel. I feel confident about that.

11 Q. Okay. And the system that you're talking
12 about that became overloaded, is that -- do you refer
13 to that as a cost tracking system?

14 A. You probably now just got beyond me. The
15 only reason I would say that to be true is because I
16 believe in the data request response that's kind of
17 how we referred to it to you, is that true,
18 Mr. Coffman? I don't have it with me.

19 Q. I'm not positive.

20 JUDGE REGISTER: Is that how you referred to
21 it earlier?

22 THE WITNESS: It is?

23 JUDGE REGISTER: Because you started talking
24 about this system --

25 MR. COFFMAN: The response to the data

1 request, that we referred to it as a cost-tracking
2 system?

3 THE WITNESS: A computer-based cost-tracking
4 system.

5 So in reading that response, your Honor,
6 that's why I would agree with that.

7 BY MR. COFFMAN:

8 Q. Okay. Would you call this system a mission
9 critical system for UE?

10 A. Cost-tracking system?

11 Q. Yes.

12 A. No. I mean, if you mean mission critical,
13 it's important to our ability to provide safe and
14 reliable service to our customers and sending out
15 bills and all of those other things, if that's what
16 we're talking about, the critical processes, I don't
17 think so.

18 Q. Okay. You used that term earlier to
19 distinguish between different computer systems and I
20 wanted to know about that.

21 A. I don't think that one would be.

22 Q. Would you agree with me that Union Electric
23 has unique access to information about its own
24 computer systems?

25 A. I would certainly hope so.

1 Q. And would Public Counsel have any ability to
2 verify the accuracy or propriety of your calculation
3 of computer system costs if we were not able to gain
4 access to your information about those systems?

5 A. I believe under the stipulation and
6 agreement it has generally been the case in our
7 interworkings with the Office of Public Counsel, we
8 make available to the Office of Public Counsel data
9 that we can at any time.

10 Certainly we hope to work with the Office of
11 Public Counsel that the data that is requested we get
12 to them on not only a timely basis but within reason
13 that we can gather the data. So, yeah, we'll be happy
14 to work with the Office of Public Counsel in any way
15 that we can.

16 Q. Wouldn't ordinarily time cards about, I
17 guess, regarding consultant work be something that as
18 an accountant you would consider to be important
19 information to -- to help verify the accuracy of your
20 earnings numbers?

21 A. I have system internal controls which allows
22 me to ensure that invoices which are paid are checked,
23 verified and approved, and then invoices run through
24 that normal processing. That system of internal
25 controls would have included at the front end a review

1 of the consultant's time cards.

2 But once that is done I don't need to hold
3 on to that information for very long periods of time,
4 so I as controller can go back and say -- and see
5 whether that person five steps down the line really
6 did their job. That's because we have an internal
7 audit department that can certainly do some of those
8 things.

9 Q. I'm sorry. Do you believe --

10 A. I'm responding to your question.

11 So the information -- you asked for me to
12 verify the accuracy of our earnings reports.

13 I as controller don't need to ensure -- go
14 back to consultant's time cards before I issue my
15 financial statements to make sure that I'm comfortable
16 with that, because my system of internal accounting
17 controls has satisfied me that that has been taken
18 care of.

19 Q. Do you believe that AmerenUE has a
20 responsibility to retain these time cards for the
21 benefit of regulatory audits and reviews of your
22 earnings report?

23 A. I believe our record retention policy is
24 adequate for regulatory purposes, and I've never heard
25 anything to the contrary. So if this is part of that,

1 I guess we -- so I guess the answer to your question
2 is, our records retention policy speaks for itself.

3 Q. Okay.

4 JUDGE REGISTER: Does that answer your
5 question, Mr. Coffman?

6 MR. COFFMAN: I'm not sure.

7 JUDGE REGISTER: Does your record retention
8 policy require you to keep the time cards?

9 THE WITNESS: My -- your Honor, my guess is
10 that the record retention policy doesn't go to that
11 level of detail.

12 JUDGE REGISTER: Okay.

13 THE WITNESS: And my sense is, that with
14 regard to time cards for consultants on major
15 projects, in my experience for companies at large, I
16 don't believe that that source document is maintained.
17 The invoices associated with those payments -- and
18 oftentimes the invoices for those payments will spell
19 out the consultants that worked on the project and the
20 hours and those type of things, and their contracts
21 with these consultants. This is what we're talking
22 about, consultants, to make sure that we're complying
23 with the terms of those things.

24 In my experience not only with UE but
25 certainly as an experienced practitioner with Price

1 Waterhouse Coopers, I haven't seen --

2 JUDGE REGISTER: I know your credits.

3 THE WITNESS: My point is, I don't know if
4 many other companies keep those documents forever.
5 And maybe even keep them at all.

6 JUDGE REGISTER: Okay.

7 THE WITNESS: So the answer to your question
8 about the record retention policy, I don't know
9 specifically what it says, but I'm speculating that
10 that record retention policy wouldn't go down to the
11 time cards for consultants work on computer.

12 JUDGE REGISTER: It might not be normal to
13 have that requirement?

14 THE WITNESS: It may not be an unusual thing
15 for people not to continue.

16 JUDGE REGISTER: Thank you, Mr. Coffman.

17 BY MR. COFFMAN:

18 Q. You're not testifying here as to what your
19 record retention policy is?

20 A. I don't know specifically what that record
21 retention policy is.

22 Q. But it's not -- it's not UE practice to
23 delete such information in less than a year after the
24 project is over? It's not policy?

25 A. Well, you know, Mr. Coffman, I delete files

1 from my database all of the time. For a variety of
2 reasons. If I don't find a specific use for that
3 database, if I feel I've satisfied the needs for that
4 information and I have not been specifically told to
5 keep it, and certainly with my own files I don't need
6 to do that, then I may delete those.

7 Q. Has AmerenUE changed its record retention
8 policies since the EARP has been adopted?

9 A. To the best of my knowledge, I don't think
10 so, but I don't know that.

11 Q. Okay.

12 MR. COFFMAN: I think that's all of the
13 questions that I have. Thank you.

14 JUDGE REGISTER: Thank you, Mr. Coffman.

15 Now, that completes the cross-examination.

16 Questions from the Bench?

17 Chair Lumpe, do you have any questions for
18 Mr. Baxter?

19 CHAIR LUMPE: Yes, just very quickly.

20 QUESTIONS BY CHAIR LUMPE:

21 Q. Mr. Baxter, I'm looking on page 27 of your
22 testimony -- on page 27, your rebuttal. Coming back
23 to the issue of the SOP 98-1. And if I read correctly
24 on lines 11 through 13, are you saying there that you
25 will not be able to change the accounting policy until

1 the year 2001, which would be the end of the current
2 EARP?

3 A. No. Frankly, Commissioner Lumpe, to the
4 extent that regulatory policy does not change with
5 regard to the expense of the computer software costs
6 subsequent to 2001, we would continue our current
7 accounting policy.

8 Q. Well, what I was wondering was, you say
9 until the company's rates are adjusted and we -- under
10 the EARPs we do not have rate cases as I understand it
11 until the end of that, which would be 2001?

12 A. Generally, that would be the case. I would
13 say contained in the agreement are possibilities for
14 us to file if we fall below 10 percent, there are
15 provisions for other activities that may come into a
16 rate case, but putting those things aside, that is
17 true.

18 And then subsequent, I guess, to try and
19 expand on what I mean, is after 2001 if there would be
20 a ratemaking proceeding, and this Commission at that
21 point in time would choose to capitalize computer
22 software costs, then it would be appropriate for us
23 from a financial accounting standpoint to do the same.

24 Q. But actually you're saying it wouldn't be
25 appropriate because you would be out of compliance

1 with GAAP?

2 A. No. Once -- if the Commission had an order
3 after 2001 which required us to capitalize our
4 computer software costs, we would then for GAAP
5 purposes capitalize our computer software costs and we
6 would be in accordance with GAAP.

7 Q. Regardless of the hierarchy and the other --
8 the FAS 71?

9 A. No. We -- we would be in accordance with
10 the hierarchy, because the regulation which would be
11 embodied in a Commission order says that for an
12 establishment of rates going forward, we're
13 capitalizing those computer software costs.

14 So the hierarchy, the highest place in the
15 hierarchy is FAS 71, would say then, okay, regulations
16 says to capitalize those costs. That is what your
17 regulation does. So for financial accounting purposes
18 then you do the same.

19 So we would be in accordance with the
20 highest level of GAAP at that point in time, just as
21 we are now.

22 Q. Okay. So the Commission could order that
23 and you wouldn't be out of compliance with GAAP or
24 some hierarchy of order?

25 A. No, you're not.

1 Q. Okay. The question of when the CSS system
2 was placed in service, you say in December '98. Did I
3 hear you correctly that it was -- that that did not
4 mean it was used and useful?

5 A. In December of '98 it is used and useful.
6 We were just --

7 Q. When was it purchased?

8 A. Well, as with any system you purchase
9 software, but then you have to implement the software
10 over a period of time. I can't say specifically when
11 the software was purchased. But to make the system
12 fully operational, that was in December of 1998.

13 Q. So we assume it was purchased sometime prior
14 to December 1998?

15 A. The software itself was purchased sometime
16 prior, yes.

17 Q. But you don't know when?

18 A. No. I believe Miss Westerfield has a
19 schedule. It may contain that data. I'm not certain.

20 Q. Well, we can find that then.

21 A. But it was purchased.

22 Q. I just wondered if it was sort of, like,
23 sometimes it happens you have money at the end of a
24 year and you better spend it now so we can include it.

25 A. No. In this particular case, it was --

1 Q. Instead of putting it off until the next
2 year.

3 A. It was -- it was a very well thought-out
4 plan on how the whole thing would come together.
5 Because with regard to the CSS system, as with any
6 system, it takes planning to try to put those things
7 in place. And in many respects you have to have the
8 software first before you can really get things
9 started in earnest.

10 Q. And that was the thrust of my question is
11 when it was purchased.

12 JUDGE REGISTER: Is the schedule you were
13 referring to 2-19?

14 THE WITNESS: Yeah.

15 JUDGE REGISTER: I think it was referred to
16 earlier.

17 THE WITNESS: Yes. Does it -- your Honor,
18 does it state when the software was purchased?

19 CHAIR LUMPE: Not really.

20 JUDGE REGISTER: It has phases for
21 assessment planning.

22 THE WITNESS: I don't think it states
23 specifically when the software was purchased.

24 BY CHAIR LUMPE:

25 Q. And one last question then: What

1 document -- refresh my memory, was it where you gave
2 the response that related to the nonregulated parts.

3 what documents were those?

4 A. That was in response to a data request that
5 the Staff that provided us that dealt with the --

6 Q. So it was a data request?

7 A. It was a data request.

8 Q. It was not some financial statement to
9 provide.

10 And why would you assume that a data request
11 would want to know what you're doing with the
12 nonregulated companies as opposed to what we care
13 about, the regulated companies?

14 A. As Mr. Dottheim pointed out, perhaps we
15 could have been clearer in our responses. It was
16 simply made in that line.

17 Q. Because we really don't care about your
18 nonregulated.

19 A. I understand.

20 Q. We want to know what you're doing with your
21 regulated.

22 A. I understand.

23 CHAIR LUMPE: Thank you. That's all I have.

24 JUDGE REGISTER: Commissioner Crumpton?

25 COMMISSIONER CRUMPTON: I just have one

1 question.

2 QUESTIONS BY COMMISSIONER CRUMPTON:

3 Q. How are you?

4 A. How are you doing, Commissioner Crumpton?

5 Q. Okay. I want you to turn to the surrebuttal
6 testimony of Miss Westerfield. Do you have a copy?

7 A. Yes, I do. If you could give me a moment.

8 Q. It's page 19.

9 JUDGE REGISTER: It's Exhibit No. 5; is that
10 right?

11 Surrebuttal testimony?

12 COMMISSIONER CRUMPTON: That's absolutely
13 correct.

14 JUDGE REGISTER: And page 19?

15 COMMISSIONER CRUMPTON: Yes.

16 BY COMMISSIONER CRUMPTON:

17 Q. Beginning at line 16 and going down to 18,
18 she makes a rather substantial charge here to suggest
19 reducing residential customers credits for a cost that
20 provides them no benefit whatsoever as UE does is
21 truly outrageous.

22 What is she trying to tell us here?

23 A. I'll speculate.

24 Q. Okay.

25 A. I believe that the point she was making is

1 that to date we have implemented the CSS system only
2 for large industrial and commercial customers. And
3 Miss Westerfield was making a statement that it was,
4 as she says, outrageous for us to consider reflecting
5 the expenses for the CSS system under the EARP.

6 Obviously the company's response is, I
7 guess, twofold: One, we're certainly complying with
8 the terms of the agreement but we don't need to go
9 into the legalese.

10 Two, that certainly appears to me more of a
11 rate design issue. What we're trying to figure out in
12 the first instance is what expenses are appropriately
13 reflected under the terms of the EARP. And then if
14 Staff and others feel that when we start distributing
15 the credits, that we should do that differently, I
16 guess they have that opportunity, although I shouldn't
17 say legally. I don't know if they can do that under
18 the terms of the EARP.

19 But thirdly, what troubles me a little bit
20 about that statement is that, you know, there are
21 other examples perhaps where the industrial customers
22 pay, for instance, some of the costs of residential.

23 I think probably a rate case would be storm
24 outage. A storm outage, you know, wipes out an
25 automatic community and there may not be an industrial

1 customer in there, but over the terms of the EARP, as
2 I'm sure you've understand, we've had several storms,
3 but nonetheless, industrial customers have shared in
4 those costs like all of the other ones when we've paid
5 out a credit. So that's the best I can do.

6 Q. On page -- I mean, on the same page, line 19
7 through 20, she says that Mr. Baxter again seems to be
8 saying that the company can treat any item it wants in
9 any manner it desires under UE's interpretation of the
10 agreement.

11 How do you respond to that?

12 A. I respond probably very forcefully to that
13 because that is absolutely not what UE is trying to
14 do. UE is complying with the terms of the agreement
15 faithfully. We are not running through any costs we
16 deem appropriate. We're not trying to cook the books,
17 if you will.

18 We're starting with our books and records
19 and we're faithfully complying with the terms of that
20 agreement. And not only does it disappoint me, it
21 frankly is somewhat -- I'll use her word "outrageous"
22 that someone would accuse us of doing that.

23 Q. Well, you shouldn't get too worked up.

24 A. I know. But you're right.

25 Q. I'll leave it at that.

1 I think what we're doing, hopefully, is
2 laying the groundwork for any future agreement by
3 going through these issues here.

4 A. Well, if I may finish then. I'll try and
5 calm down.

6 This is about as worked up as I get,
7 so . . .

8 Q. That's okay.

9 A. UE is not -- does not have -- does not take
10 the position that it can treat any item it wants in
11 any manner it desires. Under our interpretation of
12 the agreement, we will faithfully abide by that
13 agreement.

14 Q. Okay. Hopefully one of the outcomes of this
15 hearing is that we will have better agreements in the
16 future, whether it's with your company or some other
17 company.

18 Is it possible in future agreements to
19 specifically have a section dealing with expenditures
20 that could not benefit the parties who are overall
21 making the sacrifices in order to enjoy future
22 benefits?

23 And to give you an example, if Party A
24 prepays, makes a deposit, Party A will expect to get
25 some cost reductions because you have their money in a

1 grant.

2 But Party B pays late. Party A would not
3 want to pay part of the late charges for Party B.
4 They would want Party B to pay all of the late
5 charges. So is it possible that in a future agreement
6 we can have clauses that remove issues such as this?

7 A. With regard to your question, Commissioner
8 Crumpton, I think certainly it is possible to
9 structure the terms and agreement to meet the
10 objectives of the various parties and their
11 constituencies.

12 In fact, I think when we came together with
13 this agreement we thought that's, in fact, what we had
14 done. And our belief is that we've been successful.
15 But as you know -- and I think Mr. Dottheim made a
16 good point in his opening statement. The fact that
17 we're here today, this week, doesn't mean that the
18 agreement really hasn't worked. We've gone, you know,
19 through a couple of years and issues are bound to come
20 up.

21 And we could very well chalk up to a
22 learning experience. So maybe as we set these
23 agreements forward in the future, we'll have that
24 opportunity to -- to clarify things that need
25 clarification.

1 Q. Mr. Dottheim asked some questions about when
2 the CSS would be serving various residential groups.
3 Do you remember that?

4 A. Yes.

5 Q. Will CSS ever be used to serve the
6 residential class of customers?

7 A. If you're referring to the Union Electric
8 residential class of customers --

9 Q. Yes, I am.

10 A. -- it could very well be. Certainly there
11 is a game plan that says that if we should look to
12 incorporate CSS for the residential customers. But as
13 we, I believe, spoke yesterday, it's -- it's when you
14 step back and say, when should we make those
15 expenditures, when it's imprudent to do?

16 Q. Right.

17 A. So that is part of the reason we're doing
18 what we're doing. We want to make sure that we're
19 making it from a timely standpoint, from a cost of
20 money and all of these other things, those decisions
21 in an appropriate manner.

22 Q. But the ultimate goal is to also serve
23 residential customers. Is that right?

24 A. Yes, yes. The ultimate goal would be to
25 have a system that would serve residential customers,

1 whether it be the CSS system as it stands now, or
2 as -- you know, as time goes on, you have to make
3 modifications because of technology changes. That is
4 certainly possible.

5 COMMISSIONER CRUMPTON: Okay. That takes
6 care of all of my questions.

7 JUDGE REGISTER: I think all of my questions
8 have been asked also, so we will return to recross.

9 Miss Schmidt?

10 MS. SCHMIDT: No questions.

11 JUDGE REGISTER: Mr. Fulton?

12 MR. FULTON: No questions.

13 JUDGE REGISTER: Mr. Johnson is gone.

14 MS. LANGENECKERT: No, ma'am.

15 JUDGE REGISTER: No questions.

16 And, Mr. Dottheim?

17 MR. DOTTHEIM: No questions.

18 JUDGE REGISTER: And, Mr. Coffman?

19 MR. COFFMAN: Just one.

20 REXCROSS-EXAMINATION BY MR. COFFMAN:

21 Q. Just to clarify, there is no guarantee that
22 the CSS will ever serve residential customers?

23 A. No. As you know, Mr. Coffman, I can't
24 guarantee that.

25 MR. COFFMAN: Thank you.

1 JUDGE REGISTER: So then that takes us to
2 redirect.

3 MR. CYNKAR: I do have a few questions, your
4 Honor.

5 JUDGE REGISTER: Is it just a few or do we
6 need more time? Is now a good time to take a short
7 break?

8 MR. CYNKAR: It probably really isn't that
9 long, but if you want to take a break, that's fine. I
10 don't mind.

11 JUDGE REGISTER: Okay. Let's just finish
12 your redirect and we'll be done with this witness:

13 That's great, your Honor.

14 REDIRECT EXAMINATION BY MR. CYNKAR:

15 Q. Just following up on the discussion you had
16 with Commissioner Crumpton concerning when expenses
17 are recognized and so forth, and if I could direct
18 your attention to a period before the EARP and so
19 before SOP 98-1. So . . .

20 A. Before the EARP, before this --

21 Q. The first EARP.

22 A. -- the first year of the EARP.

23 Q. So we're not in that.

24 A. I understand.

25 Q. Now, during that time period did Union

1 Electric invest in computer software?

2 A. Certainly.

3 Q. Now, what if any leadtime for bringing
4 computer software into service did you have for those
5 kinds of expenses at that time?

6 A. If you're referring leadtime as to when a
7 project was sort of put in the planning stages and
8 then ultimately agreed upon and then ultimately
9 implemented -- is that what you're referring to as the
10 leadtime?

11 It varies project by project. Very rarely
12 does a project start and finish within 12 months but
13 it could take several months, 12, 18, 24. It depends
14 on the project.

15 Q. And in that context, what, if any, expenses
16 would be incurred before the computer software was
17 actually placed in service?

18 A. A number of different expenditures.
19 Obviously the purchase of software, internal costs for
20 the company, costs associated with consultants.

21 Those would be the primary. And training is
22 no small components either. So before the system is
23 actually placed in service and operational, all of
24 those types of costs are included.

25 Q. And what would be your accounting treatments

1 for those expenses before the computer system --
2 computer software was placed in service?

3 A. It was expensed as all of those are
4 incurred.

5 Q. If I could direct your attention to the
6 discussion you had with Mr. Coffman with respect to
7 the time cards and so forth.

8 A. Okay.

9 Q. The information that was contained on those
10 time cards, what, if any, of the same information was
11 contained on cash vouchers at the time?

12 A. I'll be honest with you, Mr. Cynkar, I'm not
13 sure exactly, but I would suggest that much of the
14 same information or a fair amount of the same
15 information could have been contained on cash vouchers
16 or invoices, if you will, if those are the same.

