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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Hearing

June 2, 1999  
Jefferson City, Missouri  
Volume 5

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

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

SHELLY A. REGISTER, Presiding,  
REGULATORY LAW JUDGE.

SHEILA LUMPE, Chair,  
HAROLD CRUMPTON,  
CONNIE MURRAY,  
M. DIANNE DRAINER, Vice-Chair  
COMMISSIONERS.

REPORTED BY:  
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ASSOCIATED COURT REPORTERS, INC.

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P R O C E E D I N G S

JUDGE REGISTER: Go on the record.

We are reconvening the hearing in Case No. EO-96-14 and EM-96-149. Good morning, Mr. Brandt.

THE WITNESS: Good morning.

JUDGE REGISTER: I already mentioned that you are sworn in. You continue to be sworn in.

THE WITNESS: I understand that.

JUDGE REGISTER: Thank you. Mr. Coffman, please proceed.

MR. COFFMAN: Thank you, your Honor.

DONALD E. BRANDT testified as follows:

CROSS-EXAMINATION BY MR. COFFMAN:

Q. Good morning, Mr. Brandt.

A. Good morning.

Q. I think Mr. Dottheim was pretty thorough in covering several matters related to the stipulation issue. I was a little bit confused as I was trying to review my notes as to the Company's position regarding its interpretation of what issues you believe are proper to bring before this Commission regarding the earnings report.

If I recall, you gave three different -- three categories of things that you thought were proper; is that correct?

1           A.     I don't recall three, but --

2           Q.     Okay.  Well, could you please restate, I  
3     guess, the types of controversies that you believe are  
4     appropriate or areas of disagreement that may be  
5     brought to the Commission for resolution under the  
6     Stip?

7           A.     Well, I think there's -- I guess there  
8     probably are three.  I just haven't counted them in my  
9     head yet.

10                    There's just plain errors.  I think that was  
11     one I mentioned, just simple errors.  We made a  
12     mistake in the calculation.

13                    Second category is, quote, new category of  
14     costs, and that would be new category of cost that  
15     hasn't occurred before and hasn't been included in a  
16     rate proceeding before this Commission, and that could  
17     be reviewed.

18                    And the third area is if there was a  
19     manipulation of earnings.  And relative to that  
20     manipulation area, that could come about as a result  
21     of some party, Office of the Public Counsel, Staff or  
22     others, asking us for a reasonable explanation of a  
23     cost variation, and it's our obligation to provide a  
24     reasonable explanation as to a variation in costs.

25                    And if we couldn't provide that reasonable

1 explanation, that party would have the ability under  
2 the terms of the agreement to allege a manipulation of  
3 results under the plan and bring that allegation of  
4 manipulation before the Commission for determination.

5 Now, I'd stress in that definition, in the  
6 words are -- it could be -- let me reference exactly  
7 where rather than try to recall from memory.

8 Q. Manipulation is actually mentioned in two  
9 subparagraphs, is it not?

10 A. Yes, but in subparagraph vii, or v two small  
11 i's, an allegation of manipulation could include  
12 significant variations in level of expenses associated  
13 with any category cost where no reasonable explanation  
14 has been provided.

15 Now, I think it's important to understand in  
16 our interpretation of no reasonable explanation for  
17 what caused that variation in expense, that doesn't  
18 mean it has to be the explanation that the Staff or  
19 Public Counsel's opinion is perfect.

20 We're not, I don't think, held to a standard  
21 of perfection or if we took a course of action that  
22 would not be the course of action that the Public  
23 Counsel or Staff would have taken or if the Commission  
24 were in the position of running Union Electric Company  
25 they would have elected as the most -- in their mind

1 the most preferable course of action. It only has to  
2 be a reasonable --

3 Q. Okay. And by reasonable --

4 A. -- explanation.

5 Q. -- you mean from the Company's perspective  
6 only?

7 A. No, not necessarily. I just mean a  
8 reasonable explanation.

9 Q. And --

10 A. I think for a lot of actions there could  
11 be -- well, take we have a chosen course of action.  
12 There could be several alternatives that we could  
13 take. With 20/20 hindsight, that would be great.  
14 We'd pick the perfect one every time.

15 But we don't have that luxury. Did we have  
16 a reasonable basis for doing what we did and can we  
17 explain it from a reasonable business man's  
18 perspective?

19 Q. Well, Mr. Brandt, would you agree with me  
20 that individuals often disagree about what is  
21 reasonable?

22 A. Not necessarily, no.

23 Q. Okay. Is it possible that Staff or Public  
24 Counsel might disagree that an explanation was  
25 reasonable and that would be a subject of controversy?

1           A.     If they determined -- if it was in the Staff  
2           or Public Counsel's or some other party's opinion that  
3           it wasn't reasonable, then they'd have to bring a  
4           cause -- or not a cause, but before the Commission to  
5           determine whether there, in fact, was manipulation.

6           Q.     So ultimately it's up to the Commission to  
7           determine what's a reasonable business explanation,  
8           isn't that right, under the stipulation?

9           A.     It's up to them to determine whether there  
10          was manipulation or not. The level of that reasonable  
11          explanation, if they don't believe it's reasonable,  
12          then they have to come to a finding that there was  
13          manipulation.

14          Q.     But essentially you're saying that any  
15          explanation the Company puts together and claims as  
16          reasonable should satisfy that part of the question  
17          about manipulation?

18                 MR. CYNKAR:  Objection.  I don't think  
19          that's what the witness testified.

20                 MR. COFFMAN:  I'm just trying to clarify  
21          whether this is a subjective standard or not.

22                 THE WITNESS:  I don't think so.  I think to  
23          make it very clear --

24                 JUDGE REGISTER:  Wait a minute, Mr. Brandt.  
25          We have an objection to rule on here.



1 I'm going to overrule the objection and  
2 allow him to explain what his testimony was.

3 THE WITNESS: I think the key words, if you  
4 look here, an allegation of manipulation could include  
5 significant variations in the level of expenses  
6 associated with any category of cost where no  
7 reasonable explanation has been provided.

8 And I think the Commission could come to a  
9 determination there's been manipulation if they could  
10 determine that Union Electric has provided no  
11 reasonable explanation. That doesn't mean their  
12 choice of reasonable. There's probably various  
13 courses of action we could proceed with on any given  
14 subject matter.

15 And, again, it may not be perfect, it may  
16 not be the avenue of action of their choice, but can  
17 we provide a reasonable business explanation for that.

18 BY MR. COFFMAN:

19 Q. Okay. I still come back to my question. Is  
20 that provision in the stipulation referring to  
21 reasonable explanation, are those words intended to  
22 refer to what's reasonable in the minds of the Company  
23 or what's reasonable in the mind of the Commission  
24 ultimately?

25 A. Well, it would be up to the Commission to

1 determine if we provided --

2 Q. Okay.

3 A. -- any reasonable explanation. And if we  
4 had not, then they could get to the point it was  
5 manipulation. But it would be the duty of the Staff  
6 or Public Counsel or other party to allege that there  
7 was a manipulation because for some reason your client  
8 thought there was no reasonable explanation provided,  
9 and then you bring it before the Commission to, let's  
10 see, go up to section vi.

11 Q. Okay. You're referring to another  
12 section --

13 A. Yes.

14 Q. -- than the one we're referring to, Roman  
15 Numeral vi?

16 A. Correct.

17 Q. Let me ask you about the first area that you  
18 mentioned was a proper area or proper type of  
19 challenge to the Company's earnings report, and that  
20 was plain error. Is that error in the mind of the  
21 Company or error in the mind of the Commission  
22 ultimately?

23 A. I'm talking about simply where some clerk, A  
24 times B equals D, and you guys point out A times B  
25 equals C. I mean, it's either right or wrong, I mean,

1 just simple mathematical error or error in the  
2 application of an accounting principle.

3 Q. Did you hear your counsel in opening  
4 statements refer to lobbying expense adjustment as an  
5 error yesterday?

6 A. I don't specifically recall that, but that  
7 was an error.

8 Q. Is that the type of adjustment you would  
9 consider plain error?

10 A. Yes.

11 Q. Okay. So there were several issues, I  
12 guess, raised in the -- in this case that were  
13 ultimately settled that in the mind of the Company now  
14 those are considered errors?

15 A. Yes.

16 Q. Is the question of whether the Company erred  
17 in the manner it put together its earnings report, is  
18 that ultimately something the Commission has a right  
19 to determine under the Stipulation?

20 A. If it was simple error, yes. We'd like to  
21 think on simple error, as the case of the issues we've  
22 settled, lobbying expenses, that was a new, basically,  
23 time accounting system that got put in place, and that  
24 area got overlooked, and there was no malfeasance.  
25 It's just we screwed up, and we stand corrected and

1 fixed it.

2 Q. But as to the matters that were settled, the  
3 Company now considers those to be errors, but that  
4 wasn't the understanding earlier in this case, was it?

5 A. Well, at first blush, no, but it was -- we  
6 both sat down, or the parties sat down and talked  
7 about what was involved, and we learned a lot from  
8 each other, not just lobbying, but the case of  
9 weather, I think there was probably some error on both  
10 sides there, and came up with a better solution.

11 Q. I guess the question I'm getting at is, in  
12 your mind, in the Company's interpretation of the  
13 Stipulation, is error an issue for the Company or for  
14 the Commission? Can it be error if the Company  
15 doesn't think it's error? Does the Commission have  
16 the right to make that determination about error?

17 A. Well, paragraph 7, UE, Staff, OPC and the  
18 other signatories reserve the right to bring the  
19 issues which cannot be resolved by them and which are  
20 related to the operation or implementation of the  
21 plan --

22 JUDGE REGISTER: I'm going to stop you,  
23 Mr. Brandt. I think this is a question that probably  
24 calls for a yes or no, and you need to respond to  
25 Mr. Coffman's question. If you want to point to a

1 paragraph, that's fine, but I think you need to  
2 respond to Mr. Coffman's questions.

3 BY MR. COFFMAN:

4 Q. Perhaps I can restate it more simply. Is  
5 plain error an issue for the Company or for the  
6 Commission?

7 A. I guess I can't answer that question yes or  
8 no. I don't think in the context you're asking there  
9 it's a simple yes or no.

10 Q. You're not sure?

11 A. No, I didn't say I wasn't sure. I can't  
12 answer that question.

13 Q. Under the Stipulation, under the terms of  
14 the Stipulation and Agreement that came out of Case  
15 No. ER-95-411, are errors -- is a question of whether  
16 the Company's earnings report contains an error, is  
17 that an issue for the Commission to consider or is it  
18 a matter of the Company's own subjective judgment?

19 A. Again, I can't answer that yes or no. I'll  
20 try to answer it if you'd like me to try.

21 MR. COFFMAN: That's all the questions I  
22 have. Thanks.

23 JUDGE REGISTER: I believe that it's time to  
24 go to questions from the Bench. Chair Lumpe?

25 QUESTIONS BY CHAIR LUMPE:

1 Q. Mr. Brandt, on page 2 of your rebuttal  
2 testimony, you talk about entering into the second  
3 alternative plan. In 1997, who made the request for  
4 the continuation of this plan which would then go from  
5 '99 to, I guess, 2009?

6 A. That was -- I don't recall who first brought  
7 it up, but we had proposed -- we had asked the  
8 Commission for approval of the merger transaction, the  
9 Union Electric/Central Illinois Public Service Company  
10 merger application, and as part of that application  
11 process we had asked for recovery of the merger  
12 premium and then split the savings that the merger  
13 would generate, the synergies as a result of the  
14 merger, which were almost \$800 million, over a ten-  
15 year period to be split 50/50 between shareholders and  
16 ratepayers.

17 That was our initial proposal, and as a  
18 result of negotiations we gave up that plan,  
19 collection of the merger premium and half of the  
20 savings in exchange for extending the EARP plan, the  
21 experimental regulation plan for an additional three  
22 years.

23 Q. So the continuation prior to the ending of  
24 the first experiment, the continuation of that  
25 experiment was part of the negotiations in the merger?

1           A.     That's correct.

2           Q.     All right.  And was it -- was it suggested  
3     by the Company, was it suggested by Staff, was it  
4     suggested by anybody else that that would be an  
5     acceptable solution in the merger?

6           A.     I frankly don't recall who first floated the  
7     idea.  I know the Staff had come back and said they  
8     rejected the idea of the merger premium collection and  
9     the sharing of the savings for a variety of reasons,  
10    and we sat down, and I remember it was the first week  
11    of July 1996, and we were ready to go to trial and  
12    started talking about alternatives and that came out.

13          Q.     So it got included or involved in the merger  
14    discussions?

15          A.     Yes.

16          Q.     Okay.  Because in hindsight I'm thinking  
17    would it not have been better to evaluate the  
18    experiment before renewing it and have had a look at  
19    the various issues that have come up as one does in an  
20    experiment, you view the experiment and then you  
21    evaluate it before you keep going on with it, you try  
22    to find some -- has it benefited, has it not, and then  
23    maybe you say yes, this is good and you continue it.

24                   I'm just wondering in hindsight would it not  
25    maybe have been better to do that instead of

1 continuing an experiment whose results you didn't  
2 know?

3 A. Well, I think at that point we had a year's  
4 experience under our belt, so to speak, and we hadn't  
5 gone to the actual point of having made a credit  
6 payment to customers. But at that point in time, July  
7 of 1996, actually May or June of 1996, we, being Union  
8 Electric, had a pretty good idea, a ballpark estimate  
9 of what the amount of the refund would be for the  
10 first year.

11 And I know I said in our negotiations that  
12 we were talking about a number that was, you know, on  
13 the upside of \$30 million, and subject to the results  
14 of June, but when you've got 11 out of 12 months tied  
15 down, even though June's a pretty important summer  
16 month, we were looking at the results of 30-plus  
17 million dollars. And it turned out to be, I believe,  
18 42 or \$44 million was the first year refund.

19 Q. So in your estimation, we could have done  
20 maybe a one-year experiment and that would have been  
21 adequate?

22 A. Well, I think over a period of time you get  
23 a better flavor for how something like this would  
24 work. In that regard, I think all the parties thought  
25 three years was a pretty good shot at it.



1 Q. And that's why I'm just curious why one  
2 would have continued something -- if one needed three  
3 years to look at it thoroughly, why one would continue  
4 it after the first year, and I'll let that go.

5 I have one other question, and I guess at  
6 the risk of my question being considered silly or  
7 dumb, I'd like to talk to you a little bit about the  
8 territorial agreement. Did anyone in testimony  
9 anywhere suggest that those deals should not have been  
10 done? Is there any testimony in this case that says  
11 those deals should not have been done?

12 A. Not that I'm aware of.

13 Q. All right. And did you read the territorial  
14 agreement orders?

15 A. Yes, I have.

16 Q. And do they suggest in there that those --  
17 that those revenues might be considered in the sharing  
18 agreement?

19 A. The one does, the Macon.

20 Q. The Macon does?

21 A. Yes.

22 Q. All right. So that it indeed could be  
23 considered here. It's not something that was in a  
24 previous rate case; is that correct?

25 A. That's correct.

1 CHAIR LUMPE: All right. I think that's all  
2 my questions.

3 JUDGE REGISTER: Vice Chair Drainer?

4 QUESTIONS BY COMMISSIONER DRAINER:

5 Q. Can you tell me where the word contract is  
6 used within the Stipulation and Agreement?

7 A. I don't believe that term is utilized in the  
8 Stipulation and Agreement.

9 Q. Is it used anywhere by Staff and the Company  
10 and the Office of the Public Counsel when they had the  
11 original agreement or this experimental plan?

12 A. I don't know about Staff or Public Counsel,  
13 where they might have used it or if they did use it.

14 Q. With you. It would be with you so you would  
15 know. I said with the Company, with the Staff and  
16 with the Office of the Public Counsel I have before me  
17 a Stipulation and Agreement. I do not have before me  
18 a contract. You keep mentioning a contract. I want  
19 you to tell me where you, the Company, and Staff and  
20 the Office of the Public Counsel have signed a  
21 contract and it says contract?

22 A. I don't think you'll find a place where  
23 something's been signed that says contract.

24 Q. All right. Thank you. We have a  
25 Stipulation and Agreement, correct?

1 A. We do.

2 Q. And that is what was signed by the parties?

3 A. It was signed, yes.

4 Q. Thank you. Now, explain to me with respect  
5 to the Stipulation and Agreement and the merger,  
6 refresh my memory on the time line. Was the  
7 experimental plan put in place months before there was  
8 the merger, years before there was a merger?

9 A. About one year.

10 Q. About one year?

11 A. Correct.

12 Q. When you were working with the Staff and the  
13 Office of the Public Counsel in putting together this  
14 Stipulation and Agreement, were you at the time  
15 involved in any discussions for a merger?

16 A. No.

17 Q. So there had been not a single discussion  
18 with respect to merger before the Stipulation and  
19 Agreement was put in place?

20 A. I'm not sure about what -- you lost me.  
21 Excuse me.

22 Q. Did you have in your company -- I mean, you  
23 are -- would have been somebody that would have been  
24 involved in discussions?

25 A. Yes, I would. I definitely would.

1 Q. You're far up on the chain of command?

2 A. Right.

3 Q. Did you not have any discussions before the  
4 Stipulation and Agreement was signed?

5 A. We did not.

6 Q. No discussions about merging with any other  
7 company?

8 A. No, we did not.

9 Q. And that was not until after?

10 A. We -- I'd be happy to --

11 Q. There's nothing? There would be nothing  
12 that would show that there was any discussions, any  
13 letters, communications with any party on merging --

14 A. That's correct.

15 Q. -- before June 12th, 1995?

16 A. That's correct.

17 Q. Okay. I need you to explain a couple things  
18 to me. In your testimony on page 5, the sentence on  
19 line 20 to 21, you start off, we will not stand by and  
20 allow the Staff to undermine the achievement of this  
21 agreement.

22 Would you explain to me how you will not  
23 allow the Staff, what powers you have that you will  
24 not allow? It seems rather strong words. I want to  
25 know what you mean by that.

1           A.     We'll exercise our legal rights to enforce  
2     the provisions of the Stipulation and Agreement.

3           Q.     All right.  Now, also, Mr. Coffman asked you  
4     with respect to reasonableness if two parties, both  
5     believe themselves to be reasonable, come before this  
6     Commission to resolve disputes, do you believe this  
7     Commission has the power to decide the reasonableness  
8     of the issue, to resolve the dispute?

9           A.     I don't believe that's the avenue that it  
10    would take to get before the Commission.

11          Q.     I asked once you're before the Commission  
12    with the dispute and you both believe you have a  
13    reasonable position, do you believe that this  
14    Commission is in a position to make a determination?

15          A.     This Commission would be in the position to  
16    make a determination as to --

17          Q.     Thank you very much.

18          A.     -- whether there is manipulation.

19          Q.     I wasn't going there.  I was just asking, if  
20    there was a dispute that two parties believed they  
21    were both being reasonable, is this Commission in a  
22    position to make a decision?

23          A.     I don't think so.

24          Q.     You do not believe that we can make a  
25    decision on reasonableness.  So if two parties come

1 before this Commission in a rate case and they have a  
2 dispute and they both think they have a reasonable  
3 position, we can't decide that?

4 A. Oh, in a rate case absolutely.

5 Q. Okay. Thank you. I asked you a generic  
6 question.

7 A. I thought it was specific to this.

8 Q. So in a generic question, you do believe  
9 that we --

10 A. Absolutely.

11 Q. -- have some ability?

12 A. Absolutely.

13 Q. I also was confused with respect to your  
14 counsel's opening statement about that the Company, if  
15 it found errors that were pointed out to it, would fix  
16 them and used the example lobbying.

17 If that's true, my confusion is why I was  
18 given the list and schedule of issues to be heard on  
19 May 21st and that was one of the issues, if it was a  
20 true error why throughout this whole case has it taken  
21 this long for the Company to accept that it had an  
22 error in lobbying?

23 A. It was not just a simple obvious error. It  
24 took a while for us to get an understanding of the  
25 Staff and Public Counsel's positions and the

1 information they had and through the interchange of  
2 data requests and getting people together, and there  
3 were a series of conference calls between the parties  
4 to explore the issue.

5 Q. So on one hand you believe the experimental  
6 plan should make it be easier to implement and it  
7 should not have all the red tape of a rate case,  
8 correct?

9 A. Correct.

10 Q. On the other hand, when we're dealing with  
11 just one issue, such as lobbying, the Company with its  
12 resources was not able to resolve that issue through  
13 discussions with the parties and it took months?

14 A. Well, actually, I believe that the -- it did  
15 go over a period of months. If that were the only  
16 issue we were dealing with and we got all the parties  
17 together, I think it could have been resolved a lot  
18 faster than it was.

19 Q. Because you have only a limited number of  
20 staff members delegated to look at these issues?

21 A. No, that's not the reason. It's just --

22 Q. Why did it take months?

23 A. We had a lot of other issues involved. It  
24 wasn't that we didn't have the resources to focus on  
25 that one, but when you've got all the other issues

1 that most of them are significantly larger, and it's  
2 not what I'd called a critical path item.

3 Q. What is a critical path item?

4 A. Well, the majority of the case. It's just  
5 if that were the only issue we had to deal with and  
6 everybody would have got together just for that,  
7 probably could have knocked it out in a matter of  
8 days, but there were --

9 Q. Please, I ask you to tell me what are the  
10 critical path items. So please list them for me,  
11 please, in order of importance.

12 A. The issues relative to computer related  
13 costs and weather was a big factor.

14 Q. And weather's been resolved?

15 A. Yes.

16 Q. Okay. Can you tell me, since 1994 and since  
17 this plan has gone into effect, the financial position  
18 of the Company? Has it been worse off or is it the  
19 same, similar situations to 1994 or is it better  
20 overall based on the drafts I saw in the sharing?

21 A. I think financial position is relatively the  
22 same. I think we're a much more efficient company  
23 since 1994.

24 Q. Then I'm confused again. If it's relatively  
25 the same and you had efficiencies, you would have been



1 working towards them, correct? You have long-term  
2 plans and five-year plans?

3 A. Yes.

4 Q. Why is it that in Exhibit 21, your letter to  
5 Mr. Rademan where you were initiating your savings  
6 plan and justifying why it was a good thing, that you  
7 basically said that it would be unlikely to have good  
8 years after 1994, that you believed that you are at  
9 greater downside risk than an upside risk? Why was  
10 the picture that you painted in this letter so  
11 significantly more pessimistic?

12 A. Well, I think I refer to in the letter  
13 relative to the situation we had in 1994, it was kind  
14 of a year where nothing that could go wrong went  
15 wrong. It was almost perfect. An example I know  
16 they've got in there is Callaway. There was no  
17 refueling. It ran virtually at a hundred percent.  
18 There's nowhere to go but down from that standpoint.

19 Interest rates were at 20, 25-year lows. We  
20 had recently switched from midwestern coal, Illinois  
21 coal to Powder River Basin coal. Coal prices had  
22 bottomed out, just record lows. We were looking  
23 forward to interest rates going up.

24 I would say, if in 1994 I had predicted  
25 employment of the economy of 3 percent and the Dow

1 hitting 12,000, I think people would have looked at me  
2 with a little bit of skepticism.

3 Q. Well, but it was painted much more negative  
4 than what you're telling me. Although maybe -- I  
5 don't know if it is confidential, so without going  
6 into the numbers, there's Attachment A. Okay.  
7 Attachment A which gives your, I guess, projections?

8 A. That's correct, our budget.

9 Q. But tell me, in reality, from 1995 to 1998,  
10 how accurate was this budget?

11 A. I think it was reasonable at the time. The  
12 results have differed substantially from the results  
13 here.

14 Q. Okay. So are they higher or lower?

15 A. They're higher than these, but actually  
16 earnings --

17 Q. Okay. How much higher? If you look at the  
18 1995 to 1998 and you look at your budget and if you  
19 were to place in here the numbers, the actual numbers,  
20 how different is it going to be?

21 A. I've got actual numbers.

22 Q. Why don't you file a late-filed exhibit that  
23 gives us that information? Give us the actuals.  
24 Reproduce this Attachment A with the actuals for 1995  
25 through 1998.

1 A. All right.

2 Q. And with it then any changes, and you have  
3 those numbers, so could you have those tomorrow?

4 A. If we can get it typed up.

5 Q. I would appreciate having it by tomorrow.  
6 Therefore, if -- tomorrow morning so it can be given  
7 to all parties, so if there are any questions they  
8 could be asked and you'd be able to cross or respond.

9 A. Okay.

10 Q. Would that be all right? Because that way  
11 you can explain to me or you can come back up and  
12 present them.

13 JUDGE REGISTER: Is that something you can  
14 do, Mr. Cook?

15 MR. COOK: I don't know. We'll certainly  
16 try. We are -- I mean, we have the information, but  
17 getting it in this form, getting it typed, getting it  
18 up here in proper form, I will do my best.

19 COMMISSIONER DRAINER: All the gentlemen  
20 sitting behind are shaking their heads yes.

21 MR. COOK: And not one of them types, but --  
22 (Laughter.)

23 THE WITNESS: They'll learn.

24 MR. COOK: The hard work is the other type.

25 JUDGE REGISTER: Give you Mr. Dottheim's

1 e-mail address.

2 COMMISSIONER DRAINER: And you spend all  
3 that money on computers and nobody types.

4 THE WITNESS: I would point out, and the  
5 numbers tomorrow that we'll produce will bear out that  
6 in 1994 that I referenced in the letter back then  
7 earnings were \$3.01 per share.

8 In this, the projection on Attachment A show  
9 earning per share under \$3.01 per share, and we've  
10 never gotten through -- since that point in time, we  
11 have never had earnings as high as they were in 1994.

12 BY COMMISSIONER DRAINER:

13 Q. Because that was an exceptional year?

14 A. Yes.

15 Q. So what you're telling me is what you --  
16 outside of the projections of the crystal ball, which  
17 none of us are good at, you did not expect it to be as  
18 good as '94 and you also in your letter wanted to be  
19 very clear that '94 was exceptional?

20 A. That was my point.

21 JUDGE REGISTER: Mr. Brandt, let me make  
22 sure I understood. I'm not sure. Initially you said  
23 that earnings have not been as high as \$3.01 since  
24 1994?

25 THE WITNESS: Correct.

1 JUDGE REGISTER: Thank you.

2 BY COMMISSIONER DRAINER:

3 Q. That was earnings per share, but is this  
4 also, because of the merger, will you be able to break  
5 UE out separate or did that impact? Would that not  
6 have had an impact on these statements?

7 A. That would have an impact for 1998, but we  
8 can still break Union Electric out, not on a per-share  
9 basis, but down to net income we can.

10 COMMISSIONER DRAINER: All right. Thank  
11 you. I have no other questions for right now.

12 JUDGE REGISTER: Thank you, Vice Chair  
13 Drainer. Commissioner Crumpton?

14 COMMISSIONER CRUMPTON: I would like to  
15 defer to Commissioner Murray since I just walked in.

16 JUDGE REGISTER: Thank you. Commissioner  
17 Murray?

18 COMMISSIONER MURRAY: Thank you.

19 QUESTIONS BY COMMISSIONER MURRAY:

20 Q. Good morning, Mr. Brandt.

21 A. Good morning.

22 Q. Is it your understanding that the  
23 Stipulation and Agreement is legally binding on all of  
24 the parties to that agreement?

25 A. That's my understanding.

1 Q. And when the parties entered into that  
2 agreement, did each party, in consideration for  
3 getting something, give up something?

4 A. I believe so, yes.

5 Q. Okay. Now, if you understood, this  
6 Commission didn't consider Stipulation and Agreements  
7 to be legally binding, would there be any reason for  
8 the Company to enter into a Stipulation and Agreement?

9 A. Not that I can think of, and that's -- I  
10 mean, we've used the word contract, and again I'm not  
11 a lawyer, but if you call it a business deal, a  
12 contract, a handshake, a bargain, a transaction, it's  
13 all give and take and it's legally binding.

14 And I'm not trying to get into semantics,  
15 but it's kind of a deal's a deal. And we gave up a  
16 lot in expectation of certain benefits under the  
17 agreement, and we can't -- it's difficult to get those  
18 issues we gave up, the money we gave up back again.

19 Q. So if you enter into a Stipulation and  
20 Agreement, you think that the parties are required to  
21 abide by the terms of that agreement; is that correct?

22 A. Yes.

23 Q. Okay. And there were questions that you  
24 were asked earlier about the Southwestern Bell  
25 agreement for an alternative regulation plan, an

1 incentive plan, and whether you knew about that  
2 agreement. And I think the questions were designed to  
3 discover whether that agreement was actually -- the  
4 terms of that agreement were somehow incorporated into  
5 the terms of your Stipulation and Agreement. Do you  
6 recall those questions?

7 A. Yes, I do.

8 Q. Is it your understanding that the  
9 Stipulation and Agreement constitutes the full terms  
10 of the agreement between the parties as written and  
11 that anything that is not included in that in writing  
12 is not a part of the agreement?

13 A. That's my understanding, yes.

14 Q. So that if the Southwestern Bell Stipulation  
15 and Agreement were to have been incorporated, any  
16 parts of it that were not actually copied or included  
17 somehow, if they were to have been incorporated, is it  
18 your understanding that they would have had to have  
19 been referenced somehow in your agreement?

20 A. That would be my understanding. Like  
21 yesterday I mentioned, the only part I had ever seen  
22 was a sharing grid, and I don't know if it was a  
23 preliminary or what sharing grid because the numbers  
24 aren't the same that was in the document I was shown  
25 yesterday, but it's the same. I mean, the sharing

1 grid's just not rocket science. It's pretty simple.

2 I had incorporated that. I had virtually,  
3 not dictated, but typed on my own laptop the initial  
4 draft, and then General Counsel helped me and looked  
5 at it. Our controller looked at it and gave input.  
6 But that was the substance of the agreement.

7 And the fact that our controller and lawyers  
8 used some of the language from the Southwestern Bell  
9 monitoring provisions and used those words, I can't  
10 fault them for that. For instance, lawyers when they  
11 draft contracts, I don't think there's a lawyer who  
12 starts from scratch, all the whereas and wherefores.  
13 With word processors I think they just kind of hope  
14 they change all the company names to get it through  
15 there.

16 Q. But you would assume that those parts that  
17 were copied or where the language was lifted at least  
18 very closely, that those parts were incorporated into  
19 your agreement because they were actually specifically  
20 set out in the agreement; is that correct?

21 A. Correct.

22 Q. And that anything that was intended to be  
23 incorporated in your agreement was set out there or  
24 referenced somehow?

25 A. Yes.



1           Q.     You mentioned -- I think somehow something  
2           came up about imprudently incurred costs in some of  
3           the questioning and whether you thought that this was  
4           a situation in which the Commission would consider  
5           whether costs were prudently or imprudently incurred,  
6           and I believe your answer was that you did not think  
7           that this was the forum in which to consider prudence?

8           A.     That's correct.  Prudence in the strictest  
9           sense, and I guess we can get in a legal debate about  
10          what prudence means, but as close as we get to a  
11          prudence-like determination is if we can't present --  
12          if Union Electric cannot present a reasonable  
13          explanation, then the Staff is free to go to the  
14          Commission and present a case that there's  
15          manipulation.

16          Q.     And the term prudence, where the examination  
17          of prudence is generally done in a traditional rate  
18          case; is that correct?  I mean --

19          A.     Absolutely.

20          Q.     -- that's one of the elements that's  
21          generally included?

22          A.     Any party in a traditional rate case is  
23          capable of raising the prudence issue, and it's  
24          certainly something for the Commission's determination  
25          in a traditional ratemaking case.

1 Q. Okay. I want to have you look at page 31 of  
2 your rebuttal testimony, and there you reference  
3 territorial agreements, and you say that before the  
4 EARP Union Electric entered into ot her territorial  
5 agreements. This is hardly the sort of unforeseeable  
6 category of cost that Section 3.f.viii was intended to  
7 cover.

8 I'm wondering why the Company would not have  
9 had language included in the contract to call -- that  
10 those categories of costs that could be looked at, why  
11 they would not have included the word unforeseeable in  
12 the Stipulation and Agreement?

13 A. Well, we used the word new category. I  
14 should check that before I jump to that conclusion.  
15 We don't use the word new, but it's -- use the words,  
16 has not been included previously in any ratemaking  
17 proceeding in paragraph v three small i's,  
18 subparagraph 8.

19 Staff, OPC and other signatories have the  
20 right to present to the Commission concerns over any  
21 category of cost that has been included in UE's  
22 monitoring results and has not been included  
23 previously in any ratemaking proceeding. So I'd  
24 interpret that to be a new category of cost.

25 Q. But are you saying that you think in order

1 to consider any of those, any new category of costs,  
2 that that category had to be unforeseeable at the time  
3 the Stipulation and Agreement was written?

4 A. Not necessarily unforeseeable. I can't  
5 attest to another party's clairvoyance or anticipation  
6 of the future. We kind of looked at it as if it was  
7 sort of a catch-all, what you can't foresee, new, what  
8 will happen in the next year or next month that we --  
9 it hadn't dawned on us today.

10 Q. Okay. Just in terms of the way the  
11 Stipulation and Agreement -- I won't call it a  
12 contract if that bothers some people, but the  
13 Stipulation and Agreement was written, if it was truly  
14 to mean that the only category of costs that could be  
15 considered were those that were unforeseeable at the  
16 time, would you agree that the word unforeseeable  
17 should have been included in the contract?

18 A. That would have helped to clarify matters.

19 Q. The year Y2K computer costs that are at  
20 issue, I believe the Company's position is that this  
21 is not a new category of cost, that computer changes  
22 are a part of an ordinary cost of doing business and  
23 that --

24 A. That's correct.

25 Q. -- the Y2K costs are not a new category of

1 cost; is that correct?

2 A. That's correct.

3 Q. But would it be logical to say that a new  
4 category would be extraordinary expenses whether it  
5 related to computer, out of the ordinary computer  
6 costs or out of the ordinary something else, that a  
7 category might include extraordinary expenses?

8 A. No, I don't think so. I think there's a  
9 substantial difference between extraordinary and new  
10 category or unforeseeable category of costs. We could  
11 have had fuel costs. Say the cost of uranium for the  
12 world markets and the Chinese and the Russians and  
13 maybe there was a conflict that broke out and the  
14 price of uranium went from, I believe it's somewhere  
15 in the 12 to \$14 a pound, went as high as 60 and \$70.

16 If a cost like that had quintupled, we'd  
17 been buying uranium since the 1970s, and just because  
18 it went up five times, uranium is uranium. Fuel is  
19 fuel.

20 Q. So under the terms of this contract, you're  
21 saying that any extraordinary expense would be -- fall  
22 into that part of the reconciliation agreement which  
23 provides for significant variations in the level of  
24 expenses associated with any category of cost where no  
25 reasonable explanation has been provided?