17 It is certainly possible. I can't say in
18 all instances that would be the case, but it's
19 certainly possible.

20 Q. Okay. Directing your attention to
21 several of the questions that you had concerning
22 FAS 71 and the Commission ordering the company to
23 follow SOP 98-1, what, if any, difference would there
24 be if between the Commission ordering that through an
25 accounting order or through a ratemaking?

1 A. If they -- if in that particular situation,
2 assume that the accounting order was one that would be
3 relied upon or could be relied upon by the company,
4 then you could get the same answer.

5 Q. And in that context, would an accounting
6 order reflect all of the ratemaking economics required
7 under FS 71 -- FAS 71?

8 A. You know, in some instances, in my
9 experience, Mr. Cynkar, I've seen both with regard to
10 accounting orders. In some instances accounting
11 orders are not significant or strong enough to suggest
12 that the ratemaking will follow. It would depend upon
13 the facts and circumstances of the accounting order
14 and the ratemaking order.

15 JUDGE REGISTER: Mr. Baxter, I'm going to
16 ask you to turn up the volume. I'm straining to hear
17 you.

18 THE WITNESS: Perhaps I'm wearing down. I'm
19 sorry.

20 BY MR. CYNKAR:

21 Q. Now, if I could follow up on one last area,
22 I think.

23 And if I could direct your attention to
24 Exhibit 6, which is the surrebuttal schedules for
25 Miss Westerfield, and also Exhibit 5, which is her

1 actual surrebuttal.

2 MR. CYNKAR: And, your Honor, I think I can
3 do this by just referring to numbers in general,
4 because these are HC documents and I don't -- I don't
5 think we have to go through the contours of that. I
6 think --

7 JUDGE REGISTER: As long, as I understand
8 it, if refers to it and just didn't reveal it, then
9 we're adequate. That's how we've been doing it all
10 day.

11 Isn't that right, Mr. Dottheim?

12 MR. DOTTHEIM: Yes.

13 BY MR. CYNKAR:

14 Q. First of all, let's start with Exhibit 5,
15 which again is Ms. Westerfield's surrebuttal
16 testimony, page 13, line 13.

17 A. Yes.

18 Q. You'll see at the end of that line there's a
19 number in bold face that is represented in her
20 testimony as being the first-phase costs for CSS. Do
21 you see that number?

22 A. That's correct.

23 Q. Now, I just want to leave that and turn to
24 the schedules, particularly page 9 of Schedule 11. So
25 it's Schedule 11-9.

1 A. Yes.

2 Q. Okay. Now, without stating any of these
3 numbers, what does the schedule show?

4 A. A reduction in the estimated cost for CSS.

5 Q. Okay. And these different line items are
6 part of the expenditure on CSS?

7 A. Yes.

8 Q. Now, of the total expenditure on CSS, does
9 this document tell you what is software?

10 A. Yes, it does.

11 Q. Okay. And again, without saying the number,
12 could you just point to us where that is on here?

13 A. It is under project costs on the
14 left-hand -- far left-hand column that says CSS
15 software.

16 Q. So that number is what represents the
17 actual computer software expenses of CSS, not the
18 number that we point to on page 13, line 13 of
19 Ms. Westerfield's surrebuttal?

20 A. That's correct.

21 JUDGE REGISTER: Is that just Phase I or is
22 that all phases? I would refer to Phase I which was
23 supplemented in December of 1998.

24 THE WITNESS: I believe -- I believe it is,
25 you know.

1 Your Honor, I'm not absolutely certain.
2 I'd have to look through this entire document to say
3 with certainty. But I believe that number is
4 comparative to the other number which was reflected in
5 Ms. Westerfield's testimony.

6 JUDGE REGISTER: Okay. And is there
7 somebody else in this room that has already been sworn
8 in that could confirm that for you?

9 Okay. That's fine. But you believe it is
10 comparable?

11 THE WITNESS: I appreciate you helping me
12 out.

13 BY MR. CYNKAR:

14 Q. Could I direct your attention -- still
15 staying on Schedule 11-9 -- the entries for labor,
16 internal and external.

17 A. Yes.

18 Q. Could you again, without stating the numbers
19 there, just describe what kind of labor costs those
20 are?

21 A. In total there are approximately seven times
22 the software costs.

23 Q. And what kind of labor is involved with this
24 kind of project?

25 A. Both internal and external labor.

1 Q. And what are the actual things?

2 A. External labor would typically be
3 consultants that we would hire to help us with this
4 project. Internal labor would be consulting
5 personnel.

6 Q. And how do you account for those costs?

7 A. We expense all of those costs.

8 Q. Now, does SOP 98-1 address those kinds of
9 costs?

10 A. It does.

11 Q. And what does it say?

12 A. SOP 98-1 would require us to generally
13 capitalize all of those costs.

14 MR. CYNKAR: Okay. And if you'd give me one
15 second, your Honor, I may be done.

16 JUDGE REGISTER: While you're looking, I
17 have a question.

18 QUESTIONS BY JUDGE REGISTER:

19 Q. What's "contingency" mean?

20 A. Your Honor, with many projects, because of
21 the nature of computer projects, what our IT
22 department does, it puts a contingency in there that
23 says plus or minus.

24 Q. Okay. That is what that represents.

25 JUDGE REGISTER: For the record, I was

1 referring to the use of the term that is on
2 Schedule 11-9.

3 Thank you.

4 And if you do find out that your belief that
5 the actual fact is different in terms of whether this
6 number CSS software is different from the one that is
7 on page 13, line 13 of Miss Westerfield's testimony,
8 your counsel can bring that out later, in later
9 testimony.

10 THE WITNESS: We'll be sure to get that into
11 the record.

12 JUDGE REGISTER: We can return to that if it
13 needs to be in the record.

14 FURTHER REDIRECT EXAMINATION BY MR. CYNKAR:

15 Q. Just one last question.

16 With respect to the implementation of CSS
17 for residential customers --

18 A. Yes.

19 Q. -- what, if any, determinations has the
20 senior management of UE made with respect to the need
21 for and indeed the benefit to residential customers of
22 implementing CSS?

23 A. At this point in time, to the best of my
24 knowledge, senior management is not convinced that CSS
25 will -- for residential customers in UE service

1 territory will benefit from that project at this point
2 in time.

3 Q. And is that a determination you'd made
4 before spending that money?

5 A. Absolutely.

6 MR. CYNKAR: Your Honor, I have no further
7 questions.

8 JUDGE REGISTER: Thank you, Mr. Cynkar.

9 MR. CYNKAR: Just one matter, Mr. Coffman
10 raised the opportunity to cross-examine Mr. Weiss and
11 he will be up again. So he certainly will be
12 available for you to --

13 MR. COFFMAN: I don't think I need to cover
14 that issue anymore. Thank you anyway.

15 JUDGE REGISTER: That concludes the
16 testimony by this witness on this issue.

17 And then that leaves Mr. McKnight under this
18 issue.

19 Does anybody have cross-examination?

20 (No response.)

21 JUDGE REGISTER: Okay.

22 Well, let's take a break. The court
23 reporters are going to change in ten minutes. Will
24 that be sufficient for you-all to change things?

25 That's fine. So -- I'm sorry. Did you have

1 something else?

2 MR. LERNER: Do you have any idea how long
3 we're going to go?

4 JUDGE REGISTER: I'm going to say the limit
5 tonight is 6:30. I'm hoping to get through all this.

6 (A recess was taken; court reporters
7 switched.)

8 JUDGE REGISTER: Let's go on the record.

9 The first thing I want to do is go through
10 the list. Mergers and acquisitions, is there
11 cross-examination for Mr. Gruner?

12 MR. LERNER: Brief one, yes.

13 JUDGE REGISTER: Is there cross-examination
14 for Mr. Robertson?

15 MR. LERNER: No.

16 MR. FULTON: No.

17 MR. COFFMAN: No.

18 JUDGE REGISTER: Okay. Is there
19 cross-examination for Mr. Brandt?

20 MR. COFFMAN: No.

21 MR. DOTTHEIM: I'm checking.

22 MR. FULTON: None here.

23 MR. DOTTHEIM: Are we talking about

24 Mr. Brandt on --

25 JUDGE REGISTER: Mergers and acquisitions.

1 MR. DOTTHEIM: No.

2 JUDGE REGISTER: Okay. Mr. Baxter on

3 mergers and acquisitions?

4 MR. COFFMAN: No.

5 MR. FULTON: No.

6 MR. DOTTHEIM: Mr. Baxter?

7 JUDGE REGISTER: Yes.

8 MR. DOTTHEIM: Very few.

9 JUDGE REGISTER: I'm going to hold you-all

10 to these things now.

11 Decommissioning fund deposits,

12 Ms. Westerfield, cross-examination?

13 MR. JOHNSON: Yes.

14 JUDGE REGISTER: Mr. Robertson,

15 cross-examination?

16 MR. LERNER: No.

17 JUDGE REGISTER: Anyone else besides the

18 Company? Mr. Dottheim, you don't have anything for

19 Mr. Robertson?

20 MR. DOTTHEIM: No.

21 JUDGE REGISTER: We're looking pretty good.

22 Mr. Brandt on decommissioning fund deposits?

23 MS. LANGENECKERT: None, your Honor.

24 JUDGE REGISTER: Nothing from the

25 Intervenors. Whenever you're ready, Mr. Dottheim.

1 MR. DOTTHEIM: No, nothing for Mr. Brandt.
2 JUDGE REGISTER: Mr. Baxter, decommissioning
3 fund deposits, anything from the Intervenor?
4 MR. FULTON: No. I'm sorry.
5 JUDGE REGISTER: That's fine.
6 MR. FULTON: I don't think we have any for
7 any witnesses on these remaining witnesses.
8 MS. SCHMIDT: No questions.
9 JUDGE REGISTER: Mr. Dottheim?
10 MR. DOTTHEIM: Yes, for Mr. Baxter, just
11 again very few.
12 MR. COFFMAN: And I have one for Mr. Baxter.
13 JUDGE REGISTER: One? Be careful.
14 MR. FULTON: That's what the Commissioner
15 said.
16 JUDGE REGISTER: Okay. Mr. Weiss,
17 cross-examination for Mr. Weiss?
18 MR. DOTTHEIM: Yes, very brief.
19 JUDGE REGISTER: Yes for Staff.
20 Mr. Coffman?
21 MR. COFFMAN: No, I don't think so.
22 MR. CYNKAR: Your Honor, also with that, we
23 talked to Mr. Coffman during the break. We're going
24 to address one issue as a follow-up to the time card
25 question with Mr. Weiss. Just be very brief.

1 JUDGE REGISTER: Is that where we also had
2 the question earlier, Mr. Dottheim? Did you-all get a
3 chance to look at whatever document it was? Wasn't it
4 on Mr. Weiss?

5 MR. DOTTHEIM: Yes, and we have some
6 questions for Mr. Weiss.

7 JUDGE REGISTER: And you'll have them at
8 this time, then?

9 MR. DOTTHEIM: When he takes the stand.

10 JUDGE REGISTER: Injuries and damages then,
11 Mr. Gruner?

12 MR. LERNER: Yes for the Company.

13 JUDGE REGISTER: Mr. Brandt?

14 MR. DOTTHEIM: No.

15 JUDGE REGISTER: Okay. Mr. Coffman on
16 Mr. Brandt?

17 MR. COFFMAN: Nothing on injuries and
18 damages.

19 JUDGE REGISTER: Not of any of the
20 witnesses?

21 MR. COFFMAN: None.

22 JUDGE REGISTER: And Mr. Baxter?

23 MR. DOTTHEIM: Yes.

24 JUDGE REGISTER: And Mr. McKnight? That's a
25 yes, isn't it? No, you don't have any?

1 MR. DOTTHEIM: None from the Staff.

2 JUDGE REGISTER: Mr. Coffman, did you have
3 questions for Mr. McKnight?

4 MR. FULTON: He doesn't have any questions
5 for Mr. McKnight.

6 JUDGE REGISTER: Mr. McKnight's on the stand
7 getting ready for computer cross, but will we have any
8 questions on him for injuries and damages? And
9 Mr. Coffman said none for either of these. So this
10 will be the last time Mr. McKnight will need to
11 testify then, right?

12 MR. DOTTHEIM: I believe so.

13 JUDGE REGISTER: I think it looks like we
14 might be able to complete this. So let's proceed with
15 Mr. McKnight's testimony. He's already taken the
16 stand. He's already been sworn in. So are you
17 tendering Mr. McKnight for cross?

18 MR. CYNKAR: I do, your Honor.

19 JUDGE REGISTER: Thank you, Mr. Cynkar.
20 Intervenors, Ms. Schmidt, do you have any questions?

21 MS. SCHMIDT: No questions.

22 JUDGE REGISTER: Mr. Fulton?

23 MR. FULTON: No.

24 MS. LANGENECKERT: Langeneckert.

25 JUDGE REGISTER: Langeneckert. Thank you.

1 For the record, that's how I pronounce
2 Ms. Langeneckert's name.

3 Mr. Dottheim, do you have questions for Mr.
4 McKnight on this issue, computer costs?

5 MR. DOTTHEIM: Yes.

6 JUDGE REGISTER: Please proceed.

7 MR. DOTTHEIM: And I also had a question on
8 the Y2K which I was also going to ask at this time.

9 JUDGE REGISTER: That's fine.

10 MR. DOTTHEIM: Based upon a brief
11 discussion.

12 JUDGE REGISTER: That's fine. Go right
13 ahead.

14 MR. DOTTHEIM: Thank you.

15 BENJAMIN MCKNIGHT testified as follows:

16 CROSS-EXAMINATION BY MR. DOTTHEIM:

17 Q. Mr. McKnight, do you know whether -- could
18 you explain what Andersen Consulting is? Is that
19 associated with Arthur Andersen?

20 A. It's a separate business unit of Arthur
21 Andersen, S.C.

22 Q. Are you aware of whether Andersen Consulting
23 assisted Union Electric Company in the initial
24 development of its plans and procedures to address
25 Y2K?

1 A. No, I'm not.

2 Q. Mr. McKnight, could you identify, and I
3 don't mean by name, but in some manner the 13 members
4 of the EITF? How are they -- how are they selected,
5 what general qualities, not really qualities, but
6 training and experience are the individuals who serve
7 in that capacity?

8 A. They are people that have to be capable of
9 sitting in a proceeding like this. Basically,
10 membership is made up of representatives of the big
11 five accounting firms, and then there's kind of a
12 split with the balance of the members between
13 representatives from industry and some of the smaller
14 accounting firms, and I guess among industry, some of
15 the small accounting firms and academia.

16 Q. Are you generally familiar with the
17 individuals who are serving in that capacity, and I
18 mean do you know exactly who they are?

19 A. Actually, you know, they rotate from year to
20 year. Members periodically rotate. I know generally
21 who they are. I know some of them personally, less
22 now than I did probably several years ago.

23 Q. Presently are there any individuals on the
24 EITF who are from the regulated environment?

25 A. No, I don't believe that's the case. I

1 don't believe there are.

2 Q. Is there ever an effort made to have some
3 representation on the EITF of individuals whose
4 experience is primarily in the regulated sphere?

5 A. I don't think there has been a specific
6 effort, to my knowledge. There have been people that
7 have been on the EITF that have background in
8 regulated utilities. In fact, my firm's first
9 representative when the EITF was constituted had a
10 background working with utilities and, in fact, he's
11 chairman of FASP today.

12 Q. Mr. McKnight, I'd like to direct you to your
13 rebuttal testimony. In particular I'd like to direct
14 you to page 16, line 26 and over to page 17, line 17.

15 A. Excuse me. Line?

16 Q. I'm sorry. Line 26.

17 A. Okay.

18 Q. And continuing to the next page.

19 A. Oh, page 17. Okay.

20 Q. Yes. To approximately line -- well, line
21 17, the end of that paragraph, the end of that answer.
22 Mr. McKnight, you express the opinion therein that UE
23 cannot begin capitalizing software costs under GAAP
24 until the Missouri Commission changes rates of Union
25 Electric Company to reflect that accounting change; is

1 that correct?

2 A. That would be the easiest way to do it, and
3 when you have a change of this nature, that's the
4 typical way of doing it. I think in this situation,
5 you know, in effect an accounting order or commission
6 order that effectively reallocates the current
7 recovery that's taken place for software development
8 costs effectively to equity would also probably serve
9 to provide a basis for changing the Company's
10 accounting policy.

11 Q. Would you agree that it's a function of
12 Union Electric Company's external auditor to verify
13 that UE's financial statements are in accordance with
14 GAAP?

15 A. They have in effect a requirement to do that
16 for SEC registrants, yes.

17 Q. And you can identify, can you not, which
18 accounting firm is presently Union Electric Company,
19 AmerenUE's external auditor?

20 A. Yes.

21 Q. And that is which accounting firm?

22 A. PriceWaterhouseCooper.

23 Q. Did you have any discussion with
24 PriceWaterhouseCooper respecting your view that UE
25 cannot begin capitalizing software costs under GAAP

1 until the Missouri Commission changes rates to reflect
2 that accounting change?

3 A. Yes.

4 MR. DOTTHEIM: If I may have a moment,
5 please.

6 JUDGE REGISTER: Certainly.

7 BY MR. DOTTHEIM:

8 Q. Mr. McKnight, could you refer me to a
9 specific portion of FAS-71 on which you base your
10 opinion that UE cannot begin capitalizing software
11 costs under GAAP until the Missouri Commission changes
12 rates to reflect that accounting change?

13 A. Well, I think it kind of evolves from the
14 basis for conclusion which sets forth the underlying
15 premise for statement 71 as I've outlined in the
16 testimony, that there's a cause and effect
17 relationship between the Company's revenues and its
18 costs.

19 And to the extent that those revenues are
20 being provided to provide current cost recovery, it
21 would not be appropriate to defer those costs or
22 capitalize those costs since that current recovery is
23 taking place.

24 This is similar to what we were talking
25 about yesterday with the accelerated capital recovery

1 that's taking place under the utility industry today,
2 particularly in jurisdictions that are going through
3 restructuring. This isn't exactly a point in time
4 with respect to the industry where you see companies
5 that are trying to defer these costs. Just the
6 opposite is the case.

7 Q. But returning to my question, is there any
8 specific place, paragraph in FAS-71 which is your
9 reference point?

10 A. Well, as I said, there's a paragraph in the
11 basis for conclusion that talks about the economic
12 dimension of regulation, and in practice that's the
13 guidance that's been looked to to recognize the
14 economic effect of regulation.

15 Q. I'm going to hand you a copy of FAS, F-A-S,
16 No. 71, and if you could take me to that paragraph or
17 portion of FAS-71, I'd appreciate it.

18 A. I think the most relevant sections here and
19 the guidance that's been looked to in practice is
20 generally pages -- or paragraphs 56 through 58.

21 Q. Thank you.

22 A. Yes, sir.

23 MR. DOTTHEIM: If I could have a minute,
24 please.

25 JUDGE REGISTER: Certainly.

1 MR. DOTTHEIM: Thank you, Mr. McKnight. I
2 have no further questions.

3 JUDGE REGISTER: Thank you very much,
4 Mr. Dottheim. And Public Counsel, Mr. Coffman, do you
5 have questions of Mr. McKnight?

6 MR. COFFMAN: I just have a couple.

7 CROSS-EXAMINATION BY MR. COFFMAN:

8 Q. This is not quite evening. Good afternoon,
9 Mr. McKnight.

10 A. Feels like evening.

11 Q. It does. I'm going to state a few what I
12 believe are accounting terms and ask you if you can't
13 give me a general accounting definition of these
14 terms. Could you give me an accounting definition of
15 ordinary repair?

16 A. Ordinary repair, I don't think it's a --
17 really a term of art in the accounting sense.
18 Generally, I think you just interpret it literally.

19 Q. Okay. What about the term maintenance, is
20 that a term of art?

21 A. The same way. I mean, I don't think that
22 you would characterize it differently from an
23 accounting sense than you would from an operating
24 sense.

25 Q. What about extraordinary repair, same?

1 A. That really -- that's not really a term that
2 I'm aware of.

3 Q. Well, can you give me a general operating
4 definition of ordinary repair and extraordinary
5 repair?

6 A. I think ordinary repair would be the
7 day-to-day repair work that's done to restore, if
8 possible, a piece of equipment or what have you to its
9 intended purpose.

10 Q. And extraordinary repair?

11 A. I don't -- I don't know.

12 Q. Okay. Wouldn't it be true that normally
13 ordinary repairs would be capitalized?

14 A. No.

15 Q. Okay. Would you have any basis to give me
16 an accounting definition of enhancement?

17 A. No.

18 Q. That's not a term of art either?

19 A. (Witness shook head.)

20 Q. Okay. If I can refer you to page 16 of your
21 rebuttal testimony, Exhibit 15, on lines 4 through 15
22 you reference a quote from FAS-86?