1           A.     Yes.  The example I used, the uranium, if  
2     the price went up five times and some parties have  
3     said why did it go up five times, and introduce them  
4     to our fuel buyers and present some information to  
5     them that this is the world price and we're not the  
6     only people in the world that are paying these kind of  
7     prices and this is why it went up and we had no  
8     alternatives.

9           Q.     So if you look at the Y2K costs, there was a  
10    significant variation in the level of expenses  
11    associated with the computer category of costs; is  
12    that correct?

13          A.     That's correct.

14          Q.     But there was a -- in your explanation,  
15    there was a reasonable explanation because the year  
16    2000 required a significant variation in what had to  
17    be spent on computers during that time period?

18          A.     Yes.  And relative to the Y2K costs, the  
19    dollars that are at issue in this case are just about  
20    a million dollars in that third sharing.  So given the  
21    millions we spend every year on computer systems, a  
22    million dollars is just not that big of a deal.

23                   That shouldn't be an issue anyway, but  
24    that's just not that extraordinary.  And I think with  
25    the Y2K, a lot of it is media hype around it, they

1       sensationalized it. And for some companies, banks,  
2       financial institutions, it is a big deal. It's just  
3       not turned out to be that big of a deal for Union  
4       Electric.

5           Q.       And the computer costs that are at issue,  
6       refresh my memory if you would what those other  
7       computer costs are.

8           A.       Different software systems, if I can find  
9       that testimony. On page 35 of my testimony, line 17,  
10       I mention that the three systems that the costs are  
11       primarily related to, the CSS, AMRAPS and the EMPRV  
12       system. They're acronyms.

13          Q.       What is the dollar amount that we're talking  
14       about disputing there, are you aware?

15          A.       I don't have that handy, and I don't recall.  
16       Mr. Baxter would have that exact number.

17          Q.       Okay. And what is the reasonable  
18       explanation for there being a significant variation on  
19       the level of expenses in those categories?

20          A.       We believed we need these systems to conduct  
21       our business, and the costs are justified by the  
22       improved operations and improved information those  
23       systems will provide.

24          Q.       And why did they need to be done during that  
25       time period versus spread over a longer time period?

1           A.     Well, I think the issue that's relative to  
2 those systems is whether they're expensed in the year  
3 that the dollars were spent or if we capitalized  
4 those. In our --

5           Q.     My question is, why did they have to be  
6 expensed or why did the money have to be spent during  
7 that year versus being done more gradually over a  
8 period of time?

9           A.     Well, with particularly computer systems,  
10 it's been our experience the quicker you can get it  
11 done, the better off you are because a computer  
12 system, an application system typically doesn't have  
13 that long of a life anymore, and three to five years  
14 and systems tend to be obsolete. We can't even use  
15 them. That's been our recent experience.

16                   So if you try to stretch a system out over  
17 three, four, five years, first the manpower effort  
18 that it requires is immense. And it's not just our  
19 information technology type folks, but you'll get --  
20 we call it the user groups.

21                   For instance, the computer system, the  
22 computer information technology group is putting in a  
23 new general ledger system for our controller, Mr.  
24 Baxter's department. He's got -- and that's not one  
25 of the issues here, but it's an example. I knew we

1 did that a few years ago. We put that in place.

2 We have a lot of the people, the accountants  
3 who will be using the system working pretty fast  
4 paced, and it's consuming a lot of their time. We  
5 want to get it done. It's just there's not a lot to  
6 be gained by dragging one of these systems out. They  
7 tend to take a lot longer than you originally  
8 anticipated to begin with.

9 Q. And the merger and acquisition costs, is  
10 that another area in which you're claiming that the  
11 costs were not a new category but that -- well,  
12 refresh my memory, if you would, on the Company's  
13 position on merger and acquisition costs and why they  
14 should not be considered here.

15 A. It goes back to the agreement in the second  
16 plan, the extension, the three-year, and on reference  
17 page 37 of my testimony I've got exact wording out of  
18 the agreement. It's on lines 6 through 10 on line --  
19 on page 37, that the amount of the annual amortization  
20 will be, one, the Missouri jurisdictional portion of  
21 the total amount of 7.2 million or, two, the Missouri  
22 jurisdictional portion of the total Ameren unamortized  
23 amount of the actual merger transaction and  
24 transaction costs incurred to date. It just is either  
25 one or two. It's not some three.



1 Q. And this was in the second agreement?

2 A. Yes, it was.

3 Q. Or the agreement covering the second EARP.

4 And Staff's position is that the amount to be

5 considered here is -- do you recall that?

6 A. It's to be less than it has been calculated

7 over here, and they want to amortize the total cost

8 over a ten-year period.

9 Q. Okay. And the decommissioning fund

10 deposits, the issue there is that the Company has held

11 some money for a period of time and whether the

12 Company should owe interest on that money that it's

13 had the use of during that period of time; is that

14 correct?

15 A. That's correct.

16 Q. And where would we find something in the

17 agreement that was -- that would have addressed

18 something like decommissioning fund deposits?

19 A. It's easier for me to find it on here than

20 it is in the book. The reconciliation procedure --

21 bear with me for just a second.

22 JUDGE REGISTER: Let the record reflect that

23 the witness is looking at Attachment C to the

24 Stipulation and Agreement.

25 THE WITNESS: Here under paragraph 2F of the

1 reconciliation procedure, the cash working capital  
2 rate base offset of \$24 million. Now, at this point  
3 in time, for the third period, we have no idea what  
4 the cash working capital offset provision would be.  
5 In a typical traditional rate case calculation or  
6 traditional rate case, working capital allowance is  
7 debated and potentially would be an issue. In this  
8 particular instance, we said it's \$24 million.

9           Now, the decommissioning issue for a variety  
10 of reasons gave us access to an additional \$20 million  
11 or thereabouts for a short period of time. Now, we  
12 don't know if the working capital balance is more or  
13 less than \$24 million, and that's actually a negative  
14 working capital of \$24 million that's provided for in  
15 that paragraph in the agreement. Whereas, this  
16 additional 20 that was made available to us, it looks  
17 like a windfall, but net, net we still could be worse  
18 off than the \$24 million that's laid out in the  
19 agreement.

20           So people just said, well, a variety of  
21 things will happen, and there are literally hundreds  
22 of ins and outs into a lead lag study that you conduct  
23 to come up with the working capital balance. That was  
24 part of the reason to streamline this whole process,  
25 so no matter what happens the working capital offset

1 is \$24 million, period.

2 Q. Okay. So that's the Company's position that  
3 that was stated in the agreement, and that there is no  
4 justification under the agreement to go back and  
5 revisit that number?

6 A. That's correct.

7 Q. Okay. And then injuries and damages, the  
8 issue there?

9 A. Basically, those costs went up.

10 Q. Okay. So is that another area in which  
11 there was a significant variation in the level of  
12 expenses associated with a category of cost?

13 A. Yes. There was a significant variation.

14 Q. And what is the Company's reasonable  
15 explanation for that variation?

16 A. We had more cases against us and the  
17 settlements were higher than previous volumes.

18 Q. Is that under the control of the Company,  
19 how many cases are presented during a period of time?

20 A. Not really, no.

21 Q. And then you said that the weather  
22 normalization issue is settled; is that correct?

23 A. That's correct.

24 Q. Was that resolved in the way that -- well,  
25 tell me how that was resolved, if you would.

1           A.     I am far from an expert on the weather.  I'm  
2     not sure I --

3           Q.     Just tell me in terms of the Company's  
4     position and Staff and OPC's positions as to where it  
5     fell within that.

6           A.     Well, from my perspective, which is a pretty  
7     high level perspective, but with that said, is Staff  
8     wanted to go back and basically recalculate weather  
9     over some thirty-year period and have an expert that  
10    will allege that they could do that.  We had an expert  
11    that said you couldn't.

12                   And putting aside the experts, it's sort of  
13    like my understanding of weather when we wrote this  
14    deal is it was kind of a cookbook formula to come up  
15    with what the weather normalization factor was.

16                   And I think Staff realized, and there were  
17    some short-comings in their methodology and the  
18    difference was about \$8 million, and we saw about a  
19    million dollars' worth of, you can call it error, but  
20    movement on our side.

21           Q.     Okay.  So there was a compromise, and you  
22    didn't go back and recalculate over a long period of  
23    time?

24           A.     That's correct.

25                   COMMISSIONER MURRAY:  I believe that's all

1 my questions. Thank you.

2 COMMISSIONER DRAINER: Thank you,  
3 Commissioner Murray. Commissioner Crumpton, did you  
4 want to examine at this time?

5 COMMISSIONER CRUMPTON: Yes. Thank you.

6 QUESTIONS BY COMMISSIONER CRUMPTON:

7 Q. Good morning, Mr. Brandt.

8 A. Good morning.

9 Q. First I'd like to thank your counsel for  
10 remembering my statements in the other record, and  
11 just in case the reviewing court reads this record, I  
12 want to try to explore some areas with you.

13 A. Certainly.

14 Q. From a business point of view, isn't the  
15 real dispute explained like this: Under the  
16 agreement, when should the parties recognize certain  
17 expenses are expenditures that were prudently  
18 incurred?

19 A. I guess that's a question that some parties  
20 have put forth.

21 Q. But isn't that the issue with you, your  
22 company?

23 A. We think the agreement spells out, if I  
24 recall clearly, how one does that.

25 Q. How one recognizes -- how and when one

1 recognizes expenditures prudently incurred?

2 A. Yes.

3 Q. Now, if that's the case -- let's say, just  
4 for purposes of discussion, that UE loses all the  
5 issues. What effect will that have on UE if the  
6 expenses that are not immediately recognized are put  
7 in an account, go into rate base, and the Company  
8 earns a reasonable return on that money? Did you  
9 understand the question?

10 A. Yes.

11 Q. Okay.

12 A. It'll have a negative effect on our cash  
13 flow.

14 Q. Okay. This is speaking as a businessman?

15 A. Okay.

16 Q. All right. For the negative effect, though,  
17 aren't you given the opportunity to earn on that money  
18 so that time failure of the money, if we do it right,  
19 you should be just as well off under either outcome?

20 A. Well, there's a couple factors. One  
21 specific factor unique here in the third year is  
22 there's a permanent rate reduction that will be  
23 associated with that. So to the extent that costs are  
24 pushed from year three to year four, the amount of the  
25 permanent rate reduction goes up, and that's money

1 that's lost forever.

2 Q. I just want to talk about the money in  
3 dispute. If you are able to expense, let's say,  
4 one-fifth of it this year and then expense the other  
5 portions in equal amounts the next four years -- this  
6 is just an as example -- at your allowable rate of  
7 return, wouldn't this theoretically bring you back to  
8 a position where you really are just as well off?

9 A. Well, putting aside that permanent rate  
10 reduction.

11 Q. Yes.

12 A. Putting that aside and what you're  
13 describing then would be sort of a traditional  
14 ratemaking type of a case.

15 Q. Excuse me. That has nothing to do with  
16 ratemaking. That's the way businessmen value assets  
17 and cash flows, isn't it?

18 A. Yes.

19 Q. So we're not into ratemaking. We're into  
20 business, the way a business manages its cash flows  
21 and et cetera. So are you not just as well off under  
22 either of the outcomes as long as we do not include  
23 this rate reduction?

24 A. To answer your question, yes mathematically,  
25 but by stretching out that revenue stream over five

1 year as opposed to one year, that introduced the  
2 additional risks in that particular example.

3 Q. Okay.

4 A. Sort of like the first rule of finance is  
5 get the money today all else being equal. In your  
6 example, you're correct. All else would be equal, but  
7 I'll take the money today, and I believe the terms of  
8 the agreement provide that we get it today.

9 Q. And that's the issue, is you want to have  
10 yours up front as quickly as possible, and Staff and  
11 Office of the Public Counsel, because of their  
12 perceived effects on ratepayers, would like to stretch  
13 it out; is that not correct?

14 A. That could be their motivation.

15 Q. But you've lived in this industry for a  
16 number of years. You know how they think, do you not?

17 A. Yes.

18 Q. And is it in their testimony also that  
19 they're trying to reduce the effect of this early  
20 recognition on your customers?

21 A. I think that's -- as our counsel pointed out  
22 yesterday, I think that's sort of the old, not  
23 necessarily old, but the paradigm shift from  
24 traditional regulation to this new incentive plan.

25 Q. All right. Now, in reading the agreement,



1 when there is a dispute, if when there's a difference  
2 in interpretation such as you and I just discussed,  
3 isn't Staff obligated to bring that dispute to the  
4 Commission under the agreement?

5 A. There's provisions for that.

6 Q. Okay. And now I'm going to the issue of the  
7 amount of time that we have spent, all the parties and  
8 the Commission, arguing whether or not Staff has a  
9 right or an obligation to bring issues in dispute  
10 here.

11 It seems to me there was a lot of time spent  
12 on it when just the ordinary reading of the agreement  
13 indicates that Staff has an obligation to come when  
14 there is a disagreement, and that's just my statement.  
15 This is not a question.

16 At this point, what is the total value in  
17 dispute? Do you have any idea?

18 A. I think relative to the refund for 1998,  
19 we're from, I think, the Company's perspective at  
20 about \$26 million, and I believe the other parties put  
21 it closer to \$40 million. Mr. Baxter could give you  
22 pretty detailed accounts of the pluses and minuses to  
23 that.

24 Q. Okay. Then I'll expect him to provide me  
25 with that information. I'd like to have a table that

1 shows each issue and the amount in dispute, because  
2 I'm coming up with different numbers, and if possible  
3 the effect one way or the other that the issues will  
4 have on ratepayers.

5 JUDGE REGISTER: Okay. In terms of the  
6 refund that they will receive?

7 COMMISSIONER CRUMPTON: Yes.

8 JUDGE REGISTER: Could the parties prepare a  
9 table that will compare those various effects from the  
10 positions?

11 MR. BAXTER: I believe we can provide that  
12 by this afternoon or first thing tomorrow morning.

13 JUDGE REGISTER: Did you want that before  
14 the hearing was finished or did you just want it --

15 COMMISSIONER CRUMPTON: I would like it --  
16 it doesn't have to be before the hearing is finished.

17 JUDGE REGISTER: Before we make our  
18 decision?

19 COMMISSIONER CRUMPTON: Yes. This record is  
20 fairly clear.

21 MR. COOK: We'll provide that as soon as  
22 possible.

23 JUDGE REGISTER: That would be fine.

24 MR. DOTTHEIM: The Staff is not certain that  
25 it can be provided overnight, but agreement could be

1 reached so if it is adequate to provide it soon as  
2 possible over the next couple of days while we're in  
3 the hearing room, Staff thinks that could be  
4 accomplished.

5 MR. BAXTER: And we'd be happy to work with  
6 the Staff and the parties to make sure we're in  
7 agreement as to what the numbers and the disagreements  
8 are.

9 JUDGE REGISTER: Do you want that by the  
10 issue as well, by the various issues?

11 COMMISSIONER CRUMPTON: Yes, by the issues.  
12 And the reason for that is because of the earlier  
13 discussion that this witness and I have had that this  
14 is probably a timing issue and so it's going to affect  
15 ratepayers and the company's stockholders in certain  
16 ways, especially if you take into consideration the  
17 time value of money. We're looking at the net present  
18 value of the effect of this decision, of the effect  
19 the two outcomes will have on this decision.

20 JUDGE REGISTER: Are there any other  
21 questions that you-all have now for Commissioner  
22 Crumpton about what he'd like to see on that format?  
23 If you don't have them now you can always bring them  
24 up later if you have a question.

25 MR. BAXTER: I believe we have a fairly

1 clear understanding of what's required.

2 COMMISSIONER CRUMPTON: All right. I'd like  
3 to proceed on.

4 JUDGE REGISTER: That's fine, Commissioner  
5 Crumpton.

6 BY COMMISSIONER CRUMPTON:

7 Q. Now, during the opening statements your  
8 counsel I thought said that I was a party to this  
9 agreement, and my question to you is, did I sign the  
10 agreement?

11 A. No, you didn't sign it.

12 Q. And how am I a party?

13 A. Well, I don't specifically recall him saying  
14 that. I have no doubt. I just don't recall that. He  
15 may very well may have. But I think the Commission by  
16 its order approving the Stipulation and Agreement  
17 becomes part of it.

18 Q. So if the Supreme Court -- this goes to the  
19 Supreme Court and they agree with me, are they a  
20 party, too?

21 A. I'd leave that to the lawyers.

22 Q. All right. I want to talk about the uniform  
23 system of accounts. You're familiar with that?

24 A. Yes.

25 Q. How does UE account for computer software

1 assets in its uniform system of accounts?

2 A. We expense them.

3 Q. You expense all of them. Now, in the  
4 uniform system of accounts, is there an account for  
5 computer software that is carried as an asset on the  
6 company's books? Is there such an account?

7 A. I don't recall specifically.

8 Q. You don't know. Okay. Now, who's the  
9 accountant in your company that's familiar with this?

10 A. Mr. Baxter.

11 Q. Mr. Baxter. Well, I would expect Mr. Baxter  
12 to answer that question and be prepared to tell me  
13 what's in the account right now for your company. So  
14 if you have expensed all of this, it should be empty,  
15 should it not?

16 A. I would think so.

17 Q. Unless there's something that was entered  
18 this year and you're going to expense it at the end of  
19 the year?

20 A. Yes.

21 Q. My last question is, will UE be Y2K  
22 compliant?

23 A. Yes, we will be.

24 Q. And when is your next test?

25 A. I believe there is a test scheduled for

1       July.  We just had one in the March/April time frame  
2       of major significance.  There are probably weekly  
3       tests going on from a departmental basis.

4           Q.     Are your --

5           A.     Different subsystems.

6           Q.     Are you also making sure that your suppliers  
7       are compliant?

8           A.     Yes, sir.

9           Q.     And will they be compliant?

10          A.     We are confident that the significant ones  
11       will be.

12          Q.     And the railroad, will it be compliant?

13          A.     We understand they will be.

14          Q.     And you spent money on all of these issues,  
15       right?

16          A.     Yes, we did.

17          Q.     And this is the money that's in dispute on  
18       Y2K issues?

19          A.     That's my understanding, correct.

20          Q.     And you said that that was only about a  
21       million dollars?

22          A.     Just about a million dollars for the  
23       particular sharing period.

24                    COMMISSIONER CRUMPTON:  Thank you.  That's  
25       all the questions I have.

1 JUDGE REGISTER: Thank you. Chair Lumpe,  
2 did you have another question?

3 CHAIR LUMPE: Yes.

4 FURTHER QUESTIONS BY CHAIR LUMPE:

5 Q. Let me just follow up a little bit on the  
6 Y2K. It is your contention that it is not an  
7 extraordinary expense, is that right, or an  
8 extraordinary event?

9 A. It's not a new category of cost, and I don't  
10 believe for us it's an extraordinary expense.

11 Q. And some companies are asking for AAOs to  
12 deal with it because they say it is an extraordinary  
13 event, a one-time event, but that is not UE's  
14 position?

15 A. That is not.

16 Q. When did you start working on Y2K issues?  
17 1995?

18 A. Working, thinking about it, planning as  
19 early as that, I'm certain. Spending money on  
20 modifications, not significant until basically this  
21 third period, which was for the year ended June 30,  
22 1998. So during '97 and '98 start to spend meaningful  
23 amount of dollars.

24 Q. So there would have been -- you expensed  
25 some in the 1997 sharing period as well as in the 1998

1 sharing period?

2 A. Yes.

3 Q. On the merger issue, did I hear you  
4 correctly that those items are in the second agreement  
5 or not?

6 A. Yes. That provision that I recited, the one  
7 or two, that is part of the second Stipulation and  
8 Agreement.

9 Q. Why are we dealing with it in this agreement  
10 then?

11 A. I believe we're sort of doing it.

12 Q. Are you getting prepared for the second  
13 agreement?

14 A. It's -- both the cases are being heard at  
15 the same time.

16 Q. All right. So the issues of the first  
17 agreement and the second agreement are both in this?

18 A. Yes. That's -- I looked at the lawyers for  
19 help, but we had two of those -- two case numbers on  
20 this.

21 Q. All right. So it's two?

22 A. Yes.

23 Q. All right. On the issue of the injuries and  
24 damages, is there a difference in the way you're  
25 recording them? Is that part of the issue?



1 A. No, there's not.

2 Q. Have you always recorded them this way?

3 A. Yes, we have.

4 Q. There's no difference?

5 A. There's absolutely no change whatsoever.

6 Q. And then one last thing here. As I recall,  
7 a question was asked as to whether you would consider  
8 in the interim going ahead with the sharing amount  
9 before this was settled subject to the final decision,  
10 and I think the answer was no.

11 Is there -- if the Company believes there's  
12 \$26 million there, why would you not go ahead with the  
13 sharing of that amount and then depending upon what  
14 other amounts may come out add that?

15 A. Well, Madam Chairperson, I regret having  
16 come out with just a no, but I was trying to stick to  
17 the yes/no if I possibly could.

18 The way I look at this is, we gave up  
19 substantial monetary amounts, the up front rate  
20 credit, the up front \$30 million rate reduction, the  
21 refunds for the first two years. We gave up  
22 collecting a merger premium of 232 million. We gave  
23 up collecting half of the merger savings for ten  
24 years.

25 And I don't mean to be the big bad guy from

1 St. Louis, but I'm sitting here going, we've got this  
2 agreement. I gave all this money up. I took on  
3 substantial risk.

4 And I didn't recall Commissioner Crumpton's  
5 statement until actually I saw it from our counsel at  
6 breakfast yesterday morning where he said something I  
7 don't want you four years from now screaming and  
8 hollering.

9 And if we were back here and inflation  
10 turned a double digit and the cost of money was 16  
11 percent and mathematically I could not earn more than  
12 about 13 and a half on equity, and I'm sitting here  
13 saying, woe is me, the shareholders are really  
14 screaming. They want to lynch me. And believe me,  
15 I'm the guy who called the shots on this one and took  
16 the risk. I'd heard it long before we got to 16  
17 percent.

18 But to try to make a brief explanation, I  
19 guess I'm sitting here, the agreement's the agreement.  
20 We gave up an awful lot, and I don't mean to be the  
21 bad guy, but I just don't see why I need -- should be  
22 expected to walk into town and be gracious enough to  
23 cut a check for 20-something million dollars when we  
24 want to live up to our terms of the agreement. We  
25 just expect other parties to.

1 Q. But the 26 is really not in dispute. It's  
2 something that both shareholders and ratepayers could  
3 be benefiting from.

4 And when you entered the agreement, I know  
5 you focus on what you gave up, but what you gave up  
6 you didn't do it because you're nice guys. You did it  
7 because you saw benefits at the end of the road, did  
8 you not?

9 A. Yes, we did.

10 Q. So it wasn't like you were going to walk in  
11 here and give away the company because you're really  
12 neat people; it's because you saw a lot of benefits  
13 down the road?

14 A. It's potential benefits. We also saw some  
15 potential risk. So I wouldn't say we rolled the dice,  
16 but there's a lot of --

17 Q. You're still under a rate of return  
18 paradigm --

19 A. Yes.

20 Q. -- whether we like it or not, and if you  
21 had -- if your risks had not worked out properly, you  
22 could have been back here, could you not?

23 A. Not under the terms of the agreement.

24 Q. In the three-year period, if you hadn't  
25 extended it on for three more years you could have,

1       couldn't you?

2           A.     Yes, but we could have signed the deal in  
3       June of --

4           Q.     But you thought it looked so good you were  
5       willing to add three more years to the current three  
6       years, is that not right?  You saw benefits?

7           A.     Yes, we did.

8           Q.     Saw some really good benefits here?

9           A.     But we gave up some really serious money to  
10       get those benefits.

11          Q.     You really didn't give up.  The ratepayers  
12       or the stockholders gave them up maybe.

13          A.     The people we work for gave them up.

14                   CHAIR LUMPE:  Thank you.

15                   JUDGE REGISTER:  Nothing further?

16                   CHAIR LUMPE:  No.

17                   JUDGE REGISTER:  Vice Chair Drainer, did you  
18       have any other questions?

19                   COMMISSIONER DRAINER:  I do.

20       FURTHER QUESTIONS BY COMMISSIONER DRAINER:

21          Q.     I'd really like to touch on that last point,  
22       but I think I'll not go there.

23                   Let me ask you one kind of general question.  
24       You kept referring to cooking the books.  At any time  
25       did any staff member or other party use those words in

1 discussing with you their concerns with some of the  
2 issues?

3 A. No, they did not.

4 Q. Now, I want you to help me with the  
5 Stipulation and Agreement, because my impression is  
6 that you believe that the issues brought here to be  
7 reviewed really -- that they're brought here is then a  
8 violation of the Stipulation and Agreement, that you  
9 shouldn't have to be here right now at all?

10 A. That's correct. I wouldn't characterize it  
11 as a violation. I just --

12 Q. Okay. Well, please help me with that. So  
13 you don't --

14 A. I just don't think the agreement provides  
15 for the things that Staff and Public Counsel would  
16 like it to provide for.

17 Q. Okay. So then bringing it to the  
18 Commission, you don't feel that they have violated the  
19 trust and agreement by bringing that forward?

20 A. No. Certainly I think I said yesterday  
21 you're free to sue anybody in court. You don't  
22 necessarily have to have a basis for the suit.

23 Q. Then on the chart that's behind you that has  
24 item No. 7, I want to read you the first point. UE,  
25 Staff, OPC and other signatories reserve the right to

1 bring issues which cannot be resolved by them and  
2 which are related to the operation or implementation  
3 of the plan to the Commission for resolution.

4 A. Yes.

5 Q. Now, that in and of itself seems to have a  
6 lot of latitude for if they have any concern a party  
7 can bring it to the Commission. I mean, that in  
8 itself does, correct, what I just read, that part, if  
9 we stop there?

10 A. Pardon?

11 Q. If we stop there, stop at that sentence.  
12 Don't go on to the next sentence.

13 A. Right.

14 Q. Tell me what that tells you.

15 A. I think the key words are related to the  
16 operation or implementation of the plan.

17 Q. Okay.

18 A. And, for instance, if the cash working  
19 capital offset of \$24 million is spelled out, if Union  
20 Electric had put it together and used a \$20 million  
21 offset instead of \$24 million and just said we don't  
22 have as much cash offset as we used to, we think it  
23 ought to be 20, that would be a dispute. We'd be  
24 wrong, I think, but the Staff could bring that to you.

25 Q. How do the issues that are before us not get

1 into the operation or implementation of the plan?

2 A. Well, I think the plan spells out how those  
3 should be treated. For instance, computer expenses,  
4 Commissioner Crumpton asked me about regarding whether  
5 we expense them in the third year or amortize them  
6 over five years, and basically our established  
7 accounting principles is we've always expensed  
8 computer software expenses. We expensed them in '95,  
9 '6, '7 and '8.

10 We didn't change them, and the agreement  
11 doesn't say anything about changing them to capitalize  
12 them. We did that for the first two years and for I  
13 don't know how many years, beginning of time prior to  
14 that, and all of a sudden Staff wants to make that  
15 change. That's not the implement--

16 Q. So you're saying that they want to make a  
17 change in the accounting method and the operation or  
18 implementation of the plan at the get-go, the way the  
19 accounting methods were in place, that should be good  
20 enough?

21 A. Yes.

22 Q. And that shouldn't change because it was  
23 accepted --

24 A. Correct.

25 Q. -- at the start?

1           A.     That's correct.

2           Q.     Because then to finish up with just this  
3 particular Roman Numeral vii, when I initially read  
4 it, and I was one of the Commissioners that approved  
5 this plan, when it talks about examples include  
6 disagreements, et cetera, et cetera, the rest of that  
7 paragraph to me is not all-inclusive.

8                     So you discuss that what could be brought to  
9 the Commission was if there were errors and new  
10 categories of costs, manipulation, but in reality,  
11 doesn't the rest of this paragraph just say for  
12 example, if we disagree on the mechanics of  
13 calculating the report, if we think there's a  
14 manipulation, but it's not all-inclusive?

15                     There could be other things that weren't in  
16 the example that could therefore have a party bring?

17           A.     That's entirely possible. It does specify  
18 example, but that's the entirety. It goes on to  
19 specifically address an allocation of manipulation and  
20 the language that I used before where no reasonable  
21 explanation has been provided.

22           Q.     But you see your example talks about  
23 disagreement as the mechanics of calculating the plan.  
24 That's one. Allegations of violations of the Stip,  
25 that's two. Alleged manipulation of earnings results,



1 that's three. And request for information not  
2 provided, that's four. There's four examples.

3 A. Yes.

4 Q. And then it seems to me that it goes on with  
5 the second example, the allegations of manipulation --  
6 I'm sorry. The third example, manipulation, and it  
7 just tells you more about if it was example three, an  
8 allegation of manipulation could, and then it goes on,  
9 et cetera, et cetera.

10 A. Yes, it does.

11 Q. That's all -- the rest of that paragraph is  
12 just talking about example three. It isn't saying  
13 that is the main driver for the Staff, for Public  
14 Counsel to come before the Commission?

15 A. We believe it defines manipulation.

16 Q. Which is one example?

17 A. One example, yes.

18 Q. Okay. So there could be others. And then  
19 as we go on to No. 8, is that on that chart below you?

20 A. Yes, it is.

21 Q. Okay. When Mr. Commissioner Murray was  
22 asking you some questions about one of the areas in  
23 cost and extraordinary cost or unforeseen cost, eight  
24 tells me that Staff, Public Counsel, other signatories  
25 have a right to present to the Commission concerns

1 over any category of cost that has been included in  
2 your results, and has not been included previously in  
3 any ratemaking proceeding.

4 Now, tell me why that isn't open-ended,  
5 because it seems to me it's not saying new cost, it's  
6 not saying your unforeseen cost. It's just saying any  
7 cost that there's a concern over.

8 A. Well, it goes on as you quoted, that has  
9 first -- has to be included in the monitoring results,  
10 that's kind of obvious, and has not been included  
11 previously in any ratemaking proceeding.

12 Q. And so if there's a cost, an additional cost  
13 to a particular item, you would say that it had been  
14 included but it's just increased, so increases would  
15 or would not be something that we could look at?

16 A. Increases would not be something, because  
17 it's not a new category of cost. For example, with  
18 Commissioner Murray --

19 Q. Can I stop you one second. I don't mean to  
20 interrupt you.

21 A. No. I understand.

22 Q. But it doesn't say any new category. It  
23 does say any category of costs that haven't been  
24 included. I guess what I'm wondering, why can't that  
25 be interpreted that it wasn't any cost that had not

1       been included in a previous rate case and increases  
2       would not have been included in a rate case?

3               I mean, you have buildings. You have  
4       another building. You can say, well, it's just added  
5       increases to our building and facilities. Help me  
6       here, because it doesn't say new category. It says  
7       any category of cost that wasn't included.

8               A.     It says a category of cost that has not been  
9       included previously in any ratemaking proceeding.  
10       Buildings have been included.

11              Q.     So you're saying that there have to be a  
12       line item that would have, like, buildings and  
13       facilities. See, that's been included before. But if  
14       it was something brand-new like, I don't know,  
15       something that's been added that you've never owned  
16       before?

17              A.     You can't -- at least I can't predict  
18       something we've never done before, but --

19              Q.     But it would have to be that it wasn't  
20       already a line item, I guess it wasn't already found  
21       in some item?

22              A.     I wouldn't necessarily limit it, but a  
23       category of cost, because when you get into line  
24       items, you've got --

25              Q.     Tell me, define a category for me. What

1 would be a category?

2 A. An example -- would you like an example?

3 Q. Sure.

4 A. Like fuel costs.

5 Q. Okay.

6 A. Would be a category of costs or labor would  
7 be or pension expense or consultants or lawyers. Bad  
8 example, but --

9 Q. There's nothing new there, huh?

10 A. No.

11 Q. Okay. And then finally --

12 A. We've got agreement on something.

13 Q. And then --

14 A. We've got to be careful in this room,  
15 though. I should be careful.

16 Q. In G, where on that Attachment C, the final  
17 area in G says UE, Staff, Office of the Public Counsel  
18 reserve the right to petition the Commission for  
19 resolution of disputed issues relating to the  
20 operation or implementation of this plan.

21 Again, that seems like an open door, and  
22 tell me how you narrow the opening with that type of a  
23 statement.

24 A. I narrow it down to the operation and  
25 implementation of the plan. In other words, what does

1 the Stipulation and Agreement provide for, not what  
2 the parties wish it provided for or with foresight  
3 would have put in there or with hindsight wish they  
4 had.

5           It's just -- a good example of that, cash  
6 working capital offset of 24 million. It's 24  
7 million. The fact on decommissioning we got the  
8 benefit of the 20 million, there might be offsets, but  
9 I don't believe it's our obligation to show there's  
10 offsets.

11           It's just that was a throw of the dice that  
12 that number was going to be good, bad or indifferent,  
13 because if we were short an additional \$20 million,  
14 one, I don't think we'd be here trying to collect on  
15 it, and I don't think we'd get much leeway in that  
16 regard.

17           Q.    Have you been involved in the past in  
18 earnings investigations for UE with this Commission?

19           A.    Yes, I have.

20           Q.    And your comparison of the time, the  
21 resources used by your company to the earnings  
22 investigations and with respect to this proceeding, is  
23 this more or less?

24           A.    On average, I think this is less than those  
25 earnings investigations.

1 Q. Are the issues narrower?

2 A. Certainly, yes. Yes.

3 Q. So although this procedure may not be  
4 pleasant, because I don't think that these type of  
5 procedures are pleasant because they are contentious,  
6 it is not at the level of a full-blown rate case?

7 A. That's correct. And I really think  
8 Mr. Dottheim in his opening remarks presented that. I  
9 reiterate the position. The fact that we're here, I  
10 wouldn't call that bad or for slightly different  
11 reasons than Mr. Dottheim, but this isn't the end of  
12 the world.

13 I still think it's a great idea. I think  
14 it's a great idea for shareholders of Union Electric  
15 and for customers in the efficiencies we've gained and  
16 the incentive that it's provided our company. I think  
17 it far overshadows the cost and trials and  
18 tribulations of going through a procedure like this.

19 Q. And then finally, because I can't let it go,  
20 when Commissioner Lumpe was asking you about the  
21 24 million that is not a dispute to be shared, is that  
22 correct, that was the amount?

23 A. The cash working capital offset \$24 million.  
24 Oh, excuse me.

25 Q. The sharing?

1 A. The sharing.

2 Q. Yes.

3 A. Correct.

4 Q. You had originally -- what I heard you say  
5 is you had originally said no, that you wouldn't do  
6 that now, but then when you were talking to her you  
7 said that was kind of like your first answer.

8 A. It's still no, but I would have liked to at  
9 the time offered an explanation why it's no. I'm not  
10 doing it just to be obnoxious or mean.

11 Q. I don't think anyone has told you you were.

12 A. No. And it's not to be cavalier. I just  
13 think it's part of the --

14 Q. It's still no, and you did explain to her.  
15 But part of what you said to her, this is what I want  
16 to get clear, is you expect everyone to uphold the  
17 agreement that was done in 1995, correct?

18 A. Correct.

19 Q. And if this was part of your agreement, then  
20 why -- the problem I'm having is, you're asking  
21 everyone to follow the agreement. You know there is  
22 part of the sharing that should go back, and why would  
23 you not rise to a higher level than just say no matter  
24 what we honored that piece of our agreement and we  
25 know that that sharing needs to happen so we'll do it?

1                   I really don't understand that, and you need  
2                   to tell me how you can stand on both feet and ask for  
3                   that level of agreement from everyone and yet when you  
4                   admit that you have it that needs to go back and don't  
5                   give it?

6                   A.       Well, from two perspectives, and I won't  
7                   repeat what I said to the Chairperson, but we're in  
8                   the litigation environment.  As you pointed out, this  
9                   isn't one of the more pleasant things I have to do.  
10                  There are worse, but --

11                  Q.       Should I ask?  No.

12                  A.       I have to deal with your own lawyers, too.  
13                  I'm free to insult them at will.

14                        I understand where you're coming from, but  
15                        again, we gave up a lot.  The agreement has no  
16                        provisions for these interim refunds.  Now, that  
17                        would, I'm sure, appear generous or reasonable of me,  
18                        but we're also in a litigation environment.  And very  
19                        frankly, that's one of the levers I've got.

20                           And the parties know, if we were disputing  
21                           \$10,000 and \$10,000 came up back last September,  
22                           October, whenever we filed the report, what would  
23                           prevent a party, and this is an extreme, of saying we  
24                           want another \$10,000 and they have no basis, and I'm  
25                           not going to litigate \$10,000.  I can't afford --



1 these guys can't do a whole lot for \$10,000 with the  
2 filings and all that.

3 So I'm kind of -- if I had to cut the check  
4 for \$24 million, then I'm stuck with \$10,000 and I  
5 can't afford to litigate it. And so where do you  
6 stop? Is it 10 or is it 20 or is it 200 or \$3  
7 million?

8 And from the other side of the coin, I look  
9 at some of these issues, and some of them, quite  
10 frankly, I use the word silly and dumb. I believe  
11 some of them are just simple terms, that's it. I  
12 don't understand why we're here, and if people hadn't  
13 raised some of these issues, and the computer  
14 expenses, from the beginning of time we've been  
15 expensing computer software expenses.

16 If rate issues like that hadn't been raised  
17 by other parties, the credit would have been in  
18 ratepayers' hands already. So it's not just me being  
19 the hard-nosed fellow from St. Louis, not wanting to  
20 cut the check for 24 million. It's we're here because  
21 there's more than one party, not just Union Electric.

22 Q. So who are you -- you say that's a lever.  
23 Who is that a lever against?

24 A. Well, I would think the parties would --  
25 other parties to the case would take into

1 consideration they've got risk of litigation before  
2 this Commission and potential appeals, what their  
3 likely outcome is in the cost of litigating it versus  
4 the time value of money to get the money back to  
5 ratepayers as quickly as possible.

6           And if you're going to propose things that  
7 are pretty iffy at best, there's a cost associated  
8 with that. And if we don't -- if Union Electric just  
9 cuts a check for everything we agree to, then the  
10 parties could come up with all kinds of stuff and we  
11 could just litigate forever and see how much they  
12 could throw against the wall and what would stick.  
13 There's just no incentive to be reasonable.

14           Q. All right. Then my final question, truly is  
15 my final question, as long as you think about your  
16 answer. Is there anything that we have not asked you  
17 here that is very important to you and to your company  
18 that you feel you need to state?

19           This is called -- I do this, and I think  
20 it's important because I think it's very important  
21 that if there's something you felt that you needed to  
22 say that the right question wasn't asked. I have to  
23 make very serious decisions here.

24           A. I understand.

25           Q. And I feel it's important if there's

1 anything else that you felt that I was hoping she'd  
2 ask me so and so, and what is it?

3 A. There's a couple items I think are very  
4 critical to the issue at hand relative to this  
5 agreement. The most important has been the use of  
6 this agreement, the two agreements in helping to  
7 change the culture of the Company.

8 If you want to get into the detailed  
9 numbers, Mr. Baxter is that. I'm the chief financial  
10 officer. I've got some high level decisions. But one  
11 of my key duties is communicating to employees, and  
12 when I was hired 16 years ago, the CEO at the time  
13 told me one of my jobs was, he wanted everyone in his  
14 company the best they could get a better understanding  
15 of how this company makes money, what's good for the  
16 company and what's good for the customers.

17 I've been out to work headquarters over the  
18 years, power plants, and I've talked to groups of vice  
19 presidents, too, and sometimes, believe me, the  
20 impressions and the questions are pretty similar.  
21 Kind of scary at times.

22 But the thing that kept coming up over the  
23 years was, you keep telling us we've got to be better.  
24 And it's my job to beat on people about cost, and  
25 Mr. Baxter helps me do that job, too. But they said,

1 every time we reduce costs, the Commission comes and  
2 takes it away.

3 Now, I know, and you folks know, that's the  
4 way the cost of service model rate base regulation  
5 works, but to the average working person out there,  
6 that's a disincentive.

7 And when we got this plan in place, I made  
8 speech after speech to our senior management, to our  
9 board of directors, power plants and work  
10 headquarters. Here's your opportunity, folks. This  
11 is as close to competition I can get you right now,  
12 but you make a dollar and we get to keep half of it.  
13 It goes to the bottom line.

14 And again, regardless of whether I'm talking  
15 to a vice president or a pipefitter in one of our  
16 power plants, that's had an effect, and I've seen that  
17 effect and we have gone out of our way, the senior  
18 officers of the company, our CEO and myself have been  
19 at the point there to expound on this is a new deal.  
20 It's good for the shareholders and it's good for  
21 customers. I know that sounds trite, but that rings a  
22 bell when it comes to employees.

23 The other aspect of this deal is, and this  
24 sounds self-serving relative to our shareholders, but  
25 frankly over the years the impression of regulation in

1 Missouri within the financial markets has not exactly  
2 been the best.

3 And this deal, besides the time value of  
4 money, there's a lot of our investors, institutional  
5 investors and analysts who are interested in the  
6 outcome of this proceeding and whether in Missouri is  
7 a deal a deal, and they know this is not the ending.  
8 Whether we get an additional \$12 million in computer  
9 expenses in year one or it gets spread over five  
10 years, they're not really interested in that.

11 But there's bigger fish to fry in the future  
12 relative to restructuring and this Commission's role  
13 in that, and if there -- what degree of uncertainty  
14 there is in the outcome. And I think that's a very --  
15 from my perspective at the senior level, that's  
16 extremely important.

17 Mr. Baxter and Gary Weiss will be happy to  
18 tell you about the detail of all the numbers, but I'm  
19 looking at the big picture and what kind of message do  
20 we convey to employees and to shareholders and  
21 financial markets.

22 COMMISSIONER DRAINER: Thank you very much.  
23 I appreciate your answers.

24 JUDGE REGISTER: Commissioner Crumpton?

25 COMMISSIONER CRUMPTON: Yes, I have a couple

1 of questions.

2 FURTHER QUESTIONS BY COMMISSIONER CRUMPTON:

3 Q. Mr. Brandt, I want to clear up a matter  
4 here. I asked you the total value of the issues in  
5 dispute, and you quoted some numbers between 25 and  
6 40 million. And my question is, did that include the  
7 settled issues?

8 A. I believe so.

9 Q. That would bring it --

10 A. Yes.

11 Q. Okay. So if you remove the settled issues,  
12 it would drop quite a bit?

13 A. Oh, I misunderstood you. I think the  
14 disputed issues make up the difference between about  
15 26 and \$40 million.

16 Q. Okay. And does that -- okay. Just the  
17 disputed issues. Okay. That answers that question.

18 I want to explore this area of the new  
19 paradigm where we're using incentive regulation versus  
20 rate of return regulation, and we're still somewhat in  
21 the rate of return regulatory paradigm. This is  
22 something that's boxed within this, this incentive  
23 plan that your company and the other parties have  
24 developed.

25 While the other parties come forth with

1 areas that they think show that you've done something  
2 incorrect, you have not come forth to show issues that  
3 they're overlooking that were offsets? In other  
4 words --

5 A. You're exactly right.

6 Q. In the regulatory environment since I've  
7 been here, Staff would go out and they would not just  
8 look for areas where the company was making money,  
9 they would also look for the areas where the company's  
10 expenses had changed, and then they would match those  
11 expenses with those areas that had changed and with  
12 those revenues and they would say, okay, this is what  
13 the company is really earning and we believe they  
14 ought to be earning X and there creates the dispute.

15 So in this particular case, this is not  
16 there. We only have a one-sided point of view. And  
17 I'm mentioning that because, when I first came here, I  
18 was aware of what companies do in order to improve  
19 efficiency, such as your merger resulted in a number  
20 of people being laid off.

21 A. No, it didn't. Excuse me for interrupting,  
22 but we didn't lay anyone off.

23 Q. But your efficiency went up?

24 A. Correct.

25 Q. Okay. So that means that had you achieved

1 the same level customer base under normal  
2 circumstances, you would expect that your employee  
3 count would go up with that, all other things being  
4 constant?

5 A. That would be reasonable.

6 Q. And now, in the case of some companies, they  
7 achieve efficiencies by laying people off. I know you  
8 were able to do it without laying people off, but some  
9 companies achieve efficiencies by laying people off.

10 So those companies who are in an environment  
11 where we have incentive regulation or regulatory plan,  
12 they achieve efficiencies and then they're asked to  
13 give them up. Is that the issue that you were  
14 alluding to when you made the statement the Commission  
15 takes it away?

16 A. Yes.

17 Q. Now, Mr. Brandt, if you can produce records  
18 that show how you treated software in the past or how  
19 Staff treated it in other rate cases, how you treat it  
20 and how Staff permitted you to treat injuries and  
21 damages in other rate cases or how the revenues and  
22 expenses from territorial agreements were treated,  
23 then you would be providing us with information that  
24 we would need in order to settle many of these  
25 disputes. Do you understand that?



1           A.     Yes, I do.

2           Q.     Now, is it possible that you can show us how  
3 these issues were treated in, say, your last rate  
4 case?

5           A.     I think -- we think what we've put on as  
6 evidence demonstrates that. We'd be happy to  
7 supplement that with specific.

8           Q.     You think you've already done it?

9           A.     In the case of computer expenses, they've  
10 just -- software expenses have just always been  
11 expensed. I'm trying to think off the top of my head  
12 what I can show you to prove that. That capitalized  
13 account might go a long way. I'm not sure that's  
14 bullet proof, but --

15          Q.     If you could show EMS runs from a previous  
16 rate case where Staff did not challenge the treatment  
17 of software expenses in determining how much you have  
18 overearned, that would be an example. And I may be  
19 using the wrong terminology, but do you understand  
20 what I'm saying?

21          A.     Yes. The one question is, it's been a while  
22 since I've looked at an EMS run, and I don't know  
23 if -- I doubt if software expense is laid out. But I  
24 can show you where our accounts coming from our books  
25 and records were X amount of money, and that included

1 software expense, and reconcile it into an EMS run.

2 Q. Really the only thing you have to show in my  
3 opinion is, No. 1, that you have some expenditures for  
4 software and, No. 2, that Staff did not say they were  
5 imprudently incurred or Staff did not say you should  
6 not have expensed these items, they should have been  
7 carried out over time.

8 A. We'll be happy to take a shot at that.  
9 After this is over, I'll get with Mr. Baxter and we'll  
10 see what we can put together.

11 Q. And also on injuries and damages, I did see  
12 now the exhibits that showed how things were going  
13 along and then they popped up real high on several of  
14 these disputed issues, but you would just have to  
15 show, in my opinion, that these happened in the past  
16 and Staff did not say it was imprudent to recognize it  
17 like that, because we're only talking about a  
18 recognition issue, a timing of recognition.

19 A. That's correct.

20 COMMISSIONER CRUMPTON: Okay. And I think  
21 that takes care of it. Those are all the questions I  
22 have.

23 JUDGE REGISTER: Commissioner Murray, did  
24 you have another question?

25 COMMISSIONER MURRAY: I believe mine have

1       been covered. Thank you.

2                   JUDGE REGISTER: I think it's 10:30 now.

3       Would anyone -- I think this would be a good time for  
4       a break, and why don't we take at least ten minutes.

5       Is that all right?

6                   Off the record.

7                   (A recess was taken.)

8                   JUDGE REGISTER: We have completed all the  
9       questions I think from the Commissioners. I just had  
10      a few questions myself to make sure that our record is  
11      complete, and then I'll turn back to recross and  
12      redirect.

13      QUESTIONS BY JUDGE REGISTER:

14           Q.     In your rebuttal testimony, Mr. Brandt, on  
15      page 32, you're addressing the territorial agreement,  
16      and on line 7 there the sentence starts, a unilateral  
17      act by one party to a contract does not thereby affect  
18      a change in the explicit terms of that contract.

19                   If I understood your testimony yesterday,  
20      though, you were not aware that there had been  
21      recommendations reserving ratemaking treatment for the  
22      credit sharing plan for these two territorial  
23      agreements and that those ratemaking recommendations  
24      had been ordered by the Commission?

25           A.     When I wrote this, I was not aware, and to

1 date, as of now, I'm only aware that it was relative  
2 that that language was included on the Macon  
3 territorial agreement. I'm not aware that --

4 Q. So a unilateral act would not include a  
5 Commission Order?

6 A. I think, unless we agreed to that, that  
7 would be a unilateral act on the Commission Order to  
8 reserve that.

9 Q. And then yesterday in your testimony,  
10 looking at page 14 and page 15 of your testimony,  
11 beginning on page 14 and line 21 and going through  
12 line 2 on 15, the question was put to you, according  
13 to my notes, that was UE's position made known to  
14 Staff about how you interpreted the reconciliation  
15 procedure, and my notes say that your response was you  
16 thought the document spoke for itself.

17 Is that no -- would that have meant that,  
18 no, you did not specifically discuss or UE did not  
19 make known its interpretation of the reconciliation  
20 procedure to the Staff and OPC at the time that this  
21 agreement was being negotiated?

22 A. That's correct. We didn't explicitly say  
23 that. We felt the language was self-evident.

24 Q. That's just what I need to double check.  
25 And in talking about the Attachment B of Exhibit 21,

1 you had indicated that the only thing that you were  
2 aware of was the sharing grid and that the rest of it  
3 had been prepared by someone else under your  
4 direction; is that correct?

5 A. The only part of the Bell agreement I was  
6 aware of is I saw one page that had a sharing grid.  
7 Now, I prepared basically the text. Attachments A and  
8 B were prepared by others.

9 Q. Okay. And who prepared Attachment B?

10 A. Best of my recollection, Joseph Pfeiffer,  
11 who was our controller at the time. I'm sure he had  
12 some input from lawyers and he had the rate department  
13 under him, too, the accountants and stuff that are  
14 familiar with it.

15 Q. And is Mr. Pfeiffer still in your employ?

16 A. No, he's not. He retired several years ago,  
17 about two or three.

18 Q. Are there any other parties or persons in  
19 your employ that would have assisted him with that?

20 A. I wouldn't be surprised if Mr. Gary Weiss  
21 assisted him with that or Jim Cook, our attorney here,  
22 but Mr. Weiss could obviously tell you if he did or  
23 not. He worked for Mr. Pfeiffer at the time --

24 Q. Okay.

25 A. -- in the rate area.

1 Q. And who prepared Attachment A?

2 A. That would have been someone under the  
3 control of Mr. Pfeiffer at the time. We've got a  
4 separate budget department. We've got -- we had a  
5 budget at the time. It was just put it in a format.  
6 It's a booklet, and it would have been to put it in a  
7 format that's one page instead of 30-something pages  
8 of detail.

9 Q. Okay. And there was reference, I believe  
10 this is again to your testimony, on page 23, line 15  
11 to the November 10 meeting. I believe that's a  
12 negotiation?

13 A. Page 23?

14 Q. Yes.

15 A. Okay.

16 Q. Line 15 through the end of the page  
17 discusses the November 10 meeting that representatives  
18 of Staff and Public Counsel, representatives of your  
19 company, Staff and counsel had. And I understood your  
20 testimony was that you were not present at that  
21 meeting. Do you know who that you directed to be  
22 there?

23 A. I don't recall specifically the people that  
24 were there. I believe Warner Baxter was there, and I  
25 believe Gary Weiss was there, and likely Jim Cook was

1 there.

2 Q. What was the last one?

3 A. Jim Cook.

4 Q. Mr. Cook. Okay.

5 A. I'm not absolutely certain whether they took  
6 the lawyer. We hardly go any place without a lawyer.

7 Q. You might need them.

8 A. Somebody has to pick up lunch.

9 Q. The other question I had, I think  
10 Commissioner Murray had some questions about the  
11 weather normalization issues, and I wanted to clarify.

12 Was there an issue on weather normalization  
13 about the regional measure that was agreed upon no  
14 longer existed and you-all had to choose some other  
15 measure of weather normalization?

16 MR. CYNKAR: Your Honor, I may be able to  
17 clear this up because Mr. Dottheim and myself and some  
18 other folks were really instrumental in making that  
19 happen. It gets so complicated.

20 JUDGE REGISTER: I appreciate that.

21 MR. CYNKAR: So if you don't mind. Simply  
22 put, one issue that was raised in weather  
23 normalization was the question of how you address  
24 known biases in historical records. That was one  
25 practical question. And our original position was

1 that you take a longer time period, and ultimately  
2 both the known and unknown biases shift out. Staff's  
3 position was take a shorter period and actually make  
4 an adjustment for those biases. That was No. 1.

5 No. 2 was the question of how do you make  
6 those adjustments, if you do, for those biases in  
7 historical record.

8 The third big issue had to do with the  
9 installation of a new measuring device called ASOS in  
10 1996, I believe, that introduced its own biases. And  
11 originally the Staff had not adjusted for that bias to  
12 the extent that we thought was appropriate.

13 The way the parties compromised was this.  
14 We agreed to the Staff's adjustment for the past  
15 biases, to do it that way, and use the 30-year period  
16 and use their figures for the two biases that were  
17 introduced in the past. In addition, the Staff agreed  
18 that we should make an adjustment for the ASOS change.

19 They didn't just take our number, but what  
20 we did is we had our experts get together and then  
21 agree on the comparison sites and so forth and the  
22 methodology for doing that. And so all of that  
23 together produced the agreement on weather  
24 normalization.

25 JUDGE REGISTER: Okay. I think that gives



1 us a full picture. Thank you, Mr. Cynkar.

2 Mr. Dottheim, did you have anything to add?

3 MR. DOTTHEIM: Yes. I think the number was  
4 between the -- at least the dollar value was between  
5 what had been originally proposed by the Company and  
6 by the Staff.

7 JUDGE REGISTER: Okay. I don't think I have  
8 anything further.

9 COMMISSIONER MURRAY: Can I ask a couple  
10 more?

11 JUDGE REGISTER: Commissioner Murray.

12 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

13 Q. Before we get away from questions from the  
14 Bench and then we won't have to have another round.  
15 The questions that you were asked earlier about the  
16 agreement and who were parties to the agreement, do  
17 you recall some of those questions?

18 A. Yes, uh-huh.

19 Q. The parties, in your opinion, who are the  
20 parties to the agreement? Is it the parties that  
21 signed? Is it the people, the entities that signed  
22 the agreement?

23 A. The entities that signed the agreement and  
24 this Commission.

25 Q. Okay. That's where I have a problem with

1 your interpretation. And follow this with me for a  
2 minute, if you could. The parties entered into an  
3 agreement and they came to this Commission to ask for  
4 approval of the agreement; is that correct?

5 A. That's correct.

6 Q. But by approving the agreement, the  
7 Commission itself does not become a party to the  
8 agreement, does it? Does it not just become a body to  
9 which you bring disputes and the Commission would  
10 determine whether the terms of the agreement are being  
11 complied with by the parties?

12 A. I think that's a way to look at it. By  
13 party -- and again, I'm not a lawyer. So I don't know  
14 the nuances. But obviously the Commission wasn't a  
15 signatory, but it issued an Order approving the  
16 Stipulation and Agreement. So from a layman's  
17 perspective, I don't think the Commission is free to  
18 go back and change that Stipulation to more to its  
19 liking now.

20 Q. Okay. I want to follow up on that. You  
21 talked about a unilateral act by one party to the  
22 contract in your testimony, but I read that to mean  
23 that you're referring to the Staff as to any  
24 unilateral act, Staff being a party and then making a  
25 change in terms -- in the way the contract was being

1 carried out or interpreted and that the Staff was the  
2 unilateral party to the contract that you were  
3 referencing at that point.

4 A. Yeah. In this case, that's the issue is the  
5 Staff and Public Counsel brought issues before that we  
6 think are unilateral. I'm not saying that it couldn't  
7 have occurred if the Commission itself initiated we  
8 think the working capital offset ought to be  
9 30 million instead of 24.

10 Q. Stop there a minute because I want to go  
11 into the Commission's role. When the Commission has  
12 approved an agreement like that, the Commission has  
13 said we agree that this agreement is not detrimental  
14 to the ratepayers. We don't see any harm in this  
15 agreement going forward. Therefore, we will approve  
16 this agreement, which is binding upon the parties.

17 And then at some later date, if the parties  
18 determine that they have a dispute, the Commission has  
19 the role, does it not, of deciding those disputes and  
20 those disputes being whether the agreement is actually  
21 being carried out according to its terms, which the  
22 Commission approved?

23 A. Yes. In other words, what do these words  
24 mean? Yes, the Commission -- I understand the  
25 Commission could address what is the meaning of these

1 words.

2 Q. And part of the reason the parties enter  
3 into an agreement is that there is certainty for a  
4 period of time as to how certain things will be dealt  
5 with; is that correct?

6 A. That is certainly a key benefit.

7 Q. And by approving an agreement, the  
8 Commission is saying, if the agreement is for three  
9 years, the Commission approves the agreement to last  
10 for three years. Is that your understanding?

11 A. That's my understanding.

12 Q. But it does not necessarily thereby become a  
13 party? Never mind. You've already stated your view.  
14 I don't need to try to change it.

15 If one party benefits from an agreement more  
16 than was anticipated at the time of the agreement, in  
17 your opinion, does that go -- does that give a reason  
18 for the other party to come back in and change the  
19 agreement?

20 A. No.

21 Q. So it's possible that either party can  
22 benefit more than was anticipated at the time that  
23 both parties set down the terms and agreed to them; is  
24 that correct?

25 A. I think that's true. I think it's almost

1 guaranteed because nobody can predict the future, and  
2 it's going to vary and there's random luck involved.

3 COMMISSIONER MURRAY: Okay. Thank you. I  
4 think that's all my questions.

5 JUDGE REGISTER: We're ready for recross,  
6 then, and our order is parties other than Staff and  
7 OPC. Do the Intervenors have any?

8 MR. JOHNSON: I have a few questions.

9 RE-CROSS-EXAMINATION BY MR. JOHNSON:

10 Q. Mr. Brandt, in the opening statement your  
11 counsel indicated that Union Electric perceived the  
12 all-direct plan as a step or a partial step toward  
13 deregulation, and I take it you agree with that, that  
14 statement?

15 A. Yes.

16 Q. Is UE at this time making plans to move  
17 toward competition in the generation of electric  
18 power?

19 A. Yes, to become more --

20 Q. Can you indicate what some of those steps  
21 are?

22 A. I think we've had a very strong focus on  
23 performance of our generating units, costs across the  
24 board in all areas of the company, but naturally  
25 big -- the vast majority of our assets are tied up in

1 our generating plants, and key are the overall costs  
2 of those performances. The more they run, the better  
3 off we and our customers are.

4 Q. Under the present plan you have partial  
5 regulation right now, but you still have the exclusive  
6 service territory. Can you indicate to us when you  
7 anticipate that competition would be available in the  
8 generation of electric power?

9 A. I couldn't predict it. I've heard a variety  
10 of things coming out of the Legislature, different  
11 representatives of the Legislature, whether a bill  
12 would even be seriously considered for two years. In  
13 my opinion, I think we're a few years off.

14 Q. How many years?

15 A. I think we're at least a couple of years  
16 off.

17 MR. JOHNSON: I have no further questions.

18 JUDGE REGISTER: Mr. Fulton?

19 MR. FULTON: Yes.

20 RE-CROSS-EXAMINATION BY MR. FULTON:

21 Q. Mr. Brandt, going to the UE and the Macon  
22 territorial agreements for just a second. Do you know  
23 when the UE territorial agreement was approved by this  
24 Commission?

25 A. No, I don't.

1 Q. Do you know if it was before or after the  
2 implementation of this experimental plan?

3 A. No, I don't.

4 Q. And you say you have not actually reviewed  
5 either -- was there a stipulation entered in that  
6 case, do you recall, on the Black River one?

7 A. I don't recall. My knowledge of both of  
8 them is relatively limited.

9 Q. You weren't actually involved with those  
10 cases?

11 A. No, I was not.

12 Q. Would you agree with me that a contract can,  
13 in fact -- a contract or a stipulation can be modified  
14 by subsequent agreement of the parties?

15 A. Yes, it can.

16 Q. Would you agree with me that it appears that  
17 UE modified this experimental program at least in the  
18 Macon Stipulation and Agreement that was presented to  
19 the Commission?

20 A. Yes.

21 Q. So you would agree with me that the Staff  
22 then can, in fact, consider at least that territorial  
23 agreement as far as the implication, making  
24 adjustments to it; is that correct?

25 A. Yes.

1 Q. Would you also agree with me that if similar  
2 language is contained within a Stipulation and  
3 Agreement on the Black River case, that, in fact, then  
4 the Commission, the Staff is within its rights to  
5 argue for some sort of adjustment?

6 A. If it were essentially the same, yes.

7 Q. Now, we still have various issues that we're  
8 hopefully one of these days going to get to talk about  
9 in more detail. And I guess my question to you is, do  
10 you consider any of those other issues to be  
11 appropriate topics for the Staff to bring up other  
12 than the territorial agreement?

13 In other words, under the contract or any  
14 subsequent contract, like the year 2000, Y2K computer  
15 costs, as to how to -- whether to capitalize those or  
16 expense them, is that a topic that can be brought up  
17 in your interpretation of the Stipulation and  
18 Agreement?

19 A. No.

20 Q. How about the other computer costs?

21 A. No.

22 Q. How about the -- well, we had the one for  
23 the current tax reduction for allowance of funds used  
24 during construction. Is that an appropriate topic to  
25 be brought up under the Stipulation and Agreement?



1           A.     Mr. Baxter would be able to explain. I'm  
2 not familiar with the aspects of that adjustment.

3           Q.     How about deferred taxes, was that an  
4 appropriate matter to be brought up?

5           A.     That's the same. I'd defer to Mr. Baxter on  
6 the tax issues.

7           Q.     How about the merger and acquisition costs?

8           A.     No, I don't believe that was appropriate to  
9 have been brought up.

10          Q.     How about the lobbying expense?

11          A.     That was appropriate. That was an error.

12          Q.     The decommissioning fund deposits?

13          A.     No, that was not appropriate.

14          Q.     And the injuries and damages?

15          A.     That's not appropriate.

16          Q.     The weather was settled. Was that an  
17 appropriate matter to be brought up? Actually, I  
18 guess that was under the '98, I mean the subsequent  
19 stipulation, wasn't it?

20          A.     Under the second one.

21          Q.     Let's assume for the moment the Commission  
22 says that all these matters are appropriate matters  
23 for their resolution under this Stipulation and  
24 Agreement, in other words disagrees with your position  
25 and your company's position. Let's assume further

1 that you lose on a significant -- that UE's position  
2 is not taken on, say, the computer issue, which is, I  
3 guess, the biggest cost driven one here we have left  
4 before us.

5 Will UE -- if I understand your position  
6 correctly, UE will view that as a breach of this  
7 agreement?

8 A. What would be a breach?

9 Q. By the Commission saying you have to treat  
10 these costs in a different manner than what you  
11 interpret the agreement to provide?

12 A. I don't know if I'd use the word breach. I  
13 don't believe under the terms of the contract that  
14 they could come to that -- under the terms of the  
15 Stipulation and Agreement, that contract, would come  
16 to that conclusion.

17 Q. Would UE at that point in time want to  
18 withdraw from the second three-year plan?

19 A. We'll cross that bridge when we get to it.

20 Q. Would you -- do you believe that these  
21 three-year plans provide a significant benefit to UE?

22 A. Yes, to both UE and our customers.

23 Q. Customers have not received any significant  
24 benefit to that plan at least for the third three-year  
25 sharing period, have they?

1           A.     They got a whole bunch of money, looking at  
2     that graph.

3           Q.     Sitting in your pocket?

4           A.     Well, there's 24, 25 million sitting in our  
5     pocket, so to speak.  There's several hundred million  
6     and then some sitting in our ratepayers' pockets.

7           Q.     But you can't tell us as we sit here today  
8     what the result would have been if a complaint had  
9     been filed about excess earnings as to what kind of  
10    refund or --

11          A.     I can't predict what would have happened if  
12    we went another course of action, but I can tell you  
13    relative to -- if there was a complaint proceeding,  
14    there wouldn't have been an immediate \$30 million rate  
15    reduction and there wouldn't have been an up-front  
16    \$30 million credit paid with that timing.

17                    It might have come in the form of a rate  
18    reduction, but it would have been down the road some,  
19    and that rate reduction may not have been spread on  
20    the basis of kilowatt hours.

21          Q.     With regard to the second agreement,  
22    Stipulation and Agreement, were any of the intervenors  
23    signators to that Stipulation and Agreement?

24          A.     Without looking at it, I don't recall.  I'd  
25    be happy to look for you.

1 Q. Why don't we take a quick look because I  
2 haven't found it yet.

3 JUDGE REGISTER: Is that referencing  
4 Appendix B to your testimony?

5 THE WITNESS: That's what I'm looking at,  
6 yeah, Exhibit 13, page -- I'm on page 39 and 40.  
7 We've got Office of the Public Counsel --

8 BY MR. FULTON:

9 Q. Okay.

10 A. -- Union Electric, Robert Johnson for  
11 Anheuser Busch, et al, Mr. French for Trigen,  
12 Mr. Duffy for Missouri Gas Energy. There's a few  
13 others.

14 Q. Basically pages 39 to 41?

15 A. Correct. We've got a few Intervenors on  
16 there.

17 MR. FULTON: I have no further questions.

18 JUDGE REGISTER: Are there any other  
19 Intervenors?

20 Mr. Dottheim for Staff, do you have any  
21 recross questions?

22 MR. DOTTHEIM: Yes, thank you.

23 RE-CROSS-EXAMINATION BY MR. DOTTHEIM:

24 Q. Mr. Brandt, I think you were asked some  
25 questions by Chair Lumpe regarding the second ERP, the

1 extension, so to speak, of the ERP for another three  
2 years. Do you recall whether Union Electric Company  
3 in its surrebuttal testimony in the merger case with  
4 CIPSCO proposed a five-year extension of the plan?

5 A. I don't specifically recall.

6 Q. Would you be willing to accept that that's  
7 what occurred, subject to check?

8 A. Yes.

9 Q. Vice Chair Drainer asked you a few  
10 questions -- excuse me. I think this goes to Chair  
11 Lumpe's questions about timing also, but I may be  
12 mistaken. If I could ask you to turn to what's  
13 Exhibit 22. Excuse me. I think it's Exhibit 21, your  
14 list of -- pardon me.

15 A. The Data Request?

16 Q. No. It's your schedules. It's 13,  
17 Exhibit 13, the appendices to your rebuttal testimony.

18 A. Appendix B?

19 Q. Appendix A.

20 A. Oh, Appendix A.

21 Q. Let's start there.

22 A. Okay.

23 Q. And if you would turn to page 4 of the  
24 actual Stipulation and Agreement that's attached to  
25 the Commission's Order.

1           A.     I'm on page 4 of the Stipulation and  
2 Agreement.  Is that --

3           Q.     Yes.

4           A.     Okay.

5           Q.     And if I could direct you to the paragraph  
6 at the bottom of the page which is identified as  
7 paragraph C.  I'm not looking at the Commission's  
8 Order itself.  I'm looking at the --

9           A.     Excuse me.

10          Q.     -- Stipulation and Agreement.  Pardon me.

11          A.     It's my error.  I'm on page 4 with the  
12 sharing grid on it.

13          Q.     Yes.

14          A.     Okay.  I'm there.

15          Q.     If I could direct you to paragraph C, the  
16 third sentence, that indicates that first sharing  
17 period was from July 1, 1995 to June 30th, 1996?

18          A.     That's correct.

19          Q.     And if I could direct you to Appendix B, the  
20 attachment to the Commission's Report and Order, page  
21 44, which is the signature page.  It's the last --

22          A.     Okay.

23          Q.     It's the last signature page to the  
24 Stipulation and Agreement, and it shows on the  
25 left-hand side of the page a date.

1 A. Correct.

2 Q. It says dated, and the date is July 12, '96?

3 A. That's correct.

4 Q. So the Stipulation and Agreement itself is  
5 dated 12 days approximately after the end of the first  
6 sharing period in the first EARP; is that correct?

7 A. That's correct.

8 Q. And if I could direct you again back to your  
9 Appendix A --

10 A. Okay.

11 Q. -- to the Stipulation and Agreement, page 8.

12 A. All right.

13 Q. Small Roman Numeral iv, and the first  
14 sentence says, within 90 days after the conclusion of  
15 the sharing period a preliminary earnings report along  
16 with a proposed sharing report will be submitted by  
17 UE. Did I read that correctly?

18 A. Yes, you did.

19 Q. Do you know approximately when within that  
20 90-day period the documents referred to, the  
21 preliminary earnings report along with a proposed  
22 sharing report, were submitted by UE?

23 A. No, I don't recall the specific date.

24 Q. Would you accept, subject to check, that it  
25 was sometime after July 12, 1996?

1 A. Yes, I would.

2 Q. I think you had indicated in response to a  
3 question from the Bench that at the time the  
4 Stipulation and Agreement in your merger case was  
5 filed with the Commission, UE had not entered into any  
6 merger discussions with CIPSCO; is that correct?

7 A. What was the first part? Excuse me.

8 Q. Yeah. The Stipulation and Agreement in the  
9 Company's merger case at the Commission, the  
10 Stipulation and Agreement was filed on June 12, 1996.  
11 I think you indicated in a question from the Bench  
12 that Union Electric Company at that time had not  
13 engaged in any merger discussions with CIPSCO; is that  
14 correct?