23 A. Yes, that's correct.

24 Q. And what is the title of that statement
25 No. 86?

1 A. Accounting for the costs of computer
2 software to be sold, leased or otherwise marketed.
3 Q. And the Union Electric systems that are at
4 issue in this case are for in-house use only, correct?
5 A. Yes, that's correct.
6 Q. They are not to be sold, leased or otherwise
7 marketed, correct?
8 A. To my knowledge, that's -- that's the case,
9 although I haven't made that specific inquiry.
10 Q. But that's your assumption?
11 A. Yes.
12 MR. COFFMAN: That's all I have. Thank you.
13 JUDGE REGISTER: Thank you, Mr. Coffman.
14 Okay. And I have no questions, and so that concludes
15 the examination from the Bench. Seeing none,
16 Mr. Dottheim, do you have any recross following
17 Mr. Coffman's cross? Mr. Dottheim, did you have any
18 recross following Mr. Coffman's cross?
19 MR. DOTTHEIM: No.
20 JUDGE REGISTER: And Intervenors? Okay.
21 And so we would go redirect to Mr. Cynkar.
22 MR. CYNKAR: None, your Honor. I said none.
23 I'm sorry.
24 JUDGE REGISTER: Oh, none. Sorry.
25 Mr. Coffman, you told me none, too, didn't you?

1 MR. COFFMAN: I've already had my chance.

2 JUDGE REGISTER: No cross. Okay. That is
3 all on this witness for this issue, then. Thank you
4 very much, Mr. McKnight. As has been indicated
5 earlier, Mr. McKnight will not be cross-examined on
6 injuries and damages, which is the other issue he was
7 listed for. He may be released for the day, then.

8 MR. CYNKAR: Yes.

9 JUDGE REGISTER: Given some time to think
10 about this, that's what I'd like to do is after each
11 witness testifies, if they don't have anything further
12 on that day, they may leave as long as their
13 examining -- or the attorney offering their testimony
14 has no objection to their leaving, and so that will be
15 how we proceed.

16 If you want to cover -- if a witness is
17 called up first and you want to cover that witness'
18 testimony on multiple issues, I suppose that will be
19 up to -- I will leave that up to the offering
20 attorney. Well, I will leave that up to the
21 attorneys. If you want your person to -- I know that
22 Mr. Dottheim had indicated that he wanted to leave it
23 separated by issue.

24 Okay. The next issue is merger and
25 acquisition costs, and we will begin with Mr. Gruner.

1 MR. LERNER: Could I ask a question?
2 Mr. Brandt, I think there's been no indication that he
3 is going to be examined later this evening. He
4 intends to be around, but can he leave at times if he
5 likes?
6 JUDGE REGISTER: He can go get the pizza.
7 (Laughter.)
8 MR. LERNER: I think Mr. Dottheim and
9 Mr. Coffman indicated they did not intend to call him
10 tonight.
11 MR. COFFMAN: Correct.
12 MR. LERNER: He intends to stick around. I
13 think he may --
14 JUDGE REGISTER: That's fine. He's free to
15 come and go. Off the record.
16 (Discussion off the record.)
17 (Witness sworn.)
18 JUDGE REGISTER: Please be seated, and state
19 and spell your name for the court reporter, please.
20 THE WITNESS: Michael G. Gruner,
21 G-r-u-n-e-r. Address, 815 Charter Commons Drive,
22 Suite 100B, Chesterfield, Missouri 63017. I'm
23 employed by the Missouri Public Service Commission.
24 JUDGE REGISTER: Thank you, Mr. Gruner.
25 Mr. Dottheim, you may proceed.

1 MR. DOTTHEIM: Thank you.

2 MICHAEL G. GRUNER testified as follows:

3 DIRECT EXAMINATION BY MR. DOTTHEIM:

4 Q. Mr. Gruner, do you have with you a copy of
5 what's been marked as Exhibit 7, your direct testimony
6 in this proceeding?

7 A. Yes, I do.

8 Q. And do you also have a copy of what's been
9 marked as Exhibit 8, your surrebuttal testimony in
10 this proceeding?

11 A. Yes, I do.

12 Q. Do you have any changes or corrections to
13 either Exhibit 7 or Exhibit 8 at this time?

14 A. Yes, I do. Page 6 of my direct testimony,
15 line 4, it reads "possible future claims" and should
16 read "possible future claims payments."

17 JUDGE REGISTER: Claims payments?

18 THE WITNESS: Payments.

19 JUDGE REGISTER: Insert the word payments?

20 THE WITNESS: Line 18, again it reads
21 "possible future claims" and should read "possible
22 future claims payments." Page 8 --

23 JUDGE REGISTER: Just a moment, Mr. Gruner.

24 Okay. Payments, line 18. Okay. I'm sorry. The next
25 page?

1 THE WITNESS: Page 8, line 7 and 8, middle
2 of line 7 starts "level of injuries and damages
3 expense allowed by the Staff proposed adjustment."
4 All that should be deleted.

5 JUDGE REGISTER: Okay. I'm sorry. Take me
6 back to the line number again.

7 THE WITNESS: Line 7.

8 JUDGE REGISTER: Okay. The net result?

9 THE WITNESS: The level of injuries and
10 damages expense allowed by the Staff's proposed
11 adjustment.

12 JUDGE REGISTER: On page 7?

13 THE WITNESS: No. Page 8.

14 JUDGE REGISTER: That's where my problem is.
15 Thank you very much. I'm sorry. The level of
16 injuries. Okay.

17 THE WITNESS: "And damages expense allowed
18 by the Staff's proposed adjustment." All that should
19 be deleted.

20 JUDGE REGISTER: Okay. The entire phrase
21 between the two commas; is that correct?

22 THE WITNESS: Right. Line 15, the last
23 word, cost should be costs, with an S.

24 JUDGE REGISTER: All right.

25 THE WITNESS: Line 16, the first word should

1 be from instead of form.

2 JUDGE REGISTER: Thank you.

3 THE WITNESS: In my surrebuttal testimony,
4 page 2, line 12, it says, parentheses, estimated to be
5 71.5 million. There should be three dots there.

6 JUDGE REGISTER: Inside the --

7 THE WITNESS: Inside the parentheses. And
8 on page 5, line 6, the first sentence starts "I
9 submitted." There's a space between the E and the D
10 that shouldn't be there.

11 JUDGE REGISTER: I'm sorry. You got ahead
12 of me again. Page what?

13 THE WITNESS: 5.

14 JUDGE REGISTER: Line?

15 THE WITNESS: 6.

16 JUDGE REGISTER: Thank you. And it should
17 say what?

18 THE WITNESS: It's submitted, but I have
19 a -- there's a space between the E and the D in
20 submitted, the word submitted.

21 JUDGE REGISTER: I see. Just need to remove
22 the space.

23 THE WITNESS: Yes.

24 JUDGE REGISTER: All right. Now, are there
25 any other changes?

1 THE WITNESS: No. That's it.

2 JUDGE REGISTER: Mr. Dottheim, I'll return
3 it to you.

4 MR. DOTTHEIM: Thank you.

5 BY MR. DOTTHEIM:

6 Q. Mr. Gruner, if I were to ask you the same
7 questions that are contained in Exhibit 7 and
8 Exhibit 8, would your answers as you just corrected or
9 changed them be the same?

10 A. Yes, they would.

11 Q. Is the information contained in Exhibits 7
12 and 8, your direct and surrebuttal testimony, true and
13 correct to the best of your knowledge and belief?

14 A. Yes, it is.

15 Q. And do you adopt Exhibit 7 as your direct
16 testimony in this proceeding and Exhibit 8 as your
17 surrebuttal testimony?

18 A. Yes, I do.

19 MR. DOTTHEIM: At this time I would offer
20 Exhibits 7 and 8 and tender Mr. Gruner for
21 cross-examination on the merger and acquisition costs
22 issue.

23 JUDGE REGISTER: Before you tender him, let
24 me ask you about Exhibit No. 9. We haven't identified
25 that yet.

1 MR. DOTTHEIM: The staff monitoring and
2 accounting schedules.
3 JUDGE REGISTER: Right. You're going to
4 have that done by Mr. Gruner or somebody else?
5 MR. DOTTHEIM: No. If that were to be done
6 by anyone, it should be done by Mr. Rackers, who is --
7 JUDGE REGISTER: Wasn't scheduled to come
8 back but will. Okay.
9 MR. DOTTHEIM: We can do that.
10 JUDGE REGISTER: All right. So Exhibit
11 No. 7 and 8, are there any objections to their
12 admission?
13 (No response.)
14 Hearing none, Exhibits 7 and 8 are admitted
15 into the record at this time.
16 (EXHIBIT NOS. 7 AND 8 WERE RECEIVED INTO
17 EVIDENCE.)
18 JUDGE REGISTER: And actually, it may not be
19 necessary to bring Mr. Rackers back if there --
20 MR. COFFMAN: No one objects.
21 MR. DOTTHEIM: I don't know if anyone would
22 have any objections to that document.
23 JUDGE REGISTER: And just housecleaning
24 before we go on, there were three other documents in
25 this case that were on the settled issue of the

1 weather normalization, Exhibits 18, 19 and 20. Does
2 anybody see that I've missed any? And can they be
3 offered at this time and are there any objections?

4 MR. LERNER: My only concern, your Honor, is
5 I don't see on this list the testimony that we filed
6 in connection with the weather case. I'm happy to
7 have that testimony admitted. We can also arrange to
8 have Mr. Voytas' and Mr. --

9 MR. DOTTHEIM: Are you looking -- I'm sorry.
10 Are you looking --

11 MR. COOK: Is that the other case?

12 MR. DOTTHEIM: Yeah.

13 MR. LERNER: Okay. Sorry.

14 JUDGE REGISTER: 149 is where Mr. Voytas was
15 filed.

16 MR. COFFMAN: It's already been admitted.

17 JUDGE REGISTER: I think that was filed
18 after I asked them not to be filed duplicately.

19 MR. LERNER: Fine.

20 JUDGE REGISTER: So are there any
21 objections? Mr. Dottheim, you're offering 18, 19 and
22 20?

23 MR. DOTTHEIM: Yes. I would offer at this
24 time 18, 19 and 20.

25 JUDGE REGISTER: And 9 while we're at it?

1 MR. DOTTHEIM: And 9 also.
2 JUDGE REGISTER: Anybody have any objections
3 to 9, 18, 19 and 20?
4 MR. LERNER: No.
5 JUDGE REGISTER: Hearing no objections on
6 those exhibits, they will be admitted into the record
7 at this time.
8 (EXHIBIT NOS. 9, 18, 19 AND 20 WERE RECEIVED
9 INTO EVIDENCE.)
10 JUDGE REGISTER: And Mr. Dottheim, you have
11 tendered Mr. Gruner for cross-examination, correct?
12 MR. DOTTHEIM: Yes.
13 JUDGE REGISTER: Okay. Public Counsel is
14 first cross-examination.
15 MR. COFFMAN: No questions, your Honor.
16 JUDGE REGISTER: Thank you, Mr. Coffman.
17 Intervenors?
18 MS. SCHMIDT: No questions.
19 JUDGE REGISTER: And then there is UE.
20 Mr. Lerner, you're taking this witness?
21 MR. LERNER: Yes.
22 CROSS-EXAMINATION BY MR. LERNER:
23 Q. Good evening, Mr. Gruner.
24 A. Good evening.
25 Q. I hope this will be brief. Do you have a

1 copy of what was filed as Exhibit 13? It's
2 Mr. Brandt's appendices, the appendices to
3 Mr. Brandt's schedule? Yes, that's it. If you could
4 turn please to Tab B, and that is the second EARP
5 merger agreement; isn't that right, sir?

6 A. Yes, it is.

7 Q. Okay. If you could turn to pages 2 to 3 of
8 the agreement. You're flipping now through the
9 Commission Order. Would you keep flipping, please.

10 A. Stipulation and Agreement?

11 Q. Right. On pages 2 to 3 is where we're
12 looking. And towards the -- two-thirds of the way
13 down the page there's a Section 4 transaction and
14 transition costs. Do you see where I'm reading from?

15 A. Yes.

16 Q. I'm not going to read it into the record,
17 but there's a sentence that begins on this page,
18 actual prudent and reasonable merger transactions, and
19 if you'll flip through to the next page, page 3, that
20 sentence ends, the merger closes on the second line at
21 page 3, and then there's a second sentence that
22 begins, the annual amortization of merger transaction
23 and transition costs, and that sentence goes for six
24 lines and ends, transition costs incurred to date. Do
25 you see those two sentences?

1 A. Yes, I do.

2 Q. Would you agree that those two sentences are
3 the sentences that are the important sentences in
4 terms of resolving the dispute that -- the dispute
5 about merger costs; is that fair to say?

6 A. This sentence starting on page 2 and going
7 to page -- middle of page 3?

8 Q. I was trying to direct your attention to
9 two -- there are two sentences, sir. The first
10 sentence beginning on page 2.

11 A. Uh-huh.

12 Q. That sentence carries all the way over to
13 the second line of page 3.

14 A. Right.

15 Q. And there's a second sentence that begins,
16 the annual amortization of merger transaction and
17 transition costs.

18 A. Okay.

19 Q. And that carries through about five lines
20 to, actual merger transaction and transition costs
21 incurred to date. Do you see those two sentences?

22 A. Yes, I do.

23 Q. And those are the two sentences that are
24 issues -- the sentences that we are interpreting to
25 resolve this dispute about merger costs; is that fair

1 to say?

2 A. Yes.

3 Q. They're both relevant to this dispute; is
4 that correct?

5 A. Yes.

6 Q. Brief question. You were not employed at
7 the Staff when the Staff negotiated this agreement; is
8 that correct, sir?

9 A. That is correct.

10 Q. And moving on, the transaction costs
11 associated with this merger were estimated at the time
12 of entering into this agreement, the 71 and a half
13 million dollars; is that right?

14 A. Yes.

15 Q. Okay. And the current estimates that you
16 are aware of suggest that UE is coming in under that
17 number; isn't that right?

18 A. Yes.

19 Q. Okay. And is it fair to say that as a
20 result of UE's ability to come in under the
21 anticipated merger costs, it will be saving ratepayers
22 money?

23 A. Yes, they would.

24 MR. LERNER: Okay. Thank you. One second,
25 please. I'm done.

1 JUDGE REGISTER: Thank you, Mr. Lerner. I
2 don't have any questions from the Bench. Is there any
3 need for recross?

4 MR. DOTTHEIM: I have several questions.
5 No, I'm teasing.

6 (Laughter.)

7 JUDGE REGISTER: Mr. Coffman didn't have
8 anything, so on to redirect. It is your turn,
9 Mr. Dottheim.

10 MR. DOTTHEIM: No redirect. No questions.

11 JUDGE REGISTER: No redirect. Okay. Then
12 Mr. Gruner can be excused for this issue; is that
13 correct.

14 (Witness excused.)

15 JUDGE REGISTER: Okay. And the next person
16 I have on this issues is Mr. Baxter. For the record,
17 I remind you that you're still sworn, Mr. Baxter. You
18 can take the stand again. And Mr. Lerner, you're
19 still in charge?

20 MR. LERNER: I am. I'm tendering him for
21 cross-examination.

22 JUDGE REGISTER: You're tendering the
23 witness. Intervenors, do you have any questions for
24 Mr. Baxter on this issue?

25 MS. SCHMIDT: No questions.

1 MR. FULTON: No.

2 MS. LANGENECKERT: No.

3 JUDGE REGISTER: Mr. Dottheim, do you have

4 any questions for Mr. Baxter on this issue?

5 MR. DOTTHEIM: Yes, I have a question or

6 two.

7 JUDGE REGISTER: Let's wait 'til he's ready

8 here, and let us know when you're ready, Mr. Baxter,

9 and Mr. Dottheim will proceed.

10 JUDGE REGISTER: Ready, Mr. Baxter?

11 THE WITNESS: Yes. I'm sorry.

12 JUDGE REGISTER: Please proceed,

13 Mr. Dottheim.

14 WARNER L. BAXTER testified as follows:

15 CROSS-EXAMINATION MR. DOTTHEIM:

16 Q. Mr. Baxter, you don't currently expect

17 Ameren's total merger and acquisition costs to equal

18 approximately \$72 million over ten years, do you?

19 A. I'm not sure about the last part of your

20 statement about over ten years. If your question is I

21 don't expect that the merger transaction transition

22 costs not to equal \$72 million, \$71.5 million, that's

23 accurate. Our current estimate is below that.

24 Q. And what is the current best estimate of the

25 amount of these costs?

1 A. The current best estimate was that utilized
2 by the Staff, Mr. Dottheim. I believe it's reflected
3 in Mr. Gruner's testimony.

4 JUDGE REGISTER: Direct or surrebuttal?

5 THE WITNESS: Perhaps both, your Honor. I'm
6 not sure.

7 JUDGE REGISTER: Okay.

8 THE WITNESS: I believe the Company's best
9 estimate is consistent with that reflected on
10 Schedule 1 in Mr. Gruner's testimony whereby the
11 revised total is approximately \$66.6 million, whereby
12 the Missouri electric portion, it's \$66.6 million.
13 BY MR. DOTTHEIM:

14 Q. And when you referred to Schedule 1, was
15 that in Mr. Gruner's direct or surrebuttal testimony?

16 A. His direct testimony.

17 JUDGE REGISTER: That's Exhibit 7; is that
18 right?

19 MR. FULTON: Yes.

20 JUDGE REGISTER: Thank you.

21 MR. DOTTHEIM: Yes. Thank you, Mr. Baxter.
22 I have no further questions.

23 JUDGE REGISTER: Thank you, Mr. Dottheim.
24 Okay. And Mr. Coffman?

25 MR. COFFMAN: I have no questions of this

1 witness.

2 JUDGE REGISTER: Thank you. I do not have
3 any questions of this witness on this issue. So that
4 takes us back to redirect, then. No further questions
5 from cross, right? So redirect?

6 MR. JOHNSON: None.

7 JUDGE REGISTER: Okay. Mr. Baxter, you are
8 excused on this issue.

9 (Witness excused.)

10 JUDGE REGISTER: Off the record.

11 (Discussion off the record.)

12 MR. COFFMAN: I think I may have mentioned
13 in my opening statement, and I don't recall if I told
14 all the parties, but we are in agreement with the
15 agreement that Staff and UE had reached regarding
16 rolling the advertising expenses into the merger and
17 acquisition costs.

18 I just wanted to make the record clear on
19 that point. Make sure that didn't affect what anyone
20 else wanted to do on this issue.

21 JUDGE REGISTER: Does that leave everything
22 remain the same or does anybody have further questions
23 based on that? Okay.

24 MR. COFFMAN: Thank you.

25 JUDGE REGISTER: Thank you very much,

1 Mr. Coffman. I appreciate that.

2 We are going to decommissioning fund
3 deposits, then; is that correct? And Ms. Westerfield
4 is next. I'm pretty sure this is the last time.

5 Mr. Dottheim, are we tendering the witness?

6 MR. DOTTHEIM: Yes. The Staff is tendering
7 Ms. Westerfield on the issue of decommissioning cost
8 fund.

9 JUDGE REGISTER: Thank you, Mr. Dottheim.
10 Cross-examination begins with Public Counsel.
11 Mr. Coffman?

12 MR. COFFMAN: No questions.

13 JUDGE REGISTER: Thank you. Intervenors?

14 MS. SCHMIDT: No questions.

15 MR. FULTON: No.

16 JUDGE REGISTER: Thank you. Union Electric,
17 Mr. Lerner, are you up?

18 MR. LERNER: Yes.

19 ARLENE WESTERFIELD testified as follows:

20 CROSS-EXAMINATION BY MR. LERNER:

21 Q. Good evening, Ms. Westerfield.

22 A. Hi.

23 Q. Union Electric is required to make quarterly
24 deposits in a fund that would be used in the future to
25 decommission the Callaway nuclear power plant; is that

1 correct?

2 A. Yes, it is.

3 Q. And for the IRS to treat the Company's
4 deposits as tax deductible, the Company must first
5 receive an Order from this Commission; is that
6 correct?

7 A. I believe that is correct.

8 Q. And to make its 1997 deposits in the fund,
9 the Company sought approval from this Commission in
10 1996; isn't that right?

11 A. That's my understanding.

12 Q. Okay. And this Commission did grant
13 approval in January of 1998 for the 1997 payment; is
14 that correct?

15 A. Yes.

16 Q. Okay. And just so we're clear, in terms of
17 this dispute, you lay no blame whatsoever at the feet
18 of Union Electric; is that correct?

19 A. That's correct.

20 Q. Because it was not their fault in any way
21 that this delay occurred; is that correct?

22 A. That's correct.

23 Q. Now, the Commission set forth its rules for
24 the establishment of a decommissioning fund in
25 Commission Order Case E0-85-17 and Case ER-85-160; is

1 that correct?