15 A. Where you're confusing me, Mr. Dottheim, I  
16 believe you said the Stipulation and Agreement in the  
17 merger case.

18 Q. Yes. I'm sorry.

19 A. That's what threw me.

20 Q. I'm sorry. What I meant was the first EARP,  
21 the Stipulation and Agreement in ER-95-411?

22 A. The first EARP?

23 Q. Yes. So excuse me. If I correct that, I  
24 think you indicated to the Bench that at the time the  
25 Company entered into the first EARP, it was not in



1 merger discussions with CIPSCO, Inc.?

2 A. Entered into, then you -- earlier I think  
3 you asked when it was filed, and I don't recall when  
4 it was filed, but I believe it was entered into on the  
5 12th of June 1995. And at that point there had been  
6 absolutely no merger discussions, talk whatsoever.

7 Q. And if you would actually go to the first  
8 page of the Stipulation and Agreement, the ER-95-411,  
9 at the bottom of the page in the right-hand corner  
10 there is a stamp.

11 A. Says filed June 12, 1995.

12 Q. Do you recall when there was the  
13 on-the-record presentation before the Commission of  
14 the Stipulation and Agreement in EO-95-411?

15 A. I don't specifically recall, but it was  
16 after June 12th, 1995.

17 Q. Would you accept, subject to check, that it  
18 was on July 19th, 1996? In fact, could I direct  
19 you --

20 A. I believe that date's correct.

21 Q. If I could direct you to page 2 of the  
22 Report and Order of the Commission.

23 JUDGE REGISTER: You said 1996. You meant  
24 1995?

25 MR. DOTTHEIM: I'm sorry. 1995.

1 THE WITNESS: Okay. I'm on page 2.

2 BY MR. DOTTHEIM:

3 A. I'm looking at the second full paragraph,  
4 and there's reference to the date July 19, 1995.

5 A. It appears that was the hearing date,  
6 July 19, 1995.

7 Q. At that time, at the time of the  
8 on-the-record presentation of the Stipulation and  
9 Agreement to the Commission, was Union Electric  
10 Company engaged in merger discussions with CIPSCO,  
11 Inc.?

12 A. Yes, we were.

13 Q. Did Union Electric Company bring that  
14 information to the Commission's knowledge?

15 A. No, we did not.

16 Q. There was another question from the Bench  
17 regarding the merger and acquisition costs that are in  
18 this case, and it's seemingly a question on the basis  
19 if the merger and acquisition costs are addressed in  
20 the second EARP, the second Stipulation and Agreement,  
21 that being in the Company's merger case, why are  
22 merger and acquisition costs in this case?

23 Is the -- are there merger and acquisition  
24 costs in that third year sharing period?

25 A. Yes. We are amortizing those costs in that

1 period. Let me refine that. Some of the amortization  
2 of those costs falls under that period.

3 Q. In another question from the Bench, you gave  
4 an indication of what you believe the Company gave up  
5 in entering into the Stipulation and Agreement in the  
6 merger case, did you not?

7 A. I think I touched on that.

8 Q. And one of those items was recovery of the  
9 merger premium; is that correct?

10 A. That's correct.

11 Q. There is no assurance that the Company would  
12 have, if that issue had gone to hearing, had prevailed  
13 on that issue, is there?

14 A. I think we put on a pretty good case. I  
15 have no idea how it would have come out.

16 Q. You indicated in response to a question from  
17 the Bench that the Y2K costs for the third year  
18 sharing period are a million dollars; is that correct?

19 A. I believe I said that, and the specifics to  
20 fine tune those numbers, I'd defer to Mr. Baxter and  
21 Weiss.

22 Q. Do you know what the company's total Y2  
23 costs are or are projected to be?

24 A. In total, through the year 2000, a range of  
25 10 to \$15 million, total Ameren Corporation.

1 Q. And so that would -- there's an allocation  
2 to Missouri because --

3 A. Yes.

4 Q. -- you're saying total Ameren. That  
5 includes Illinois?

6 A. Yes.

7 Q. And is the company approximately 85 to  
8 90 percent Missouri?

9 A. Union Electric is, but of total Ameren,  
10 Missouri Union Electric is probably closer to 70,  
11 75 percent. I don't have a figure on the exact  
12 allocation. And then you've got electric and gas,  
13 too.

14 Q. But there are Y2 -- well, there are Y2K  
15 costs for both electric and gas?

16 A. Yes.

17 Q. Was there a Callaway refueling in 1994? Do  
18 you recall?

19 A. Let me double check. No, there was not.

20 Q. And there were a number of questions from  
21 the Bench which you addressed regarding software costs  
22 and historically what company expensed. Did Union  
23 Electric Company have a written policy setting forth a  
24 required treatment of expensing software costs when  
25 the EARP was adopted?

1           A.     Not that I'm specifically aware of.  Just  
2     the fact that we've always done it that way.

3           Q.     Has the Company historically had a written  
4     policy setting forth the required treatment of  
5     software costs?

6           A.     No, other than we've always expensed them.

7           Q.     So there's no written policy?

8           A.     I have not seen it.  There very well could  
9     be, but I just don't know.

10          Q.     But you're not aware of one?

11          A.     I'm not aware of one.

12          Q.     Another question from the Bench regarding  
13     the time value of money of the decommissioning trust  
14     fund.  Is it your position that if the Commission does  
15     not allow any recognition of the time value of money  
16     associated with the decommissioning deposits in the  
17     third year sharing period, that the Staff is precluded  
18     from raising any issue at any subsequent point  
19     regarding the time value of money for that third year  
20     sharing period?

21          A.     I guess I don't understand the question.  If  
22     they don't allow it, then we've finalized this.  I  
23     don't understand how it could be raised in the future.

24                   MR. DOTTHEIM:  One moment, please.

25                   That's all the questions I have for

1 Mr. Brandt. I do have something of a housekeeping  
2 matter regarding questions from the Bench, but that  
3 could be deferred until Mr. Coffman asks any  
4 additional recross.

5 JUDGE REGISTER: All right. Thank you,  
6 Mr. Dottheim. Mr. Coffman?

7 MR. COFFMAN: I think there's only one other  
8 matter I was wanting to clear up.

9 RE-CROSS-EXAMINATION BY MR. COFFMAN:

10 Q. Mr. Brandt, you refer -- in reference to the  
11 decommissioning fund issue, I believe in response to  
12 Commissioner Murray's questioning you said that you  
13 didn't think that this was a proper issue to bring to  
14 the Commission because of the reference in the  
15 reconciliation procedures to the step that refers to  
16 cash working capital, cash working capital adjustment;  
17 is that correct?

18 A. Correct.

19 Q. Are you aware of Public Counsel's primary  
20 recommendation with regard to that issue?

21 A. I don't specifically recall it.

22 Q. Do you recall the recommendation that the  
23 Company be ordered simply to make that fund whole with  
24 an additional payment to the fund?

25 A. Now that you mention it, I do recall that.

1 Q. In your opinion, does that recommendation --  
2 is that recommendation also prohibited by that  
3 reference in the reconciliation procedure?

4 A. I would think so, as part of this  
5 proceeding, yes.

6 MR. COFFMAN; Okay. Thank you. I think we  
7 can discuss this issue when we get to it later. Thank  
8 you.

9 JUDGE REGISTER: Thank you, Mr. Coffman.

10 Mr. Dottheim, did you have an additional  
11 issue that needed to be addressed on the recross?

12 MR. DOTTHEIM: Well, I don't know if this is  
13 the appropriate time, but whatever the Company is  
14 going to submit to the Commission regarding the  
15 Staff's treatment of computer software costs in prior  
16 periods, when the Staff will have an opportunity to  
17 respond to that or comment on that? I don't know  
18 whether that's contemplated. I thought I'd raise that  
19 matter.

20 THE WITNESS: I don't know if I can help the  
21 matter, but after thinking about it, I know what  
22 Commissioner Crumpton asks for, and we'd be happy to  
23 work towards that goal providing something and work  
24 with Staff maybe.

25 But it's my understanding that whether we --

1 no one in this case is disputing that we expensed  
2 those costs in prior years. I don't know if that  
3 helps anyone on the Bench with the issue, but I think  
4 the lawyers want to dispute that, but it's my  
5 understanding nobody's debating that we did not  
6 expense them in prior years. So I don't think that's  
7 an issue of controversy. But with that said, we'd  
8 still be happy --

9 JUDGE REGISTER: I think Commissioner  
10 Crumpton's question was, what were the expenses?

11 THE WITNESS: My understanding, we can work  
12 towards coming up with some kind of an exhibit to  
13 demonstrate that they were -- those expenses were, in  
14 fact, expensed in prior years. And again, we'd be  
15 happy to do that.

16 But with that said, it's my understanding  
17 none of the parties dispute that those costs were, in  
18 fact. So we'd be happy to prove it over, try to  
19 again, but I don't think it's --

20 JUDGE REGISTER: I think that we'll have an  
21 opportunity when the issue of the other computer costs  
22 come up to -- and I think that's what I understood  
23 Commissioner Crumpton was asking -- to make sure that  
24 that was part of that testimony. Would that be  
25 accurate?



1                   COMMISSIONER CRUMPTON: My concern is that,  
2                   in reading the testimony, that some of the parties  
3                   think that these things ought to be spread out over up  
4                   to ten years, and in the agreement I got the  
5                   impression that we will treat things as we normally  
6                   treat them.

7                   And so, for example, if you're looking at  
8                   computer expense, then in the past we've always  
9                   expensed them, then to me that's significant. But if  
10                  in the past we have actually spread out those costs,  
11                  capitalized them and spread them out over a period of  
12                  time, then that also is significant.

13                 JUDGE REGISTER: And you're wanting them to  
14                 present that evidence as part of the issues as we take  
15                 up other computer costs?

16                 COMMISSIONER CRUMPTON: Right.

17                 JUDGE REGISTER: So Staff will have an  
18                 opportunity to address that under the specific issue.  
19                 If there's some document that UE presents that is  
20                 not -- they're not able to present during the hearing  
21                 time and it's filed as a late-filed exhibit, then, of  
22                 course, Staff and the OPC and the other parties would  
23                 have an opportunity to address that late-filed exhibit  
24                 in that normal procedure.

25                 COMMISSIONER CRUMPTON: There's the claim,

1 and I just want to see how it was actually treated --

2 JUDGE REGISTER: Right.

3 COMMISSIONER CRUMPTON: -- in the past.

4 JUDGE REGISTER: I thought that's what you  
5 were asking for. Does that take care of your  
6 question, Mr. Dottheim?

7 MR. DOTTHEIM: Yes.

8 JUDGE REGISTER: Then I believe we're ready  
9 for redirect. Mr. Cynkar?

10 MR. CYNKAR: Just a couple things to clear  
11 up a few things.

12 REDIRECT EXAMINATION BY MR. CYNKAR:

13 Q. Mr. Brandt, if I could direct your attention  
14 on that chart to small Roman vii, which is actually  
15 Section 3.f.vii in the first EARP, which is on page 9  
16 of Exhibit 13 as Attachment A. And if I could  
17 particularly direct your attention to the language in  
18 the second sentence related to the operation or  
19 implementation of the plan. If you want to refer to  
20 it on the big chart, you can.

21 A. No. I -- I've got it in front of me here.  
22 The second sentence of vii?

23 Q. Correct. The language related to the  
24 operation or implementation of the plan.

25 COMMISSIONER DRAINER: I think you mean just

1 the second line.

2 MR. CYNKAR: The first sentence, I'm sorry,  
3 second line.

4 THE WITNESS: This is a trick, huh, from my  
5 own lawyer nevertheless.

6 COMMISSIONER DRAINER: Look at the chart.  
7 He's confused. Second line.

8 JUDGE REGISTER: Or it's the fourth line in  
9 that.

10 BY MR. CYNKAR:

11 Q. Okay. Is that clear?

12 A. I know who's buying lunch. Okay. The  
13 operation or implementation of the plan.

14 Q. All right. Now, from your perspective, does  
15 that include all the disputes over what the plan  
16 means?

17 A. Yes.

18 Q. Now, directing your attention back to the  
19 question of the mergers and acquisition dispute, what  
20 is involved there?

21 A. In the second Stipulation and Agreement  
22 provides how that cost will be handled under the terms  
23 of the sharing plan.

24 Q. Okay.

25 A. And it prescribes a formula one or two will

1 be the amount that's included in the plan for  
2 determination of credits.

3 Q. And the dispute between the parties is over  
4 what the plan means, correct?

5 A. Yes.

6 Q. And so that is a dispute concerning the  
7 operation or implementation of the plan?

8 A. Yes, it is.

9 Q. And that's properly before the Commission?

10 A. Yes, it is.

11 Q. Now, is there any language in the first or  
12 second EARPs that allows a party to propose an  
13 additional adjustment to the earnings calculation  
14 beyond what's set out in the reconciliation procedure?

15 A. No, there's not.

16 Q. And if you have reviewed the Southwestern  
17 Bell plan, is there any language in that plan that  
18 allows the same kind of thing to happen under the  
19 Southwestern Bell plan?

20 A. No, there's not.

21 Q. Now, if someone were to propose an  
22 adjustment that was not within the reconciliation  
23 procedure and claim that that was within the operation  
24 or implementation of the plan and you disagreed,  
25 that's an issue that the Commission could still

1 decide, isn't it?

2 A. Yes.

3 Q. Directing your attention to the new category  
4 question, you were asked questions about what could be  
5 a new category now. Let's say you look in the past,  
6 since you said you couldn't -- didn't have a crystal  
7 ball.

8 But if you put yourself back in, let's say,  
9 1960s era and so forth and looking forward from that  
10 time, was there any event that happened between then  
11 and now that you could consider to possibly be a new  
12 category of cost as an example?

13 A. The only one -- literally the only one that  
14 even comes close that I can think of, and I haven't  
15 done an exhaustive study, but in the early 1990s there  
16 was legislation passed by the United States Congress  
17 that required nuclear operators to -- basically, it  
18 was a tax. I think they called it something else, but  
19 in our case it was a million dollars a year for 15  
20 years for a total of about 15 million to help fund the  
21 cleanup of different Department of Energy facilities,  
22 Uranium Enrichment Corporation, which is primarily  
23 weapons type sites, but they've stuck the cost on  
24 commercial nuclear operators.

25 So that was a cost that's sort of a kind of

1 a tax, if you will, that we had never seen before. It  
2 wasn't -- didn't really fit into what I'd call a  
3 category of cost that was crystal clear, a category of  
4 cost that we had had before. So that very well could  
5 have been a new category of cost if one was starting  
6 at some sometime before the 1990s, and it was one of  
7 the very early years of 1990s that that legislation  
8 was passed and that cost imposed on us.

9 MR. CYNKAR: I have nothing else, your  
10 Honor.

11 JUDGE REGISTER: Thank you, Mr. Cynkar. I  
12 believe that the testimony of this witness is  
13 concluded.

14 Off the record.

15 (A recess was taken.)

16 JUDGE REGISTER: Back on the record.  
17 We're ready for UE to call their next  
18 witness.

19 MR. CYNKAR: Call Warner Baxter.

20 (Witness sworn.)

21 JUDGE REGISTER: Please be seated. Would  
22 you spell your name for the court reporter, please.

23 THE WITNESS: My name is Warner L. Baxter,  
24 B-a-x-t-e-r.

25 JUDGE REGISTER: Please proceed, Mr. Cynkar.

1 MR. CYNKAR: Thank you, your Honor.

2 WARNER L. BAXTER testified as follows:

3 DIRECT EXAMINATION BY MR. CYNKAR:

4 Q. Mr. Baxter, I direct your attention to what  
5 has been marked as Exhibit 14. Do you recognize that  
6 document?

7 A. I do.

8 Q. What is it?

9 A. It is my rebuttal testimony.

10 Q. And was that prepared by you or by people  
11 under your supervision?

12 A. It was.

13 Q. And do you have any corrections to make?

14 A. I do. I have some corrections. My first  
15 correction appears on page 46, line 20. The second  
16 reference should be EO-85-160.

17 My next correction appears on page 50,  
18 line 13. The number \$31,000 should be \$177,000.

19 JUDGE REGISTER: That's on line 13?

20 THE WITNESS: Yes, on line 13.

21 JUDGE REGISTER: And instead of 31,000 it  
22 should be what?

23 THE WITNESS: \$177,000. And similarly, on  
24 page 51, on line 20, that \$31,000 number should be  
25 \$177,000. And that is all.

1 BY MR. CYNKAR:

2 Q. And with those additions, is this testimony  
3 accurate?

4 A. It is.

5 MR. CYNKAR: I offer Exhibit 14 into  
6 evidence.

7 JUDGE REGISTER: Are there any objections to  
8 Exhibit 14?

9 (No response.)

10 JUDGE REGISTER: Hearing no objections,  
11 Exhibit 14 will be admitted into the record.

12 (EXHIBIT NO. 14 WAS RECEIVED INTO EVIDENCE.)

13 JUDGE REGISTER: And you tender Mr. Baxter  
14 for cross-examination, Mr. Cynkar?

15 MR. CYNKAR: I do, your Honor.

16 JUDGE REGISTER: And again, we're following  
17 the order of cross-examination for UE's witnesses. So  
18 parties other than Staff and OPC are first.  
19 Ms. Schmidt?

20 MS. SCHMIDT: No questions.

21 JUDGE REGISTER: Mr. Fulton?

22 MR. FULTON: No questions.

23 JUDGE REGISTER: Do you know if Mr. Johnson  
24 has any questions?

25 MS. SCHMIDT: I would imagine not.



1 JUDGE REGISTER: Ms. Forrest?

2 MS. FORREST: No, thank you.

3 JUDGE REGISTER: Anybody else left here?

4 Then we'll go to Mr. Dottheim for Staff.

5 MR. DOTTHEIM: Thank you.

6 CROSS-EXAMINATION BY MR. DOTTHEIM:

7 Q. Good afternoon, Mr. Baxter.

8 A. Good afternoon, Mr. Dottheim.

9 Q. I think this will go considerably quicker  
10 with Mr. Brandt, who I forgot to thank for his  
11 patience the last day.

12 A. I appreciate that. I don't want people to  
13 accuse me of being the dead horse in the memo that was  
14 referenced a little bit earlier.

15 Q. I'd like to direct you to page 1 of your  
16 rebuttal testimony which has been marked as  
17 Exhibit 14, and direct you to lines 25 and 26 where  
18 you state that from August 1995 to August 1996 you  
19 were assistant controller at UE.

20 Will you please identify where you were  
21 employed prior to August 1995?

22 A. Yes. I was employed with Price Waterhouse.  
23 I believe I state that on lines 26 and 27.

24 Q. And as a consequence, you were not employed  
25 at UE at the time that the Stipulation and Agreement

1 in ER-95-411, otherwise referred to as the first EARP,  
2 you weren't employed at UE while that agreement was  
3 negotiated, were you?

4 A. I was not.

5 Q. Even though you weren't employed at UE at  
6 that time, were you involved in any manner in any of  
7 the negotiations respecting the Stipulation?

8 A. I'm sorry. Would you repeat the question?

9 Q. Even though you weren't employed at Union  
10 Electric company at the time the ER-95-411 Stipulation  
11 and Agreement was negotiated, were you involved in any  
12 manner in the negotiations respecting the first EARP?

13 A. I was not.

14 Q. Were you employed at Union Electric Company  
15 at the time that Stipulation and Agreement was filed  
16 with the Commission on June 12, 1995?

17 A. I was not.

18 Q. Were you employed at UE at the time that the  
19 ER-95-411 Stipulation and Agreement was presented to  
20 the Commission on July 12, 1995?

21 A. I was not.

22 Q. Would you please describe your duties when  
23 you were employed as assistant controller?

24 A. My duties as assistant controller included  
25 several things. Obviously as assistant controller I

1 worked under the direction of the controller of the  
2 company as well as the Senior Vice President of  
3 finance, which would be Mr. Brandt.

4 Those duties as assistant controller frankly  
5 are fairly similar to the duties which I describe a  
6 little bit later in my testimony, although obviously I  
7 had still another reporting person above me.

8 Q. Do you recall approximately when you became  
9 aware that Union Electric Company had entered into an  
10 experimental alternative regulation plan?

11 A. I was aware of that at the time that I was  
12 employed with Union Electric Company and, frankly,  
13 probably even some time before I actually became  
14 officially employed because I knew for some time I was  
15 going to be going to Union Electric.

16 Q. Do you recall approximately when you first  
17 read the Stipulation and Agreement, the first EARP?

18 A. Oh, I would say that it clearly was within  
19 the first month of my employment at Union Electric.

20 Q. I'd like to direct you to page 4 of your  
21 rebuttal testimony, and I'd like to direct you to  
22 lines 3 through 10.

23 A. Yes.

24 Q. Therein you make various references to the  
25 terms of the Stipulation and Agreement as being

1 binding contractual obligations and make reference to  
2 proposed adjustments if they are accepted, adopted by  
3 the Commission, they would constitute a breach of  
4 contract, impaired contractual obligations, affect an  
5 uncompensated taking of the Company's property rights  
6 and deny the Company due process of law, do you not?

7 A. That's correct.

8 Q. Are those legal determinations?

9 A. Those are representations from a business  
10 person in consultation with legal counsel.

11 Q. And am I reading that correctly where you  
12 indicate that it would be the Commission that would be  
13 breaching the contract, impairing the contractual  
14 obligations, affecting an uncompensated taking of the  
15 Company's property rights and denying the Company's  
16 right to due process of law if it were to adopt the  
17 Staff's adjustment in this case?

18 A. That is correct. Again, that was done in  
19 consultation with legal counsel.

20 Q. I'd like to direct you to page 5 of your  
21 testimony, lines 3 to 5, where you make reference to  
22 monitoring by the parties of UE's compliance with the  
23 specific terms of the agreement, that being the EARP,  
24 correct?

25 A. That is correct.

1 Q. Do you recall whether the word compliance  
2 appears anywhere in the Stipulation and Agreement in  
3 ER-95-411?

4 A. I don't recall.

5 Q. I'd like to direct you to page 6 of your  
6 rebuttal testimony, lines 9 through 11, where you  
7 state that the failure to eliminate \$250,000 of good  
8 will advertising would be a failure to apply the  
9 accounting methodologies under the agreement.

10 Do you know approximately the amount of good  
11 will advertising that Union Electric Company engages  
12 in on an annual basis?

13 A. Off the top of my head, I do not.

14 Q. Could you provide a definition of good will  
15 advertising?

16 A. I believe good will advertising is  
17 advertising which is simply done on behalf of the  
18 company.

19 Q. Is the \$250,000 that's specified a limit on  
20 the amount of good will advertising that is permitted  
21 to be eliminated from the final earnings report  
22 submitted by the company for the sharing period?

23 A. I'm not sure exactly what you mean by limit.

24 Q. A cap.

25 A. If you're asking me that whether we would

1 not be required to put any more than \$250,000 in our  
2 final earnings report as an adjustment, that is  
3 correct.

4 Q. Thank you. That is what I was asking. Do  
5 you know how the amount of \$250,000 was arrived at?

6 A. As you know, Mr. Dottheim, I was not party  
7 to all the specific negotiations, so I can't speak  
8 specifically. But from reading the document, the  
9 parties obviously had the ability to go back and look  
10 at prior Commission Orders and potentially past  
11 ratemaking actions.

12 So I guess as a person in my position, I  
13 would assume that that potentially was one possibility  
14 as to why that number was arrived at, but I can't say  
15 definitively.

16 Q. You don't actually know how the \$250,000  
17 figure was arrived at, do you?

18 A. No, I do not.

19 Q. And if I understand you correctly, the  
20 \$250,000 limit is the amount that is to be eliminated  
21 from the final earnings report regardless of how many  
22 dollars in excess of that number the Company might  
23 spend in a sharing period?

24 A. That is the Company's view of the agreement.

25 Q. I'd like to refer you again on page 6, this

1 time again on line 11 where you make reference to  
2 accounting methodologies under the agreement.

3 Can you identify where in the Stipulation  
4 and Agreement for the first EARP are the accounting  
5 methodologies to which you are referring in your  
6 rebuttal testimony?

7 A. I think there's one principal place, and  
8 that would be in Attachment C, the reconciliation  
9 procedure. And in there there are specific  
10 adjustments or specific accounting methods which are  
11 supposed to be reflected in either the final earnings  
12 report or potentially in the calculation of average  
13 rate base. That would be one source.

14 And then if you would allow me, instead of  
15 paging through this, this is my understanding of  
16 the --

17 Q. And when you say "this," what are you  
18 referring to?

19 A. This is the reconciliation procedure which  
20 has been reflected on this board. And also embodied  
21 in the agreement is 2A of the reconciliation procedure  
22 which says that the earnings report will start with  
23 the company's Missouri electric net operating income  
24 based upon the June 30 operating revenues, expenses  
25 and average rate base.

1                   And embodied in that statement in my view  
2                   are the accounting methodologies that the Company has  
3                   to follow in order to come up with this starting  
4                   point, which is our book earnings as for the 12 months  
5                   ended June 30. So it's that body of accounting  
6                   methodologies.

7                   Q.        Would you refer to those as also accounting  
8                   principles or practices?

9                   A.        Yeah, I would say they are accounting  
10                  practices clearly, and those accounting practices are  
11                  largely based upon accounting principles which are  
12                  embodied by either the FERC Uniform System of Account,  
13                  GAAP, or potentially even accounting principles or  
14                  methodologies that this Commission has made rulings on  
15                  which affect our books and records of the Company.

16                  Q.        Do you know whether the phrase accounting  
17                  methodologies appears in the Stipulation and Agreement  
18                  that's the first EARP?

19                  A.        I would have to go through the specific  
20                  provisions of the agreement. I'm not sure if it  
21                  actually is embodied in there. But what I can say  
22                  without knowing specifically whether it's in there,  
23                  that this person's reading of the EARP with my  
24                  experience as a business person certainly suggests  
25                  that there are accounting methodologies reflected in



1 that agreement, if it's not specifically stated.

2 Q. Do you know whether the term accounting  
3 principles appears anywhere in the Stipulation and  
4 Agreement?

5 A. Again, Mr. Dottheim, off the top of my head,  
6 I can't say for certain.

7 Q. And finally, do you know whether the term  
8 accounting practices appears anywhere in the  
9 Stipulation and Agreement that's the first EARP?

10 A. Again, in specific terminology, I can't say  
11 specifically. But the answer that I just stated  
12 earlier with regard to accounting methodologies would  
13 apply again to accounting principles.

14 Q. Might those accounting methodologies change  
15 at any time?

16 A. Under the agreement, those accounting  
17 methodologies could change if all the parties to the  
18 agreement would agree to make that change.

19 Q. But they could not change under any other  
20 condition other than all the parties agreeing to the  
21 change in the accounting methodology or methodologies?

22 A. I believe that to be correct.

23 Q. Would that be the case even if an accounting  
24 methodology was no longer appropriate?

25 A. What do you mean by no longer appropriate?

1 Q. Was no longer thought to be the best means  
2 of reflecting treatment of certain costs?

3 A. Based upon an agreement by the Company and  
4 the parties or some other body, I'm not sure.

5 Q. Or if that occurred through a determination  
6 of the Financial Accounting Standards Board, for  
7 example?

8 A. Well, for instance, if the Financial  
9 Accounting Standards Board would change the accounting  
10 treatment for a particular cost, under the terms of  
11 the agreement we would still be contractually bound to  
12 follow the particular treatment that we agreed to at  
13 the inception of the agreement.

14 Certainly, and I believe Mr. Cynkar pointed  
15 this out in his opening statement, that to the extent  
16 that FASB or other accounting body or whomever we  
17 believe would be an appropriate governing body, if  
18 some change would be made and all the parties came  
19 together and agreed that change would be appropriate  
20 and in the best interests of ratepayers, then we  
21 certainly have that opportunity to do so.

22 Q. Would only the best interests of the  
23 ratepayers be considered? Would there be possibly  
24 considerations broader than that?

25 A. I think there could possibly be a number of

1 considerations, sure.

2 Q. For example?

3 A. I think the interest of the ratepayers, I  
4 think the interest of certainly our shareholders and  
5 certainly other parties to the agreement, whatever  
6 interests that they represent.

7 Q. I'd like to refer you to page 7 of your  
8 rebuttal testimony, starting at line 9 where you make  
9 reference to a new category of cost.

10 From your perspective, can every cost that  
11 UE might incur be placed in an existing Uniform System  
12 of Account, each -- an account number paragraph?  
13 Would the Uniform System of Accounts cover every cost  
14 that Union Electric Company might incur?

15 A. You're asking me to speculate what could  
16 happen in the future. So I don't know if it could.  
17 My sense is that the Uniform System of Accounts has  
18 been established to address as many things as  
19 possible, but I guess it is possible that some time  
20 down the road in the future that some costs may not be  
21 appropriately covered under the Uniform System of  
22 Accounts. I just can't speak to it.

23 Q. To your knowledge, has that occurred in the  
24 past?

25 A. That is -- excuse me. I'm sorry.

1 Q. That there's a new category of cost that is  
2 not covered by the USOA?

3 A. A new category of cost under the terms of  
4 this agreement?

5 Q. Just in general.

6 A. Well, the Company prepares its books and  
7 records and certainly files a report with this  
8 Commission that basically complies with the Uniform  
9 System of Accounts. And so to the extent that costs  
10 have been incurred, we have found provisions, adequate  
11 provisions in the Uniform System of Accounts, I  
12 assume, to reflect those costs appropriately.

13 Q. And in the context of the first EARP, has  
14 the Uniform System of Accounts proven to be adequate  
15 for placing costs?

16 A. Well, I think in terms of the EARP, you  
17 know, we have the Uniform System of Accounts. We  
18 have -- now you're talking about the agreement. Now  
19 you've gotten more specific. I think we don't look  
20 just to Uniform System of Accounts.

21 We look to obviously GAAP. We look at past  
22 accounting practices, which are generally in  
23 accordance with both of those, and certainly things  
24 which the Commission may require us to do which affect  
25 our books and records. So it's really all of those

1 things.

2 Q. Again on page 7, if I can refer you to  
3 lines 13 through 15 of your testimony. Do you know  
4 when the signatories to the Case No. ER-95-411  
5 Stipulation and Agreement --

6 A. I'm sorry, Mr. Dottheim. That's this  
7 agreement?

8 Q. Yes. I'm sorry.

9 A. I'm doing my best to keep up.

10 Q. The first EARP.

11 A. Thank you.

12 Q. Do you know when the signatories to the  
13 first EARP expected a new category of costs to  
14 possibly occur?

15 A. No. I don't think any parties to the  
16 agreement knew whether -- or when or if new category  
17 of costs would occur. I believe that that provision  
18 was put in there as sort of a fail-safe provision, to  
19 the extent that a new category of costs would occur  
20 sometime in the future, that the parties would have  
21 the ability to address that as part of a proceeding in  
22 front of this Commission.

23 Q. Can you think of some example of a type of  
24 cost that would fall within the new category of cost  
25 designation that's covered by the first EARP?

1           A.     If your question is whether a new category  
2 of cost has occurred during the first EARP, and I  
3 assume you mean the first second and third sharing  
4 periods?

5           Q.     Correct.

6           A.     To the best of my knowledge, no, there's not  
7 been a new category of cost arise.

8           Q.     And can you think of what -- or might be  
9 able to provide an example of what might appropriately  
10 from the Company's perspective fall within the  
11 designation new category of cost?

12          A.     Well, I think to do that, first you have to  
13 start with a perspective as to when, say, for instance  
14 an agreement would be entered into. It's one thing if  
15 we entered into an agreement, say, five years ago and  
16 we look back five years, not 10, 15, 20 years.

17                   If you would go back, say, 20 years, I  
18 believe Mr. Brandt cited an example this morning, and  
19 frankly it isn't as a result of a lot of study, but we  
20 cited an example that, say, if we had entered into  
21 this agreement, say, 20 years ago and it was an EARP  
22 that went for a significantly long period of time,  
23 that the assessment that we received with regard to  
24 helping the DOE decommission their enrichment plant,  
25 that might be a potential category, something that was

1 sort of, I don't know if you call it government  
2 imposed, but something like that.

3 But other than that, Mr. Dottheim, it is  
4 rather difficult, which is really why I say what I say  
5 in my testimony.

6 Q. Under UE's interpretation of the first EARP,  
7 can a party propose to adjust UE's book earnings on  
8 the grounds that a particular cost was imprudently  
9 incurred?

10 A. I believe Mr. Brandt testified and I believe  
11 we responded to in a Data Request that prudence in the  
12 context of this agreement, if that is indeed your  
13 question.

14 Q. Yes.

15 A. Prudence can be reviewed in the context of  
16 manipulation or a new category of costs.

17 Q. And only in the context of manipulation and  
18 new category of costs?

19 A. That is correct.

20 Q. So then the definition of imprudence would  
21 have to cover manipulation or new category of cost?

22 A. Well, I think what you're saying is  
23 accurate. Again, I believe Mr. Brandt pointed out the  
24 example from, I guess it's No. 7, where he cited that  
25 we have to provide a reasonable explanation.

1                   If there's a significant variation level of  
2 costs and the Company's unable to provide -- and the  
3 Company can provide no reasonable explanation, then  
4 it's the parties' ability to go to the Commission and  
5 allege manipulation, because I believe that's, in  
6 fact, what that language said, an allegation of  
7 manipulation can include significant variations in the  
8 level of expenses associated with any category of  
9 costs where no reasonable explanation has been  
10 provided.

11                   And then again -- so that obviously can be  
12 brought to the Commission, and that's manipulation.

13           Q.     Is that imprudence?

14           A.     How do you define imprudence?

15           Q.     I'm asking you how you define imprudence.

16           A.     I'm not sure it -- if we can provide no  
17 reasonable explanation for a significant variation of  
18 costs and it is done with the intent to reduce  
19 earnings, solely with the intent to reduce earnings,  
20 that is indeed manipulation. And you can call it what  
21 you will, whether that's imprudence or not, that is  
22 inappropriate.

23           Q.     Some definition of imprudence that might  
24 cover a cost, some definition other than manipulation  
25 or new category of cost for which there is no



1 reasonable explanation, that cost could not be raised  
2 in the context of the EARP; is that correct?

3 A. That is the Company's interpretation of the  
4 agreement, that is correct.

5 Q. Could that cost be challenged upon the  
6 conclusion of the EARP?

7 A. What do you mean by challenged,  
8 Mr. Dottheim?

9 Q. Disallowed.

10 A. By whom?

11 Q. By the Commission. It would be done, for  
12 example, through an audit by the Company -- excuse  
13 me -- an audit by the Staff of the Company and a, for  
14 example, complaint case.

15 A. A complaint case?

16 Q. Pardon me?

17 A. A complaint case under the agreement?

18 Q. After the agreement.

19 A. Oh, no. I'm sorry. I thought we were  
20 talking about the terms of the agreement. Are we  
21 talking about within the terms of the agreement or are  
22 we talking about subsequent?

23 Q. We're talking about subsequent to the  
24 agreement --

25 A. Okay. I'm sorry.

1 Q. -- involving the costs that the Company  
2 incurred during the course of the agreement.

3 A. You know, Mr. Dottheim, that would probably  
4 require a legal conclusion as to whether, for  
5 instance, a cost which was incurred during the term of  
6 the agreement, whether the agreement, let's say a  
7 settlement or whatever the case may be would shut off  
8 for imprudence. I don't know if I can answer that.

9 Q. If the cost was incurred during the  
10 pendency --

11 A. I'm sorry?

12 Q. If that cost, if that imprudent cost were  
13 incurred during the pendency, during the term of the  
14 EARP, would it be in a current test year at the  
15 conclusion of the EARP?

16 A. I'm sorry, Mr. Dottheim. I'm trying to  
17 follow you.

18 Q. I'm sorry. I'm talking or attempting to  
19 talk about an audit that comes after the EARP, and the  
20 audit would utilize a test year presumably, correct?

21 A. Yes.

22 Q. Is it possible that, or even likely that the  
23 test year after the EARP terminates would be a  
24 different test year from which the imprudent cost was  
25 incurred by the Company?

1           A.     Yes.  You're assuming that there was an  
2     imprudent cost incurred, and if your question is, is  
3     it likely, I would not say it's likely.

4                     But is it possible that a test year as a  
5     result of a ratemaking proceeding subsequent to the  
6     EARP could include a period of time which, for  
7     instance, would be part of the last sharing period,  
8     whether costs that were part of the last sharing  
9     period could be included in the test year sometime in  
10    the future, if that is your question, it is possible,  
11    certainly, that that could happen.

12          Q.     Is it likely?

13          A.     I don't know if it's likely.

14          Q.     If --

15          A.     Depends, excuse me, on when the complaint  
16    case, depends upon when the filing would result in  
17    predicting what the future would hold for us.

18          Q.     If the imprudent cost incurred during a  
19    period prior to the test year that was being utilized,  
20    would it be inappropriate to reflect that cost in the  
21    determination of the Company's revenue requirement for  
22    that test year that was chosen?

23          A.     Well, again, you're probably asking for a  
24    regulatory/legal determination which I'm not certain I  
25    can respond to.  I think in part it depends upon

1 whether you're talking about a capital cost, whether  
2 you're talking about a cost that's been expensed  
3 already and not on the company's books going forward.

4 Q. Could you give me a regulatory answer for  
5 both a cost that was expensed and then a cost that was  
6 capitalized?

7 A. You know, Mr. Dottheim, again, what happens  
8 after the subsequent sharing period, I know I can give  
9 you this answer, that subsequent to the end of this  
10 EARP, EARP, this second EARP, that the Commission  
11 obviously in a typical ratemaking proceeding has the  
12 ability to look at prudence issues.

13 They have that as part of -- my  
14 understanding from a regulatory perspective, that is  
15 one of their duties, and I don't know if  
16 responsibilities, but essentially that is part of  
17 their purview.

18 Now, if you're asking me if a test year that  
19 we would develop would have imprudent costs embodied  
20 in them, and that would assume that we would all agree  
21 that they are imprudent, whether the Commission would  
22 be precluded in that test year in excluding those  
23 costs, that is what I'm saying requires a legal  
24 determination and that I can't adequately respond to.  
25 I'm sorry.

1 Q. Regardless of whether the cost was expensed  
2 or capitalized?

3 A. Yeah, I guess regardless of whether. I'm  
4 talking about in total. I can't speak specifically to  
5 that.

6 Q. And that -- and you're speaking regarding a  
7 cost that was prior to -- or would you speak to a cost  
8 that was prior to the test year that is utilized?

9 A. That was utilized, what do you mean by  
10 utilized?

11 Q. For that regulatory proceeding, for that  
12 ratemaking proceeding for determining the Company's  
13 revenue requirement.

14 A. I guess I'm -- I'm really not trying -- I'm  
15 trying to answer your question the best I can. I'm  
16 saying that I can't respond to how costs which have  
17 been incurred during the last year, say the second  
18 EARP, I can't respond to what you do subsequent to  
19 that with regard to prudence.

20 JUDGE REGISTER: Excuse me, Mr. Baxter.  
21 Mr. Dottheim, where is this leading to? I'm not sure  
22 I understand how it's relevant to the issue.

23 MR. DOTTHEIM: Well, I'm not clear if  
24 there's -- if there's been an indication that, even  
25 though the EARP does not contemplate a cost being

1 disallowed or an adjustment being made for that cost,  
2 in the context of the EARP, whether that cost which  
3 would be called imprudent could be part of a  
4 ratemaking determination subsequent to the EARP.

5 JUDGE REGISTER: If it happened that the  
6 test year would overlap?

7 MR. DOTTHEIM: Or if it's outside of the  
8 test year.

9 JUDGE REGISTER: And that's relevant to the  
10 issue on this Stipulation and Agreement? You're just  
11 trying to determine whether that's permitted --

12 MR. DOTTHEIM: Yes.

13 JUDGE REGISTER: -- under the agreement?

14 MR. DOTTHEIM: Yes. I'm trying to determine  
15 based upon what I thought I heard this morning, which  
16 was that the Commission has jurisdiction generally to  
17 address imprudent costs.

18 But regardless of that general jurisdiction  
19 to address imprudent costs, if the imprudent costs  
20 occurred within the context of the time frame of the  
21 EARP, would that make it completely out of bounds  
22 forever being addressed by the Commission and in  
23 particular being addressed by the Commission sometime  
24 after the EARP concludes?

25 JUDGE REGISTER: I think some of this may be

1 outside the scope of this witness' ability. It may be  
2 a matter of legal argument. But if you could complete  
3 that issue fairly quickly, we can move on.

4 BY MR. DOTTHEIM:

5 Q. Mr. Baxter, you heard my further explanation  
6 in response to Judge Register.

7 A. Yes, and I think I understand, and again my  
8 response, and it will be consistent, is that it  
9 requires a legal determination which I'm not able to  
10 provide.

11 Q. Okay. Thank you. I'd like for you to  
12 assume a hypothetical situation, if you would. If you  
13 would assume that a situation occurs in a sharing  
14 period for which the Staff could propose an adjustment  
15 under the Company's interpretation of the EARP, but  
16 for some reason the Staff does not propose an  
17 adjustment for that applicable sharing period. If you  
18 would assume that.

19 A. Uh-huh.

20 Q. If you would then assume that a like or  
21 similar situation, not the same situation, but a like  
22 or similar situation occurs in a subsequent sharing  
23 period. Is the Staff precluded from proposing an  
24 adjustment for the subsequent situation because it had  
25 not proposed an adjustment respecting the prior

1 situation?

2 A. No.

3 MR. DOTTHEIM: May I have a moment, please?

4 JUDGE REGISTER: Yes.

5 MR. DOTTHEIM: I have additional questions  
6 for Mr. Baxter, but I think that they fall within the  
7 separate issues that are scheduled to be heard. I've  
8 attempted to just ask the particular -- the general  
9 questions. So at this time I have no further  
10 questions.

11 JUDGE REGISTER: Thank you, Mr. Dottheim.  
12 Mr. Coffman?

13 MR. COFFMAN: I have no questions, thank  
14 you.

15 JUDGE REGISTER: Then we will go to the  
16 Bench for questions. Vice Chair Drainer, do you have  
17 any questions for Mr. Baxter?

18 COMMISSIONER DRAINER: I have no questions,  
19 thank you.

20 JUDGE REGISTER: And Commissioner Crumpton?

21 COMMISSIONER CRUMPTON: Can you pass me up?

22 JUDGE REGISTER: Commissioner Murray?

23 COMMISSIONER MURRAY: I have a couple.

24 QUESTIONS BY COMMISSIONER MURRAY:

25 Q. Good afternoon, Mr. Baxter.



1 A. Good afternoon.

2 Q. I was just sitting here thinking about new  
3 categories of costs as referenced in, I believe it's  
4 F8 --

5 A. That's correct.

6 Q. -- of the agreement. If the Company were to  
7 buy a corporate aircraft, would that be a new category  
8 of cost?

9 A. Not necessarily, because the reason why we'd  
10 purchase that aircraft would be to offset other  
11 transportation costs, for instance, that company  
12 employees would be utilizing to fly wherever they  
13 would need to fly. So there would be transportation  
14 costs to move employees from point A to point B.

15 Q. Okay. So there's already a transportation  
16 category cost?

17 A. Uh-huh.

18 Q. I didn't expect to get called this quickly  
19 either. Let see if I can find any questions here.

20 On the FY -- or the Y2K computer maintenance  
21 expenses, what was the increase in the expenses for  
22 computer maintenance between the years, say the second  
23 and third year?

24 A. Are you referring to between 1994 and 1995  
25 or, excuse me, between 1995 and '96, the difference

1 between the 18 million and the \$13 million number on  
2 page 14 of my testimony?

3 Q. Okay. So that's where you're showing the  
4 differences as they occurred year by year?

5 A. That's correct.

6 COMMISSIONER MURRAY: I believe that's all.  
7 Thank you, Judge.

8 JUDGE REGISTER: Commissioner Crumpton?

9 COMMISSIONER CRUMPTON: Yes. I'm ready.

10 QUESTIONS BY COMMISSIONER CRUMPTON:

11 Q. Good afternoon.

12 A. Good afternoon, Commissioner.

13 Q. How are you?

14 A. Doing well. How are you?

15 Q. As the comptroller, what do you do?

16 A. I am responsible for the financial  
17 reporting, both regulatory and to the external world.  
18 Primarily responsible for the books and records of the  
19 company, the accounting practices that we follow.  
20 Also embodied in my particular role is the budget  
21 function, and I also serve as one of our primary  
22 contacts from the investor relations standpoint with  
23 the investment community that Mr. Brandt referred to a  
24 little bit earlier.

25 Q. So would you be considered an expert on the

1 Uniform System of Accounts used by FERC or --

2 A. Yes.

3 Q. -- your industry?

4 Then you would be familiar with the account  
5 that contains assets related to computer software,  
6 would you not?

7 A. Yes, I would.

8 Q. Do you have any value in that account now?

9 A. The value that we have in that account, for  
10 companies -- utility companies that do capitalize  
11 computer software, the appropriate account under the  
12 FERC Uniform System of Accounts is called account 311  
13 or intangible plant.

14 Q. Okay.

15 A. That's the appropriate account. We do not  
16 capitalize computer software costs. So we do not have  
17 anything in there related to computer software costs.

18 Q. So you may have something in there, but it's  
19 not related to computer software?

20 A. That's correct. The only -- well, the  
21 only -- let me correct that. In one instance we do --  
22 our policy is to capitalize hardware but not software.  
23 So we do have hardware reflected, but no computer  
24 software.

25 Q. Okay. So if our staff did an audit, they

1 would see an entry for, like, mainframes and things of  
2 that nature?

3 A. That is correct.

4 Q. Okay. But they would not see anything in  
5 there related to software?

6 A. On Union Electric's books, that is correct.

7 Q. And how long have you been with the Company?

8 A. I've been with the Company since August of  
9 1995.

10 Q. And how long have you been in this office,  
11 in this particular position?

12 A. I was assistant controller for a year. Then  
13 I was promoted to controller of Union Electric. Then  
14 when we became Ameren, I became thereafter vice  
15 president/controller. So as controller for Union  
16 Electric/Ameren, approximately two and a half, almost  
17 three years now.

18 Q. Now, could you as an expert testify to the  
19 fact that in prior rate cases your company had shown  
20 that it expensed its software costs?

21 A. Yes.

22 Q. And if someone was to dispute your  
23 statement, they would have to go to your records and  
24 pull out something that says Windows '95, 2,000  
25 copies, whatever?

1 A. They would have to --

2 Q. \$20,000.

3 A. They would have to go to our records and  
4 find software systems where we had capitalized those  
5 costs.

6 Q. So that takes care of that. All right.  
7 Now, on the issue of injuries and damages, where is  
8 that kept in the Uniform System of Accounts?

9 A. Off the top of my head, I believe it's in  
10 Account 923, which is an expense account. There's  
11 several accounts, but I believe it's that account.

12 Q. And we would see -- our auditors would see  
13 that you had expensed known liabilities as you went  
14 along?

15 A. Absolutely. They would -- assuming they had  
16 the account right, what they would see would be, to  
17 the extent that we would have increased our reserve  
18 for injuries and damages, they would see an  
19 appropriate entry in our books and records that would  
20 expense those, absolutely.

21 Q. And in order to prove that you were  
22 incorrect, they would have to go to that account and  
23 find something other than what you just --

24 A. That's correct.

25 Q. All right. This takes care of injuries and

1 damages.

2 Now, on territorial exchanges, were you  
3 around when the Company was doing some of that?

4 A. For some territorial agreements, no. On  
5 some of the recent territorial agreements, I was in  
6 the employ of Union Electric.

7 Q. Okay. In your opinion, how has the Company  
8 handled gains and losses on those kind of  
9 transactions?

10 A. Well, the Company has required under  
11 accounting principles, whether it be GAAP or any  
12 accounting records, that to the extent that we would  
13 exchange properties or customers, that what we are  
14 required to do is then record the appropriate revenues  
15 and expenses for those customers that we actually have  
16 in our possession after the fact.

17 And so we couldn't keep track of the old  
18 customers. They're no longer ours. So what we do is  
19 the net revenues, if you will, associated with these  
20 territory agreements reflect the Commission's order  
21 saying you've given that and you take that and go with  
22 it, and that's what we do.

23 Q. Now, does the Commission reserve ratemaking  
24 issues related to territorial transfers for rate  
25 cases?

1           A.     As a general statement, whether the  
2           Commission in every territory agreement, whether they  
3           always reserve some further right to examine that in a  
4           rate case, I don't know if I can state that as a  
5           general rule.

6           Q.     Okay. Do you know the value, the total  
7           value of the issues in dispute in this case?

8           A.     Commissioner Crumpton, I know you asked,  
9           requested Mr. Brandt to respond to that, and we are  
10          going to prepare a schedule for you.

11          Q.     So I will have that soon?

12          A.     Yes, absolutely. I've spoken with  
13          Mr. Dottheim this morning and Mr. Coffman, and  
14          together we believe that we can put together a  
15          schedule that would faithfully represent where the  
16          issues are right now.

17          Q.     Okay. Do you recall my discussion with  
18          Mr. Brandt about the time value of the decisions that  
19          the Commission has to make in this case?

20          A.     Yes. I was present certainly when you had  
21          those discussions, and I recall certainly some of  
22          those discussions.

23          Q.     You recognize that in the relationship  
24          between the Company and the Commission Staff and the  
25          Office of the Public Counsel, there may be conflicts

1 based on the need to serve the different  
2 constituencies? For instance, your constituency would  
3 be your stockholders. Their constituency in the case  
4 of Office of the Public Counsel would be the  
5 ratepayers. You recognize --

6 A. Yes.

7 Q. -- you have conflicts?

8 A. I understand we have different  
9 constituencies.

10 Q. And you understand that they have a strong  
11 feeling that they need to, while not necessarily  
12 taking your assets, reduce the financial impact on the  
13 people they represent?

14 A. I guess my view on that, Commissioner  
15 Crumpton, is that when we entered into the agreement,  
16 we took all of our constituencies into consideration.  
17 And when we entered into the agreement, we all  
18 agreed -- well, I can speak certainly for the Company.

19 I would assume the other parties would not  
20 have entered into the agreement if they didn't believe  
21 it to be true, that this was really a good deal for  
22 all their constituents. And we, as a company,  
23 certainly believed that to be the case, and I believe  
24 Mr. Brandt pointed out some of those issues earlier.

25 What we believe, then, based upon that, that



1 what is appropriate is for us to abide by the terms of  
2 the agreement faithfully going forward, because we  
3 believe, and I believe Mr. Cynkar pointed out in his  
4 opening statement, that the constituents are clearly  
5 being served.

6 You know, obviously some people may believe  
7 that they should do better under the agreement and  
8 wish they could do better. Others wish they -- you  
9 know, it's just part of that in the agreement.

10 And so to respond to your question, I do  
11 understand that they do serve different  
12 constituencies, but that's why we entered into the  
13 agreement. We think that the faithful following of  
14 that agreement is what's appropriate in this  
15 particular situation.

16 Q. I think it's in your testimony you discuss  
17 some generally accepted accounting procedures for  
18 capitalizing various assets. Do I have you --

19 A. Well, I certainly respond to  
20 Ms. Westerfield's statements, and yes, whether  
21 directly or indirectly, I clearly do talk about that.

22 Q. You mentioned that on occasion in your  
23 industry they will use a three to five year period for  
24 recovering the costs of certain kinds of projects?

25 A. Yes. That is what we -- we see that.

1 That's been reflected in a survey that was performed  
2 by PriceWaterhouseCoopers, and I supplied that as  
3 evidence, so to speak.

4 Q. And it's still your position that your  
5 company is unwilling to give at all on these issues?

6 A. Well, I think our view on that particular  
7 situation is, as I believe Mr. Cynkar pointed out  
8 earlier, was that, as with any agreement, all the  
9 parties to an agreement can choose to amend that  
10 agreement, and --

11 Q. You mean going forward?

12 A. Yes. That's correct. In this particular  
13 situation, we'd be willing to -- if we believe it's in  
14 the best interests of ratepayers and all the  
15 constituents, that we could consider amending the  
16 agreement for whether it be an accounting change or  
17 some other type of event.

18 Q. So basically, then, what we have between you  
19 and I as an understanding of these issues that Staff  
20 is bringing up, while they may not apply to this old  
21 agreement which was signed several years ago, could be  
22 addressed in preparations for a new?

23 A. Certainly. If all the parties get together  
24 and we would all come to agreement as to how to, for  
25 instance, apply a different accounting methodology

1 that's appropriate, I think that is possible.

2 Q. Because you do recognize that there is a  
3 conflict between GAAP and Missouri Public Service  
4 Commission on occasion?

5 A. Absolutely.

6 Q. Okay. Now, I discussed the general problem  
7 that a rate base regulated company has with an  
8 incentive program. I discussed that with Mr. Brandt.  
9 Do you recall that?

10 A. I do recall some of those discussions, yes.

11 Q. And one of the things that we talked about  
12 was the possibility that there were some expense  
13 offsets that your company was willing to, in quotation  
14 marks, eat in order to live up to your part of the  
15 agreement. Is it possible that there are some of  
16 those that you-all could talk about if you wanted to?

17 A. I guess in the context of the discussion, if  
18 I recall, and we'll say expense offsets, clearly upon  
19 entering into the agreement the Company believes it  
20 has given up some things, and that was in the form of  
21 a \$30 million one-time credit, permanent rate  
22 decrease, to forego the merger premium.

23 So in some respects those are expense  
24 offsets, I guess, if you will. Others are just some  
25 sort of give back. It's sort of what -- I know it's

1 based upon our reliance on this agreement as we set  
2 our expectations. So yes, we believe that we've put  
3 some real money up for this particular agreement.

4 If your question, though, is not getting to  
5 that but whether there are some other expense offsets  
6 that we have sort of buried within our books and  
7 records, I wouldn't say that we have those because, as  
8 we've said, we believe that this agreement is in many  
9 respects almost a mechanical type thing.

10 You start with an appropriate method for  
11 your company. You faithfully follow the accounting  
12 methodologies under the agreement, and it just sort of  
13 flows. And certainly you reflect the adjustments that  
14 are set forth in Attachment C.

15 Q. I think you've answered the question  
16 properly because if you had another set of records I'm  
17 sure Staff would want to know about it.

18 A. I'm fairly certain if I presented to Staff  
19 at the end of June 30, I had my books and records and  
20 said, you know, that's the one I show the public, but  
21 by the way, here's this other one that I think you-all  
22 should view and I decided to make a few changes to our  
23 accounting policies, I'm fairly certain Staff and OPC  
24 would --

25 Q. But the point of the discussion was that

1       there are -- your company was willing when it signed  
2       the agreement to accept the risk that you were not  
3       going to be able to reach the goals that you have  
4       promised to your constituency?

5           A.       Absolutely. We believe that we entered --  
6       there's clearly risk associated with that. Not only  
7       did we believe there was risk, but we backed it up  
8       with some real money.

9           Q.       I think you've answered all of my questions.  
10       Let me check. On page 14, I think Commissioner Murray  
11       took you to that. It does look a little strange, the  
12       growth in computer maintenance expense from 1994 to  
13       '97.

14          A.       Uh-huh.

15          Q.       Just have to point that out to you. And  
16       likewise, on page 25, these new applications --

17          A.       I'm sorry. On page?

18          Q.       25.

19          A.       Okay. Thank you.

20          Q.       Your rebuttal.

21          A.       Uh-huh.

22          Q.       I want to talk about that just briefly.

23          A.       Certainly.

24          Q.       It's my understanding that a company does  
25       not just create applications of this magnitude in a

1 30-day period.

2 In other words, there must be some  
3 long-range planning. Somebody's got to be complaining  
4 about the lack of quality or getting out of the  
5 existing system and projects are put together within  
6 companies to do benefit analysis and contracts are let  
7 and consultants are hired and all of those things  
8 before you spend this kind of money on these types of  
9 applications.

10 A. Absolutely. Our company's no different  
11 than -- well, I can't speak for other companies. I  
12 know how it is at our company. We take these expenses  
13 very seriously. And as you said, there's quite a bit  
14 of study. It oftentimes results from either people  
15 inside the company, sometimes our customers.

16 In many cases what we end up doing is at the  
17 end of the day is ensuring that at the end of the day  
18 is it pertinent, is it a prudent business expenditure,  
19 and we don't take into consideration how we're going  
20 to flow this through a sharing grid. Is it a prudent  
21 business expenditure?

22 Q. And you do that because the benefit analysis  
23 indicates that you're going to enjoy a great benefit  
24 from these expenditures?

25 A. We do hope to enjoy great benefits, that's

1 right.

2 Q. But you would not spend the money if you  
3 couldn't prove to someone in your company that you're  
4 going to benefit from it?

5 A. Well, as you know, there's no certainty when  
6 you do a business plan or even --

7 Q. Right.

8 A. But clearly when we make those decisions,  
9 they're based upon sound business judgment, which  
10 includes cost/benefit analysis.

11 Q. Now, when your company measures projects,  
12 I'm assuming, as your counsel indicated in opening  
13 statements, that there were benefit, other benefits  
14 that you could have put your money in, that you're  
15 looking at a series of projects and somebody's making  
16 decisions based on some kind of standard, either  
17 return on equity, payback period or something like  
18 that.

19 Is it true that your company used one of  
20 those standards before it entered into contracts on  
21 these software packages we're talking about?

22 A. Yes, we do. It's a combination of return on  
23 essentially your investment, assuming that there has  
24 to be appropriate payback period, because as you know,  
25 we do not have unlimited funds, and so we have to make

1       sure that we allocate our financial resources in the  
2       most appropriate manner.

3           Q.     Now, according to this sharing grid, the  
4       more you earn, the more the citizens, your customers  
5       benefit?

6           A.     That is correct.

7           Q.     And so there is a sharing of the benefits  
8       received from these projects with your customers under  
9       the sharing program?

10          A.     That is correct.

11                 COMMISSIONER CRUMPTON:  I think you've  
12       answered all my questions.  Thank you.

13                 JUDGE REGISTER:  If there are no other  
14       questions from the Bench, then we will go to recross,  
15       and I'll go back to the Intervenors.  Ms. Schmidt?

16                 MS. SCHMIDT:  No questions.

17                 JUDGE REGISTER:  Mr. Fulton?

18                 MR. FULTON:  No questions, your Honor.

19                 JUDGE REGISTER:  Mr. Johnson?

20                 MR. JOHNSON:  No questions.

21                 JUDGE REGISTER:  Ms. Forrest?

22                 MS. FORREST:  No, thank you.

23                 JUDGE REGISTER:  Mr. Dottheim?

24                 MR. DOTTHEIM:  Yes.  I have a few questions.

25       RE-CROSS-EXAMINATION BY MR. DOTTHEIM:



1 Q. Mr. Baxter, if I could refer you to page 14  
2 of your rebuttal testimony. Commissioner Crumpton  
3 commented respecting the table that appears starting  
4 at line 12.

5 A. Yes.

6 Q. Could you provide what the numbers for  
7 computer maintenance expenses is for fiscal year 1998?

8 A. I believe, Mr. Dottheim, that was requested  
9 in a Data Request. I may have it here with me. Do  
10 you know the answer already? I'm asking you a  
11 question.

12 ( Laughter.)

13 MR. CYNKAR: Teacher, I know the answer. I  
14 can just give you the number.

15 JUDGE REGISTER: What document are you  
16 looking at?

17 MR. CYNKAR: Well, I'm looking at  
18 Mr. Baxter's testimony which I've handwritten that  
19 number from, Data Request 94, and for 1998 the number  
20 is 24,439,000.

21 MR. DOTTHEIM: That's the number I have  
22 also.

23 JUDGE REGISTER: Would you repeat that,  
24 please?

25 MR. CYNKAR: 24,439,000, and it originates

1 in Data Request 94.

2 THE WITNESS: 24,439,000?

3 MR. CYNKAR: Yes, sir.

4 THE WITNESS: Thank you.

5 BY MR. DOTTHEIM:

6 Q. For fiscal year, that is through June the  
7 30th --

8 A. That is correct.

9 Q. -- for each of those years; is that correct?

10 A. That is correct. That is fiscal year  
11 June 30.

12 Q. In response to a question from Commissioner  
13 Crumpton, I think you mentioned the merger premium as  
14 being a potential expense offset; is that correct?

15 A. I was -- I'm sorry. I'll let you finish  
16 your statement.

17 Q. What amount of merger premium amortization  
18 on the Company's books in the third sharing period did  
19 the Company not recover per the second EARP?

20 A. I guess that would -- well, Mr. Dottheim, as  
21 you know, we did not recover any of the merger  
22 premium. It would depend upon your view as to how  
23 that merger premium, if it was actually -- if, for  
24 instance, in the second EARP that merger premium was  
25 approved to be recovered in rates, then it would have

1       been the responsibility of the parties and the  
2       Commission to come to a conclusion as to an  
3       appropriate amortization period.  So it's impossible  
4       for me to answer as to what we did not recover.

5           Q.     Is there any merger premium amortization on  
6       the Company's books?

7           A.     Is there any merger premium amortization?  
8       No.  The effects of the merger premium now are being  
9       felt by the Company, but there is no merger premium  
10      amortization whereby we have an asset on our books  
11      that we're amortizing to expense.

12          Q.     Is any part of the CIPSCO merger premium in  
13      UE's rate base?

14          A.     None.

15          Q.     Mr. Baxter, did the Staff accept any  
16      adjustment in the third sharing period that reduced  
17      the sharing credits amounts?

18          A.     I'm not sure I understand your question.  
19      Did they accept -- did the Staff accept adjustments  
20      from whom?

21          Q.     For example, respecting income taxes in the  
22      third sharing period that reduced the credit amount?

23          A.     Well, I'm not sure if the Staff accepted the  
24      adjustment or not.  What we did in connection with  
25      that, as you know, Mr. Dottheim, we settled the income

1 tax issue.

2 And with regard to the income tax matter,  
3 what the Company did was follow the Staff's  
4 traditional calculation of income taxes for the third  
5 sharing period, and then other issues we settled,  
6 including one which the Staff proposed, which we  
7 agreed with was an error in how we prepared that  
8 calculation that is going to be reflected as part of  
9 our settlement.

10 Q. Did correction of that error have the impact  
11 of reducing credits?

12 A. Did correction of the error? Are you  
13 referring to the AFUDC?

14 Q. Yes.

15 A. I believe it had the impact of increasing  
16 the credit. I believe it was over a million dollars,  
17 if I'm not mistaken.

18 Q. Did the Company perform any cost/benefit  
19 analysis to justify its implementation of the AMRAPs  
20 computer program?

21 A. That project commenced several years ago. I  
22 believe that the Staff in Data Requests asked for  
23 information. I believe the Company provided that  
24 information to the extent that it had it available.

25 So off the top of my head, my assumption is

1 that there was an analysis performed, but I'm not sure  
2 what the status of the documentation is. I do believe  
3 in speaking with the Staff as part of this sharing  
4 credit that there was a Data Request and we provided  
5 whatever documentation we had available.

6 Q. But you're not familiar with what that  
7 documentation was --

8 A. No, I do not.

9 Q. -- that was provided?

10 A. No, I do not.

11 MR. DOTTHEIM: Thank you, Mr. Baxter.

12 JUDGE REGISTER: You have no further  
13 questions?

14 MR. DOTTHEIM: No further questions.

15 JUDGE REGISTER: Thank you. Mr. Coffman?

16 MR. COFFMAN: No questions.

17 JUDGE REGISTER: And then on to redirect,  
18 Mr. Cynkar?

19 MR. CYNKAR: Just a couple items.

20 REDIRECT EXAMINATION BY MR. CYNKAR:

21 Q. Mr. Baxter, Commissioner Murray raised the  
22 hypothetical of UE purchasing an airplane, and she  
23 asked the question in the context of the new cost  
24 category aspect of the agreement.

25 Is it possible -- and you answered, if I

1 recall, that that would be within the category of  
2 transportation costs. If UE, I assume, does not now  
3 own an airplane and purchased an airplane, could that  
4 create a significant variation in the level of  
5 expenses for that category?

6 A. Certainly.

7 Q. And as a result, could that be examined and  
8 parties asked questions about whether it was  
9 reasonable as a business matter to buy that plane?

10 A. Absolutely.

11 Q. And if they disagreed with you and felt that  
12 there was no reasonable explanation, could that  
13 dispute be taken to the Commission?

14 A. Certainly.

15 Q. Do you believe that there are any  
16 constituencies that UE represents in addition to  
17 shareholders?

18 A. Absolutely. I think our constituencies  
19 consist of shareholders, ratepayers, our employees.  
20 Those three come to mind.

21 Q. Okay. Did UE make any pro forma adjustments  
22 for costs that might have been unusually low during  
23 the third sharing period?

24 A. No.

25 MR. CYNKAR: Your Honor, I actually have two

1 more housekeeping questions just to make it simple for  
2 the record. I believe you testified that the USOA  
3 account for injuries and damages was 923. It's  
4 actually 925, just for the record to be clear.

5 THE WITNESS: Thank you. I didn't know most  
6 of these things.

7 MR. CYNKAR: And finally, Mr. Weiss actually  
8 advises that there is one other numerical correction  
9 to the testimony that Mr. Baxter forgot to mention at  
10 the beginning.

11 JUDGE REGISTER: Wait a minute. Before you  
12 go on, Mr. Cynkar, Mr. Cynkar's statement was that he  
13 believed that that account is 925. Could that be  
14 accurate in your testimony, Mr. Baxter?

15 THE WITNESS: I'll accept that, yes.

16 JUDGE REGISTER: Just wanted to make sure  
17 that the testimony was coming from Mr. Baxter.

18 MR. CYNKAR: That's fine. I was going to  
19 show him the book and all that, but I thought I'd be  
20 more direct.

21 JUDGE REGISTER: That's fine.

22 MR. CYNKAR: And the other correction in the  
23 testimony, if I could direct everyone to page 44 of  
24 Mr. Baxter's testimony, line 6. You'll see the number  
25 217,000 there. That should be changed to 197,000. So

1 page 44, line 6, the number \$217,000 should be changed  
2 to \$197,000.

3 JUDGE REGISTER: Mr. Baxter, if your  
4 testimony is changed to 197 from 217 on page 6, that  
5 would be accurate?

6 THE WITNESS: That would be accurate.

7 MR. CYNKAR: And that's all I have, your  
8 Honor.

9 COMMISSIONER MURRAY: That was page 44?

10 JUDGE REGISTER: Page 44, line 6.

11 THE WITNESS: Thank you.

12 MR. CYNKAR: That was all I have.

13 JUDGE REGISTER: Then the examination of  
14 Mr. Baxter on the issue of Stipulation and Agreement  
15 is complete, and you may step down, Mr. Baxter.

16 THE WITNESS: Thank you.

17 JUDGE REGISTER: Of course, you'll be  
18 recalled for other testimony probably.

19 We can move on to the testimony of  
20 Mr. McKnight. Would you like to call him?

21 MR. CYNKAR: Union Electric calls Benjamin  
22 McKnight.

23 JUDGE REGISTER: Okay.

24 (Witness sworn.)

25 JUDGE REGISTER: Thank you, Mr. McKnight.



1 Please be seated, and spell your name for the court  
2 reporter, please.

3 THE WITNESS: My name is Benjamin A.  
4 McKnight, M-c capital K-n-i-g-h-t.

5 JUDGE REGISTER: And please proceed,  
6 Mr. Cynkar.

7 BENJAMIN A. MCKNIGHT testified as follows:

8 DIRECT EXAMINATION BY MR. CYNKAR:

9 Q. Mr. McKnight, let me direct your attention  
10 to what has been marked as Exhibit 15. Do you  
11 recognize that document?

12 A. Yes, I do.

13 Q. What is it?

14 A. It's rebuttal testimony of Benjamin A.  
15 McKnight.

16 Q. And was it prepared by you or by persons  
17 under your direction?

18 A. Yes, it was.

19 Q. And is it accurate and true?

20 A. Yes, it is.

21 MR. CYNKAR: Your Honor, I offer Exhibit 15  
22 into evidence.

23 JUDGE REGISTER: Are there any objections to  
24 Mr. McKnight's testimony?

25 (No response.)

1 JUDGE REGISTER: Hearing no objections,  
2 Exhibit No. 15 is admitted into evidence.

3 (EXHIBIT NO. 15 WAS RECEIVED INTO EVIDENCE.)

4 JUDGE REGISTER: And do you also tender  
5 Mr. McKnight for cross-examination?

6 MR. CYNKAR: I do, your Honor.

7 JUDGE REGISTER: Thank you.

8 Cross-examination begins with the parties other than  
9 Staff and OPC. Ms. Schmidt, do you have any  
10 questions?

11 MS. SCHMIDT: No questions.

12 JUDGE REGISTER: Mr. Fulton stepped out, but  
13 he indicated he had no questions of this witness.  
14 Mr. Johnson have any questions? No questions. And  
15 Ms. Forrest?

16 MS. FORREST: No questions, thank you.

17 JUDGE REGISTER: Thank you, Ms. Forrest.  
18 Then on to Staff, Mr. Dottheim?

19 MR. DOTTHEIM: Thank you.

20 CROSS-EXAMINATION BY MR. DOTTHEIM:

21 Q. Good afternoon, Mr. McKnight.

22 A. Good afternoon.

23 Q. Mr. McKnight, you're employed by Arthur  
24 Anderson, are you not?

25 A. Yes, sir. That's correct.

1 Q. Is Arthur Anderson Ameren's external  
2 auditor?

3 A. No, sir, it's not.

4 Q. Has Arthur Anderson performed any work for,  
5 other than your appearance here today, for AmerenUE  
6 this decade?