2 A. Yes, I believe so.

3 MR. LERNER: Okay. And if I can approach?

4 JUDGE REGISTER: Go right ahead.

5 MR. LERNER: Thank you.

6 BY MR. LERNER:

7 Q. I'm afraid I only have one copy right here.

8 So let me just look on with mine.

9 A. All right.

10 Q. I'd like to direct you to -- it's a very
11 long Order, and I just have an excerpt of it here, and
12 I'm holding -- I have the cover page and then I have
13 page 111 of that Order.

14 I'd like to direct your attention, if I
15 could, to the sentence here which reads, the
16 Commission believes UE should make payments to the
17 fund in accordance with IRS regulations and does not
18 oppose the use of the funds by UE between each payment
19 if IRS regulations permit it, period, close quote. Do
20 you see that sentence?

21 A. Yes, I do.

22 Q. And I read it accurately?

23 A. Yes, you did.

24 Q. And there are no IRS regulations that would
25 prohibit UE from using the decommissioning funds; is

1 that correct?

2 A. That's correct.

3 Q. Okay. Thank you. You were not involved in
4 the preparation of the reconciliation procedure that
5 became a part of the EARP; is that correct?

6 A. That's correct.

7 Q. Okay. If I could, do you have a copy of
8 Mr. Brandt's --

9 A. Yes, I do.

10 Q. Okay. If you could turn to the
11 reconciliation procedure of that, please, which is in
12 Tab A, which is the first EARP.

13 JUDGE REGISTER: And that was Exhibit
14 No. 13?

15 MR. LERNER: Yes, I think so.

16 BY MR. LERNER:

17 Q. And I'm looking at Attachment C of the
18 reconciliation procedure.

19 A. Uh-huh.

20 Q. Let me direct your attention, please, to the
21 second page, and if you'll notice about -- well,
22 Section F, 2F reads, the earnings report will utilize,
23 and then skimming down about the sixth line, a cash
24 working capital rate base offset of \$24 million. Do
25 you see that?

1 A. Yes, I do.

2 JUDGE REGISTER: That's the sixth dot,
3 right?

4 MR. LERNER: I'm sorry?

5 JUDGE REGISTER: I want to make sure the
6 record's clear. The sixth dot?

7 MR. LERNER: Yes. Thank you.

8 BY MR. LERNER:

9 Q. Now, the money that was available for the
10 Company's use because of the timely -- untimeliness of
11 the deposit in the decommissioning fund is
12 appropriately considered cash working capital; is that
13 correct?

14 A. It could be considered that.

15 Q. Would you consider it that? If I can, I can
16 read from your deposition.

17 A. That's all right, Mr. Lerner. I don't think
18 you need to find it in my deposition. I would agree
19 that it would be cash working capital.

20 Q. Thank you. Now, you don't know how the
21 people who actually negotiated the reconciliation
22 procedure in this line in particular, the line that
23 I'm referring to, cash working capital base offset
24 \$24 million, came up with that figure, do you?

25 A. The figure of 24 million?

1 Q. Yes.

2 A. No, I don't.

3 Q. Okay. Is it fair to say that a cash working
4 capital calculation is a very complicated calculation?

5 A. Yes, it is.

6 Q. Also, just so we know our semantics here,
7 it's also called a lead lag study; is that correct?

8 A. That's correct.

9 Q. And it is a very time-consuming matter; is
10 that fair to say?

11 A. Yes, it is.

12 Q. Because such a calculation involves an
13 analysis of a number of variables and ever-changing
14 over time pattern; is that correct?

15 A. Yes.

16 Q. Okay. Now, is it fair to say that instead
17 of doing such a calculation each year, the
18 reconciliation procedure and the persons who
19 negotiated it settled upon a number, a \$24 million
20 offset to the rate base precisely so they would not
21 have to conduct such an annual cash working capital
22 calculation?

23 A. Yes, that's correct.

24 Q. Okay. And to be -- furthermore, the use of
25 the decommissioning funds is only one part of cash

1 working capital; isn't that right?

2 A. I don't believe that decommissioning funds,
3 and I would have to look -- could you ask me that
4 again? I'm not sure.

5 Q. Sure. I think as we spoke earlier you
6 agreed with me that the use of decommissioning funds
7 over the course of the year 1997 could be considered
8 cash working capital?

9 A. Right.

10 Q. And there are -- now, in terms of the
11 24 million figure here, there are a number of
12 variables that go into a cash working capital
13 calculation also. We agreed to that?

14 A. That's right.

15 Q. And you did no study of the other variables
16 that go into a cash working capital calculation; is
17 that fair to say?

18 A. That's right.

19 Q. So it's entirely possible in the third
20 sharing period that some of these other variables
21 might have offset any benefit, any cash working
22 capital benefit that UE received from the use of
23 decommissioning funds; is that fair to say?

24 A. Well, I think -- no, because I think I have
25 a different perspective of this cash working capital

1 rate base offset of 24 million.

2 And in my view, looking at a cash working
3 capital schedule where these items have lags that go
4 up and go down, as you mentioned just a minute ago,
5 but I see the money that was available for the
6 decommissioning fund deposits as something in addition
7 to what we're seeing here and something that couldn't
8 have been foreseen at the time.

9 And I just don't view it as the same as an
10 expense that would have been included in that cash
11 working capital initial calculation.

12 Q. So in other words, it wasn't foreseen by, in
13 your opinion, by the people who negotiated the
14 reconciliation procedure; is that correct?

15 A. I think when they put together the cash
16 working capital rate base offset, they were looking at
17 the traditional expenses that we look at and the
18 traditional expense lags and whatever the revenue lag
19 is, but I don't think that they anticipated something
20 like this.

21 I see it as an additional amount of working
22 capital, I guess, that would be available to the
23 Company outside of this 24 million.

24 Q. But they clearly were aware that the Company
25 could have the use of decommissioning funds for

1 periods of time; is that not correct?

2 A. And I don't think that we --

3 Q. I'm sorry. I don't mean to interrupt, but
4 is that -- do you agree with me?

5 JUDGE REGISTER: You need to answer the
6 questions he asks of you.

7 BY MR. LERNER:

8 Q. The people who negotiated the reconciliation
9 procedure were clearly aware that the Company could
10 have cash working capital in the form of use of funds
11 to be deposited in a decommissioning fund; is that
12 correct?

13 MR. DOTTHEIM: I object. I don't believe
14 that's Ms. Westerfield's testimony.

15 JUDGE REGISTER: Are you quoting from her?

16 MR. LERNER: I wasn't asking if it was her
17 testimony. I was asking if she agreed with me. I'll
18 try again.

19 JUDGE REGISTER: So you withdraw your
20 objection, Mr. Dottheim?

21 MR. DOTTHEIM: I withdraw my objection.

22 JUDGE REGISTER: Okay. You have the
23 question, Ms. Westerfield.

24 THE WITNESS: I can agree with you in the
25 fact, if I can qualify it, that the moneys that are to

1 be deposited in the fund, it was clear that it was
2 agreeable that the Company would have the use of those
3 funds between the time that the deposits were made.

4 But I think the fact that they didn't make a
5 deposit for this long period of time is something
6 outside of that. So no, I can't agree with you.

7 BY MR. LERNER:

8 Q. But on the basis of what do you say that you
9 don't think the people who negotiated this agreement
10 thought that the use of the funds for more time was
11 not part of this offset?

12 A. No, I don't.

13 Q. I'm sorry. You don't have any -- you have
14 no basis for that opinion? I just didn't understand
15 what the answer to my question was.

16 JUDGE REGISTER: I think she answered it.
17 The answer was yes from period to period where the
18 payments were expected, but they did not expect it
19 would be long periods between the payments due.

20 MR. LERNER: Right. And I was just asking
21 what was her basis for that opinion.

22 JUDGE REGISTER: All right. Do you have a
23 basis for that opinion?

24 THE WITNESS: I think all of the
25 adjustments, or it's my understanding, and I didn't

1 participate in the -- I always use the word framing,
2 like the Declaration of Independence. But the framers
3 of this Stipulation and Agreement utilized some of the
4 traditional items that took place in a normal rate
5 case.

6 And I think that's what this cash working
7 capital rate base offset was, but I don't think they
8 were anticipating that something like this could
9 happen with the decommissioning fund and the payments
10 not being made timely. That's my basis.

11 BY MR. LERNER:

12 Q. I'll just move on now to the use of the
13 AFUDC rate, which is the rate that you chose.

14 A. Uh-huh.

15 Q. Now, the AFUDC rate is a composite rate of
16 both long and short-term interest?

17 A. Yes, it is.

18 Q. But isn't it true that UE did not know how
19 long it was going to have these decommissioning funds;
20 isn't that right?

21 A. Yes, I would agree with that.

22 Q. Because at any time in the course of the
23 year 1997 the Commission could have issued an Order
24 saying deposit the funds?

25 A. That's true.

1 Q. And so the Company could not have put this
2 money -- could not have gained a -- I mean, could not
3 have put the money in some sort of fund that got
4 long-term interest, a higher rate that would be
5 associate with a long-term interest rate; is that
6 right?

7 A. Not necessarily.

8 Q. Well, how can that be? I mean, if they
9 needed -- if they couldn't know for sure when they
10 would need the money, how could they get a long-term
11 interest rate for it?

12 A. Well, in the calculation, in the reason that
13 we use the AFUDC rate was the fact that the AFUDC rate
14 was higher than what the short-term interest rate was.
15 So the assumption that we made was there was no
16 short-term debt available, and so we used the longer
17 period.

18 Q. I understand it's higher, but I
19 understand -- I mean, I don't think you understand the
20 potential unfairness that is perceived.

21 MR. FULTON: Objection, argumentative.

22 JUDGE REGISTER: Mr. Lerner, do you have a
23 response?

24 MR. LERNER: No.

25 JUDGE REGISTER: You're going to withdraw

1 that question?

2 MR. LERNER: Yes.

3 JUDGE REGISTER: You're going to start
4 again. All right. Mr. Lerner, proceed with your next
5 question.

6 MR. LERNER: Actually, I have no more
7 questions.

8 JUDGE REGISTER: Thank you. That completes
9 cross-examination. I only had one question.

10 QUESTIONS BY JUDGE REGISTER:

11 Q. Do you still have that copy with the excerpt
12 of the original Order that relates to the
13 decommissioning fund up there?

14 A. No, I don't. I think Mr. Lerner has it.

15 MR. LERNER: I have an excerpt of it. I
16 don't have the whole thing.

17 JUDGE REGISTER: That's fine. If you could
18 just let Ms. Westerfield have that back for a minute.
19 There you go.

20 THE WITNESS: I'm sorry. Did you want this
21 or --

22 BY JUDGE REGISTER:

23 Q. It's not been marked, and we've just been
24 testifying from it. So what was the date that that
25 Report and Order was issued? Does it say?

1 A. Actually, I just see this file date, but I
2 don't see any date for the Report and Order.

3 MR. LERNER: Can I explain?

4 JUDGE REGISTER: Sure.

5 MR. LERNER: The caption page is so long
6 that I guess --

7 JUDGE REGISTER: Oh, this is off the
8 computer. Okay. That's an E0 case, E0-85-17 and
9 ER-85-160.

10 BY JUDGE REGISTER:

11 Q. You said in your testimony, Ms. Westerfield,
12 that you weren't here when this particular Order was
13 issued; is that correct?

14 A. At the Commission?

15 Q. Yes.

16 A. What was the date of it?

17 Q. That's the one where it says filing
18 January 15, 1985.

19 A. I would have been here then.

20 Q. You would have been here?

21 A. Yes.

22 Q. But you weren't involved in this
23 decommissioning trust fund deposit issue?

24 A. That's correct.

25 JUDGE REGISTER: Okay. Did you have a date

1 on this that you knew of, Mr. Lerner?

2 MR. LERNER: It's the Callaway rate case. I
3 don't know the date.

4 JUDGE REGISTER: Okay. I can check.

5 THE WITNESS: Then I have to amend what I
6 just said, because I was involved in the Callaway rate
7 case.

8 BY JUDGE REGISTER:

9 Q. But not particularly on this issue?

10 A. That's correct.

11 Q. Okay. Do you remember when that Callaway
12 rate case was completed before the Commission? I
13 don't know if there were more than one, so I'll say
14 the first time.

15 MR. DOTTHEIM: The Order was issued in 1985.
16 It may have been March of 1985.

17 MR. COOK: I think that's right. There were
18 two Orders issued at the same -- or an Order was
19 issued in both cases at the same time.

20 JUDGE REGISTER: Okay.

21 MR. COOK: Consolidated.

22 JUDGE REGISTER: Mr. Lerner, I'll let you
23 pick that up next time you're up this way, or if you
24 want to come get it.

25 I don't have any other questions for

1 Ms. Westerfield. That completes examination from the
2 Bench. Recross. Public Counsel, any recross?

3 MR. COFFMAN: No.

4 JUDGE REGISTER: Intervenors, any recross?

5 MS. SCHMIDT: No, thank you.

6 MR. FULTON: No, your Honor.

7 JUDGE REGISTER: And given that, did you
8 have any recross?

9 MR. LERNER: No.

10 JUDGE REGISTER: Okay. None from
11 Mr. Lerner. So we're ready for redirect, and that
12 would be Mr. Dottheim.

13 MR. DOTTHEIM: Briefly.

14 REDIRECT EXAMINATION BY MR. DOTTHEIM:

15 Q. Ms. Westerfield, in a cash working capital
16 study, would an expense lag be calculated based on
17 when payments would routinely be made?

18 A. Mr. Dottheim, I don't think I could
19 characterize it as routinely. In a cash working
20 capital study we would actually look at the various
21 items and determine exactly when the items were paid.

22 Q. In a cash working capital study, would an
23 expense lag be calculated in a manner that would
24 assume that payments could not be made?

25 MR. LERNER: Objection, leading, your Honor.

1 That was a leading question. It's trying to elicit a
2 yes answer.

3 JUDGE REGISTER: Well, if the only answer
4 that can be made to it is a yes or no, then it might
5 be leading, but if it can -- I think it's eliciting a
6 response, and it's possible not to answer it as just
7 yes or no, then it's not necessarily leading.

8 Are there any other comments to the
9 objection? I'm going to overrule it and allow her to
10 respond.

11 THE WITNESS: Traditionally, the way a cash
12 working capital calculation is put together, there's
13 no provision for payment that is not made.

14 MR. DOTTHEIM: I have no further questions.

15 JUDGE REGISTER: I have just one. I
16 apologize for coming in late on this one.

17 FURTHER QUESTIONS BY JUDGE REGISTER:

18 Q. Ms. Westerfield, if the Commission would
19 decide that they didn't make the Order earlier and
20 they decided that, in fact, in favor of UE in this
21 particular issue, would any other adjustments be
22 necessary for the calculations of this third year
23 sharing period for that issue?

24 A. No. I think we have the dollar value
25 spelled out for this adjustment.

1 Q. And other than whether this should be
2 included or not, UE's calculated it correctly except
3 for the issue of whether or not you should require
4 them to?

5 A. Well, there are some differences between the
6 Company's calculation and between the Staff's
7 calculation, which was, I think, what Mr. Lerner was
8 alluding to earlier, that the Staff utilized an AFUDC
9 rate. Also, with our calculation, it was an expense
10 adjustment offset.

11 All we did was calculate what the benefit
12 was to Union Electric for the time period that they
13 had those moneys before the makeup payment was finally
14 made, and I don't -- I know that there's some
15 testimony from Mr. Weiss. He's suggesting that this
16 item be placed in rate base, and so they have a
17 different dollar value to their calculation than we
18 do.

19 Q. Okay. I appreciate that explanation.

20 JUDGE REGISTER: I don't have anything
21 further. Any further examination? Stirred your
22 conscious. Go ahead, Mr. Coffman.

23 RE-CROSS-EXAMINATION BY MR. COFFMAN:

24 Q. Ms. Westerfield, you were talking about
25 differences between your issue and the Company's.

1 A. Yes.

2 Q. Your position is not the same as the
3 position of the Office of the Public Counsel, is it?

4 A. No. I believe there are a few differences
5 there as well.

6 Q. Okay. And one of those differences would be
7 another late payment that Mr. Robertson identifies and
8 that you don't; is that correct?

9 A. Yes, that's correct.

10 Q. Okay. Can you tell me why you didn't
11 include the payment that Mr. Robertson identifies as
12 having been ultimately made on May 27th of 1998?

13 A. Mr. Coffman, we didn't look at any of the
14 regular deposits that were made and whether they were
15 made on a timely basis or not. This was an issue that
16 came up in the last rate -- in the last sharing period
17 and was not addressed at that time because of the
18 materiality of it.

19 And we looked at it again in this credit
20 period, but it was only based on the payments
21 foregone, I'll call it, for that period of time when
22 Union Electric wasn't able to make the deposits
23 because of the Order.

24 Q. So you haven't checked the Company's records
25 to know whether or not you agree with Mr. Robertson's

1 adjustment?

2 A. No. We only looked at those -- actually,
3 those four payments.

4 Q. And do you understand what Public Counsel's
5 primary recommendation is on this issue?

6 A. I believe I do.

7 Q. And what's your understanding what that is?

8 A. I think it's based --

9 MR. LERNER: Objection. Mr. Coffman could
10 have called his witness. I think it's a little unfair
11 to ask --

12 MR. COFFMAN: It's in the record. I
13 withdraw it. That's all I have.

14 JUDGE REGISTER: Intervenors, anything
15 further? And Mr. Lerner?

16 MR. LERNER: Very brief.

17 RECROSS-EXAMINATION BY MR. LERNER:

18 Q. In response to the question from the Bench,
19 isn't it true that the Company's primary
20 recommendation here is that the adjustment should be
21 zero because we're contractually -- the Commission and
22 the Staff is contractually foreclosed from approaching
23 us about the \$24 million offset figure in the
24 reconciliation procedure?

25 A. Oh, that's correct. I was just going to

1 Mr. Weiss' schedule.

2 Q. So in other words, the Bench was approaching
3 the secondary recommendation of the Company; is that
4 correct?

5 A. Yes.

6 MR. LERNER: Thank you.

7 JUDGE REGISTER: Mr. Dottheim, redirect?

8 MR. DOTTHEIM: No redirect.

9 JUDGE REGISTER: Thank you very much,
10 Ms. Westerfield. We are finished with you on this
11 issue, and I believe this is the last time you're
12 scheduled. And if there's no objection,
13 Ms. Westerfield may be released for the evening, for
14 the rest of the hearing actually.

15 THE WITNESS: Thank you.

16 (Witness excused.)

17 Okay. Mr. Baxter is next up again on the
18 issue of decommissioning fund deposits. Thank you
19 very much, Ms. Westerfield. I appreciate you staying
20 late with us.

21 THE WITNESS: Thank you.

22 JUDGE REGISTER: Mr. Lerner, do you tender
23 your witness?

24 MR. LERNER: Consider him tendered.

25 THE WITNESS: I'm tender all right.

1 JUDGE REGISTER: Okay. Intervenors?

2 MS. SCHMIDT: No questions.

3 JUDGE REGISTER: Staff, Mr. Dottheim?

4 MR. DOTTHEIM: Yes.

5 WARNER BAXTER testified as follows:

6 CROSS-EXAMINATION BY MR. DOTTHEIM:

7 Q. Mr. Baxter, good evening.

8 A. Good evening.

9 Q. Mr. Baxter, this issue relates to the
10 quarterly decommissioning trust fund deposits that the
11 Company could not make as scheduled during both the
12 second and third sharing periods; is that correct?

13 A. Yes.

14 Q. How many deposits were foregone during the
15 second sharing period?

16 A. I believe my recollection serves me
17 properly. Let me make sure I state this correctly.
18 During the second sharing period, if you refer to
19 foregone, I believe there are two of those deposits
20 that we did not make at that time.

21 Q. Did Union Electric have use of the funds
22 associated with the foregone deposits from the second
23 sharing period during all or part of the third sharing
24 period?

25 A. Yes, it did.

1 MR. DOTTHEIM: One moment, please.

2 JUDGE REGISTER: Thank you, Mr. Dottheim.

3 Go ahead.

4 BY MR. DOTTHEIM:

5 Q. Mr. Baxter, in calculating cash working
6 capital, is it correct to say that UE loses use of
7 customer supplied funds when such funds are used as an
8 offset to rate base?

9 A. The question is whether UE loses use of
10 customer supplied funds if there is an offset to rate
11 base?

12 Q. Yes.

13 A. I believe that it would suggest that if we
14 have an offset to rate base, it means that customer
15 supplied funds that UE has the ability to use those
16 customer supplied funds compared to the outflow of its
17 expenses. So it is an offset as opposed to UE having
18 a benefit associated with it as an offset.

19 MR. DOTTHEIM: Thank you, Mr. Baxter. No
20 further questions.

21 JUDGE REGISTER: Nothing further,
22 Mr. Dottheim. Mr. Coffman?

23 MR. COFFMAN: Yes, just a couple.

24 CROSS-EXAMINATION BY MR. COFFMAN:

25 Q. Mr. Baxter, are you familiar with the

1 payment that Mr. Robertson identified as being late
2 for which the Staff did not look at, that is the
3 contribution to the trust fund that was due for the
4 quarter ending March of '98?