7 A. AmerenUE? There might have been some minor  
8 consultation work. I couldn't answer in a  
9 comprehensive way. But if it -- to the extent that it  
10 is, it's very minor.

11 Q. And when I said AmerenUE, I meant to say  
12 Ameren or UE.

13 A. I'm sorry. Different answer. For a number  
14 of years we were the auditors of CIPS, Central  
15 Illinois Public Service Company and its holding  
16 company, CIPSCO, Inc. And I believe we still, in  
17 connection with registration statements, still include  
18 our audited reports in the Ameren's registration  
19 statements with the Securities and Exchange  
20 Commission.

21 Q. And would you identify a little bit more  
22 specifically, if you can, the number of years that  
23 you've been auditors of CIPS, CIPSCO, Inc.?

24 A. Well, that would be were. We no longer are  
25 since the merger. But prior to that time, it could be

1 up to -- could be up to 70 years.

2 JUDGE REGISTER: Was that 70?

3 THE WITNESS: 70. I wasn't around for all  
4 of them.

5 (Laughter.)

6 BY MR. DOTTHEIM:

7 Q. I'd like to direct you to your rebuttal  
8 testimony that's been marked as Exhibit 15. I'd like  
9 to refer you to page 5 and particularly lines 23 to  
10 25. You state there, do you not, that you will  
11 comment upon the primary objective of entering into an  
12 extended based regulatory arrangement, do you not?

13 A. Yes, that's correct.

14 Q. And from whose perspective are your comments  
15 based?

16 A. I think generally my experience with  
17 situations where these arrangements have been and  
18 these types of plans have been entered into.

19 Q. Are you commenting from the perspective of  
20 Arthur Anderson, external auditor to regulated  
21 utilities, from what perspective?

22 A. Based on my experience on why these  
23 arrangements are typically entered into, what the  
24 objectives are and have been.

25 Q. And again, that's your perspective?

1           A.     That's --

2           Q.     You're not commenting on the perspective of  
3     state commissions or offices of public advocate?

4           A.     I think at the end of the day there has to  
5     be some mutuality of interest in order for these plans  
6     to actually be agreed to and put into place.

7                    JUDGE REGISTER:  The question, Mr. McKnight,  
8     is, you're testifying from your own perspective and  
9     your experience?

10                   THE WITNESS:  That's correct.

11                   JUDGE REGISTER:  Thank you.

12     BY MR. DOTTHEIM:

13           Q.     I'd like to refer you to page 10 of your  
14     rebuttal testimony, starting on line 5 and then going  
15     to page 11, line 3.

16                    You had expressed -- you express an opinion  
17     therein, do you not, that the Staff and Office of the  
18     Public Counsel have violated the June 12, 1995  
19     Stipulation and Agreement, which has also been  
20     referred to as the first EARP, by proposing  
21     inappropriate judgment -- excuse me -- inappropriate  
22     adjustments, do you not?

23           A.     Yes, that's correct.

24           Q.     And on what do you base your understanding  
25     of how the June 12, 1995 Stipulation and Agreement is

1 intended to operate?

2 A. Well, I think the starting point with  
3 respect to the monitoring process or the, if you will,  
4 the earnings report, as has been pointed out several  
5 times today, is the Missouri net operating income,  
6 jurisdictional operating income for the Company.

7 And I think embodied in that starting spot  
8 is certain accounting practices, principles,  
9 methodologies that were in place when the agreement  
10 was entered into, and during the course of this  
11 agreement those -- the adjustments proposed by the  
12 Staff have departed from those practices and  
13 methodologies.

14 Q. Were you involved in the negotiations that  
15 led to the execution of the June 12, 1995 Stipulation  
16 and Agreement?

17 A. No, I was not.

18 Q. Could you provide an approximate date as to  
19 when you first read the June 12, 1995 Stipulation and  
20 Agreement that's the first EARP?

21 A. In its entirety? I would say sometime in  
22 the first part of the year, this year.

23 Q. And is your interpretation of the June 12,  
24 1995 Stipulation and Agreement based in part on  
25 discussions that you've had with Union Electric

1 Company?

2 A. Based on -- based on discussions, but  
3 generally when you have a performance measurement, you  
4 know, it basically should be something pretty specific  
5 and objective, be able to determine an objective way.  
6 And I think based on my experience, the logical  
7 starting spot is exactly what -- for an agreement of  
8 this type is exactly what was in place in paragraph 2A  
9 of Attachment C.

10 Q. Have you had any discussions with the Staff  
11 regarding the June 12, 1995 Stipulation and Agreement?

12 A. Not directly, no.

13 Q. And when you say not directly, have you had  
14 discussions indirectly?

15 A. That's a poor choice of words. I've read  
16 testimony and what have you, but I haven't directly  
17 communicated with the Staff.

18 Q. Have you had any discussions with the Office  
19 of the Public Counsel regarding the June 12, 1995  
20 Stipulation and Agreement?

21 A. No, sir.

22 Q. Again, on page 10, I'd like to refer you to  
23 lines 6 and 7 of your rebuttal -- of your rebuttal  
24 testimony. You indicate therein that the third  
25 sharing period has not been a simple process because

1 the Staff and the Office of the Public Counsel are  
2 attempting to breach the process. You indicate that,  
3 do you not?

4 A. That's correct.

5 Q. And you also indicate that on lines 8 and 9  
6 of that same page?

7 A. That's the basis. That gets into the basis  
8 for my conclusion.

9 Q. Are you familiar with any of the events that  
10 occurred regarding the processing of either the second  
11 or the first years of the EARP?

12 A. Just generally that there was some  
13 discussions and perhaps some minor adjustments or  
14 minor settlements that didn't elevate themselves to  
15 the magnitude of what's being discussed during the  
16 third sharing period.

17 Q. Have you reviewed any documents respecting  
18 either the first or second year of the EARP?

19 A. It seems like there was some correspondence.  
20 Some of the earlier filings made reference to some of  
21 the issues.

22 Q. Were you aware of any issues that have been  
23 settled regarding the second year sharing period  
24 issues between the Company and Union Electric Company?

25 A. As I recall, there may have been some, but



1 as I indicated, certainly I'm not aware that they're  
2 of the magnitude of what's being discussed here.

3 Q. And when you say on the magnitude of, what  
4 do you mean by magnitude?

5 A. Well, you know, I think the range that was  
6 being tossed out is the difference between the Staff  
7 and the Company's position is something in the  
8 neighborhood of 14, \$14 million at this point, and I  
9 don't have any recollection that it was in that order  
10 of magnitude during the second and first sharing  
11 period.

12 Q. Did you have any role in any of the  
13 proceedings regarding the merger applications of  
14 CIPSCO, Inc. and Union Electric Company either before  
15 the Illinois Commerce Commission or in any proceeding?

16 A. Our role was limited to our responsibilities  
17 with respect to CIPS and CIPSCO financial statements.  
18 I might add, during the course of the merger,  
19 obviously there were a number of issues, primarily  
20 finance reporting related issues, accounting related  
21 issues and tax issues, and there was some regulatory  
22 matters because of what was going on in Illinois that  
23 were of mutual interest to both CIPS and Ameren that  
24 we were engaged in discussions with.

25 Q. You've been in the hearing -- in the hearing

1 room for the better part of the last day and a half,  
2 have you not?

3 A. That's all it's been? Yes, I have.

4 Q. And you've indicated that you've read  
5 testimony that's been filed in this proceeding, have  
6 you not?

7 A. That's correct.

8 Q. So you are aware of the various references  
9 that have been made to an incentive regulation  
10 experiment in Missouri involving Southwestern Bell  
11 Telephone Company, are you not?

12 A. Yes, that's correct.

13 Q. Did you have any role in that incentive  
14 regulation plan either as Arthur Anderson in the  
15 employ of any of the parties to that incentive  
16 regulation plan?

17 A. Not to my knowledge. I don't believe so.

18 MR. DOTTHEIM: If I could have a moment,  
19 please.

20 I have some additional questions, but they  
21 just as easily could be asked respecting the  
22 individual adjustments that are scheduled to be heard  
23 in the next day and a half. So I would defer until  
24 Mr. McKnight takes the stand again.

25 JUDGE REGISTER: Thank you, Mr. Dottheim.

1 Mr. Coffman?

2 MR. COFFMAN: No questions on this issue,  
3 thank you.

4 JUDGE REGISTER: Thank you, Mr. Coffman.

5 Then we will go to questions from the Bench.

6 Commissioner Crumpton, do you have any questions for  
7 Mr. McKnight?

8 COMMISSIONER CRUMPTON: No questions.

9 JUDGE REGISTER: And Commissioner Murray?

10 COMMISSIONER MURRAY: No questions, thank  
11 you.

12 JUDGE REGISTER: I have just a couple.

13 QUESTIONS BY JUDGE REGISTER:

14 Q. Mr. McKnight, I think you said earlier that  
15 your statements are made based on your experiences  
16 with other incentive-based regulation plans; is that  
17 right?

18 A. Yes, ma'am.

19 Q. What other incentive-based regulation plans  
20 have you been involved with?

21 A. I've been involved with a number of them  
22 related to telecommunications companies, basically  
23 price cap proposals that came out of the FCC rules and  
24 regulations in the early '90s.

25 As far as electric companies go, I really

1 first started getting involved with them with the City  
2 Gas and Electric with the Diablo King settlement back  
3 in the late '80s and have worked with a number of our  
4 clients, such as Ohio Edison and some of the other  
5 Ohio utilities as well as of the clients that have  
6 been dealing with incentive plans that have come out  
7 of the restructuring in the industry.

8 Right now a primary example would be one  
9 that's going on in Illinois primarily with  
10 Commonwealth Edison and Central Illinois Public  
11 Service Company.

12 And there's -- you know, again, out of the  
13 restructuring that's taken place in the industry,  
14 there's a number of incentive plans that are being  
15 considered now that we're working with our clients  
16 with, primarily almost literally as we speak in Texas  
17 and Ohio.

18 Q. Are any of those incentive-based plans  
19 similar to the EARP that's been at issue in this case?

20 A. Well, from my perspective, in the  
21 environment that we're dealing with now, and I know  
22 there's been some limited discussion or references of  
23 transition going from a cost-based form of regulation  
24 to a market-based form of regulation.

25 The transition plans that are coming out of

1 that change in regulation have some significant  
2 incentive elements in them that have some of the  
3 features of the EARP, such as the equity scale, the  
4 determined equity scale and what have you.

5 But relatives to those plans, this one is  
6 somewhat mild. Those plans are much more robust in  
7 objectives with focusing primarily on accelerated  
8 capital recovery. And, in fact, it's somewhat ironic  
9 that the plan that we're dealing with here and the  
10 issues that we're dealing with here to a large extent  
11 are going in the opposite direction.

12 The focus here issues-wise seems to be on  
13 deferring costs for future recovery as opposed to  
14 accelerating cost recovery, which really is --  
15 whenever there's restructuring going on, that's the  
16 primary issue.

17 JUDGE REGISTER: I don't have any other  
18 questions. Any other questions from the Bench?

19 Then we're back to recross. Do the  
20 intervenors have any questions? Ms. Schmidt?

21 MS. SCHMIDT: Yes.

22 RECROSS-EXAMINATION BY MS. SCHMIDT:

23 Q. I just have one question, Mr. McKnight. You  
24 talked about some plans being more robust and  
25 accelerating cost recovery in states that are

1       transitioning to competition.  Could you name the  
2       states where that's happening?

3           A.       The primary one at this point would be --  
4       primary ones, of course, would be California, which is  
5       well along.  In fact, my understanding is that one of  
6       the companies there, the old San Diego Gas and  
7       Electric -- I have a hard time with all the new  
8       names -- is completed.  Pennsylvania was the second.  
9       Illinois was the third.  There's been various activity  
10      in this regard in some of the New England states.

11                 There's been a -- without going through the  
12      restructuring, there was a plan involving Ohio Edison  
13      that in effect involved a ten-year moratorium, rate  
14      moratorium.  The Commission's dealing with issues here  
15      over a three-year time frame.  The one there, which  
16      was much more extensive, it was ten years.

17                 But one of the components or objectives of  
18      the plan was to accelerate the recovery of two and a  
19      half billion dollars during that ten-year moratorium  
20      period.  Part of the agreement was that that amount  
21      would be excluded from rate base at the end of that  
22      period.

23                 There's been various forms of that that  
24      have -- accelerated capital recovery that have also  
25      taken place in Florida, involving Florida Power and

1 Light, and in Texas with Houston Power and Light.

2 Both of those last two -- or both of Ohio  
3 and Texas now are having kind of generic  
4 jurisdictional-wide restructuring plans that I haven't  
5 seen all the details, but from talking with my  
6 partners and what have you, they include forms of  
7 accelerated capital recovery also.

8 Q. Based on what you know about the situation  
9 in Missouri, would you agree with me that there's been  
10 very little progress as far as regulatory change  
11 toward competition in this state compared particularly  
12 to the other states that you're talking about?

13 A. Well, you know, I'd have to go back and look  
14 at all the states to see exactly -- exactly where they  
15 fall, but certainly relative to where some of these  
16 other states are, there hasn't been as much done in  
17 regard to accelerated capital recovery, but that is  
18 generally based on -- based on need.

19 I think there's a little better situation  
20 here with respect to high costs and what have you than  
21 some of the other jurisdictions that I mentioned.

22 Q. Just to clarify, then, you would agree that  
23 there's been very little progress toward competition  
24 in Missouri?

25 A. Well, I think the first step that, at least

1 in the electric industry that I'm aware of would  
2 involve this, the EARP that we've been dealing with  
3 here.

4 MS. SCHMIDT: Thank you.

5 JUDGE REGISTER: Thank you, Ms. Schmidt.  
6 Mr. Fulton, any questions?

7 MR. FULTON: No, your Honor.

8 JUDGE REGISTER: Mr. Johnson doesn't have  
9 any questions. Ms. Forrest?

10 MS. FORREST: No, your Honor.

11 JUDGE REGISTER: Recross, Mr. Dottheim?

12 RE-CROSS-EXAMINATION BY MR. DOTTHEIM:

13 Q. The various states you had mentioned in  
14 response to Ms. Schmidt, California, Illinois,  
15 Pennsylvania, those are states where the legislature  
16 has dealt with electric restructuring, is it not?

17 A. It's a combination. For example, Illinois  
18 was basically all the legislature. Other states, you  
19 generally have a legislative kind of framework, and  
20 then it sort of goes through the Commission for all  
21 the dot the i's and cross the t's and come up with an  
22 ultimate plan and process. So it's been a combination  
23 of the two.

24 Q. And when you mentioned the length of the  
25 plan here, three years, there is a second plan, and I



1 don't know if you're referring to the first EARP.  
2 There is a second EARP which is an additional three  
3 years?

4 A. Right. That's correct.

5 MR. DOTTHEIM: Thank you.

6 JUDGE REGISTER: Thank you, Mr. Dottheim.  
7 Mr. Coffman?

8 MR. COFFMAN: No recross.

9 JUDGE REGISTER: Redirect from UE?

10 MR. CYNKAR: No redirect, your Honor.

11 JUDGE REGISTER: Mr. McKnight, your  
12 testimony at this time on this issue is complete. You  
13 may step down. You are subject to recall, of course.

14 (Witness excused.)

15 JUDGE REGISTER: Mr. Dottheim, I believe  
16 your witness is next.

17 MR. DOTTHEIM: Yes. Staff would call as its  
18 first witness Steve Rackers.

19 (Witness sworn.)

20 JUDGE REGISTER: You may be seated. Please  
21 spell your name for the court reporter.

22 THE WITNESS: Stephen M. Rackers,  
23 R-a-c-k-e-r-s.

24 JUDGE REGISTER: Is it Stephen with a p-h?

25 THE WITNESS: With a p-h, yes.

1 JUDGE REGISTER: Mr. Dottheim, whenever  
2 you're ready.

3 MR. DOTTHEIM: Pardon me a moment, please.

4 JUDGE REGISTER: That's quite all right.  
5 Off the record.

6 (A recess was taken.)

7 JUDGE REGISTER: On the record. Please  
8 proceed, Mr. Dottheim.

9 STEPHEN M. RACKERS testified as follows:

10 DIRECT EXAMINATION BY MR. DOTTHEIM:

11 Q. Would you please state your name and address  
12 for the record.

13 A. Stephen M. Rackers, 815 Charter Commons  
14 Drive, Suite 100B, Chesterfield, Missouri.

15 Q. And would you please identify your employer.

16 A. Missouri Public Service Commission.

17 Q. Are you the same Stephen M. Rackers who  
18 caused to be filed what's been marked as Exhibit  
19 No. 1, your direct testimony in this proceeding?

20 A. Yes.

21 Q. And are you the same Stephen M. Rackers who  
22 caused to be filed what has been marked Exhibit 2,  
23 your surrebuttal testimony in this proceeding?

24 A. Yes.

25 Q. At this time, do you have any changes or

1 corrections to make to either Exhibit 1 or 2?

2 A. Yes. Let's start with the direct testimony,  
3 Exhibit 1. Page 3, line 22, the amount listed there  
4 should be changed to 18,320,000. Page 10, line 23,  
5 the year should be changed to 1991.

6 JUDGE REGISTER: That was page 10, line?

7 THE WITNESS: 23.

8 JUDGE REGISTER: Thank you. And the year  
9 should be 1990?

10 THE WITNESS: 1991.

11 BY MR. DOTTHEIM:

12 Q. Mr. Rackers, for purposes of clarity, the  
13 change you made on page 3, line 22 --

14 A. Yes.

15 Q. -- that number that you've asked be inserted  
16 reflects the agreement that's been reached between the  
17 Staff and Union Electric Company on the weather  
18 normalization issue?

19 A. That's correct.

20 Q. Please proceed.

21 A. Schedule 2, the amounts that appear in the  
22 column weather normalized credits, the first amount,  
23 it's labeled first year, should be 11,989,000. The  
24 second year should be 22,882,000. Third year should  
25 be 20,089,000, and the average permanent rate

1 reduction should be 18,320,000.

2 Q. Again, Mr. Rackers, these changes reflect  
3 the agreement that's been reached between the Staff  
4 and Union Electric Company on the weather  
5 normalization issue?

6 A. That's correct. And just for clarity, all  
7 those amounts on Schedule 2 have been rounded to the  
8 nearest thousand.

9 In Exhibit 2, the surrebuttal, page 6,  
10 line 21, the sentence that begins "based upon", the  
11 words "my own and other" should be inserted between  
12 upon and Staff. That's all the corrections I have.

13 Q. Thank you, Mr. Rackers. If I were to ask  
14 you the same questions that are contained in  
15 Exhibit 1, would your answers as corrected be those as  
16 are shown in Exhibit 1?

17 A. Yes.

18 Q. If I were to ask you today the same  
19 questions that are contained in Exhibit 2, would your  
20 answers today as you've just corrected them be the  
21 same as they appear in Exhibit 2?

22 A. Yes.

23 Q. Is the information contained in Exhibit 1  
24 true and correct to the best of your knowledge and  
25 belief?

1           A.     Yes, it is.

2           Q.     Is the information contained in Exhibit 2  
3 true and correct to the best of your knowledge and  
4 belief?

5           A.     Yes, it is.

6           MR. DOTTHEIM: I would tender Mr. Rackers  
7 for cross-examination.

8           JUDGE REGISTER: Do you want to offer  
9 Exhibits 1 and 2 at this time?

10          MR. DOTTHEIM: Yes. I would offer  
11 Exhibits 1 and 2 at this time.

12          JUDGE REGISTER: And Exhibit No. 2 was the  
13 only one, I believe, that you didn't offer in Case  
14 EM-96-149. Would you also offer it for both cases?

15          MR. DOTTHEIM: Exactly.

16          JUDGE REGISTER: Are there any objections to  
17 Exhibit No. 1 or No. 2?

18          MR. CYNKAR: I object to Exhibit No. 2.

19          JUDGE REGISTER: Can you explain your  
20 objection?

21          MR. CYNKAR: Your Honor, I suggest, if I  
22 might, because some of the bases for my objection for  
23 parts of it will be illuminated in my  
24 cross-examination and indeed will answer some  
25 questions I have about the basis of some things in

1 here. So is it possible to reserve ruling on  
2 admitting those parts of the surrebuttal testimony  
3 until after my cross-examination?

4 JUDGE REGISTER: What portions are you  
5 referring to?

6 MR. CYNKAR: The portions with respect to  
7 Mr. Rackers' testimony concerning the Southwestern  
8 Bell Telephone incentive regulation experiment, which  
9 is essentially on pages 6 and 7.

10 JUDGE REGISTER: Are there no objections  
11 relating to Exhibit No. 1, then?

12 MR. CYNKAR: No, your Honor.

13 JUDGE REGISTER: All right. Hearing no  
14 objections in relation to Exhibit No. 1, Exhibit No. 1  
15 will be admitted into the evidence at this time.

16 We will reserve ruling on Exhibit No. 2 for  
17 both cases until after the testimony, and we'll rule  
18 on that at the end of the testimony.

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

20 JUDGE REGISTER: Mr. Dottheim has tendered  
21 his witness, and so I believe the first  
22 cross-examination party is Public Counsel.  
23 Mr. Coffman?

24 MR. COFFMAN: I have no questions of  
25 Mr. Rackers.

1 JUDGE REGISTER: And Intervenors,  
2 Ms. Schmidt?

3 MS. SCHMIDT: No questions.

4 JUDGE REGISTER: Mr. Fulton?

5 MR. FULTON: Briefly. It's more appropriate  
6 for the next issue. So I'll withdraw.

7 JUDGE REGISTER: Thank you.

8 MR. JOHNSON: No questions.

9 MS. FORREST: No questions.

10 JUDGE REGISTER: And none of the Intervenors  
11 have questions at this time. UE, Mr. Cynkar, are you  
12 going to be examining?

13 MR. CYNKAR: Yes, your Honor. Thank you.

14 CROSS-EXAMINATION BY MR. CYNKAR:

15 Q. Hello, Mr. Rackers.

16 A. Hi.

17 Q. It's been a long day. Hopefully I won't  
18 take too long. I'd like to start out with a  
19 hypothetical question. Let's say we have a large  
20 farmer and a food store owner, and they have a  
21 contract that the food store owner is going to buy all  
22 of the produce from the large farmer. And in the  
23 context of that arrangement, that agreement, would it  
24 be fair to say that the farmer has given up his right  
25 to sell his produce to someone else?

1           A.     The specific produce that the store owner  
2           has agreed to buy.

3           Q.     The deal is the store owner buys all of his  
4           produce for the whole year, and so my question is,  
5           isn't it true that it's fair to say that the farmer  
6           has given up his right to sell that produce to someone  
7           else; isn't that true?

8           A.     Yes.

9           Q.     Now, if the farmer tries to break the deal  
10          and sell his produce to someone else, that would be a  
11          breach of that agreement; isn't that fair to say?

12          A.     Well, I'm not an attorney.

13          Q.     Well, they had an agreement, right? I'm not  
14          using it in any legal sense. And he's going against  
15          that agreement; isn't that fair?

16          A.     Yes.

17          Q.     Okay. And if he decides to enforce that  
18          agreement, go to court to get the court to order the  
19          farmer to perform the agreement, that's not anything  
20          that's particularly unusual; isn't that true?

21          A.     I don't know how unusual it is.

22          Q.     But in that context, what we would have is  
23          the food store owner would be trying to enforce his  
24          rights under that agreement, correct?

25          A.     Correct.



1 Q. And in that context, don't you think it  
2 would be sort of odd to say that the farmer is trying  
3 to exercise a unilateral -- or the food store owner is  
4 trying to exercise a unilateral veto right over where  
5 the farmer sells his produce?

6 A. Why don't you ask me that question again?

7 Q. Okay. In the context of this agreement  
8 where the farmer has agreed to sell all his produce to  
9 a food store owner and now the farmer wants to sell to  
10 someone else, the food store owner goes to court and  
11 tries to enforce the deal they had.

12 In that context, don't you think it would be  
13 sort of odd to say that the food store owner is trying  
14 to exercise some unilateral veto right over where the  
15 farmer sells his vegetables?

16 A. Yes.

17 Q. Now, in the context of this case, obviously  
18 the parties have two different understandings of what  
19 the EARP does, correct?

20 A. Correct.

21 Q. Okay. And you understand that the Company's  
22 perspective is that this is an agreement that all the  
23 parties agreed to, correct?

24 A. Yes.

25 Q. And we understand that you disagree with

1 that, correct?

2 A. I don't disagree that all the parties agree  
3 to it.

4 Q. I'm losing track of our agreements and  
5 disagreements. But the point is, you don't believe  
6 that this is an agreement that is legally binding on  
7 all the parties; is that fair?

8 A. Again, I'm not an attorney. I think that  
9 all the parties that signed it agreed to the terms.

10 Q. Then you understand the terms differently  
11 than we do?

12 A. I believe that's correct.

13 Q. Okay. Now, and so in a sense we're now  
14 before the Commission presenting those different  
15 perspectives on what our agreement means, correct?

16 A. Yes.

17 Q. And it wouldn't be fair, would it, to say  
18 that Union Electric is trying to exercise some  
19 unilateral veto right over anyone; isn't that true?

20 A. I think in this case it would be. I think  
21 UE is attempting to veto individual signatory's rights  
22 to even bring adjustments to the Commission.

23 Q. You understand, don't you, that UE's  
24 position is that we had an agreement that set out all  
25 the adjustments that were to be made, correct?

1 A. I believe that's their position.

2 Q. Right. And you disagree with that?

3 A. Correct.

4 Q. But I'm not asking you to accept our  
5 position, but that's not an irrational position from  
6 your perspective, is it?

7 A. I don't think it's irrational.

8 Q. And so we -- our position here in a sense is  
9 trying to enforce the agreement as we understand it;  
10 is that fair?

11 A. Yes.

12 Q. Okay. And that being the case, aren't we in  
13 the position of the food store owner? We're just  
14 trying to get everyone to abide by the agreement we  
15 believe everyone entered into; isn't that fair?

16 A. I think we're here to settle various  
17 disputes, and I think that's one of them.

18 Q. Right. But we're -- from our perspective,  
19 we're not trying to exercise any unilateral veto right  
20 over anyone's rights; we're trying to exercise our  
21 right to get everyone to live by the agreement that we  
22 thought we had; isn't that fair?

23 A. Well, I think UE has made various attempts  
24 in this case and motions before the Commission to try  
25 to stop various parties from even bringing adjustments

1 before the Commission.

2 Q. Well, is it fair to say that UE understands  
3 that adjustments outside those listed in the  
4 reconciliation agreement are not part of our  
5 agreement, correct?

6 A. I think that's their position.

7 Q. Right. And we are here in front of the  
8 Commission arguing about what the agreement means,  
9 correct?

10 A. Yes.

11 Q. So, I mean, UE hasn't tried to stop that, we  
12 just say you don't have the right to make those  
13 adjustments because that's not part of the agreement?

14 A. In my opinion, at various times during this  
15 proceeding the Company has tried to prevent Staff from  
16 both making the adjustments and bringing them forward  
17 to the Commission.

18 Q. With respect to -- let me ask you this. Are  
19 you referring to the earlier issues with respect to  
20 manipulation where we contended that there was a  
21 procedure in the agreement for bringing issues of  
22 manipulation forward? Is that what you're referring  
23 to when you say --

24 A. That's part of it.

25 Q. But as far as I know, there is no other

1 avenue to prevent the Staff procedurally under the  
2 agreement from bringing issues in front of the  
3 Commission; isn't that true?

4 A. I'm sorry. I think you lost me.

5 Q. Well, outside of the question of  
6 manipulation, there's nothing else in the agreement  
7 that addresses a procedure of getting before the  
8 Commission per se, does it?

9 A. I don't think so, but I'm not sure I would  
10 characterize the Company's position in that respect.

11 Q. I can, and I can say that that's true.

12 MR. FULTON: Objection. It's testimony  
13 by -- attempted testimony by an attorney.  
14 Furthermore, this entire line of questioning is unduly  
15 argumentative. He's attempting to set forth the  
16 position of UE through his spokesman and counsel.  
17 This witness is not being asked about any of his  
18 testimony. So I'd object to this line of questioning.

19 MR. CYNKAR: Can I respond, your Honor?

20 JUDGE REGISTER: Please.

21 MR. CYNKAR: Briefly. First of all, I can  
22 move on. I've done what I need to do. But I'm just  
23 asking leading questions, I think, in a fairly normal  
24 cross-examination.

25 JUDGE REGISTER: Your leading questions are

1 permitted, but you might want to refrain from  
2 testifying. You have stated the Company's position in  
3 your opening statements, and so let's go ahead and  
4 move on.

5 MR. CYNKAR: Fine.

6 BY MR. CYNKAR:

7 Q. Now, it's your position that in these  
8 proceedings the Staff's role is to -- or its goals are  
9 in line with the full goals of the Commission as  
10 opposed to the individual parties in this proceeding;  
11 isn't that true?

12 A. Are you referring to a specific part of my  
13 testimony?

14 Q. Well, I can direct you to your deposition on  
15 page 65. You were explaining the Staff's goals as  
16 opposed to the goals of OPC or UE, and you testified  
17 on page 65 that, from your perspective, the Staff's  
18 goals were more in line with the Commission and the  
19 Commission's broad range of interests as opposed to  
20 the interests of any particular party.

21 A. That's correct.

22 Q. Okay. And is it fair to say that by that  
23 you meant the full responsibilities of the Commission  
24 to look at the interests of consumers and the  
25 utilities and the public at large?

1 A. Yes.

2 Q. Now, is it fair to say that if a utility is  
3 operating more efficiently, that's a good thing?

4 A. I believe it is to the extent that it  
5 results in the utility being able to offer service at  
6 a fair and reasonable price, safe and adequate service  
7 at a fair and reasonable price.

8 Q. Now, would it also be fair to say that if a  
9 utility does its job at a lower cost, that it is being  
10 more efficient?

11 A. I think that would be one measure of  
12 efficiency.

13 Q. And would you also say it's fair to say that  
14 another measure of efficiency is that if the utility  
15 produces more power or does a better job at the same  
16 cost, that's also an increase in efficiency?

17 A. Well, it produces more power. You could be  
18 operating one of your power plants more efficiently in  
19 that respect.

20 Q. So is the answer to my question yes?

21 A. Yes, with regard to perhaps one power plant.

22 Q. The Company could be doing a safer, more  
23 reliable job just generally at the same cost, and that  
24 would be an improvement in efficiency, wouldn't it?

25 A. Generally, I think I could agree with you.

1 Q. Now, would you also agree that having a more  
2 efficient utility is good for economic development in  
3 Missouri?

4 MR. DOTTHEIM: I object on the grounds of  
5 relevance of this cross-examination.

6 JUDGE REGISTER: Mr. Cynkar, how is this  
7 relevant?

8 MR. CYNKAR: It's relevant in several  
9 different ways, your Honor, which I will show in my  
10 following questions, and I think it goes to the issues  
11 concerning what the purpose of the EARP is and what  
12 the Staff's position is on it. So if I could ask a  
13 few more questions, I think it will become clearer if  
14 that's possible.

15 JUDGE REGISTER: Okay. I'll overrule the  
16 objection at this time. If you could move it along,  
17 I'd appreciate it.

18 MR. CYNKAR: Thank you.

19 THE WITNESS: Can I hear the question again?

20 BY MR. CYNKAR:

21 Q. Absolutely. My question was, that having  
22 more efficient utilities in the state of Missouri is  
23 good for economic development in the state of  
24 Missouri, isn't it?

25 A. I have to say I don't know.



1 Q. Would it be fair to say that other  
2 businesses would find getting power more cheaply as an  
3 attractive thing?

4 A. Generally, I would agree with that.

5 Q. And as I'm sure you know this better than I,  
6 in the mission statement for the Commission, one of  
7 the missions of the Commission is, as you said, to  
8 ensure that Missourians would receive safe and  
9 reliable utility service at just, reasonable and  
10 affordable rates, correct?

11 A. Correct.

12 Q. And another mission is to support economic  
13 development through either traditional rate of return  
14 regulation or competition; is that fair?

15 A. I don't have a copy of the mission  
16 statement.

17 Q. I'd be happy to just hand mine to you, and  
18 maybe if you could just --

19 MR. CYNKAR: If I may approach the witness,  
20 your Honor, I just need to read it.

21 JUDGE REGISTER: Have him read it.

22 MR. CYNKAR: I just wanted to make sure that  
23 he sees it. I didn't want to have him read the whole  
24 thing. It's too long.

25 JUDGE REGISTER: Okay.

1                   MR. CYNKAR:  As you can see, that's from the  
2                   Commission's web page.

3                   BY MR. CYNKAR:

4                   Q.       And so the -- I had just read the second  
5                   bullet point concerning economic development.  So  
6                   you'd agree that that's obviously part of the  
7                   Commission's mission?

8                   A.       Yes.

9                   Q.       And then finally, it also has the Commission  
10                  has one of its missions to establish standards so that  
11                  competition will maintain or improve the quality of  
12                  services provided to Missourians, correct?

13                  A.       That's what it says.

14                  Q.       Great.  It not only says that, but you agree  
15                  that that's one of the missions of the Commission?

16                  A.       Yes.

17                  Q.       And apropos of what you said about the  
18                  Staff's goals being in line with the Commission, the  
19                  Staff's goals are in line within that mission  
20                  statement; isn't that true?

21                  A.       Well, I don't really think that was my  
22                  testimony.  I think that what my testimony was in my  
23                  deposition is that Staff has concerns of all the  
24                  parties, not just any specific constituency that we're  
25                  looking out for.

1 Q. Right. But in -- is it fair to say that  
2 when you come before the Commission, that you try to  
3 make your positions congruent with the full mission of  
4 the Commission?

5 A. I would have to say that I didn't consider  
6 that mission statement when I wrote my testimony.

7 Q. That wasn't really my question.

8 JUDGE REGISTER: I'm sorry. I didn't hear  
9 his response.

10 THE WITNESS: I said I didn't consult that  
11 document when I wrote my testimony.

12 JUDGE REGISTER: You need to answer his  
13 question. He may be laying foundation for his  
14 ultimate question, but you need to answer the question  
15 he asked. Can you restate that, Mr. Cynkar?

16 MR. CYNKAR: Yes.

17 BY MR. CYNKAR:

18 Q. My question is, when Staff then comes before  
19 the Commission and advances any particular position,  
20 it does so with the idea that that position is  
21 congruent with the full mission of the Commission?

22 A. When I advance the statements or, excuse me,  
23 the positions that I have in my testimony, I did not  
24 consider the full mission as it's labeled -- excuse  
25 me -- as it's discussed there.

1 Q. Okay. And, therefore, and my next question  
2 was, and that then explains the statement in your  
3 surrebuttal, which is on page 7, lines 12 to 16, in  
4 which -- do you see that in which you say it was not  
5 the goal of the Staff --

6 JUDGE REGISTER: What line were you on on  
7 page 12?

8 MR. CYNKAR: Page 7, lines 12 through 16.

9 JUDGE REGISTER: Page 7?

10 MR. CYNKAR: Yes, ma'am.

11 BY MR. CYNKAR:

12 Q. The question was, quote, was it the Staff's  
13 goal to put in place an incentive mechanism to  
14 encourage the Company to operate more efficiently as  
15 Mr. Brandt states on page 10 of his rebuttal  
16 testimony? And your answer was no.

17 A. That's correct.

18 Q. And so that reflects what you just said a  
19 moment ago, that in recommending the position that you  
20 have in this proceeding, you haven't taken the sort of  
21 full mission of the Commission into account; is that  
22 fair?

23 A. Well, I'm not sure that mission existed when  
24 this agreement was negotiated, and I think what I'm  
25 saying in that question and answer is that it wasn't

1 Staff's goal when it negotiated the first EARP to put  
2 in place an incentive mechanism to encourage the  
3 Company to be more efficient.

4 Q. Do you think that this mission statement is  
5 a new statement of the Commission's mission that adds  
6 new missions to what the Commission is about?

7 A. I'd have to say I don't know.

8 Q. So you don't know if the Commission, even  
9 before you put this testimony together, one of its  
10 missions was to support economic development?

11 A. No.

12 Q. No, you don't know?

13 A. I'm sorry.

14 Q. You do not know whether one of the missions  
15 of the Commission before you prepared this testimony  
16 was to support economic development?

17 A. That's correct.

18 Q. Okay. And similarly, you do not know  
19 whether one of the missions of the Commission before  
20 you put together your testimony was to establish  
21 standards so that competition will improve the quality  
22 of services?

23 A. That's correct.

24 Q. Okay. On page 7, lines 15 and 16, after you  
25 say no to that question that I read, you note that,

1 quote, In fact, it should be noted that the word  
2 incentive does not appear in the title of EARP, close  
3 quote. Did I read that accurately?

4 A. Yes.

5 Q. Okay. Now, wouldn't it be fair to say that  
6 the EARP could create incentives for efficient  
7 operation even if the word incentive never appeared in  
8 it?

9 A. It could.

10 Q. And do you understand that the sharing grid  
11 can encourage efficiencies?

12 A. I think it could.

13 Q. And it is a fact that the Commission has  
14 considered the UE EARP to be an incentive plan; isn't  
15 that true?

16 A. Are you referring to something in particular  
17 that says that or --

18 Q. Yes, I can, but do you -- I'd just like to  
19 know if you know that on your own first.

20 A. Let me check something real quick.

21 Q. Please do. Actually, Mr. Rackers, I didn't  
22 mean to put you through the game of got you here. So  
23 let me just direct you to something here. We'll talk  
24 about it further.

25 If I direct your attention to Exhibit 13,

1 Tab A in the Commission Order, page 5, the second full  
2 paragraph, the first sentence, I'll read it, quote,  
3 the 12.61 percent trigger for sharing should allow UE  
4 sufficient incentive to manage its operations in an  
5 efficient manner, close quote.

6 So there would it be fair to say that the  
7 Commission considered this an incentive plan?

8 A. It appears the Commission viewed that at  
9 least parts of the agreement, the 12.61 percent  
10 trigger, would allow UE sufficient incentive to manage  
11 its operations in an efficient manner.

12 I don't know that that really speaks to the  
13 fact that the Commission viewed the entire plan as an  
14 incentive plan.

15 Q. Okay. Let me just cite something to you,  
16 and I can certainly give you a copy because we have  
17 copies, but it was actually a case that was cited in  
18 some of the Staff testimony, which is in the Matter of  
19 Missouri Public Service, Case No. ER-97-394, and in  
20 the Report and Order dated March 6th, 1998 at page 97,  
21 the Commission said this: Quote, the sliding scale  
22 mechanism is the only type of incentive plan that has  
23 been approved by this Commission. It is currently  
24 being used on an experimental basis by UE as a result  
25 of Case No. ER-95-411, close quote.

1                   So would it be fair to say that the  
2 Commission does consider this to be an incentive plan?

3           A.     Based on your quote, I would say yes.

4           Q.     Okay.  And the issue of efficiency was  
5 discussed with the Commission when the EARP was  
6 presented in July of 1995; isn't that true?

7           A.     I believe it was.  I don't have that in  
8 front of me.

9           Q.     Okay.  Well, let me just give you a copy of  
10 it so you can have it in front of you.

11           MR. CYNKAR:  Just for the record, I'm not  
12 going to introduce this, your Honor.

13           JUDGE REGISTER:  What is it?

14           MR. CYNKAR:  It is a copy of the transcript  
15 of the proceedings before the Commission dated  
16 July 19, 1995 in Case No. ER-95-411.

17           THE WITNESS:  Do you have the specific cite?

18 BY MR. CYNKAR:

19           Q.     Well, yes.  You're correct that the  
20 Commission did consider it, and on pages 62 to 63  
21 there is a discussion between Commissioner Kencheloe  
22 and Mr. Brandt, among other things, asking about the  
23 financial community's expectations and Mr. Brandt  
24 discussing the fact that UE would be telling the  
25 financial community that the effect of this agreement



1 would be to maximize the efficiency of their  
2 operations.

3 I don't need to read that in the record. I  
4 just want to give you comfort that you're correct that  
5 this issue was discussed in front of the Commission at  
6 the time. Is that fair?

7 JUDGE REGISTER: I'm sorry. Did you have a  
8 question there?

9 BY MR. CYNKAR:

10 Q. I said is that fair? It was a leading  
11 question. I said, isn't it fair that the goal of  
12 efficiency was discussed?

13 A. What line are you on?

14 Q. It's actually several lines, page 62 from  
15 the bottom, line 23, all the way through page 63,  
16 line 16.

17 JUDGE REGISTER: You said his earlier  
18 response was that efficiency was discussed; is that  
19 right?

20 MR. CYNKAR: Right. And he expressed some  
21 hesitancy, and I just wanted to show him at least one  
22 place in the record where there was, in fact, the  
23 discussion.

24 JUDGE REGISTER: Does that discussion appear  
25 there, Mr. Rackers?

1 THE WITNESS: On lines 11 and through 13,  
2 Mr. Brandt makes a statement, but we would be making  
3 comments that we would continue to try and maximize  
4 the efficiency of our operations. That's at least one  
5 comment I see.

6 BY MR. CYNKAR:

7 Q. I don't need to belabor the point. If I ask  
8 you to turn the page to go over to page 65, there you  
9 have -- again, this is a continuing discussion between  
10 Commissioner Kencheloe and Mr. Brandt. And on  
11 page 65, lines 5 through 15 is the quote from  
12 Standard & Poors that I read during my opening. I  
13 don't know if you recall that. Do you recognize that?

14 A. Yes.

15 Q. Okay. And in the context of this Standard &  
16 Poors is commenting, and it's obviously being related  
17 to the Commission, that, quote, this, meaning the  
18 first EARP, is a positive development since under the  
19 sharing plan UE will be rewarded for efficient  
20 operations, close quote. It goes from there.

21 MR. FULTON: Object to the form of the  
22 question. Move to strike. There was no question  
23 asked.

24 BY MR. CYNKAR:

25 Q. Isn't that correct?

1                   MR. FULTON: Same objection. He's  
2 attempting to testify by his questions.

3                   JUDGE REGISTER: Mr. Cynkar, it does seem  
4 that you're reading testimony in from a different  
5 proceeding and just asking Mr. Rackers to agree with  
6 you that that is the reference there.

7                   I have no objection to you asking the  
8 Commission to take that document and notice if you  
9 want those things noticed, and maybe you should admit  
10 this document into the record if it's relevant. But I  
11 think that I'm going to overrule the objection and ask  
12 you to move on.

13                   MR. CYNKAR: That will be fine. Thank you,  
14 your Honor.

15 BY MR. CYNKAR:

16                   Q. Now, the first time you became aware that  
17 other states had experimented with a sharing grid was  
18 in reading Mr. McKnight's testimony in this  
19 proceeding; isn't that true?

20                   A. Yes.

21                   Q. Okay. And so you're not familiar with the  
22 experience in other states?

23                   A. No, I'm not.

24                   Q. Okay. And your recommended adjustments that  
25 you're proposing are not being offered here with any

1 advice or counsel with respect to the impact on  
2 ultimately the utility's efficiency; isn't that true?

3 A. Would you ask me that question again?

4 Q. Sure. The adjustments that you're proposing  
5 to the Commission here are not being offered with any  
6 advice or perspective on whether those adjustments  
7 will have any impact on the utility's efficiency;  
8 isn't that true?

9 A. Yes.

10 Q. Now, in the context of the first EARP,  
11 Mr. Rademan was the lead Staff negotiator; isn't that  
12 correct?

13 A. Yes. I think I stated that in my  
14 deposition.

15 Q. You did. And you were at some of the  
16 meetings; isn't that true?

17 A. Well, when you say at some of the meetings,  
18 do you mean Staff meetings, Company meetings?

19 Q. Meetings with representatives of the  
20 Company?

21 A. Yes, I was present at some of those. I  
22 actually don't believe there were very many. I think  
23 in my deposition I said I was present at four.

24 Q. Is it fair to say that Mr. Rademan was the  
25 main liaison with UE?

1           A.     I would agree with that, as assisted by  
2 Mr. Dottheim.

3           Q.     Okay.  And you reviewed drafts of the first  
4 EARP; isn't that true?

5           A.     That's one of the things I did.

6           Q.     Correct.  Now, during the context of any  
7 meetings you were at, no one represented to UE that  
8 this agreement was supposed to work just like  
9 Southwestern Bell; isn't that true?

10          A.     I don't recall that statement being  
11 specifically made.

12          Q.     Okay.  Now, you did not participate in the  
13 negotiations for the Southwestern Bell experimental  
14 plan?

15          A.     I think that's true.  It depends on how you  
16 characterize negotiations.  I think I probably did  
17 read draft language from that agreement.

18                   MR. CYNKAR:  If I could have one second,  
19 your Honor.

20                   JUDGE REGISTER:  Sure.

21 BY MR. CYNKAR:

22          Q.     If I could direct your attention, if there  
23 is available, a copy of Exhibit 21.  I have actually  
24 some extras.

25          A.     Is that Mr. Brandt's --

1 Q. That's Mr. Brandt's January letter.

2 A. I've got one here.

3 Q. Great. If I could direct your attention to  
4 page 8 of that draft. And, in fact, if you have  
5 Exhibit 13, which is the two EARPs, you might as well  
6 get those out. And for simplicity's sake I'll refer  
7 to Exhibit 21 as the UE proposal, and we'll be looking  
8 at the first EARP in Exhibit 13.

9 Okay. On page 8 of Mr. Brandt's proposal,  
10 right there in the middle of the document is a  
11 provision which is headed monitoring program, correct?

12 A. Yes.

13 Q. And in the context of this proposal, that  
14 was UE's proposal for monitoring procedures for the UE  
15 EARP; isn't that true?

16 JUDGE REGISTER: What page are you looking  
17 at, Mr. Cynkar?

18 MR. CYNKAR: Page 8 of Exhibit 21, your  
19 Honor.

20 JUDGE REGISTER: Thank you.

21 THE WITNESS: This was UE's original  
22 proposal. They didn't refer to it as EARP, but --

23 BY MR. CYNKAR:

24 Q. Fine. In UE's original proposal for what  
25 became the first EARP, this paragraph here is the

1 total proposal initially for the monitoring  
2 procedures; isn't that true?

3 A. Yes.

4 Q. Okay. And to flip back where you might have  
5 been a second ago to Attachment B, the heading of  
6 Attachment B is Reconciliation Procedure; isn't that  
7 true?

8 A. Yes.

9 Q. And that sets out the calculation for the  
10 earnings report; isn't that true?

11 A. That's one of the things it does, yes.

12 Q. But it doesn't set out monitoring  
13 procedures, does it?

14 A. Well, I would consider monitoring procedures  
15 to include the actual calculation of the earnings  
16 report, checking the earnings report, asking various  
17 data requests, having meetings.

18 Q. I understand that. Indeed you've testified  
19 to that effect in your deposition. But with respect  
20 to what Mr. Brandt intended, there's no indication in  
21 this reconciliation procedure that there's anything in  
22 there that he would call monitoring, is there?

23 MR. FULTON: Objection. Calls for  
24 speculation as to state of mind of Mr. Brandt who is  
25 not currently testifying.

1                   MR. CYNKAR: Your Honor, I think it's a  
2 perfectly fair question. I'm asking about what this  
3 document shows. It was written by someone else, and  
4 in response to my question Mr. Rackers answered by  
5 what he considers, and I'm focusing on what this  
6 document evidences.

7                   JUDGE REGISTER: I think that may have been  
8 your intention, but I think what you asked him was,  
9 what may have gotten out there is what Mr. Brandt  
10 intended it to say. And so I'm going to sustain the  
11 objection and ask you to restate the question --

12                   MR. CYNKAR: That's fine, your Honor. Thank  
13 you.

14                   JUDGE REGISTER: -- in the way you intended  
15 it.

16                   MR. CYNKAR: Thank you.

17 BY MR. CYNKAR:

18           Q.     This reconciliation procedure does not  
19 include -- does not include any provisions concerning  
20 information provisions, does it?

21           A.     I'm thinking about something in one of the  
22 provisions here. Bear with me. I would agree that  
23 the exact same language that's on page 8 does not  
24 appear in Attachment B. Now --

25           Q.     Would -- I'm sorry.



1           A.     The monitoring procedures here do talk about  
2 providing information, and I think there's -- in my  
3 mind, certainly Section G, 2G that would allow people  
4 to bring -- excuse me -- parties to bring issues to  
5 the Commission, I mean, that would be based on  
6 information that they would gain from the Company.

7           Q.     The word monitoring or monitor does not  
8 appear anywhere in the reconciliation procedure in  
9 Attachment B, does it?

10          A.     I don't believe it does.

11          Q.     Okay. Now, if we go from there to  
12 Exhibit 13, and if I could direct your attention to  
13 page 6 of the first EARP, and it begins at -- indeed,  
14 it's all of Section 3F(E), starting on page 6 and  
15 continuing over on to page 7.

16          A.     Yes.

17          Q.     And is it fair to say that this provision  
18 sets out the information provision requirements of the  
19 first EARP?

20          A.     This section specifically labels nine  
21 reports. It also speaks to signatory's ability to  
22 gather data, have meetings, conduct interviews.

23          Q.     Is that yes?

24          A.     I'm sorry. Ask me your question.

25          Q.     My question was, does that provision,

1 Section 3E, set out the requirements of the first EARP  
2 with respect to the provision of information and, as  
3 you point out, access to personnel at UE and so forth?  
4 Is that a fair reading of that?

5 A. Yes.

6 Q. Now, if you turn over to Attachment C, you  
7 see again the reconciliation procedure, and again, is  
8 it fair to say that the word monitor or monitoring  
9 does not appear anywhere in that provision?

10 A. I believe you're correct. It's not -- that  
11 word's not listed there.

12 Q. Do you have Exhibit 22, which is the  
13 Southwestern Bell plan?

14 A. Yes.

15 Q. Okay. Now, if you turn to Attachment 3,  
16 that's the monitoring procedures.

17 JUDGE REGISTER: On this attachment they  
18 have marked on the bottom of Attachment A26  
19 through --

20 MR. CYNKAR: Page 66 of 75. I'm sorry.

21 JUDGE REGISTER: Thank you. That's the  
22 easier way to follow.

23 THE WITNESS: Attachment 3, monitoring  
24 procedures?

25 BY MR. CYNKAR:

1 Q. Yes, sir.

2 A. Yes.

3 MR. DOTTHEIM: Excuse me, Mr. Cynkar. When  
4 you're looking at page 66, that document, the  
5 monitoring procedures appears more than once in the  
6 document. It's also on page 32 of 75, and those were  
7 the pages that I referred to yesterday in my  
8 cross-examination.

9 MR. CYNKAR: Right.

10 BY MR. CYNKAR:

11 Q. The monitoring procedures are in the  
12 document in two places. Anyway, Attachment 3 is  
13 labeled monitoring procedures, correct?

14 A. Correct.

15 Q. And as Mr. Dottheim helpfully points out,  
16 that this was the beginning of this monitoring  
17 procedures, which goes on from the first page of the  
18 attachment on for several pages, near the end of page  
19 3 involves provisions for calculating the earnings  
20 report for the Southwestern Bell Company in the  
21 context of this agreement, correct?

22 A. Okay. Ask me your question again, please.

23 Q. I said that the first pages from 1 through  
24 most of page 3 set out the provisions for calculating  
25 the earnings report for the Southwestern Bell

1 Telephone Company in the context of this agreement;  
2 isn't that true?

3 A. Yes.

4 Q. And after that part, still within monitoring  
5 procedure, beginning at the bottom of page 3 all the  
6 way through page 5, you have provisions governing the  
7 production of information and data and the like; isn't  
8 that fair?

9 A. Yes.

10 Q. So in the Southwestern plan under monitoring  
11 procedures, you both have the earnings calculations  
12 and the information provision functions; is that true?

13 A. Yes.

14 Q. Okay. Let me direct your attention back to  
15 Exhibit 13, and let's go to the first EARP again. If  
16 I could direct your attention to page 8 of  
17 Attachment A, which also says in the lower right-hand  
18 corner page 8 of 23 pages.

19 A. Yes.

20 Q. Okay. And if I could direct your attention  
21 to the two paragraphs, small Roman i and ii. Now, the  
22 sharing grid in the first EARP is based on a  
23 calculation of the return on equity; is that true?

24 A. Yes.

25 Q. And in this provision, the parties say that

1 that return on equity are going to be calculated by  
2 using the methodology set out in the reconciliation  
3 procedure, true?

4 A. That's what Item 1 says.

5 Q. Okay. And the paragraph 2 little i also  
6 articulates the fact that Staff, OPC and UE have  
7 conferred and determined what items based on prior  
8 Commission Orders should be excluded from that  
9 calculation; isn't that fair?

10 A. That's what Item 2 says.

11 Q. Okay. And there's no indication from this  
12 text that any methodology or accounting manipulation  
13 other than that set out in the reconciliation  
14 procedure is to be used in calculating return on  
15 common equity; isn't that true?

16 A. There's nothing in i and ii.

17 Q. Right.

18 A. I think that's what it says, yes.

19 Q. Okay. Now, before we get to the  
20 reconciliation procedure itself, there is nothing else  
21 in the text of the EARP before the reconciliation  
22 agreement that suggests that some other methodology or  
23 accounting practice beyond what is set out in  
24 Attachment C, the reconciliation procedure, should be  
25 used to calculate the return on common equity; isn't

1 that fair?

2 A. Now, you're saying before we get to  
3 Attachment C?

4 Q. Yes, sir.

5 A. I wouldn't agree with that.

6 Q. Could you point me to language that shows  
7 the parties agreed to some other methodology or  
8 accounting practice other than that set out in the  
9 reconciliation procedure?

10 A. Well, it's not that the parties specifically  
11 agreed to another accounting practice or methodology,  
12 but certainly on page 9 it discusses the ability of  
13 parties to bring issues before the Commission, and  
14 those -- those issues could relate to adjustments  
15 Staff made based on criteria or specific calculations  
16 that are not actually in Attachment C.

17 Q. Okay. Well, let's look at that language.  
18 This is 3.f.vii?

19 A. Yes. I'm sorry. I said 9. I meant 10.

20 Q. You're on page 10, correct?

21 A. Yes.

22 Q. And the language you're referring to is in  
23 paragraph 3 of 7, correct?

24 A. And 8, but on page 9, yes.

25 Q. Okay. And the language specifically as you

1 just mentioned involves the signatories' reserving,  
2 quote, the right to bring issues which cannot be  
3 resolved by them and which are related to the  
4 operation or implementation of the plan, close quote.

5 Is that the language you're referring to?

6 A. Well, that and down at the bottom of 7 it  
7 also speaks to variations in the level of expenses  
8 where no reasonable explanation has been provided.

9 Q. Well, let's take them one at a time. So  
10 start with the first. Now, it's your view, then, that  
11 by virtue of this language, a party like the Staff  
12 could propose an additional adjustment or accounting  
13 methodology beyond what is in the reconciliation  
14 procedure; is that fair?

15 A. Well, you talk about accounting  
16 methodologies, and the agreement does state that. I  
17 don't look at it as though I'm -- excuse me -- or  
18 Staff or some party would be suggesting a new  
19 accounting methodology. They would be proposing an  
20 additional adjustment to address a concern.

21 Q. An additional adjustment meaning in addition  
22 to the adjustments that are set out in the  
23 reconciliation procedure?

24 A. Correct.

25 Q. Okay. And so is it fair to say that your

1 understanding of this language on paragraph 9 means  
2 that --

3 A. Excuse me. Paragraph 7.

4 Q. Sure. Go ahead.

5 A. You said paragraph 9.

6 Q. I'm sorry. Page 9. Thank you for catching  
7 me. Getting late in the day. But this language on  
8 page 9 that we are talking about concerning the  
9 operation or implementation of the plan means that you  
10 can propose an adjustment that is not set out in the  
11 methodology in the reconciliation procedure?

12 A. That's correct.

13 Q. Okay. Now, in looking at those, this  
14 language of the right to bring issues, that whole  
15 phrase we've been looking at, in there it doesn't  
16 specifically advert to adjustments in the earnings  
17 calculation, correct?

18 A. Well, it says the signatories can bring  
19 concerns to the Commission. Now, we've brought our  
20 concerns forward in the form of adjustments.

21 Q. I'm sorry. If you could direct your  
22 attention to 7, it says the right to bring issues.  
23 Are we both reading from the same place?

24 A. Yes.

25 Q. Okay. So that it says that they reserve the



1 right to bring issues which cannot be resolved by them  
2 and which are related to the operation or  
3 implementation of the plan, right?

4 A. That's correct.

5 Q. And that does not -- that reference to  
6 issues doesn't specifically refer to adjustments to  
7 the earnings calculation in the reconciliation  
8 procedure, correct?

9 A. I don't know that it makes a specific  
10 reference to the earnings calculation, but it says the  
11 right to bring issues for resolution. So the form  
12 that we have chosen to bring those issues forward are  
13 adjustments.

14 Q. So if I understand your perspective, then,  
15 the language right to bring issues is broader than the  
16 right to propose adjustments to the earnings  
17 calculation, correct?

18 A. I'm sorry. I'm not following you.

19 Q. If I understood what you just said, you say  
20 that the right to bring issues includes the right to  
21 propose an adjustment to the earnings calculation,  
22 correct?

23 A. Correct.

24 Q. Now, since that language does not focus on  
25 earnings calculations, your understanding of issues is

1 broader than just earnings calculations? You feel  
2 that that concept is included in there but not limited  
3 to it, correct?

4 A. That's correct.

5 Q. So then under that understanding of the  
6 language of issues, you could propose a change to any  
7 provision in this EARP; isn't that true?

8 A. No, I wouldn't agree with that. I think if  
9 the signatories got together and discussed a change  
10 and they all accepted it, I think you could change the  
11 plan. I don't think one party alone could propose an  
12 amendment, changes to the plan.

13 Q. It is your view that under this language you  
14 can unilaterally propose an adjustment that isn't  
15 included in the reconciliation methodology and have  
16 the Commission order it on the rest of the parties;  
17 isn't that true?

18 A. I probably wouldn't characterize it that  
19 way. I would characterize it as this portion of the  
20 agreement allows any party, even the Company, to bring  
21 issues forward, and the form that we have brought our  
22 issues forward is adjustments to the earnings report.

23 Q. That's true, but what -- the proceeding that  
24 we're in now in which one of those parties, the Staff,  
25 has proposed adjustments is different than your answer

1 to my earlier question when you said all the parties  
2 could get together and agree on a change, correct?

3 A. Well, that would be a change, not an  
4 adjustment.

5 Q. Right. And we're not agreeing to your  
6 proposed adjustment, correct?

7 A. That's correct.

8 Q. And so my question was, given that the  
9 language that you're relying on talks about issues and  
10 does not limit issues, it's your view that you have  
11 the ability to propose changes to any part of this  
12 agreement and come before the Commission and have the  
13 Commission order those changes; isn't that fair?

14 A. No.

15 MR. DOTTHEIM: I object. I don't believe  
16 that is what Mr. Rackers' testimony is. I think  
17 you're testifying on behalf of Mr. Rackers.

18 MR. CYNKAR: Your Honor, I'm just asking  
19 questions about the logic of his understanding of this  
20 language. Let me ask a slightly different way.

21 JUDGE REGISTER: I'm going to overrule the  
22 objection, and let Mr. Rackers explain what he does  
23 understand.

24 MR. CYNKAR: Well, if I could ask a specific  
25 question, your Honor, it might be helpful in focusing.

1 JUDGE REGISTER: So you're going to withdraw  
2 your question and ask a different one?

3 MR. CYNKAR: I don't want to withdraw it. I  
4 just want to ask an additional question, if I might.

5 JUDGE REGISTER: That would be a compound  
6 question.

7 MR. CYNKAR: You're right. You're  
8 absolutely right. Let me withdraw that one and I'll  
9 ask another one.

10 JUDGE REGISTER: All right. Thank you.

11 MR. CYNKAR: Thank you. I appreciate it.

12 BY MR. CYNKAR:

13 Q. What in your view, in this language that  
14 we're looking at here -- let me back up. Let's follow  
15 the logic that you and I have been talking about.

16 It's your testimony that this language  
17 concerning the right to bring issues allows you to  
18 propose adjustments that are not -- that is not in the  
19 methodology set out in the reconciliation procedure,  
20 correct?

21 A. Adjustments in addition to those set out in  
22 the reconciliation procedure.

23 Q. Okay. And earlier we discussed paragraph  
24 3FI on page 8 which says that the return on common  
25 equity for the sharing grid is supposed to be

1 calculated by using the methodology in the  
2 reconciliation procedure; is that correct?

3 A. That's what it says.

4 Q. And so your understanding of 3.f.vii is that  
5 you can add to that methodology, correct?

6 A. My understanding of 7 is that you can bring  
7 issues that can't be resolved forward. We have done  
8 that in the form of adjustments.

9 Q. And it's an adjustment what is, as you've  
10 already testified, is not set out in the methodology  
11 in the reconciliation?

12 A. It doesn't appear -- our adjustments don't  
13 specifically appear in the reconciliation procedure,  
14 but Section 2G of the reconciliation procedure has  
15 almost exactly the same language.

16 Q. Right. So we're still talking about the  
17 same thing. And my question to you then is, in terms  
18 of where our discussion has gone, what in this  
19 language limits you in terms of the issues you can  
20 bring to propose changes to the EARP to just the kind  
21 of accounting adjustments you're proposing here?

22 MR. DOTTHEIM: I object. I don't believe  
23 that Mr. Rackers has testified that he can bring  
24 changes to the Commission or propose changes to the  
25 Commission.

1                   MR. CYNKAR: Your Honor, I think that the  
2 body of the testimony that's in the record right now  
3 is that the agreement sets out methodology, and  
4 Mr. Rackers' view is that this provision here can  
5 allow the Staff to add additional accounting  
6 adjustments to the methodology that's set out in the  
7 reconciliation plan.

8                   I'm just asking him further about his  
9 understanding of that, of whether you call it  
10 additions or changes or what have you, what limits the  
11 Staff or any parties' powers under his view of this  
12 agreement to adjust those accounting changes and why  
13 not add things or do whatever, make changes to  
14 anything else.

15                  JUDGE REGISTER: I'm going to overrule the  
16 objection because I believe that I recall that  
17 Mr. Rackers did say that these were additions to the  
18 reconciliation plan. Please proceed.

19 BY MR. CYNKAR:

20                  Q.     So I presume you're going to want me to  
21 restate my question?

22                  A.     Yes.

23                  Q.     Okay. My question then is, what in this  
24 language, in your view, limits you to proposing  
25 additions to the agreement that only deal with

1 accounting adjustments to the earnings report as  
2 opposed to making any other additions to the  
3 agreement?

4 A. Well, I don't view the word issues to mean  
5 amendment, changes to the plan. Other than additional  
6 adjustments, I can't envision exactly what another  
7 issue might be. And the only issue Staff has brought  
8 forward are additional adjustments, and I don't view  
9 the word issues as allowing parties to make amendments  
10 or changes to the plan.

11 Q. The adjustments that you have proposed are  
12 in addition to the adjustments set out in the  
13 reconciliation procedure, correct?

14 A. Those that are specifically set out, yes.

15 Q. Correct. Are there adjustments that are not  
16 specifically set out?

17 A. I think there's a provision in the  
18 reconciliation procedure that allows parties to bring  
19 forward additional adjustments.

20 Q. And that is essentially, as you mentioned a  
21 minute ago, the provision 2G from the reconciliation  
22 procedure that is essentially the same language?

23 A. Yes.

24 Q. Okay. So is it your position that because  
25 2G is in the reconciliation procedure, the language of

1 2G is limited to the reconciliation procedure?

2 A. No. It's the same language as in No. 7.

3 Q. Right. So if I understand your testimony  
4 correctly, it is something inherent in the word issues  
5 in your view that limits you to additional accounting  
6 adjustments; is that fair?

7 A. Over changes or amendments to the plan, yes.  
8 As I said, I can't specifically envision any right now  
9 of issues that this would deal with, but certainly  
10 if -- well, here's an example. If some of the reports  
11 that are listed under the monitoring section, if the  
12 Company discontinued some of those reports, that would  
13 be an issue that you could bring forward.

14 Q. That's quite true, but what you've -- isn't  
15 it fair to say that the monitoring reports that you're  
16 talking about are requirements that are currently in  
17 the agreement, correct?

18 A. That's true.

19 Q. So that's not an issue in which you're  
20 adding anything to the agreement, true?

21 A. Well, if one of those reports was  
22 discontinued, as I believe it has been, then you might  
23 propose an additional item to replace it, but it would  
24 be an issue regarding potentially another report that  
25 you would need to replace.



1 Q. And the parties could agree to that?

2 A. The parties could agree to that, yes.

3 MR. CYNKAR: Your Honor, if I could just  
4 have a minute.

5 JUDGE REGISTER: Certainly.

6 BY MR. CYNKAR:

7 Q. Mr. Rackers, would it be fair to say,  
8 looking at this word issues, that it wouldn't be  
9 unreasonable for another person to not agree that  
10 issues is somehow inherently limited the way you  
11 suggest?

12 A. Do I think it would be unreasonable for  
13 somebody else to agree?

14 Q. To say issues is not limited, it's a broad  
15 word?

16 A. I don't think it would be unreasonable. I  
17 don't believe that it would be appropriate under the  
18 plan.

19 Q. But there's no other language limiting the  
20 word issues to support your notion that it wouldn't be  
21 appropriate under the plan; isn't that true?

22 A. Well, when we talked earlier when we were  
23 looking at page 8, we talked about that the earnings  
24 report is designed to be put together based on the  
25 reconciliation procedure.

1                   Now, I believe that the reconciliation  
2 procedure itself in 2G envisions that you could bring  
3 additional issues forward, and it's also covered under  
4 7 and 8.

5           Q.     But you said before that 2G isn't limited to  
6 the reconciliation procedure, correct?

7           A.     Because it's the very same language as 7.

8           Q.     Correct. So there still is no other  
9 language that limits the scope of the issues covered  
10 by either 7 or 2G just to additional accounting  
11 adjustments; isn't that true?

12           MR. DOTTHEIM: I object. The question's  
13 been asked and answered.

14           MR. CYNKAR: I'm not sure what the answer  
15 was, your Honor. It's a simple yes or no question as  
16 your Honor has pointed out to some of our witnesses.

17           JUDGE REGISTER: I'm not sure I recall  
18 hearing that answered either yes or no. Can you  
19 answer that yes or no?

20           THE WITNESS: I'm not sure I can. Ask the  
21 question one more time.

22 BY MR. CYNKAR:

23           Q.     There is no other language in this agreement  
24 that limits the scope of the word issues in 3.f.vii  
25 and 2G just to accounting adjustments in the earnings

1 calculation, true?

2 A. When you say there's no other language,  
3 there's no other language that limits it except my  
4 interpretation, is that what you said?

5 Q. I said there's no other language in this  
6 agreement that limits the scope of the word issues in  
7 3.f.vii and 2G to only accounting adjustments to the  
8 earning calculation, true?

9 A. There's no other language other than what?

10 Q. Any language?

11 A. Okay. So you're asking me --

12 JUDGE REGISTER: Let me -- is there any  
13 language in the agreement; is that correct?

14 MR. CYNKAR: Correct.

15 JUDGE REGISTER: The Stipulation and  
16 Agreement that limits the term issues as it's used in  
17 either of those two locations? Do you know of any  
18 language?

19 THE WITNESS: No.

20 BY MR. CYNKAR:

21 Q. So then if this provision allows you to  
22 propose additions to the performance of this  
23 agreement, it would allow a party to propose an  
24 addition to the sharing grid, for example; isn't that  
25 true?

1 A. I don't agree that it does.

2 Q. I realize that you don't agree that it does,  
3 but is there any language in this agreement that would  
4 prevent the word from having that meaning?

5 A. I think the language on page 4, 3B.

6 Q. I'm sorry. Which page are you on?

7 A. Page 4, 3B where it specifically talks about  
8 using the sharing grid.

9 Q. Okay. So that provision says the following  
10 sharing grid is to be utilized as part of the plan,  
11 correct?

12 A. Yes.

13 Q. If we turn back to page 8, and we go to  
14 paragraph small Roman i, it says that the return on  
15 common equity for determining sharing will be  
16 calculated by using the methodology set out in the  
17 reconciliation procedure; isn't that true?

18 A. That's what it says.

19 Q. And so with respect to calculating sharing,  
20 it has the same style of language as the sharing grid  
21 provision does you just talked about, true?

22 A. One says the sharing grid will be utilized.  
23 On page 8, small i, it says will be calculated by  
24 using the methodology in Attachment C. I'm not sure I  
25 can agree to the same style.

1 Q. So you think that the way paragraph 3B on  
2 page 4 is written makes it immune from the scope of  
3 the issues language in paragraph 3.f.vii that we've  
4 been discussing?

5 A. Well, not -- I don't know that there's  
6 something in the way it's written that makes it  
7 immune, no. I view that the word issues as discussed  
8 in 7 doesn't mean that you can make changes to the  
9 sharing grid.