5 A. (Witness nodded.)

6 Q. Can you verify that the date that that
7 deposit was actually made was April 25 of 1998?

8 A. To be honest with you, Mr. Coffman, I am not
9 certain that that is the specific date. If that
10 information was provided to OPC or the Staff in a Data
11 Request saying that was the date, I'll accept that.

12 Q. You don't have any reason to believe that's
13 not correct?

14 A. No, I have no reason to believe that's not
15 the case.

16 Q. Just one more thing. I'm going to hand you
17 an excerpt from your 1998 Annual Report. Can you
18 identify that document?

19 A. Yes. It is the Ameren 1998 Annual Report.

20 Q. And the page that I've referred to?

21 A. The page is No. 40, and it's Note 13 titled
22 Callaway Nuclear Plant.

23 Q. Could you please read the highlighted
24 portion of that page?

25 A. Uh-huh. Costs collected from customers are

1 deposited in an external trust fund to provide for
2 Callaway's decommissioning, period. Fund earnings are
3 expected to average 9.25 percent annually through the
4 date of decommissioning, period. If the assumed
5 return on trust assets is not earned, comma, the
6 Company believes it is probable that such earnings
7 deficiency will be recovered in rates, period.

8 MR. COFFMAN: Okay. That's all the
9 questions I have.

10 JUDGE REGISTER: I believe that completes
11 cross. Mr. Baxter, I have a few questions from the
12 Bench.

13 QUESTIONS BY JUDGE REGISTER:

14 Q. I note through all of the prefiled testimony
15 that everybody's been very diplomatic, but I'm sure
16 that there are going to be questions that I'm going to
17 get from the Commissioners.

18 So at the risk of raising something that the
19 Commission doesn't necessarily want to see, all the
20 testimony I recall said that the Company was supposed
21 to make the quarterly deposits but they needed an
22 Order from the Commission to do so; is that correct?

23 A. That is correct.

24 Q. And it was the Internal Revenue Code that
25 required the Order from the Commission to do so?

1 A. That is correct. Otherwise we would have
2 been in violation.

3 Q. Okay. Just give me a general description of
4 was that required by the Order in -- previously in the
5 case that the decommissioning fund came out of? How
6 did that come about?

7 A. I believe the original Order from the
8 Callaway case did require the Company to maintain the
9 trust fund and to comply with the Internal Revenue
10 Code provisions.

11 Q. And when was it learned that the Internal
12 Revenue Code required a Commission -- an additional
13 Commission Order to make the payments?

14 A. I think it -- it was certainly the
15 understanding of the Staff and the Company for some
16 time. In fact, it was my understanding that they knew
17 this -- this Order that the Company had originally was
18 about to essentially expire, and that there was a need
19 to get another Order.

20 And I believe the Company worked with the
21 Staff and others to do, in their best efforts, both
22 sides, to try and get that Order done on a timely
23 basis.

24 Q. And, you know, not trying to place any blame
25 or anything, but because they're going to ask me these

1 questions, Company and Staff both knew it for some
2 time. Can you give me a ballpark, months, weeks,
3 days?

4 A. I would say it was clearly months in
5 advance.

6 Q. Was it years?

7 A. Well, I guess the answer to that question is
8 yeah, I guess they knew maybe a year in advance, but
9 there were no -- they just figured things in the
10 natural course would take care of itself. I think
11 there was, if you will, a more concerted effort to
12 move things along as we moved closer to that deadline.

13 Q. And do you know when the request was filed
14 for that Order?

15 A. Your Honor, I do not know that answer.

16 Q. Do you know who filed that request for that
17 Order to be issued by the Commission?

18 A. I believe -- I believe the Company filed the
19 request, but I would assume that the Company would
20 have to have filed that request.

21 Q. Do you know how long it took for the
22 Commission to issue its Order from the time that it
23 was requested?

24 A. I believe it was over a year.

25 Q. Did you have a chart in your testimony,

1 Mr. Baxter, that listed the payments?

2 A. No, I did not.

3 JUDGE REGISTER: That was Mr. Robertson's
4 testimony, wasn't it, Mr. Coffman?

5 MR. COFFMAN: That contained what?

6 MS. WESTERFIELD: It's attached to
7 Schedule 2, I think.

8 JUDGE REGISTER: He had the one where they
9 changed April to March?

10 MR. COFFMAN: Yes, and I'm not sure it
11 actually was attached to his testimony, but he did
12 prepare a work paper, and I'd be very happy to make it
13 an exhibit.

14 JUDGE REGISTER: I'm remembering something
15 that we had made changes on earlier. Ms. Westerfield,
16 you're saying it was an exhibit?

17 MS. WESTERFIELD: I don't believe we made
18 any changes to mine, though.

19 JUDGE REGISTER: Let me take just a moment
20 here, Mr. Baxter.

21 MR. DOTTHEIM: I think what you're recalling
22 is a schedule to Mr. Robertson's testimony as far as
23 changing the dates from April to March.

24 JUDGE REGISTER: Okay. Thank you very much,
25 Mr. Dottheim.

1 THE WITNESS: Your Honor, it may be possible
2 as well that there may be some pertinent information
3 to your question that may be in Mr. Weiss' testimony.
4 I'm not sure I know who may be up here, but I'm just
5 glancing quickly. So one way or the other, I'm sure
6 we can get you the accurate information.

7 JUDGE REGISTER: I guess my question was
8 when that issue was -- Order was issued.
9 Mr. Dottheim?

10 MR. DOTTHEIM: I think it may be on page 25
11 of Mr. Robertson's direct testimony, if you were -- if
12 that in part is what you were --

13 JUDGE REGISTER: Yes. That's it, page 25 of
14 Exhibit 10. Thank you very much, Mr. Dottheim.

15 BY JUDGE REGISTER:

16 Q. So these were the payments that were made,
17 and looking at the chart, I guess it begins on
18 page 24, line 26 of Mr. Robertson's testimony. You
19 have that handy?

20 A. Yes, I have that.

21 Q. And his correction was that the actual
22 payment was made catching up those four payments on
23 March 11, 1998; is that correct?

24 A. That's correct.

25 Q. So the Order from the Commission would have

1 been issued somewhere just immediately preceding that?

2 MR. LERNER: If I can, I think I can
3 clarify.

4 THE WITNESS: Excuse me, your Honor. I'm
5 looking, trying to find the information. I believe it
6 was in January of 19 -- I may be able to give you a
7 chronology which may be helpful.

8 BY JUDGE REGISTER:

9 Q. That would be helpful. Thank you very much.

10 A. I'm sure Mr. Dottheim if I get the dates
11 wrong can help me, or Mr. Cook.

12 In September of '96 the Company filed an
13 application with the Missouri Public Service
14 Commission seeking a determination of the appropriate
15 amount of decommissioning funds to be included in
16 rates. In April of 1997 the Staff, UE and OPC filed a
17 Unanimous Stipulation and Agreement with the
18 Commission, and then in January of 1998 the Missouri
19 Public Service Commission issued its Order.

20 Q. All right. And then by March those were
21 issued or those were paid?

22 A. Yes, in March of 1998, that's correct.
23 That's the best of my recollection.

24 Q. And Mr. Cook's got something to help us out
25 here.

1 MR. COOK: Mr. Lerner will explain it.

2 JUDGE REGISTER: Mr. Lerner.

3 MR. LERNER: If you like, I can -- this is
4 Case No. E0-97-86, and it was the Commission Order
5 approving the deposit of funds, but it has a
6 chronology in it. So on September 3rd Union Electric
7 filed the application. On December 1st it moved for
8 expedited treatment along with -- you can read it for
9 yourself.

10 JUDGE REGISTER: Thank you, gentlemen.

11 BY JUDGE REGISTER:

12 Q. All right. Your testimony was that you
13 think the Order was issued in January, and according
14 to the document that's Case No. E0-97-86 that we have
15 been provided, the date was January 14th, 1998; is
16 that correct, Mr. Baxter?

17 A. That's correct.

18 Q. Okay. So you guessed very well.

19 A. Your Honor, did you say January 14th or
20 January 24th?

21 Q. Issued January 24th is what -- I'm sorry.
22 January 14th.

23 A. Well, you might be right. There's
24 something --

25 Q. It would have been effective January 24th.

1 A. Okay. I'm sorry. I was reading the
2 effective date.

3 Q. Okay.

4 A. It's January 1998. Your Honor, do I need
5 this?

6 Q. No. I don't think I'll need it anymore.

7 JUDGE REGISTER: I don't have any other
8 questions for Mr. Baxter on this issue. Then to
9 recross, Intervenors?

10 MS. SCHMIDT: No, thank you.

11 JUDGE REGISTER: Mr. Dottheim?

12 MR. DOTTHEIM: Nothing.

13 JUDGE REGISTER: Mr. Coffman?

14 MR. COFFMAN: Yes. Your Honor, if I could
15 just ask one question.

16 RECROSS-EXAMINATION BY MR. COFFMAN:

17 Q. I guess your question from the Bench
18 referred to Mr. Robertson's schedule which includes
19 the four payments that Staff and Public Counsel talked
20 about and, in addition, the fifth payment.

21 I've handed Mr. Baxter, I guess, a work
22 paper which I guess I previously distributed to Staff
23 and Company yesterday. And Mr. Baxter, I'll just ask
24 you if you've seen this document?

25 A. Not until just this moment.

1 Q. Okay. I might also, if I might, ask you to
2 look at the next to last line there, the one that
3 begins with contribution for quarter ending 31 March
4 '98. And I think I may have earlier misspoke when I
5 asked you about the actual date of deposit. What is
6 the date of deposit on this schedule, I guess the
7 actual date of deposit?

8 A. May 27th, 1998.

9 Q. And do you have any reason to believe that
10 that's not the correct date of deposit?

11 A. I do not.

12 MR. COFFMAN: Your Honor, if I could mark
13 this as an exhibit and offer it into evidence.

14 JUDGE REGISTER: That's fine. Exhibit 35
15 will be the number.

16 MR. COFFMAN: It just provides more
17 information about Public Counsel's position.

18 MR. LERNER: Was this attached to an exhibit
19 yesterday or --

20 MR. COFFMAN: No.

21 JUDGE REGISTER: It's the supporting
22 information for the evidence on page 24 and 25, right?

23 MR. COFFMAN: Yes. Yes. It provides more
24 detail than I guess what was referred to as a
25 schedule, which is a listing of dates in

1 Mr. Robertson's testimony.

2 JUDGE REGISTER: Kellene, we can go off the
3 record for a moment.

4 (Discussion off the record.)

5 (EXHIBIT NO. 35 WAS MARKED FOR
6 IDENTIFICATION.)

7 JUDGE REGISTER: Mr. Coffman, do you have
8 any corrections to make to this document?

9 MR. COFFMAN: Yes. I apologize for my
10 disorganization, but what Exhibit 35 is would be more
11 accurately described as the work papers of
12 Mr. Robertson on the decommissioning fund issue.

13 The sources for this work paper were the
14 Public Counsel Data Request No. 1008 and the Staff
15 Data Request No. 14. But this document is actually
16 just a work paper showing how Mr. Robertson arrived at
17 his position on this issue.

18 JUDGE REGISTER: Okay. So all we're
19 changing is what we call that document on our exhibit
20 list?

21 MR. COFFMAN: That's correct.

22 JUDGE REGISTER: And that is actually the
23 work papers of Public Counsel witness Ted Robertson on
24 the decommissioning issue?

25 MR. COFFMAN: That's correct.

1 JUDGE REGISTER: Decommissioning fund issue.
2 And that has been marked as Exhibit No. 35. It's been
3 offered into the record. Are there any objections to
4 admission of this document into the record?

5 MR. LERNER: I don't object, but I guess
6 it's just -- it's been kind of sprung on my witness.
7 I would like an opportunity because he's never seen
8 this before, if I could just consult with him for a
9 moment to give him an opportunity to talk to other
10 people before he's cross-examined about this document.

11 MR. COFFMAN: I have no further questions.

12 MR. LERNER: Oh, you don't? Okay.

13 JUDGE REGISTER: So you don't need any time
14 for this?

15 MR. LERNER: No.

16 MR. COFFMAN: Certainly would offer
17 Mr. Robertson if there were any questions about this
18 document.

19 JUDGE REGISTER: Okay. And you withdraw
20 your objection?

21 MR. LERNER: Yes.

22 JUDGE REGISTER: Are there any objections at
23 this time, then?

24 (No response.)

25 Hearing none, Exhibit No. 35 will be

1 admitted into the record.

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

3 JUDGE REGISTER: And Mr. Coffman indicated

4 he didn't have any further questions for Mr. Baxter.

5 So that completes recross, and we are at redirect.

6 Mr. Lerner?

7 MR. LERNER: Just briefly.

8 REDIRECT EXAMINATION BY MR. LERNER:

9 Q. I think Mr. Coffman directed you to a

10 section of the Annual Report that references an AFUDC

11 rate in connection with the decommissioning fund. Do

12 you recall that, Mr. Baxter?

13 THE WITNESS: Mr. Coffman, may I have that?

14 MR. COFFMAN: Yes.

15 THE WITNESS: If I may, Mr. Lerner --

16 BY MR. LERNER:

17 Q. If you could explain --

18 A. I do have it in front of me now.

19 JUDGE REGISTER: Do you remember the

20 question, Mr. Baxter?

21 BY MR. LERNER:

22 Q. I guess my question would be, why do you

23 think that it is inappropriate in this case to apply

24 the AFUDC rate to the funds that the Company had at

25 its disposal in 1997?

1 MR. DOTTHEIM: Excuse me. I object that the
2 AFUDC rate is the Staff's proposal. It's not the
3 Office of the Public Counsel.

4 JUDGE REGISTER: Thank you, Mr. Dottheim.

5 THE WITNESS: I was going to -- I'll be
6 quiet until you-all figure it out.

7 JUDGE REGISTER: Wait just a moment,
8 Mr. Baxter. Mr. Coffman, did you have an objection?

9 MR. COFFMAN: I'm not sure that the AFUDC
10 rate was the subject of cross-examination.

11 MR. LERNER: I think it was.

12 JUDGE REGISTER: I think we need to correct
13 Mr. Lerner. I should have stopped you myself. The
14 rate that was referred to was not the AFUDC rate. So
15 let's see. Sustain the question -- sustain the
16 objection, and Mr. Lerner's restating his question
17 appropriately, and then you can answer the next
18 question, Mr. Baxter. Mr. Lerner, let's try another
19 question.

20 BY MR. LERNER:

21 Q. Why do you think that 9.25 percent is an
22 inappropriate interest rate for the calculation of how
23 much should be -- for what should be used for
24 calculating the benefits that UE got from the use of
25 decommissioning funds in 1997?

1 A. I guess two things. One is, as was stated
2 in Company's position, we don't agree with the nature
3 of any adjustment for decommissioning funds in this
4 case, and I think I've set that forth clearly in my
5 testimony, due to the specific items set forth in
6 Attachment C to the reconciliation procedure, the
7 \$24 million rate base offset, as well as the
8 Commission's Order which specifically allows the
9 Company to utilize funds that it receives from its
10 ratepayers between its payment dates as long as
11 they're in accordance with the Internal Revenue Code.

12 Having said that, the 9.25 percent with
13 regard to Mr. Robertson's calculation is inappropriate
14 because the Company, in fact, did not invest these
15 funds in the external decommissioning trust fund. In
16 fact, it utilized those funds to offset short-term
17 borrowing needs, because that would have been
18 inappropriate for the Company to invest these funds
19 because it really didn't know when the Commission was
20 ultimately going to issue its Order and when we would
21 have to ultimately pay those funds out.

22 So if you're doing a calculation like this,
23 which we do not agree with in the first place, but if
24 you're doing a calculation like this, you should look
25 to see what, in fact, the company is able to benefit

1 from the use of those funds, and that was the
2 short-term borrowing rate, which we pointed out in my
3 testimony, which Mr. Weiss will have the opportunity
4 to talk about the Company's calculation for the
5 Commission's consideration to the extent that they --
6 if they would disagree with our initial view that
7 there should be no adjustment in this area.

8 JUDGE REGISTER: Anything further,
9 Mr. Lerner?

10 MR. LERNER: No.

11 JUDGE REGISTER: I believe that finishes
12 Mr. Baxter's testimony on the issue of decommissioning
13 fund deposits. Thank you, Mr. Baxter. You can step
14 down for now.

15 And that takes us to Mr. Weiss. Your last
16 turn on the stand, Mr. Weiss. Mr. Lerner, you are
17 tendering Mr. Weiss; is that correct?

18 MR. LERNER: Yes.

19 JUDGE REGISTER: And are the -- do the
20 Intervenors have any questions of Mr. Weiss?

21 MS. SCHMIDT: We don't.

22 JUDGE REGISTER: Ms. Langeneckert?

23 MS. LANGENECKERT: No.

24 JUDGE REGISTER: And Mr. Dottheim, do you
25 have any questions for Mr. Weiss?

1 MR. DOTTHEIM: Yes. I have got one or two
2 questions on decommissioning funds. I also have
3 several questions regarding the work paper for the
4 correction that Mr. Weiss made.

5 JUDGE REGISTER: Exhibit 31 we marked
6 earlier. Okay. Yes. Thank you very much.
7 Mr. Weiss, are you about ready?

8 THE WITNESS: Yes, I am.

9 JUDGE REGISTER: Okay. Please proceed,
10 Mr. Dottheim.

11 MR. DOTTHEIM: Pardon me, Judge. My
12 question relates not to Exhibit 31 which was provided
13 in response to a request yesterday from Commissioner
14 Drainer.

15 It was the work paper that we requested
16 respecting when Mr. Weiss took the stand. I think we
17 started off earlier this afternoon and he provided an
18 explanation as to the basis for a change he made in
19 his rebuttal testimony.

20 JUDGE REGISTER: Okay. It wasn't an exhibit
21 we marked?

22 MR. DOTTHEIM: No. The work paper was not
23 marked as an exhibit.

24 JUDGE REGISTER: Okay. Let me stop then
25 real quick. One of the things I didn't have noted on

1 my exhibits list, when we marked Exhibit 31, I don't
2 have it noted here as -- I have it noted as being
3 offered, but I don't have it being admitted.

4 MR. DOTTHEIM: And that's because I had
5 requested to have an opportunity to visit internally
6 with someone who had reviewed that document that's
7 marked as an exhibit, and we may be able to address
8 that at this very moment.

9 JUDGE REGISTER: Okay.

10 MR. DOTTHEIM: We think we need to visit
11 with the Company about that document. At the moment
12 we would object to it, but if we're able to visit with
13 the Company, I'm not sure whether Mr. Baxter would be
14 the appropriate person, we may be able to address that
15 yet this evening.

16 JUDGE REGISTER: I'll leave that as offered,
17 and given that it was just requested and requested
18 yesterday by the Commissioners and provided today,
19 I'll leave that open. And I'd like for the Staff to
20 note in their Briefs at the very latest if you can
21 whether you still have an objection and what that
22 objection is, and then I'll rule in the Report and
23 Order as a late-filed -- as if it were a late-filed
24 exhibit. I'll reserve my decision on that document
25 then.

1 Okay. Thank you very much for taking care
2 of that. Please proceed, Mr. Dottheim, with your
3 examination.

4 GARY S. WEISS testified as follows:

5 CROSS-EXAMINATION BY MR. DOTTHEIM:

6 Q. Mr. Weiss, if I could direct you to page 8
7 of your rebuttal testimony, line 19.

8 JUDGE REGISTER: That's Exhibit No. 16; is
9 that right, Mr. Dottheim?

10 THE WITNESS: Are you looking at my revised
11 testimony that was filed this morning?

12 MR. DOTTHEIM: I'm sorry. Give me a moment,
13 please.

14 JUDGE REGISTER: Certainly. The revised
15 testimony that Mr. Weiss was referring to was actually
16 filed May 27th, and we made a correction this morning
17 to page 8.

18 MR. DOTTHEIM: Yes. Why don't I refer to
19 your Exhibit 16 that was offered this morning?

20 JUDGE REGISTER: The correction to page 8?

21 MR. DOTTHEIM: Yes.

22 JUDGE REGISTER: Okay. I didn't mark the
23 correction as an exhibit. The testimony, the rebuttal
24 testimony is Exhibit 16.

25 MR. DOTTHEIM: Exhibit 16, the correction.

1 JUDGE REGISTER: We're together.

2 BY MR. DOTTHEIM:

3 Q. If I can direct you to that last sentence in
4 the first answer of the correction, and by suggesting
5 that the decommissioning deposits be placed in rate
6 base, what rate are you suggesting should be assigned
7 to those funds?

8 A. The overall return of the Company. It's a
9 rate base item, and it gets factored into the return
10 on rate base.

11 Q. And do you know what that number is, the
12 return on rate base?

13 A. I don't think the return on rate base has
14 anything to do with the calculation, but I can give
15 you the return on rate base.

16 Q. Yes, if you would.

17 A. It's on my schedule. If you look at the
18 Revised Schedule 5, page 2 of 2, it shows return on
19 rate base of 10.780 percent.

20 Q. Okay. Thank you.

21 Mr. Weiss, isn't it true that all the funds
22 available to the Company are commingled and cannot be
23 segregated or specifically associated with any one
24 source or use?

25 A. I'm really not qualified to answer that

1 question. I don't work in that area.

2 Q. Is there someone here yet this evening who
3 is?

4 MR. BAXTER: I didn't really hear the
5 question, but all the eyes are looking at me.

6 JUDGE REGISTER: Let the record reflect that
7 Mr. Baxter will be the one that will probably answer
8 that question. Did you have another question,
9 Mr. Dottheim?

10 MR. DOTTHEIM: Other than that, no. My
11 questions go to the work paper that was provided
12 respecting one of the corrections that Mr. Weiss made
13 earlier today to his testimony.

14 JUDGE REGISTER: Okay. And if I recall, you
15 said that wasn't -- it was a work paper that they
16 provided to you that has not been marked as an
17 exhibit?

18 MR. DOTTHEIM: Correct.

19 JUDGE REGISTER: Okay. Proceed with your
20 questions.

21 BY MR. DOTTHEIM:

22 Q. Mr. Weiss, if I could direct you to page 9
23 of your testimony, the correction you made to line 13,
24 do you have a copy of the work paper that was provided
25 earlier today as support for that change?

1 A. Yes, I do.

2 Q. And the change I'm referring to is when
3 earlier today you changed the number \$216,504 to
4 \$196,847?

5 JUDGE REGISTER: Before you answer that,
6 where is that change?

7 MR. DOTTHEIM: That is on line 13.

8 JUDGE REGISTER: Of page?

9 MR. DOTTHEIM: Page 9 of Exhibit 16.

10 JUDGE REGISTER: Thank you. I'm with you.

11 THE WITNESS: I have that.

12 BY MR. DOTTHEIM:

13 Q. And you have the work paper also?

14 A. Yes, I do.

15 Q. The work paper, isn't that the same work
16 paper, except for the handwritten notations that now
17 appear on it, that the parties used, or when I say the
18 parties, the Staff and the Company used to value fuel
19 costs associated with the weather adjustments that
20 were calculated to determine the permanent rate
21 reduction?

22 A. That is correct.

23 Q. As part of that weather calculation, was any
24 change made to the level of energy sales on the
25 interchange market associated with the increase or

1 decrease in KWH sales to Union Electric consumers
2 during the third sharing period?

3 A. I don't follow the question.

4 Q. Okay. Let me ask it again. As part of that
5 weather calculation, was any change made to the level
6 of energy sales on the interchange market associated
7 with the increase or decrease in KWH sales to Union
8 Electric's customers during the third sharing
9 period -- excuse me -- during the first three sharing
10 periods, not the third, but the first three sharing
11 periods?

12 MR. LERNER: With all respect, I'd like to
13 object. I thought this line of questioning was going
14 to be about a narrow question concerning the
15 correction to the -- that one correction as a result
16 of that 216,190. I'm a little off, but --

17 MR. DOTTHEIM: It's a question of
18 consistency.

19 THE WITNESS: I'm not aware of any
20 adjustment. This is the way the fuel cost would be
21 calculated for the rate decrease for the impact of the
22 weather. These numbers are agreed to in the
23 Stipulation. So I don't -- the weather normalization
24 sales is what was done in the weather adjustment. It
25 doesn't impact the calculation of the average fuel

1 cost.

2 JUDGE REGISTER: Before you go on,
3 Mr. Weiss, you've got to wait for me to rule on the
4 objection when your attorney objects.

5 THE WITNESS: I'm sorry.

6 JUDGE REGISTER: I'm going to allow just a
7 little latitude. At this point in time we're all a
8 little tired, and I'm -- I'll ask Mr. -- so I will
9 overrule your objection, but I'll ask Mr. Dottheim to,
10 of course, keep it narrow and to the point for me,
11 please.

12 BY MR. DOTTHEIM:

13 Q. Was there any change in interchange sales as
14 a result of the change in KWH sales?

15 A. Are you referring to the --

16 Q. Pardon?

17 A. What are you referring to? You're referring
18 to the prior question about the weather?

19 Q. Yes. Yes, I am.

20 A. I guess I don't know what was done with the
21 weather adjustment. I was just given the impact to
22 calculate on the revenues and the fuel cost. The
23 weather normalized sales did change, but we did not
24 adjust interchange sales because of that.

25 MR. DOTTHEIM: Thank you. I have no further

1 questions.

2 JUDGE REGISTER: Okay. And I believe it's
3 Public Counsel's turn.

4 MR. COFFMAN: Yes, thank you.

5 CROSS-EXAMINATION BY MR. COFFMAN:

6 Q. Mr. Weiss, the funds associated with the
7 late deposits that are at issue here, the Company
8 earned a return on that money during the sharing
9 period, did it not?

10 A. I would say we had use of the funds during
11 the sharing period.

12 Q. And what was -- what was the Company's
13 actual achieved rate of return during the sharing
14 period?

15 A. There again, I refer you to Revised
16 Schedule 5, page 2 of 2, my Exhibit 16, which shows
17 the return on rate base being 10.780.

18 Q. And that is higher than 9.25 percent,
19 correct?

20 A. It's higher. It's not a comparable number,
21 but it's higher. They're not -- they're not the same
22 thing. One's a return on rate base and one's an
23 interest rate.

24 MR. COFFMAN: Thank you. That's all I have.

25 JUDGE REGISTER: All right. That completes

1 cross. I don't believe I have any questions for
2 Mr. Weiss at all, and so there shouldn't -- well, let
3 me just double check on recross. Intervenors?

4 MS. LANGENECKERT: No.

5 JUDGE REGISTER: Mr. Dottheim, do you have
6 any recross?

7 MR. DOTTHEIM: No.

8 JUDGE REGISTER: Then Mr. Coffman, you don't
9 need recross either. Mr. Lerner, redirect?

10 MR. LERNER: Very briefly.

11 REDIRECT EXAMINATION BY MR. LERNER:

12 Q. I'm looking at the work papers that
13 Mr. Dottheim questioned Mr. Weiss about that have on
14 the top calculation of average fuel costs.

15 Can you explain to me what you did here in
16 response to Mr. Rackers' statement in his surrebuttal
17 testimony that you weren't taking out the summer
18 months from your calculation of average fuel costs?

19 MR. DOTTHEIM: I object. I believe that's
20 beyond the scope of my questions to Mr. Weiss.

21 JUDGE REGISTER: Your response?

22 MR. LERNER: He did ask about this document.
23 He asked about the consistency of Mr. Weiss'
24 calculations in this document. I just want Mr. Weiss
25 to have an opportunity to explain what he did.

1 MR. DOTTHEIM: Mr. Weiss has already
2 explained what he did when he explained that earlier
3 this afternoon.

4 JUDGE REGISTER: Didn't he go through that
5 once before, Mr. Lerner?

6 MR. LERNER: I'll withdraw.

7 JUDGE REGISTER: Thank you. I appreciate
8 that. If it's on the record, we'll be reviewing the
9 transcript again and, of course, you know, we will
10 review that and that will be taken into consideration,
11 but I don't want to be cumulative at this hour.

12 Mr. Lerner's finished his redirect. Then
13 Mr. Weiss is finished testifying on this issue and
14 he's not scheduled to return. So he may be excused.

15 (Witness excused.)

16 JUDGE REGISTER: The next issue -- oh, I'm
17 sorry. Before we excuse Mr. Weiss, did you have some
18 questions on the time card issue that you wanted to
19 address with Mr. Weiss?

20 MR. COFFMAN: No.

21 MR. LERNER: Actually, can I go off the
22 record just a minute?

23 JUDGE REGISTER: Yes.

24 (Discussion off the record.)

25 JUDGE REGISTER: Back on the record.

1 Mr. Gruner is next on our list entering the
2 issue of injuries and damages, and we have admitted
3 his testimony. You've also been sworn already,
4 Mr. Gruner. So Mr. Dottheim, do you have anything for
5 Mr. Gruner or are you tendering the witness?

6 MR. DOTTHEIM: I tender Mr. Gruner for
7 cross-examination on injuries and damages.

8 JUDGE REGISTER: Thank you, Mr. Dottheim.
9 Public Counsel, Mr. Coffman just stepped away, and he
10 indicated that he had no questions for Mr. Gruner.
11 Intervenors, do you have any questions for Mr. Gruner?

12 MR. FULTON: None for Intervenors.

13 MS. LANGENECKERT: None, your Honor.

14 JUDGE REGISTER: And then that leaves UE.
15 Mr. Lerner, do you have questions for Mr. Gruner?

16 MR. LERNER: Yes.

17 MICHAEL G. GRUNER testified as follows:

18 CROSS-EXAMINATION BY MR. LERNER:

19 Q. Good evening.

20 A. Good evening.

21 Q. It's fair to say that the adjustments you're
22 sponsoring here tells a two-part procedure; is that
23 correct?

24 A. Yes.

25 MR. FULTON: I'm sorry. Could you speak up

1 just a little bit?

2 MR. LERNER: Sure.

3 BY MR. LERNER:

4 Q. I said it's fair to say that the adjustment
5 that you're sponsoring entails a two-part procedure;
6 is that correct?

7 A. Yes.

8 Q. Okay. The first part of that procedure
9 entails averaging the reserve balances in the first
10 two sharing periods --

11 A. Right.

12 Q. -- and then making an adjustment in the
13 third sharing period to bring it up to the average of
14 the first two sharing periods --

15 A. Yes.

16 Q. -- is that correct?

17 A. Yes.

18 Q. And then the second part of your procedure
19 is to compare UE's cash payments in the third sharing
20 period to the provision that it made and then to
21 reduce the provision to the cash payments; is that
22 correct?

23 A. Yes.

24 Q. Okay. Thank you. I'm going to come back to
25 the adjustment a little bit later, but I'd like now to

1 show you -- let me just -- first, has the Staff ever
2 proposed an adjustment to the Company, to the
3 Company's injuries and damages expenses?

4 A. I don't know. I know they have been
5 proposed. I don't know that they were proposed by
6 Staff. I can give you an example.

7 Q. Are you aware of any precedent in which
8 there has been an adjustment to the injuries and
9 damages expenses of the Company?

10 A. I believe in EC-87-114 Public Counsel made
11 an adjustment to the injuries and damages balance.

12 Q. And I think you are correct.

13 JUDGE REGISTER: I know the hour is getting
14 late, but I just want to remind everybody that, as we
15 get tired, we still don't have the sound system. So
16 we need to speak up a little bit and make sure the
17 court reporter hears you.

18 BY MR. LERNER:

19 Q. Let me -- I'm showing Mr. Gruner a copy of
20 the case that he just mentioned, which again is
21 EC-87-115.

22 JUDGE REGISTER: EC-87-115?

23 MR. LERNER: It's actually 114 and 115.

24 Excuse me.

25 JUDGE REGISTER: Is that right, Mr. Gruner?

1 THE WITNESS: Yes.

2 JUDGE REGISTER: Thank you.

3 BY MR. LERNER:

4 Q. And this is the only case that you are aware
5 of at this time, as you testify tonight, in which
6 there was an adjustment proposed to the Company's
7 injuries and damages expenses; is that correct?

8 A. To UE, yes.

9 Q. And could you direct me to the -- you
10 mentioned before that you were aware of a Public
11 Counsel adjustment in this case. If you could direct
12 me to that section that you were talking about.

13 A. I believe it's Section M.

14 Q. Section M?

15 A. Yeah, page 24 and goes to page 25.

16 Q. Thank you. I see. Section M; is that
17 correct?

18 A. Yes.

19 Q. Okay. Now, I'm looking now at the second
20 paragraph of that section of the last paragraph on
21 page 24.

22 A. Okay.

23 Q. According to that paragraph, Public Counsel
24 proposed an adjustment, but as a preliminary to doing
25 so it examined three categories of injuries and

1 damages expenses, that is workers' compensation,
2 medical claims and public claims. Do you see that,
3 sir?

4 A. Yes.

5 Q. Did you likewise analyze the trends in each
6 of those three subparts of injuries and damages
7 expenses?

8 A. We -- we analyzed them simply as one payout.

9 Q. So you didn't break out your analysis as
10 Public Counsel did here into three separate subparts?

11 A. No, we did not.

12 Q. Thank you.

13 Now, it's also fair to say that the
14 accounting methodology sponsored or proposed by the
15 OPC and adopted by the Commission in the '87 Order is
16 different from the methodology, the two-part
17 methodology that you are proposing in connection with
18 this case; is that correct, Mr. Gruner?

19 A. Yes, it is.

20 Q. Thank you. And also, just to be clear, the
21 '87 case was a complaint case; is that correct?

22 A. Yes, it was.

23 Q. And in a complaint case, in fact, if
24 you'll -- if you'll check the very beginning of it,
25 I'm looking actually at the first section, Roman I of

1 Findings of Fact on page 3. The complaint case as a
2 preliminary matter involved the formulation of the
3 test year; is that correct?

4 A. Yes.

5 Q. Okay. And I think Ms. Westerfield actually
6 testified earlier today that the sharing period is not
7 designed to be a test year. Do you recall her
8 testifying to that?

9 A. I don't believe I was present.

10 Q. Would you agree with that statement?

11 A. The sharing periods --

12 Q. Is not -- a sharing period is not designed
13 to be a test year. Would you agree with that
14 statement?

15 A. Yes, I would.

16 Q. Okay. Thank you.

17 Do you have the appendix to Mr. Brandt's
18 testimony with you, Mr. Gruner? It's the document
19 marked as Exhibit 13. If you don't, I have an extra
20 one.

21 JUDGE REGISTER: The Stipulations and
22 Agreement?

23 MR. LERNER: Yes. That's it.

24 BY MR. LERNER:

25 Q. If you could turn, please, to Tab A, and

1 Attachment C to Tab A, again the reconciliation
2 procedure. Sir, the phrase injuries and damages
3 appears nowhere in this document; is that correct?

4 A. No, it does not.

5 Q. Does the word normalize appear in this
6 document any place?

7 JUDGE REGISTER: You're referring just to
8 Attachment C; is that correct?

9 MR. LERNER: Yes.

10 THE WITNESS: Yes, it does.

11 BY MR. LERNER:

12 Q. And where is that?

13 A. At least once on -- under Section C, first
14 bullet point.

15 Q. And that is normalize the expense of
16 refueling the Callaway nuclear power plant to provide
17 an annual expense level; is that correct?

18 A. Yes.

19 Q. So there is a normalization expense in the
20 reconciliation procedure, right?

21 A. Yes, there is.

22 Q. But there is no injuries and damages
23 normalization adjustment in the reconciliation
24 procedure; is that correct?

25 A. No, there's not.

1 Q. When the parties to the agreement, you would
2 agree with me, intended to allow for a normalization
3 adjustment, they included it in the agreement?

4 MR. DOTTHEIM: I object.

5 MR. FULTON: Calls for speculation.

6 JUDGE REGISTER: All right. Everybody over
7 here stop. I heard yours first, Mr. Dottheim. Let's
8 hear your objection.

9 MR. DOTTHEIM: It's the same as
10 Mr. Fulton's, calls for speculation regarding the
11 intent of the parties. I think Mr. Gruner's already
12 testified that he wasn't in the employ of the
13 Commission at the time that this document was
14 executed.

15 JUDGE REGISTER: Anything to add,
16 Mr. Fulton?

17 MR. FULTON: No.

18 JUDGE REGISTER: Mr. Lerner, do you want to
19 respond?

20 MR. LERNER: I'll just withdraw the
21 question.

22 JUDGE REGISTER: Withdraw the question.
23 Thank you.

24 BY MR. LERNER:

25 Q. And would you agree with me that the

1 agreement seems to reflect a great deal of effort?

2 A. I don't know.

3 Q. Okay. If I could direct your attention to
4 the third adjustment under 2C, which says eliminate
5 \$250,000 in good will advertising. Do you see that?

6 A. I see that, yes.

7 Q. That's a relatively small amount compared to
8 the income of UE; is that correct?

9 A. I honestly don't know. I don't know about
10 their good will advertising.

11 Q. I'm actually looking at the dollar value,
12 \$250,000. That's a relatively small amount compared
13 to UE's income; is that correct?

14 A. It is compared to UE's income, but I don't
15 know what UE's good will advertising is. That may be
16 all of it for all I know. That may be 100 percent of
17 it. I don't know what that is --

18 Q. Okay.

19 A. -- that balance is.

20 Q. I'd like to turn now to the adjustment that
21 you're actually sponsoring today.

22 A. I'm sorry. Where are you now?

23 Q. Right here.

24 A. You're sure?

25 (Laughter.)

1 JUDGE REGISTER: Subject to dispute among
2 the rest of the parties. You have another question,
3 Mr. Lerner?

4 MR. LERNER: Yes.

5 BY MR. LERNER:

6 Q. The first part of your adjustment entails
7 taking the average of the reserve balances in the
8 first two sharing periods?

9 A. Yes.

10 Q. Okay. Did you do any historical study to
11 determine whether or not the reserve balances in those
12 two sharing periods was typical for UE?

13 A. Yes, I have.

14 Q. Did you do that before you actually
15 sponsored the adjustment?

16 A. No. I did that, I believe, the weekend
17 after I had my deposition.

18 Q. Okay. But you hadn't done it before
19 sponsoring the adjustment; is that fair?

20 A. No, but I would be glad to give you what
21 those balances are if you'd like.

22 Q. No, thank you.

23 Now, I think you say on page 6, line 21,
24 that this portion of your adjustment is designed to
25 bring the reserve to an appropriate level. Do you see

1 where I read from?

2 A. Yes, I do.

3 Q. How do -- what do you mean by appropriate?

4 A. In this case, we're referring to an average
5 balance for the first two sharing periods, which we
6 feel is -- are the periods closest to the third
7 sharing period and, therefore, would be -- that would
8 be the best period or best two years to use to compare
9 them to.

10 Q. I'd like to turn now to the second part of
11 your adjustment, which is again comparing the cash
12 payments in the third sharing period to the provision
13 and then reducing the provision to the level of the
14 cash payment. That is the second part of the
15 adjustment; is that correct?

16 A. Yes, it is.

17 Q. Now, you are not questioning that there were
18 an exceptionally high number of claims against UE in
19 the third sharing period; is that right?

20 A. No.

21 Q. And, in fact, the Staff did nothing to
22 dispute or verify the Company's statement that it had
23 had a high number of claims in that sharing period; is
24 that right?

25 A. Nothing to dispute it, no.

1 Q. Okay.

2 A. We took the Company's word that they had a
3 large number. We did ask for a DR No. 67 which
4 requested a breakdown of the cases that were settled
5 and cases that were pending during the third sharing
6 period.

7 Q. And what did you find?

8 A. Well, there were cases pending, large cases
9 pending and large cases that had been settled.

10 Q. You satisfied yourself that the Company was
11 accurate when it told you they had a high number of
12 claims and high number of --

13 A. Yes, we did.

14 Q. Yes?

15 A. Yes.

16 Q. And just to be clear, you're not challenging
17 the prudence of any of the expenses incurred by the
18 Company in connection with injuries and damages; is
19 that right?

20 A. Prudence of the -- by prudence of the -- are
21 you referring to the actual payouts? Did we believe
22 that they paid out on the claims that they settled or
23 were --

24 Q. Let me reformulate my question. What does
25 prudence mean in the context of ratemaking

1 proceedings?

2 A. Prudence would be conservatism, care, taking
3 care and acting cautiously and, for lack of a better
4 word, prudently.

5 Q. And did the Company act prudently in its
6 treatment of its injuries and damages expenses in the
7 third sharing period?

8 JUDGE REGISTER: Are you talking the actual
9 amount of damages incurred?

10 MR. LERNER: The amounts it paid, the
11 amounts it provided for for injuries and damages in
12 the third sharing period.

13 THE WITNESS: Which amount are you -- the
14 actual expense provisioned?

15 BY MR. LERNER:

16 Q. The provision.

17 A. The cash payment?

18 Q. The provision.

19 A. Okay. The reason we did our reduction as I
20 said was two-fold. First because --

21 JUDGE REGISTER: Wait a minute. I'm going
22 to stop you, Mr. Gruner. I know it's late and we're
23 all tired. When you say the provision, are you saying
24 the actual 17 million that was paid out? Isn't that
25 what you testified, Mr. Gruner, the actual paid out is

1 17,160,897?

2 MR. LERNER: That's not what I meant by
3 provision.

4 JUDGE REGISTER: What are you asking?

5 MR. LERNER: The 20 million that was
6 actually provided for, expensed in that third sharing
7 period.

8 JUDGE REGISTER: Okay. Thank you very much.
9 Now, Mr. Gruner, you may continue your answer. I'm
10 sorry.

11 THE WITNESS: We won't -- first of all, part
12 of that 20 million includes an estimate of future
13 claims payments, which we feel is speculative in that
14 it is very hard for anyone to predict how jurors are
15 going to decide in a trial that's going to take place
16 sometime in the future.

17 The second reason we no longer want to use
18 their estimate is because, in addition to that, there
19 is a true-up for past estimates that have been
20 incorrect in the past, and they must also be included
21 in the estimate -- or the expense. I'm sorry.

22 BY MR. LERNER:

23 Q. You agree that the Company conforms with
24 accounting practices of GAAP; is that correct?

25 A. We have never disputed they follow GAAP.

1 Q. And GAAP requires companies to accrue as an
2 expense probable contingent liabilities that are
3 reasonably estimable; is that correct?

4 A. Yes.

5 Q. In connection with litigation claims, they
6 are required to accrue as an expense probable claims
7 that are reasonably estimable; isn't that right?

8 A. Yes, they are. And we feel that in this
9 situation GAAP is working at cross purposes with
10 ratemaking policy in that, in this case, by including
11 what we consider to be speculative estimates, it is
12 reducing ratepayers' credits by including those.

13 Q. Why do you say that these estimates are
14 speculative?

15 A. I think I already explained that.

16 Q. Let me ask you this. Do you think there's a
17 difference between speculative estimates and good
18 faith estimates based on a history of looking at how
19 much cases settled for?

20 A. I think when you're trying to predict how a
21 case that's going to be settled in the future would --
22 by its very nature it is speculative. I'm not saying
23 that they're not doing a good job or the best job
24 possible.

25 I'm saying the Staff no longer wants to rely

1 on those estimates partly because of the problems
2 we've had with so many large claims in the third
3 sharing period.

4 Q. Okay. Now, as it happens, in the third
5 sharing period there was a provision for \$17 million
6 and a cash payment -- excuse me. There was a
7 provision of \$20 million roughly and a cash payment of
8 roughly 17 million; is that correct?

9 A. Okay. The cash payment was 17 million?

10 Q. Roughly 17.

11 A. And the provision or expensed was
12 20 million, yes.

13 Q. Now, those numbers could have been flipped;
14 isn't that right?

15 A. It is possible.

16 Q. And in that case, applying the Staff
17 methodology would have had a \$3 million bonus as
18 opposed to a \$3 million penalty; isn't that right?

19 MR. DOTTHEIM: Argumentative. I object.
20 The question is argumentative.

21 MR. LERNER: I'm trying to explore what the
22 ultimate Staff methodology is, your Honor, because
23 they're proposing adjustment one way. I want to see
24 whether the adjustments fly the other way also.
25 Frankly, the Company needs to know that when it fills

1 out its earnings reports.

2 Your Honor, it also, I think, is very
3 important in terms of illuminating what we think is, I
4 don't want to mince words, I mean, the perverse and
5 strange nature of this adjustment. I mean, it's never
6 been seen before. We've never seen it. We just want
7 to understand what it is.

8 And we think if it's illuminated and shown
9 to be what it is, we don't think it would pass muster.
10 So I think this question illuminates that. It's a
11 simple question.

12 MR. DOTTHEIM: With a characterization of
13 penalty or bonus?

14 MR. LERNER: I can rephrase it if you'd
15 like. I'm happy to do that.

16 JUDGE REGISTER: Well, I'm going to overrule
17 it and allow you some latitude, but this is this
18 question. You don't have any more like this?

19 MR. LERNER: Okay. If I can get an answer
20 to this one, the end of this one.

21 JUDGE REGISTER: Do you remember the
22 question, Mr. Gruner?

23 THE WITNESS: Could you restate or --

24 BY MR. LERNER:

25 Q. I'll try. In the third sharing period, just

1 to go back, there's a cash payment, cash out the door
2 of roughly \$17 million and a provision, the amount
3 provided as an expense put in the reserve of
4 20 million?

5 A. Right.

6 Q. Okay. Now, it's entirely possible that
7 those numbers at some point could be reversed, that is
8 you could have a cash payment of 17 million and --
9 excuse me -- a cash payment of 20 million and a
10 provision of 17 million. The effect would simply be a
11 reduction in the reserve in the difference of
12 \$3 million.

13 Now, the methodology being proposed by the
14 Staff penalizes the Company for the \$3 million
15 difference between the \$17 million cash payment and
16 the \$20 million provision. My question goes to what
17 if those numbers are reversed, does the Company get a
18 \$3 million bonus?

19 MR. DOTTHEIM: I object. I thought,
20 Mr. Lerner, you were going to rephrase the question.

21 MR. LERNER: The question was overruled.

22 MR. DOTTHEIM: I'm sorry.

23 JUDGE REGISTER: Was that the same
24 objection?

25 MR. DOTTHEIM: Well, I -- yes, it was the

1 same objection, and Mr. Lerner said he just rephrased
2 the question, but then yes, you overruled it. I'm
3 sorry.

4 JUDGE REGISTER: That's fine, Mr. Dottheim.
5 No problem. Can you answer the question, Mr. Gruner?

6 THE WITNESS: I have been told by members of
7 senior staff that if this policy is accepted by the
8 Commission, it would be, how would you say, applied
9 variable in both cases that you've mentioned where the
10 payment is higher than the expense and when the
11 expense is higher than the payment. It would be
12 applied consistently.

13 MR. LERNER: Okay, sir. Thank you.

14 JUDGE REGISTER: I don't think I have any
15 questions of Mr. Gruner.

16 MR. LERNER: I'm not done yet.

17 JUDGE REGISTER: Oh, you're not?

18 MR. LERNER: I just meant in terms of the
19 follow-up to that, I didn't want to stretch your
20 latitude.

21 JUDGE REGISTER: Don't turn away too
22 quickly. You may lose your place.

23 MR. LERNER: I'm almost done.

24 JUDGE REGISTER: All right. Thank you,
25 Mr. Lerner. The time is going on eight o'clock. I'd

1 appreciate if you could finish up.

2 Off the record.

3 (Discussion off the record.)

4 JUDGE REGISTER: Back on the record.

5 Proceed, Mr. Lerner.

6 BY MR. LERNER:

7 Q. Just briefly on the speculative point. It
8 is true that GAAP only allows companies to accrue an
9 expense for contingent liabilities that are probable,
10 not ones that are reasonably possible or remote; is
11 that correct?

12 JUDGE REGISTER: If you know.

13 THE WITNESS: Probable or --

14 BY MR. LERNER:

15 Q. FAS-5 distinguishes between three sort of in
16 terms of the spectrum of possibilities?

17 A. Okay. Referring to?

18 Q. Probable, reasonably possible and remote.
19 And in terms of GAAP only allows companies to accrue
20 as an expense probable contingent liabilities, not
21 reasonably possible or remote?

22 A. Right.

23 Q. Isn't that right?

24 A. I believe so.

25 Q. Okay. And Price Waterhouse signs off on

1 everything, on UE's Annual Reports and confirms that
2 their financial statements are consistent with GAAP,
3 right?

4 A. Is Price Waterhouse their --

5 Q. Yes, outside auditor.

6 A. Yes. Then I imagine they do sign off on
7 their opinion or whatever.

8 Q. And again, in terms of UE's experience
9 evaluating how much claims are going to be, you
10 acknowledge, I think you mention, that you're not
11 questioning their good faith and their best efforts in
12 determining how much claims will in the future settle
13 for or jury verdicts go for; is that correct?

14 A. I'm sorry. Can you repeat that?

15 Q. Sure. And I think -- I don't want to
16 characterize your previous testimony. So you be sure
17 to correct me.

18 I think before you testified, and I just
19 want to see if I can expand on this, that when UE,
20 when a company evaluates the future costs it will face
21 in terms of jury verdicts or settlement in litigation,
22 it does its best effort and it does it in good faith
23 and it has a history of doing so?

24 A. I believe so, yeah.

25 Q. And would you -- well, wouldn't it be your

1 view that the Staff's adjustment, proposed adjustment
2 to injuries and damages expenses, would it be your
3 view that it amends the reconciliation procedure or
4 the Stipulation and Agreement?

5 A. Reconciliation procedure as far as
6 Attachment C?

7 Q. Yes.

8 A. No. I believe there is a provision 2G which
9 would allow us to make this adjustment.

10 Q. Okay. And you would agree that your
11 adjustment is at least in part, the first part of it
12 at least is a normalizing adjustment; is that correct?

13 A. It's the average of the first two sharing
14 periods, average balance, average reserve balance of
15 the first two sharing periods.

16 Q. And it has the flavor of a normalizing
17 adjustment; would you agree?

18 MR. DOTTHEIM: I object. Argumentative.

19 MR. LERNER: I was asking a question. Is
20 that a normalizing type adjustment?

21 JUDGE REGISTER: Okay. Don't answer the
22 question. Do you still have an objection?

23 MR. DOTTHEIM: If he can rephrase that, I
24 think we may have just done that.

25 JUDGE REGISTER: Okay. So the question was

1 withdrawn and the objection is -- and Mr. Lerner
2 already rephrased it himself, so proceed.

3 BY MR. LERNER:

4 Q. Is that a normalization type adjustment?

5 A. Yes, it is.

6 Q. Okay. Thank you.

7 JUDGE REGISTER: Somebody take Mr. Baxter's
8 paper away from him.

9 BY MR. LERNER:

10 Q. Is the method that you're proposing in terms
11 of making adjustments to the Company's injuries and
12 damages expenses on a going-forward basis -- on a
13 going-forward basis, would that be an amendment to the
14 agreement?

15 MR. DOTTHEIM: I object. Asked and
16 answered.

17 MR. LERNER: It's different because now I'm
18 asking on a going-forward basis.

19 MR. DOTTHEIM: I object. Mr. Gruner's
20 answered that question by reference to Section 2G.

21 JUDGE REGISTER: Any response to that,
22 Mr. Lerner?

23 MR. LERNER: I think it's a different --
24 points in a different direction, because my question,
25 the previous testimony had focused on the application

1 of this adjustment to the third sharing period. I
2 never asked Mr. Gruner frankly about on a going-
3 forward basis what is the basis for his adjustment.
4 It's never been asked.

5 JUDGE REGISTER: You're now asking him to
6 look at 96-149 and the attachment?

7 MR. LERNER: Well, no. Well, I mean, the
8 reconciliation procedure is roughly identical.

9 JUDGE REGISTER: Well, we're not going
10 forward at the end of this period, right?

11 MR. LERNER: I agree. But my point was, I
12 think in prior testimony Mr. Gruner said that if
13 this -- this adjustment, this methodology they're
14 proposing is not simply to the third sharing period,
15 not retrospective. They're hoping to adopt it and
16 incorporate it into the future, I think, in terms of
17 how UE is supposed to do its accounting for its
18 injuries and damages expenses.

19 So my question would be, if I could ask it,
20 is this not somehow being incorporated into the
21 reconciliation procedure for future earnings
22 calculations?

23 JUDGE REGISTER: That being his question,
24 Mr. Dottheim, does your objection still stand?

25 MR. DOTTHEIM: My objection still stands.

1 JUDGE REGISTER: And your objection was?

2 MR. DOTTHEIM: That the question's been
3 asked and answered. I don't believe that his initial
4 question was limited to the third sharing period.

5 JUDGE REGISTER: I'm going to overrule the
6 objection and allow the witness to answer the
7 question.

8 THE WITNESS: Can you repeat the question?

9 MR. LERNER: Sure.

10 JUDGE REGISTER: It doesn't need all the
11 explanation you gave me.

12 BY MR. LERNER:

13 Q. It's hard to say it simply. The method for
14 adjusting injuries and damages expenses, the Company
15 has proposed for the third sharing period and now
16 proposes on a going-forward basis in the future, the
17 Staff -- excuse me -- the Staff proposal. Does that
18 represent an amendment to the agreement?

19 A. No, it does not. It's covered under G3. I
20 think what you're asking is, you asked me if the
21 Company -- you said the Company was concerned about
22 how this would be handled, would it be handled on a
23 consistent basis, and I said yes, it would. The
24 adjustment can be made under 2G of Attachment C.

25 JUDGE REGISTER: Mr. Lerner, anything

1 further?

2 MR. LERNER: Thank you.

3 JUDGE REGISTER: Mr. Baxter, just for the
4 record, you're free to give your counsel any questions
5 you'd like.

6 MR. BAXTER: I'm toast. I'm done.

7 JUDGE REGISTER: All right. So that is
8 cross-examination. No, that was --

9 MR. LERNER: That was cross-examination.

10 JUDGE REGISTER: I'm sorry. That's right.
11 I tried to take your place earlier, didn't I? Now I
12 don't think I have any questions for you, Mr. Gruner.
13 I think your testimony is clear to me. And so we will
14 go back to recross, Mr. Coffman?

15 MR. COFFMAN: No questions.

16 JUDGE REGISTER: Intervenors?

17 MS. SCHMIDT: No questions.

18 JUDGE REGISTER: And since there haven't
19 been any recross since your cross, you don't have
20 anything further, Mr. Lerner.

21 MR. LERNER: No.

22 JUDGE REGISTER: And redirect, Mr. Dottheim?

23 MR. DOTTHEIM: No redirect.

24 JUDGE REGISTER: Thank you, Mr. Dottheim.

25 Mr. Gruner, you have completed your testimony on this

1 issue, and as I understand you're not going to be
2 called to testify any further. You are released.

3 THE WITNESS: Thank you.

4 JUDGE REGISTER: Thank you, Mr. Gruner. I
5 appreciate you sticking around.

6 THE WITNESS: I'm sorry?

7 JUDGE REGISTER: I do appreciate your
8 sticking around. Thank you very much.

9 (Witness excused.)

10 JUDGE REGISTER: Okay. Mr. Baxter is our
11 last witness. I'm looking for the other shoe to drop
12 about that time. Would you resume the stand for the
13 last and final time, Mr. Baxter.

14 THE WITNESS: Yes, thank you, your Honor.

15 JUDGE REGISTER: Mr. Lerner, do you tender
16 your witness for cross-examination?

17 MR. LERNER: I do.

18 JUDGE REGISTER: Thank you. Intervenors, do
19 you have any questions for Mr. Baxter on injuries and
20 damages?

21 MS. SCHMIDT: No questions.

22 JUDGE REGISTER: Okay. Thank you,
23 Ms. Schmidt. And just for the record, all the other
24 Intervenors are gone. Mr. Dottheim?

25 MR. DOTTHEIM: Yes, I have some questions.

1 JUDGE REGISTER: All right. Thank you,
2 Mr. Dottheim.

3 WARNER L. BAXTER testified as follows:

4 CROSS-EXAMINATION BY MR. DOTTHEIM:

5 Q. Mr. Baxter, is it true to state that under
6 UE's practices injuries and damages expense consists
7 of two separate components, one an estimate of future
8 claims payouts that will be incurred by UE, and two a
9 reconciliation of actual claims paid to the previous
10 estimates booked to expense?

11 A. Mr. Dottheim, I'm sorry. It must be getting
12 late. Would you please repeat the question?

13 Q. Certainly. Would it be true to state that,
14 under the Company's practices, injuries and damages
15 expense consists of two separate components, one an
16 estimate of future claims payouts that will be
17 incurred by the Company, and two, a reconciliation of
18 actual claims paid to the previous estimates booked to
19 expense?

20 A. If I can try and address that in two parts?

21 Q. Yes.

22 A. I believe you said the first part was that
23 our -- I believe your question is, does the expenses
24 that we recognize in our financial statements or in
25 our books and records consist of estimates of future

1 claims. That is not true.

2 Q. Future claims payouts?

3 A. Future claims payouts. Based upon claims
4 which have been incurred as of the particular balance
5 sheet date, we do not estimate future claims which
6 have not been incurred yet.

7 Q. I'm sorry. Are you asking me?

8 A. No. That was a statement. And then
9 secondly, I'm not sure I understand your point about
10 the reconciliation. I'm not sure that's very clear to
11 me. I'm not sure how that transposes into accounting
12 and how we book our expenses.

13 Q. Okay. Well, let's move on. We may come
14 back to that.

15 A. Sure.

16 JUDGE REGISTER: Can I follow up on that?

17 MR. DOTTHEIM: Certainly.

18 JUDGE REGISTER: Does that mean that you do
19 not consider what you paid out previous years, in the
20 previous year when you're making your estimate of what
21 you're going to be needing in the future?

22 THE WITNESS: Let me try and address that,
23 your Honor. Our expense that we reflect for a
24 particular claim that's actually been incurred would
25 not necessarily consider items that we've paid out in

1 the past for that particular claim because perhaps
2 that claim hasn't been settled. We may not have made
3 any payouts for that particular claim.

4 But when we do estimate a claim for a
5 particular item, we would look to past history for
6 similar claims to see what kind of liability we
7 believe we should record and, therefore, corresponding
8 expense for a similar claim. I don't know if I
9 answered your question.

10 We do consider past history in our
11 adjustments, among other things, but that would be one
12 component.

13 JUDGE REGISTER: So it's not just a
14 reconciliation dollar for dollar connecting them to
15 the item that you estimated in the previous year, but
16 it's a consideration based on what the previous claims
17 have brought?

18 THE WITNESS: That is correct.

19 JUDGE REGISTER: Okay.

20 THE WITNESS: I believe that's fair.

21 JUDGE REGISTER: That's the only
22 clarification I wanted on that. Mr. Dottheim, please
23 proceed.

24 BY MR. DOTTHEIM:

25 Q. Mr. Baxter, why did the injuries and damages

1 expense increase significantly in the third sharing
2 period?

3 A. I believe in my rebuttal testimony I state
4 on page 35, lines 4 through 8, I state what the
5 primary causes were for that increase.

6 JUDGE REGISTER: Okay. That's Exhibit 14,
7 page what?

8 THE WITNESS: Page 35, lines 4 through 8.

9 JUDGE REGISTER: And can you tell
10 Mr. Dottheim what those are?

11 THE WITNESS: Sure. I'm sorry. My
12 testimony states that first during the period the
13 Company settled a high number of claims, some of which
14 were very large. Many of these claims were settled
15 for amounts in excess of the original reserve
16 established. In addition, there was an increase in
17 occurrences that the Company believes will result in
18 payments by the Company.

19 JUDGE REGISTER: Was that in answer to the
20 question you asked, Mr. Dottheim?

21 MR. DOTTHEIM: Yes.

22 BY MR. DOTTHEIM:

23 Q. Well, let me ask, is also part of that
24 explanation the last sentence which, I'm sorry, I
25 don't know what you read?

1 A. Oh, excuse me a moment. Yes, that would be
2 a fair statement as well, Mr. Dottheim. Would you
3 like me to read it into the record?

4 JUDGE REGISTER: If you'd just tell me which
5 lines.

6 THE WITNESS: It's lines 8 through 11. I
7 should have went all the way down to the bottom.

8 JUDGE REGISTER: I'll leave that up to
9 Mr. Dottheim. I see where you're looking at.

10 BY MR. DOTTHEIM:

11 Q. I don't know that you need to read it into
12 the record.

13 A. That's fine.

14 Q. When a claim is made against a company in a
15 lawsuit, what GAAP pronouncement governs the financial
16 reporting treatment of that claim?

17 A. Financial Accounting Standards No. 5.

18 Q. And Financial Accounting Standards No. 5
19 utilizes the terms probable, reasonably possible and
20 remote?

21 A. Yes, it does.

22 Q. And what are the distinctions between the
23 three?

24 A. Probable, there's a high degree of
25 likelihood that a particular event will occur. And

1 then if you go to the other end, remote, there's a
2 very low likelihood that that will occur. In the
3 middle, then, is reasonably possible.

4 Q. And under FAS No. 5, when should the Company
5 accrue an expense associated with a current claim
6 against it?

7 A. They should accrue it when they deem that
8 that future claim or the amount for that claim is both
9 probable and reasonably estimable.

10 Q. That is that the payout is reasonably
11 estimable?

12 A. The payout is reasonably estimable and, if I
13 may, if there is a range for that particular payout
14 and there is no better number within that range which
15 can be estimated, then you generally accrue the
16 minimum amount of that range.

17 Q. How does the Company explain -- or could you
18 explain how the Company determines whether a claim
19 payment is probable versus reasonably possible?

20 A. It's done in consultation with legal
21 counsel. We talk through the claims with legal
22 counsel. We have a process whereby the claims are
23 identified. We have a system which makes sure that we
24 identify all the appropriate claims.

25 Then on a periodic basis we will go through

1 the particular claims. I'll sit down with counsel and
2 discuss the nature of those claims. They'll give me
3 their view. It's not only just in-house but
4 potentially external counsel. And then from there, we
5 apply the appropriate standard.

6 Q. Under some circumstances can insurance
7 companies pay all or a portion of claims payouts
8 ordered against the Company?

9 A. Certainly a portion. I'd have to know if
10 our specific policy would be such that they in all
11 cases would pay 100 percent or whether there is a
12 deductible. That I'm not absolutely certain about.
13 But certainly a portion, absolutely.

14 Q. What is the practice of releasing insurance?

15 JUDGE REGISTER: Mr. Dottheim, could you
16 repeat the last two words, releasing?

17 MR. DOTTHEIM: Releasing insurance.

18 JUDGE REGISTER: Insurance?

19 MR. DOTTHEIM: Yes. I'm sorry.

20 THE WITNESS: In the accounting sense or --

21 BY MR. DOTTHEIM:

22 Q. In a sense of what the practice itself is as
23 far as releasing an insurance company from any
24 obligation it may have or --

25 A. The practice is one which I do not get

1 involved with when our company or to what extent
2 releases insurance. That's not my primary
3 responsibility.

4 Q. Okay. And as a consequence, you couldn't
5 answer why that is done?

6 A. That's correct.

7 Q. What is the impact on injuries and damages
8 expense if the Company releases insurance on a claim
9 which later results in an adverse judgment against the
10 Company?

11 A. If the -- I'm not sure what the impact would
12 be, Mr. Dottheim. I guess it would depend on the
13 facts and circumstances. It would depend upon the
14 nature of the claim that we ultimately pay out and the
15 amount of insurance that we have to pay to maintain.

16 Q. Would the expense be higher than it
17 otherwise would be?

18 A. Maybe. Maybe not. I do not know.

19 Q. Was insurance released by the Company on any
20 claims payments that were made in the third sharing
21 period?

22 A. Mr. Dottheim, I believe it's possible. I
23 can't say for absolute certain, but it is possible
24 that that happened.

25 Q. Mr. Baxter, would it be accurate to say that

1 one reason why injuries and damages expense was at the
2 level it was during the third sharing period was that
3 UE was not previously able to accurately estimate the
4 amount of actual settlements that were made in the
5 period?

6 A. I wouldn't characterize it that way. I
7 think facts and circumstances change, as I'm sure you
8 know, Mr. Dottheim, as cases go on you learn new
9 facts. And so I wouldn't say that our inability to
10 predict is a function of our inability to predict, but
11 it may be a function of facts and circumstances
12 changing.

13 MR. DOTTHEIM: If I could have a moment,
14 please.

15 JUDGE REGISTER: Certainly.

16 MR. DOTTHEIM: Thank you, Mr. Baxter. I
17 have no further questions.

18 JUDGE REGISTER: Okay. Mr. Coffman?

19 MR. COFFMAN: No questions.

20 JUDGE REGISTER: Then that completes the
21 cross-examination. I do have some questions
22 Mr. Baxter on this issue.

23 QUESTIONS BY JUDGE REGISTER:

24 Q. If I understand this expense correctly, it
25 is actually created as something as a reserve for --

1 let me stop there. It's something of a reserve
2 account; is that correct?

3 A. The liability is sort of the reserve
4 account, and I'm not going to try and confuse you with
5 all the accounting terms, but it does get somewhat
6 confusing.

7 If we believe, for instance, that a claim
8 that has been brought to us will result in a future
9 payment and it meets all the accounting standards,
10 then what we end up doing, we establish a liability at
11 that time. At the same time we'll establish a
12 corresponding expense.

13 Q. And that's a future payment to be paid in
14 the next year?

15 A. Well, it could be next month. There's no --
16 it just depends. If today I'm asked to go back to my
17 office and sit down with your counsel and say, okay,
18 let's work on injuries and damages issues, and we
19 would go through and we'd assess claims that are in
20 existence right now.

21 And in consultation with counsel we'd decide
22 that we have to establish for this one particular
23 claim a \$100,000 reserve or liability because it's our
24 expectation, based upon the facts and circumstances
25 available to us, that we'll make a future payment.

1 We'll record an expense for \$100,000 and a liability
2 at the same time.

3 It could be literally a month later, the
4 next day, say, or next week that that claim may be
5 settled in litigation.

6 Now, let's say -- if we continue with that
7 same example, and let's say it's outstanding for six
8 months and more facts and circumstances come to our
9 attention about that particular claim. Now we think
10 that, based upon more facts as discovery goes along,
11 it should really be \$500,000.

12 What we would do at that point, then, is
13 increase our liability, our expected liability by
14 \$400,000, and at the same time we would record an
15 expense for \$400,000. So in total for that claim we
16 have a liability for 500,000 and an expense for
17 \$500,000.

18 So let's say, then, two months later we
19 settle that particular claim. The process is finally
20 done and we settle that claim for, say, \$300,000.
21 What ends up happening then is that we would -- we
22 have a liability on our books for \$500,000. We only
23 have to pay \$300,000. And so we would remove the
24 liability, and then we have \$200,000 which is left
25 over, and essentially that offsets expense. Meaning

1 that we over -- we had overestimated.

2 And similarly, it could go just the opposite
3 way. If when ultimately upon settlement it was an
4 additional \$200,000 over the \$500,000 we had
5 estimated, then what we end up doing is we set up
6 the -- we actually just make a cash payment for
7 \$700,000 and we increase the expense for \$700,000.
8 That's how it works.

9 Q. Okay. And that doesn't necessarily limit
10 that expense as you're looking at for the next year?

11 A. Oh, no. No. I mean, for instance, we have
12 cases which go on beyond a year. I mean, that's --

13 Q. You have as expense a case you think may
14 take another 18 months to settle and --

15 A. Yes.

16 Q. -- and you have an estimate on that case on
17 what you think it will eventually cost, and that is
18 estimated and added to the expense?

19 A. Yes. And it's appropriate under generally
20 accepted accounting principles and accounting
21 principles in general for accrual basis accounting
22 that even though the payment's going to be made 18
23 months in the future, it's a known occurrence today,
24 it's based upon a situation which happened in the
25 past, and it is therefore our obligation to record

1 that expense in the current period in which that
2 either the claim occurred or more facts and
3 circumstances came to our attention as opposed to
4 waiting 'til the end, which would really be cash basis
5 accounting.

6 Q. So the account that you had, the expense for
7 injuries and damages, as the Company has estimated
8 that is based on actual claims that are known now?

9 A. That is correct.

10 Q. That are reasonably estimable?

11 A. Yes. Tough word to say, but that's
12 accurate.

13 Q. And that are probable or have a high degree
14 of likelihood that UE will have to pay them?

15 A. That is correct.

16 Q. And in your testimony, I think that we were
17 looking at page 35 in the testimony that you gave
18 earlier when talking to Mr. Dottheim. You were
19 talking about the increase that the Company saw during
20 the third year sharing period?

21 A. That's correct.

22 Q. And that increase that you now see in the
23 third year sharing period, can you tell me what that
24 is?

25 A. Yeah. It's due to probably two or --

1 Q. No, not what it's based on. What's the
2 amount?

3 A. Oh, what the number is?

4 Q. Yeah.

5 A. The increase in -- if you look down below on
6 my schedule in the table, the increase in injuries and
7 damages expense during the third sharing period went
8 up to \$20 million from 1997 numbers.

9 Q. Okay. That's the table that begins on
10 line 15 of page 35?

11 A. That is correct.

12 Q. And your testimony is Exhibit 14. Okay.
13 And that increase, it is your testimony, is based in
14 some part on the high number of claims that you had in
15 this last year?

16 A. In part. Claims meaning occurrences,
17 something occurred which resulted in us believing that
18 we are going to have a future claim.

19 Q. Okay. Claims, not payouts? Claims filed,
20 not payouts?

21 A. That's correct.

22 Q. All right. I have a better understanding of
23 that. Thank you.

24 A. In addition, if I may, your Honor.

25 Q. Please do.

1 A. If you recall the example I said before, the
2 second piece of that would have been for claims that
3 we had estimated in the past that due to changes in
4 facts and circumstances or better information we
5 believe that there will now be additional amounts
6 having to be paid under those claims. So that
7 increased expense for this particular period.

8 And thirdly, and I'm not trying to confuse
9 you, it could be within the third sharing period that
10 we actually had a claim which occurred that at the
11 same time we made a cash payout during that same
12 period. So it's really a combination of all of those
13 three things.

14 JUDGE REGISTER: All right. Mr. Dottheim,
15 that gets back to your question you were talking about
16 the reconciliation part of it, of the two parts; is
17 that correct?

18 MR. DOTTHEIM: Yes.

19 JUDGE REGISTER: Okay. So I think that --

20 THE WITNESS: Are we talking same language.

21 JUDGE REGISTER: -- everybody talks about it
22 in different terms.

23 THE WITNESS: That's fine. That is what I
24 was --

25 BY JUDGE REGISTER:

1 Q. So you reconcile what you estimated, and if
2 it's above you add an increase, if it's below you
3 decrease that?

4 A. That is true.

5 Q. Of the claims that you've paid out?

6 A. Or potentially going to pay out.

7 Q. And when you talk in this third sentence --
8 I'm sorry. Make that the fourth sentence of that
9 paragraph that starts on line 8, and given the
10 trend -- quote, given the trend in the amounts of
11 payments required in the third sharing period, the
12 Company believes the amount to settle these current
13 claims will be greater than those required in prior
14 years, end quote.

15 That's simply an explanation of why your
16 amounts are higher for the claims that you're
17 estimating now?

18 A. Yeah. I think it gets back to the comment I
19 made before that, you know, we look at history, and we
20 know how certain cases have been settled. And, you
21 know, our counsel has certainly more insight to me as
22 to what a particular type of claim has to be settled
23 for, and they look at the facts and circumstances.

24 But given the current trend, there's been an
25 increasing trend in higher settlements for particular

1 types of cases.

2 Q. Can you tell me what some of the types of
3 claims are that you have pending that are considered
4 in this --

5 A. Uh-huh.

6 Q. -- expense?

7 A. Many of our -- many of our claims relate to,
8 frankly, individuals touching wires. Other portions
9 of our claims relate to workman's compensation where
10 they've been at work and they've hurt themselves.

11 Those are -- and I say touching wires. It's
12 people who come into contact with wires or other
13 things that are considered our property, our
14 responsibility, and they make claims saying that we
15 are liable and we've incurred damages. Those are two
16 examples. I know there's several more, but those are
17 two examples.

18 Q. There's several more you're not thinking of
19 at the moment?

20 A. Yeah. I'm sure there's different types of
21 categories and different types of cases.

22 Q. Okay. That's what I was asking. Thank you.

23 JUDGE REGISTER: And I believe that that's
24 all the questions I have. So we're back to recross,
25 and Intervenors, Ms. Schmidt?

1 MS. SCHMIDT: No questions.

2 JUDGE REGISTER: I'm going to get this

3 right. Ms. Langeneckert?

4 MS. LANGENECKERT: No questions.

5 MR. FULTON: I don't have any questions

6 either.

7 JUDGE REGISTER: There you are, Mr. Fulton.

8 Nothing for Mr. Fulton, then. Okay. Mr. Dottheim,

9 anything for Staff?

10 MR. DOTTHEIM: Nothing further.

11 JUDGE REGISTER: Mr. Coffman, anything

12 further?

13 MR. COFFMAN: No questions.

14 JUDGE REGISTER: That concludes recross.

15 Redirect, Mr. Lerner?

16 MR. LERNER: Just a few.

17 REDIRECT EXAMINATION BY MR. LERNER:

18 Q. I think you mentioned in response to a

19 question from the Bench that there had been an

20 increase in settlements. Are you aware of the

21 difference between settlement and verdict, Mr. Baxter?

22 A. Yes.

23 Q. Has there been a trend from verdicts as

24 well?

25 A. Yes, there's been an increase in verdicts as

1 well.

2 Q. Mr. Dottheim asked you about FAS and FAS-5.
3 Would the Staff's proposed adjustments to injuries and
4 damages be consistent with FAS-5?

5 A. Absolutely not.

6 Q. Would you please explain why?

7 A. GAAP -- simply stated, GAAP requires --
8 well, we're in conformance with GAAP as a company, and
9 we are recording our expense based upon the provisions
10 of FAS-5.

11 What the Staff is proposing to do is to take
12 away from our expense under the sharing plan over \$2
13 million of expenses which were not only prudently
14 incurred expenses but certainly conform with our
15 established accounting practices and GAAP with really
16 no fundamental basis in accounting.

17 Q. I think your response to a question from the
18 Bench, and this is my last question, you explored the
19 difference between you'd expense something for a
20 claim, say zero times zero, and then it might not be a
21 year, 18 months later until there's a settlement or
22 verdict. Do you recall that?

23 A. Yes.

24 Q. Can you just explain the impact on earnings
25 in terms of when you provide for the expense in year

1 one and when you actually make the payment 18 months
2 later?

3 A. Well, for instance, if we had a claim this
4 year that was, say, for \$100,000 that was brought to
5 our attention and we believed in the future we would
6 have to make that claim, we would expense or we'd have
7 to pay off on that claim of \$100,000. This year we
8 record an expense for \$100,000 with a corresponding
9 liability.

10 If then in year two -- that was year one.
11 If in year two we ended up making the payment on that
12 particular claim and it indeed was \$100,000, there
13 would be no effect on expense. We would simply
14 relieve our liability that we have recorded in the
15 first year with -- and offset our cash payment, but
16 there would be no effect on expense in year two in
17 that particular situation.

18 MR. LERNER: One moment. I'm through.
19 Thank you.

20 JUDGE REGISTER: Thank you, Mr. Lerner.

21 I believe that concludes redirect, and that
22 concludes the testimony of this witness on this issue.
23 You are excused, Mr. Baxter.

24 (Witness excused.)

25 JUDGE REGISTER: And if I am correct, we are

1 completed with all the witnesses on all of the issues
2 in this case; is that correct?

3 MR. FULTON: Yes.

4 MR. LERNER: I believe so.

5 JUDGE REGISTER: Mr. Dottheim?

6 MR. DOTTHEIM: I believe so.

7 JUDGE REGISTER: I want to thank you all
8 very much for staying this late and finishing this up.
9 I think this is in all of our best interests, and we
10 will --

11 MR. COFFMAN: Thank you.

12 JUDGE REGISTER: Thank you, Mr. Coffman. We
13 will conclude this hearing at this time subject to the
14 late-filed documents that have been requested. And do
15 you need to discuss a briefing issue on this case or
16 is this one set up with the other case?

17 MR. DOTTHEIM: No. I think it's dependent
18 on itself.

19 JUDGE REGISTER: Do you have a request for
20 briefing schedule? Go off the record.

21 (Discussion off the record.)

22 JUDGE REGISTER: We have a briefing
23 schedule. We've agreed to the initial briefs being
24 filed on July 23rd, with reply briefs being filed on
25 August 24th.

1 And then also we want to look at the
2 exhibits. We have admitted all of the documents that
3 have been marked in case EM-96-149. And I have marked
4 35 exhibits in E0-96-14, and I have all of those
5 exhibits except Exhibit 29 is reserved. That's the
6 Black River Cooperative training update documents that
7 I had requested.

8 And the other document is Exhibit 31, and
9 that's the document that Commissioner Drainer
10 requested, and Staff has requested time to review
11 that, and they will file their objections along with
12 their initial Briefs.

13 MR. DOTTHEIM: If there are any.

14 JUDGE REGISTER: If there are any.

15 MR. DOTTHEIM: I think some discussions have
16 started regarding that exhibit already. I don't know
17 whether there's even any possibility that there might
18 be a substitute or what have you. That will not --

19 JUDGE REGISTER: The parties can just submit
20 or file any changes in the agreements you make or you
21 can let me know in your briefing of your objection or
22 lack thereof. Mr. Dottheim, is that acceptable?

23 MR. DOTTHEIM: Yes.

24 JUDGE REGISTER: And I believe that covers
25 all issues. Mr. Cook?

1 MR. COOK: The one unresolved matter is the
2 deposition of Mr. Rademan.

3 JUDGE REGISTER: Oh, yes. Thank you. And
4 Mr. --

5 MR. COOK: And Mr. Trippensee on the
6 assumption that he is providing a statement to us
7 prior to a potential deposition of Mr. Trippensee. We
8 have not yet resolved finally whether that will be
9 next Tuesday or Wednesday. That seems to be the two
10 days and evenings that we will be looking at.

11 JUDGE REGISTER: All right. Hold on. We're
12 still on the record. She's still trying to record it.
13 So if we can wait just a moment 'til we finish this
14 record.

15 MR. COOK: I think that that process will
16 work itself out with the parties. If it isn't, I
17 suspect we'll come to you for assistance.

18 But the one matter I did want to bring up
19 that was in your order on our -- on the motion and the
20 statement of Mr. Rademan, you indicated that
21 Mr. Rademan needed to be available for a deposition
22 and that he could not arbitrarily cut that off at two
23 hours, and that should he cut that off, it would not
24 be admitted and his statements would be stricken.

25 I'm not anticipating bad faith on any part

1 of the parties, but certainly that order without
2 further assumption of reasonableness could allow one
3 party to question Mr. Rademan until four o'clock in
4 the morning until he cries uncle.

5 I'm assuming that we're talking about a
6 reasonable -- a reasonable time should be allotted for
7 Mr. Rademan, that he not arbitrarily cut it off too
8 soon, but that at some point we would be able to bring
9 to you the request that it had gone too long and,
10 therefore, we stopped it.

11 JUDGE REGISTER: I think that under the
12 rules that any deposition is done in good faith and
13 reasonable terms, and should the parties decide to
14 break it and you can either file something designating
15 that you ended it or you can wait for Staff or OPC or
16 one of the other parties to file a Motion to Strike
17 Mr. Rademan's testimony and then bring that as a
18 defense, I think that's still available. Does that
19 sound accurate to you, Mr. Dottheim?

20 MR. DOTTHEIM: In part I think that's a
21 function of when we start. That is, when I say when
22 we start, at what time we start.

23 MR. COOK: Correct.

24 MR. DOTTHEIM: And I think Mr. Rademan has
25 previously expressed a preference for seven o'clock to

1 nine o'clock, and I don't know if there's a
2 possibility of starting earlier than seven. But if we
3 start at seven, I certainly don't think we will be
4 going 'til four a.m., but at the same time I'm not
5 certain what Mr. Rademan might consider to be
6 reasonable.

7 MR. COOK: And I'm not suggesting that at
8 9:15 we're going to declare it unreasonable. We
9 recognize that it could probably go more than two
10 hours and it may go significantly more than that, but
11 I'm just asking that the parties --

12 MR. DOTTHEIM: You certainly have a --

13 MR. COOK: -- and assuming that the parties
14 will be acting in good faith.

15 MR. DOTTHEIM: You certainly have a
16 commitment from the Staff to function in good faith.

17 MR. COOK: I assumed that, I just wanted to
18 discuss it on the record.

19 JUDGE REGISTER: Mr. Coffman, did you have
20 anything you wanted to add to that?

21 MR. COFFMAN: No, other than I guess we're
22 hoping to do these depositions consecutively, but I'm
23 not sure of Mr. Trippensee's availability on Tuesday.
24 I think we can make him available any time on
25 Wednesday. I guess we still have to work that out.

1 And then I assume when we do figure it out, we need to
2 contact Ms. Boyce?

3 JUDGE REGISTER: Yes.

4 MR. COOK: They will be here?

5 MR. DOTTHEIM: That was the other matter I
6 thought we might address. The Staff would suggest the
7 Commission's offices.

8 JUDGE REGISTER: Did you have something
9 besides this room in mind or are you going to make
10 arrangements for reserving the room?

11 MR. DOTTHEIM: We can try to make
12 arrangements for reserving the room. Since it's in
13 the evening, I would expect we would be able to find
14 another room, if not a number of other rooms, in the
15 building. But I would expect that this room would be
16 open, too. It might be facilitated by putting a
17 couple of tables together or what have you.

18 JUDGE REGISTER: Touch base with me tomorrow
19 afternoon on that because there is another hearing
20 starting here next week, and so we may -- I'm sure we
21 can find you a room here, and if not this room, the
22 hearing room 520A.

23 MR. CYNKAR: Your Honor, one thing to keep
24 in mind in that regard is that, particularly with
25 Mr. Trippensee, if we do depose him in the afternoon,

1 probably the afternoon would be most likely, again we
2 could have a room. I don't know how you feel, John,
3 in terms of where you want Mr. Trippensee deposed. We
4 could do it in this building or do it at the hotel.
5 It doesn't make any difference to us.

6 JUDGE REGISTER: We'll work those logistics
7 out later. If there is some disagreement, then the
8 parties can bring that to me in filings.

9 The other thing that I had asked is that
10 Mr. Rademan's statement be included with the
11 deposition, and I know there was some reference to the
12 rule. I would like for his statement to be given,
13 it's already in the narrative, but I'd like it to
14 conform with the rule on prefiled testimony.

15 MR. COOK: All right. Certainly.

16 JUDGE REGISTER: If there's nothing further
17 at this time, thank you very much for your patience
18 and your cooperation. We'll conclude this hearing at
19 this time.

20 Off the record.

21 WHEREUPON, the hearing of this case was
22 concluded.

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