10 Q. But that's not based on any language in the  
11 agreement; that's your opinion, correct?

12 A. Well, it's my opinion, but on page 4 it says  
13 utilize the sharing grid. This is the only sharing  
14 grid that's in the agreement.

15 Q. And is it fair to say that the  
16 reconciliation procedure set out in Attachment C is  
17 the only reconciliation procedure in this agreement,  
18 too?

19 A. Yes, it is.

20 Q. And yet you believe that you can add  
21 accounting adjustments to that reconciliation  
22 procedure by virtue of the language in 3.f.vii,  
23 correct?

24 A. And 2G.

25 Q. Which is the same, right, so the answer is

1 yes?

2 A. Yes.

3 Q. Is it fair to say that none of the Staff's  
4 proposed adjustments here are based on a claim that  
5 the involved expenses were imprudent?

6 A. That's correct.

7 Q. Okay. And also, the Staff is not claiming  
8 that operating results have been manipulated?

9 A. That's correct.

10 Q. Okay. And except for the issue of mergers  
11 and acquisitions, that one issue, the remaining issues  
12 don't involve a Staff claim that UE has made an  
13 erroneous calculation under the terms of the  
14 agreement, correct?

15 JUDGE REGISTER: Would it be fair to say  
16 none of the remaining issues at issue are --

17 MR. CYNKAR: Except for mergers and  
18 acquisitions.

19 JUDGE REGISTER: Except for mergers and  
20 acquisitions. Thank you.

21 THE WITNESS: I'm trying to think if we've  
22 used the term erroneous calculation with regard to the  
23 mergers and acquisition adjustment.

24 I think that we believe that you should use  
25 the most recent estimates and the actual cost to make

1 that adjustment. I don't know that we've accused the  
2 Company of putting forward an erroneous adjustment.

3 BY MR. CYNKAR:

4 Q. Is it fair to say that the issue with  
5 respect to mergers and acquisition has to do with the  
6 construction of the language of the agreement and how  
7 that should be applied?

8 A. I think it's the interpretation of the  
9 language.

10 Q. Fine. That's what I mean by erroneous. So  
11 putting that aside, there's no other issue before the  
12 Commission in which the Staff is making a claim that  
13 UE has done something incorrectly under the terms of  
14 the agreement, correct?

15 A. Correct.

16 Q. And it is your view that any adjustment can  
17 be proposed by the Staff even if it hasn't involved a  
18 significant variation in costs; isn't that true?

19 A. Yes.

20 Q. And is it fair to say that your position is  
21 based on the idea that you have discretion to propose  
22 an adjustment wherever you feel an expense is not  
23 appropriate?

24 A. I believe the terms of the agreement would  
25 allow that.

1 Q. Okay. Let me direct your attention to pages  
2 160 and 161 of your deposition, and we're going to be  
3 talking about, starting on page 160, lines 14 through  
4 line 9 on page 169. And for the benefit of the  
5 record, this is a discussion concerning an increase in  
6 injuries and damages expenses, and --

7 A. I'm sorry. You're on 160 or 69?

8 Q. 160 going over to 161. I'm sorry.

9 A. Okay.

10 Q. And begin on line 14, and the question that  
11 Mr. Lerner posed to you was, quote, surely it would be  
12 a reasonable explanation that the reason they had a  
13 significant variation in expenses was there was a jury  
14 verdict against them in a case which they had only set  
15 aside a half a million dollars when the verdict was  
16 \$5 million. Wouldn't that be a reasonable  
17 explanation? So that was the question. They've only  
18 reserved five -- or half a million dollars, and the  
19 verdict comes in for that claim of being five.

20 And your answer, directing your attention to  
21 lines 5 to 9, was, quote, we don't believe that it's a  
22 reasonable explanation as to why those additional  
23 dollars should be included in the third sharing period  
24 in the calculation of credits, close quote. Correct?

25 A. Correct.



1 Q. And you still agree with that answer?

2 A. Yes.

3 Q. And so your position is that it's not  
4 reasonable, if a jury awarded a greater verdict than  
5 they anticipated, that's not a reasonable explanation  
6 under the meaning of the agreement to justify those  
7 expenses, correct?

8 A. Correct.

9 Q. Okay. Is it fair to say that the judgment  
10 that you're making when you say that's not a  
11 reasonable explanation is very much like the  
12 normalization of expenses in a ratemaking context?

13 A. I would have to say no to that.

14 Q. Why?

15 A. I think the adjustment that we're proposing  
16 would be quite different if we were going to propose a  
17 normalization adjustment in a rate case than what  
18 we've done here.

19 Q. Is it fair to say that in rejecting a notion  
20 that a jury happened to award more damages than the  
21 Company anticipated as a reasonable explanation, in  
22 rejecting that as a reasonable explanation, that  
23 you're saying it's just simply not appropriate for the  
24 credit to be affected by an expense that large?

25 A. Right. The adjustment has more to do with

1 than the expenses or the item as large.

2 Q. Could you explain that?

3 A. Well, yes. I think what Staff's -- I don't  
4 have Mr. Gruner's testimony in front --

5 Q. Just so we don't get off track, I'm really  
6 not asking about the actual proposal you're making.  
7 I'm asking about this exchange here in which you're  
8 explaining your understanding of reasonable  
9 explanation in the context of the injuries and damages  
10 expense. So it's a simpler question.

11 But as I understand your answer here, that  
12 your rejection of that reasonable explanation is based  
13 on a judgment that it's simply not appropriate for the  
14 credit calculation to be affected by an expense that  
15 large in that period; is that fair?

16 A. Well, it has more to do with the fact that  
17 it's a large expense.

18 Q. Okay. Now, directing your attention to the  
19 Southwestern Bell plan, I'm not going to go to the  
20 document quite yet. Have you reviewed  
21 Mr. Schallenberg's testimony in this case?

22 A. Yes, I have.

23 Q. And so you know that at the end of the  
24 Southwestern Bell agreement there apparently was a  
25 dispute over a number of issues among the parties; is

1 that fair?

2 A. Well, you said the end of the agreement.  
3 I'm not entirely sure which sharing period that  
4 occurred in.

5 Q. But in the context of his testimony, he  
6 attached some documents from that dispute whenever it  
7 occurred; is that fair?

8 A. That's correct.

9 Q. You don't happen to have his testimony  
10 handy?

11 A. Yes, I do.

12 JUDGE REGISTER: I have to ask you this,  
13 Mr. Cynkar, but are you cross-examining Mr. Rackers on  
14 Mr. Schallenberg's testimony?

15 MR. CYNKAR: Yes, because Mr. Rackers --  
16 well, not quite. But Mr. Rackers does make some  
17 characterizations of what was going on in the  
18 Southwestern Bell situation, and this is quite  
19 relevant to that, your Honor.

20 JUDGE REGISTER: Okay. You're referencing  
21 his testimony where he's talking about Southwestern  
22 Bell?

23 MR. CYNKAR: I will be, but at one point  
24 there's some documents that come from that.

25 JUDGE REGISTER: Okay. That clears that for

1 me. Thank you.

2 BY MR. CYNKAR:

3 Q. And briefly, all I want to refer to is those  
4 documents, not Mr. Schallenberg's testimony per se.  
5 But if I direct your attention to Schedule 2-3 in  
6 Mr. Schallenberg's testimony, which is Exhibit 3.

7 A. Yes.

8 Q. Okay. And this is, it's fair to say, is a  
9 proposal to identify -- identifying issues and  
10 proposing a procedural schedule that was prepared by  
11 the Staff and Public Counsel, correct?

12 A. Correct.

13 Q. And in it Staff and Public Counsel set out a  
14 whole list of issues that are the genesis of this  
15 agreement between the parties, true?

16 A. Yes.

17 Q. Okay. And in this document it does not set  
18 out either the Staff and Public Counsel's position or  
19 Southwestern Bell's position on these issues, correct?

20 A. I'm not sure what you mean by position. You  
21 mean it doesn't describe each one of the adjustments,  
22 is that what you're asking me?

23 Q. It doesn't include from the perspective of  
24 Southwestern Bell why these adjustment are not  
25 appropriate, true?

1           A.     Well, Southwestern Bell filed something in  
2 response to this, and they didn't raise that as a  
3 concern.

4           Q.     Well, isn't it fair that these are all areas  
5 of disagreement, correct?

6           A.     Yes.

7           Q.     Okay. And there is nothing written in the  
8 record that explains the basis of Southwestern Bell's  
9 disagreement, correct?

10          A.     What I understand you to be asking me is  
11 that there's no specific discussion on each one of  
12 these adjustments where Southwestern Bell says they  
13 disagree with 1993 flight costs because. Is that what  
14 you're asking me?

15          Q.     In any of these documents, correct?

16          A.     That's correct.

17          Q.     Now --

18          A.     Hold on just a second.

19          Q.     Sure.

20          A.     Okay.

21                 JUDGE REGISTER: You saw nothing in your  
22 testimony that changed your last answer?

23                 THE WITNESS: Correct.

24                 JUDGE REGISTER: In the documents.

25 BY MR. CYNKAR:

1 Q. Now, ultimately this proceeding that  
2 Schedule 2-3 refers to never happened because the  
3 parties settled their disagreement, correct?

4 A. They never took these issues forward to the  
5 Commission.

6 Q. Right. They settled the matter, correct?

7 A. That's correct.

8 Q. And there were no other documents that you  
9 know of in which Southwestern Bell explained its  
10 position with respect to its disagreements with the  
11 Staff on each of these issues, correct?

12 A. Correct.

13 Q. Okay. Now, on page 7 of your surrebuttal,  
14 lines 7 to 10, you say, quote, over the duration of  
15 the SBIRE, that's the Southwestern Bell plan,  
16 Southwestern Bell Telephone, SWBT, never raised  
17 objections to the Commission or interpreted the  
18 provisions of the plan as UE has in this proceeding.  
19 This experience with the operation of SBIRE guided the  
20 Staff's understanding of the language in EARP, close  
21 quote, correct?

22 A. Correct.

23 Q. The basis, then, of this testimony does not  
24 come from documents, correct?

25 A. It comes from my review of the documents

1 attached to Mr. Schallenberg's testimony.

2 Q. But as you just testified, nothing in those  
3 documents explains the basis of Southwestern Bell's  
4 disagreement over those issues with the Staff and  
5 Public Counsel, correct?

6 A. Correct. But part of that statement talks  
7 about over the duration of the plan -- excuse me. It  
8 talks about the parties being able to resolve  
9 disputes, which I think is evident from those  
10 documents.

11 Q. True. That is a fact. They did resolve the  
12 dispute, correct, but with respect to the statement in  
13 the sentence on lines 7 through 9 to the effect that  
14 Southwestern Bell Telephone never raised objections to  
15 the Commission or interpreted the provisions of the  
16 plan as UE has in this proceeding, that testimony  
17 cannot be based on any written documents as we've  
18 discussed, correct?

19 A. Well, I think it can because Southwestern  
20 Bell's response, at least the only response that they  
21 filed that I'm aware of, they didn't raise that. The  
22 only item they raised was, I think, a timing of what  
23 day to hold a certain proceeding on.

24 Q. So you're assuming that somehow they had a  
25 duty in their filing to raise all their points of

1 disagreement with the Staff in that filing on the  
2 question of setting the hearing schedule?

3 A. I don't think I'm assuming that.

4 Q. Well, then, in effect isn't that what you  
5 just said?

6 A. No. What I told you was, they didn't do it  
7 in those documents. You said there's no documents  
8 that relate to that. And I'm saying in response --  
9 Southwestern Bell's response, they didn't raise that  
10 as a concern.

11 Q. They obviously disagreed with the Staff,  
12 correct?

13 A. Yes.

14 Q. Okay. They didn't in those documents  
15 articulate the basis for their disagreement, correct?

16 A. Correct.

17 Q. And they didn't in any other written  
18 document, correct?

19 A. That I know of.

20 Q. Right. And the -- and that's because there  
21 was a settlement, correct?

22 A. Well, again, they didn't articulate their  
23 exact reason why there were disputes. Now, they  
24 didn't articulate in that response that Staff couldn't  
25 bring those adjustments forward.



1                   Based on review of those documents, I think  
2                   you can see that Southwestern Bell felt that the Staff  
3                   had the right to bring those adjustments forward under  
4                   the agreement.

5                   JUDGE REGISTER: Mr. Cynkar, I'm going to  
6                   interrupt here.

7                   Let me ask you if you have knowledge as to  
8                   why Southwestern Bell did not file in writing their  
9                   objections to the Staff's proposal? Do you know why  
10                  Southwestern Bell did not file anything in writing?

11                  THE WITNESS: Well, after reviewing the  
12                  documents, I believe it's because the issues were  
13                  done.

14                  JUDGE REGISTER: That answers your question,  
15                  Mr. Cynkar.

16                  MR. CYNKAR: Thank you. I appreciate the  
17                  assistance.

18                  BY MR. CYNKAR:

19                  Q. Now, if you turn to your deposition, on  
20                  pages 86 to 87, beginning on line 21 through page 87,  
21                  line 1, you say that your recollections with respect  
22                  to this question of Southwestern Bell not making the  
23                  argument that the Staff had no right to bring certain  
24                  adjustments forward was based on discussions you had  
25                  with the individuals who were involved, directly

1 involved with the monitoring process of Southwestern  
2 Bell; isn't that true?

3 A. That's what I say there, yes.

4 Q. And that's accurate, correct?

5 A. Correct.

6 Q. And you did not participate in the  
7 monitoring of Southwestern Bell personally, correct?

8 A. Correct.

9 Q. You did not participate in the settlement  
10 negotiations with Southwestern Bell personally,  
11 correct?

12 A. Correct.

13 MR. CYNKAR: Your Honor, I just have a  
14 couple more points in cross, but obviously what we  
15 just did goes to my objection. So I thought I'd hold  
16 the argument on that until I've finished my cross. I  
17 just have a couple more points. Is that acceptable?

18 JUDGE REGISTER: That's fine.

19 MR. CYNKAR: Thank you.

20 THE WITNESS: Let me ask, the settlement  
21 negotiations you're talking about, settlement of the  
22 issues in that sharing period?

23 BY MR. CYNKAR:

24 Q. Correct.

25 A. That's what you were talking about?

1 Q. Yes, sir.

2 A. That's correct.

3 Q. Is it fair to say that when you expense an  
4 item, you are recognizing a cost faster and getting it  
5 off your books faster?

6 A. Yes.

7 Q. And conversely, when you capitalize an item,  
8 it goes into rate base and you're amortizing it, so  
9 the recognition of that cost is slower, stretched out  
10 over time; is that fair?

11 A. Yes.

12 Q. Okay. So would it be fair to say that when  
13 you expense an item, it reduces the likelihood that  
14 that cost will be around in future years; isn't that  
15 true?

16 A. Yes.

17 Q. Okay. And so isn't it fair to say in the  
18 context of potential restructuring of the industry  
19 that expensing an item reduces or mitigates stranded  
20 costs; isn't that true?

21 MR. DOTTHEIM: Objection on the grounds of  
22 relevance.

23 MR. CYNKAR: Well, it's quite relevant, your  
24 Honor, because on page 6 of his surrebuttal testimony,  
25 at lines 12 to 14, Mr. Rackers says, this position of

1 UE, the expensing of items, is unfair and inequitable  
2 particularly with respect to potential stranded costs  
3 concerns that electric utilities may face in the  
4 future if restructuring is implemented. So  
5 Mr. Rackers has made it relevant.

6 JUDGE REGISTER: I'll overrule the  
7 objection. Do you remember the question, Mr. Rackers?

8 THE WITNESS: I think so. And I'm not sure  
9 I can answer with a yes or no.

10 JUDGE REGISTER: Can you restate the  
11 question?

12 MR. CYNKAR: I think he said he remembered  
13 the question, your Honor. I'd be happy to for you.

14 JUDGE REGISTER: If you would, please.

15 BY MR. CYNKAR:

16 Q. In light of the questions and answers that  
17 we exchanged concerning expensing versus capitalizing,  
18 I said isn't it true that expensing a cost mitigates  
19 the possibility of future stranded costs?

20 A. Yes.

21 Q. And finally, you are not familiar with the  
22 incentive compensation plans at Union Electric; is  
23 that fair?

24 A. In their current form, yes.

25 Q. And so, as you testified in your deposition,

1 you did not know that the incentive plan for the  
2 senior managers, a hundred senior managers of the  
3 company are tied to price earnings ratios, correct?

4 A. Correct.

5 Q. And you also were not aware of any other  
6 incentive compensation plans for lower level employees  
7 at UE; is that fair?

8 A. I'm not aware of their specific terms.

9 MR. CYNKAR: Your Honor, that's all I have.  
10 If you'd like me to proceed to my argument.

11 JUDGE REGISTER: That's just recross. Let's  
12 hold your argument to the end of all the examinations.

13 MR. CYNKAR: That's fine.

14 JUDGE REGISTER: That way if there's  
15 anything else that would change your opinion in your  
16 argument, those other parties have the opportunity to  
17 ask those questions.

18 That should conclude cross and we should now  
19 go to questions from the Bench. Commissioner Drainer,  
20 do you have any questions for this witness?

21 COMMISSIONER DRAINER: I just have a couple.

22 QUESTIONS BY COMMISSIONER DRAINER:

23 Q. Good afternoon, Mr. Rackers.

24 A. Good afternoon.

25 Q. Can I ask, at any time did you or your staff

1 members that you supervise indicate to UE or to each  
2 other that you believed that UE was cooking the books?

3 A. No.

4 Q. Do you believe that UE has intentionally  
5 manipulated its -- or changed any form of accounting  
6 to cause excess expenses to lower their  
7 overearnings --

8 A. No.

9 Q. -- during this phase?

10 A. Sorry. No.

11 Q. Can you tell me, were you involved in  
12 discussions here at the PSC with staff members in  
13 putting together this experimental plan?

14 A. Yes.

15 Q. And were you aware of or did you have access  
16 to the initial January 27th, 1995 Exhibit 21, which  
17 was a letter to Mr. Rademan?

18 A. Yes.

19 Q. Can you tell me why with respect to the  
20 reconciliation procedure, which was Attachment B to  
21 that document -- have you got that with you?

22 A. Yes.

23 Q. Okay. Attachment B, the reconciliation  
24 procedure, there is a paragraph 3, why that was not  
25 made a paragraph in the final document, in the final

1 Stipulation and Agreement?

2 A. I don't specifically know the answer to your  
3 question. I'm thinking that perhaps it's covered in  
4 another section, and I was going to check real quick.

5 MR. CYNKAR: Your Honor, if I could be of  
6 assistance in terms of Commissioner Drainer's  
7 question, in the final EARP on page 18, paragraph 8.

8 JUDGE REGISTER: You said final. You don't  
9 mean the second one. You mean the first one, final  
10 version?

11 MR. CYNKAR: We're talking about the drafts  
12 here, yes. It's Exhibit 13. It's similar, but I  
13 don't think -- it's not identical, but that's the  
14 closest that I know of.

15 JUDGE REGISTER: What page was it?

16 MR. CYNKAR: Page 18.

17 COMMISSIONER DRAINER: So in the Stipulation  
18 and Agreement, page 18, line 8?

19 MR. CYNKAR: That's correct. I don't know  
20 if that helps you out, Mr. Rackers, but that's the  
21 closest I know.

22 JUDGE REGISTER: Would you consider that to  
23 be similar language, Mr. Rackers?

24 THE WITNESS: Yes. I would presume that it  
25 was taken out of -- it was not included in the

1 reconciliation procedure because it's covered on  
2 page 18.

3 JUDGE REGISTER: Thank you. Do you have any  
4 other questions, Commissioner Drainer?

5 BY COMMISSIONER DRAINER:

6 Q. Okay. So you would believe that would have  
7 covered it. Then let me get to the heart of this  
8 initial area on the Stipulation and Agreement. Did  
9 the Staff believe that the issues that have been left  
10 to be resolved by this Commission were significant  
11 enough and were outside of normal accounting methods  
12 of costing that it had to be brought before the  
13 Commission, that no way you're violating the  
14 Stipulation and Agreement by bringing these issues to  
15 us?

16 A. I missed the very part.

17 Q. That in no way do you believe that you are  
18 violating the Stipulation and Agreement by bringing  
19 these issues to us?

20 A. I would agree.

21 Q. And I'm sure you have heard discussion in  
22 this hearing room with respect to the costing, and the  
23 words new category are not in there, but there's a  
24 costing category.

25 Do you believe that, to use Commissioner



1 Murray's example of if the Company were to buy a  
2 plane, even though there's a transportation category,  
3 do you believe that there are issues that are  
4 significant enough in cost or in changes that even  
5 though there's a category for them to be in that  
6 rightfully so the Staff should bring that to the  
7 Commission for analysis?

8 A. Yes, I do.

9 Q. On whether or not that was prudent, whatever  
10 that cost is?

11 A. Well, Staff is not asserting that any of the  
12 costs are imprudent.

13 Q. Okay. But --

14 A. But we --

15 Q. You would bring them to us because? Why  
16 would you bring them to us, then?

17 A. Well, you were specifically talking about  
18 new items. Because they are new items, we don't think  
19 that they're appropriate for inclusion in the sharing  
20 period.

21 Q. Well, I guess I wonder about the No. 8,  
22 Roman Numeral viii where it talks about that the  
23 Staff, OPC and other signatories have the right to  
24 present to the Commission concerns over any category  
25 of cost that has been included in UE's monitoring

1 results and has not been included previously in any  
2 ratemaking proceeding.

3 And I want to be clear on how Staff views  
4 that when they interpret that paragraph. Were you  
5 here when we asked that question earlier of  
6 Mr. Brandt?

7 A. Yes, I was. I think the term new has  
8 evolved out of the language that when it talks about  
9 that it has not been previously -- included previously  
10 in any ratemaking proceeding. That's sort of where  
11 the word new comes from. It doesn't specifically use  
12 that word in Item 8.

13 Q. But here's my concern is, the way it is  
14 written, when it talks about a cost that wasn't  
15 previously in any ratemaking proceeding, in Staff's  
16 opinion, in your opinion as an expert witness before  
17 this Commission on numerous cases in accounting  
18 matters, does a change in cost in a category, any  
19 category cost where there's significant increase or  
20 decrease, does that fall into this or is it exempt  
21 from being looked at?

22 A. I think a significant change in an expense  
23 could fall into No. 8. I think I address it in my  
24 testimony. That would be in my surrebuttal, page 4,  
25 line 4.

1 JUDGE REGISTER: Line what? I'm sorry.

2 THE WITNESS: Surrebuttal, page 4, line 4.

3 JUDGE REGISTER: Page 4, line 4?

4 THE WITNESS: Right. I talk about items  
5 arising in situations/circumstances significantly  
6 different than previously encountered by UE.

7 COMMISSIONER DRAINER: All right. Thank  
8 you. I have no other questions.

9 JUDGE REGISTER: Thank you, Commissioner  
10 Drainer. Commissioner Murray, do you have any  
11 questions?

12 COMMISSIONER MURRAY: Yes, thank you.

13 QUESTIONS BY COMMISSIONER MURRAY:

14 Q. I'd like to follow up on that just a little  
15 bit. If there were a significant increase in the cost  
16 of a specific category that had been considered  
17 previously, would you be addressing it under 3 -- I  
18 don't remember whether it's 2.f.viii or 3.f.viii.

19 JUDGE REGISTER: 3.f.viii. The small  
20 letters are under 3.

21 BY COMMISSIONER MURRAY:

22 Q. Or would you look at it under the language  
23 in the reconciliation section that says an allegation  
24 of manipulation could include significant variations  
25 in the level of expenses associated with any category

1 of cost where no reasonable explanation has been  
2 provided?

3 A. I believe we would address the adjustments  
4 that you spoke of in 3.f.vii.

5 Q. And 3.f.vii?

6 A. I'm sorry. Vii.

7 Q. Okay. Tell me there how you're addressing  
8 the category that's been the subject of a rate  
9 proceeding previously, a category of cost, and because  
10 the costs have increased, nothing else but just the  
11 level of the costs has increased, how are you  
12 addressing that under 7?

13 A. Staff's interpretation of 7 gives parties  
14 the right to bring issues which cannot be resolved by  
15 them related to the operation or implementation of the  
16 plan to the Commission for resolution.

17 Now, as an example, there's some very good  
18 language in 7 that talks about a significant increase  
19 in an expense for which a reasonable explanation has  
20 not been provided.

21 Q. And that's talking about an allegation of  
22 manipulation; is that correct?

23 A. I don't believe so.

24 Q. Well, read it to me. Tell me where it is,  
25 and read the whole sentence.

1           A.     Starts on the bottom of page 9.  Yeah,  
2 starts on the bottom of page 9.

3           Q.     Read the sentence.

4           A.     An allegation of manipulation could include  
5 significant variation in the level of expenses  
6 associated with any category of costs where no  
7 reasonable explanation has been provided.

8           Q.     And what were the first four words of that  
9 sentence?

10          A.     An allegation of manipulation.

11          Q.     And you're saying this is not an allegation  
12 of manipulation?

13          A.     No.

14          Q.     Okay.  I have great trouble understanding  
15 how you interpret language.  How can you read that  
16 sentence to not be an allegation of manipulation?

17          A.     Because it said it could include.

18          Q.     What could include?

19          A.     An allegation of manipulation could include  
20 this definition.

21          Q.     All right.

22          A.     It's giving an example of manipulation.  
23 It's not -- I don't believe it's intended to be  
24 all-inclusive.

25          Q.     An allegation of manipulation could include.

1 So you're saying that anything else, any other  
2 allegation could also include that? It doesn't have  
3 to be an allegation of manipulation?

4 A. To include a significant variation in  
5 expense, no.

6 Q. Okay. I don't want to -- as the little  
7 humorous thing that was passed around earlier, I don't  
8 want to beat a dead horse here. So I will move on.

9 You testified earlier during some  
10 questioning that you didn't -- you were not  
11 considering the mission of the Commission as we state  
12 it now when you were negotiating the terms of this  
13 agreement; is that correct?

14 A. Not as specifically enunciated on that  
15 document.

16 Q. Okay. Would you agree that it's always been  
17 the charge of this Commission to balance the interests  
18 of all the constituencies?

19 A. Yes.

20 Q. Okay. Now, did you come at that negotiation  
21 from that standpoint?

22 A. Yes, we did, or yes, I did.

23 Q. Okay. Under your interpretation of the  
24 agreement, is there any kind of an adjustment that you  
25 think it would be impermissible for Staff to make and

1 be in compliance with the agreement for Staff to  
2 recommend?

3 A. Well, during cross-examination we discussed  
4 an adjustment to the grid. I think that would be  
5 inappropriate. And there's also some specific  
6 language in the agreement that deals with depreciation  
7 rates, and I think there are certain circumstances in  
8 which you could propose an adjustment to those  
9 depreciation rates.

10 But other than those two, I would view that  
11 Staff has the right to bring any adjustment forward.

12 Q. And the reason that you stated it would not  
13 be appropriate to bring an adjustment under the grid  
14 was because language in the agreement specifically  
15 states what will be used for determination of the  
16 grid; is that correct?

17 A. Yes. And I don't view that the language  
18 under item 7 or 8 or 2G in the reconciliation  
19 procedure when it talks about bringing issues forward  
20 envisions changing the grid.

21 Q. But you do think it envisions changing the  
22 reconciliation?

23 A. Well, I don't view that I've changed the  
24 reconciliation because 2G, which is part of the  
25 reconciliation procedure, speaks to bringing issues

1 forward regarding the operation and implementation of  
2 the plan.

3 Q. Okay. When this agreement was entered into,  
4 did the Company give up anything in consideration of  
5 agreeing to the terms it agreed to?

6 A. I believe it did give up something. I have  
7 opinions about the value of what it gave up, but it  
8 did give things up.

9 Q. Okay. And what did the other parties give  
10 up under the terms of the agreement in consideration  
11 of the Company giving up something?

12 A. Well, Staff gave up the right to file a  
13 complaint case.

14 Q. Okay. What else?

15 A. Other parties to the agreement also gave up  
16 that right.

17 Q. Anything else?

18 A. Let me check something real quick. That's  
19 the only thing. And actually, that -- on page 5 of  
20 the agreement, there is a clause which would allow  
21 under certain circumstances the filing of a complaint.

22 Q. So the only thing Staff or any other party  
23 gave up was the right to file a complaint case, and  
24 that was only in certain circumstances; is that your  
25 testimony?



1           A.     Yes.

2           Q.     Okay.  What's the purpose of the Staff's  
3           contention that the UE EARP is based upon the  
4           Southwestern Bell plan?  For what purpose are you  
5           linking the two?

6           A.     Well, the purpose that we're linking the two  
7           is that Staff's experiences on how it operated, how it  
8           monitored the Company under the Southwestern Bell plan  
9           would guide them in terms of how it operated under  
10          UE's plan.  That would be its experience with  
11          alternative regulation.

12          Q.     And where is that stated in the UE EARP that  
13          the Southwestern Bell plan monitoring procedures would  
14          be used?

15          A.     It doesn't state that.  Many of the terms  
16          and sentences in the two documents are not the exact  
17          language but very similar.

18          Q.     Okay.  And are you claiming that more than  
19          those phrases are applicable?  You're saying that some  
20          were taken from that or the language was very  
21          similarly used.  Are you claiming that there are other  
22          portions of that Southwestern Bell document that were  
23          incorporated into this agreement?

24          A.     No.  What I'm saying is, Staff's experiences  
25          operating under that plan would guide it in terms of

1 operating under other alternative regulation plans.

2 Q. Guide it in what way?

3 A. Well, if Staff viewed certain terms in the  
4 Southwestern Bell plan as similar if not the very same  
5 as in the UE plan and it had experiences about how it  
6 operated under the Bell plan, it would naturally  
7 assume that it would operate the very same way under  
8 the UE plan which has the same or similar terms and  
9 agreements.

10 Q. Are you making an allegation that the  
11 Company has manipulated or is the Staff making an  
12 allegation of manipulation?

13 A. No.

14 COMMISSIONER MURRAY: That's all my  
15 questions. Thank you.

16 JUDGE REGISTER: Commissioner Drainer?

17 FURTHER QUESTIONS BY COMMISSIONER DRAINER:

18 Q. I just want to follow up very quickly. At  
19 the time the original plan was put in place, had Staff  
20 been involved in doing an overearnings investigation  
21 on UE?

22 A. Yes.

23 Q. And from the Staff's investigation, what was  
24 their position on whether or not UE was overearning?

25 A. Staff believed based on its investigation

1 that UE was overearning.

2 Q. How much?

3 A. I think a document was presented to the  
4 Commission that had something in the order of  
5 60 million. There were iterations during the  
6 investigation where the number was as high as  
7 100 million.

8 Q. Okay. So if Staff, to get to the question  
9 on what Staff or the other parties were giving up by  
10 not having an overearnings case where if you start  
11 with 100 million -- I don't know why this seems to  
12 happen, but oftentimes it ends up being about half the  
13 amount. Should the overearnings investigation have  
14 shown that the Company was overearning 50 million, and  
15 even then they would have on a going forward basis a  
16 reduction to all customers at 50 million annually,  
17 correct?

18 A. If Staff would have brought that complaint  
19 and that would have been the Commission's finding,  
20 then rates should have been reduced 50 million.

21 Q. How much since this plan has gone in effect  
22 on an annual basis have the rates been reduced?

23 A. The rates have been reduced 30 million on an  
24 annual basis during this plan. There have been  
25 credits of 40 million the first year, approximately

1 17 the second year, and we're debating about the third  
2 year.

3 Q. So if the final number that you're saying  
4 Staff had was 60 million, and if you cut it in half at  
5 30 million, by doing this plan and the Company not  
6 having to go through an overearnings investigation,  
7 it's probably been a wash to date on average. Do you  
8 agree with that?

9 A. I'm not sure I followed your math there.  
10 Sorry.

11 Q. Well, you're telling me that Staff started  
12 off with 100 million, and I said, you know, these rate  
13 cases tend to end up at what they start with. Then  
14 you told me that you thought it got to 60 million.

15 So I'm saying if we'd gone into a rate case  
16 at 60 million and if after the hearing the Commission  
17 would have found for 30, that there would have had to  
18 have been a \$30 million reduction, you now are telling  
19 me that from this experimental plan there has been on  
20 average a \$30 million reduction, and I'm saying, had  
21 we had the rate case or this plan, it's been a wash.

22 A. Well, I --

23 Q. Do you agree with that or not?

24 A. No, I don't. I'm sorry. I may have misled  
25 you when we were talking about the amount of rate

1 reduction.

2 Q. Okay.

3 A. There was a permanent rate reduction that  
4 was part of this plan that took effect right away of  
5 \$30 million. So if we would have done a complaint  
6 proceeding and found overearnings of \$30 million  
7 and -- I'm sorry -- or if we would have reduced rates  
8 by \$30 million, that part would have been a wash. But  
9 we've had credits on top of those rate reductions that  
10 would have been in excess of 30.

11 Q. So in reality ratepayers have probably been  
12 better off because of this plan?

13 A. Well, if that's all we would have found from  
14 overearnings in a complaint case. Depending on what  
15 the outcome of that case would have been and the  
16 timing of when those rates would have taken effect, we  
17 could have exceeded what the ratepayers realized under  
18 this agreement.

19 COMMISSIONER DRAINER: Okay. No other  
20 questions. Thank you.

21 JUDGE REGISTER: Commissioner Murray?

22 COMMISSIONER MURRAY: That's all.

23 JUDGE REGISTER: I just have a few  
24 questions.

25 QUESTIONS BY JUDGE REGISTER:

1 Q. I think that I can clear up one point we  
2 were trying to get to earlier. If you graphically --  
3 I'll share my graph here. If you graphically identify  
4 manipulations in one scope and significant variations  
5 in another, it's my understanding your testimony was  
6 earlier that manipulations could include significant  
7 variations that are not reasonably explained?

8 A. Correct.

9 Q. But that there could be -- I think the part  
10 we didn't get to was that there could be significant  
11 variations outside that are not manipulations?

12 A. Correct.

13 Q. And so that this would be -- this graph  
14 showing the two circles intersecting would be a fair  
15 depiction of that graphically of your testimony in  
16 relation to manipulations and significant variations?

17 A. Well, where the two intersect, I guess,  
18 would be a graphic display of when you had significant  
19 variations in expense and you asserted manipulation.

20 Q. So there are -- there could be significant  
21 variations where there's no explanation that is not a  
22 manipulation?

23 A. Correct.

24 Q. And is that what the Staff is alleging in  
25 relation to some of the pending issues here in this

1 case?

2 A. That's correct.

3 Q. Now, one of the questions that Mr. Cynkar  
4 was asking you was, I'm going to ask you to look at  
5 your testimony, surrebuttal testimony, on page 7.  
6 Actually, I'm going to ask you to look at page 6 and  
7 7, but he was talking about page 7, line 7 through 10,  
8 where you were talking about the Southwestern Bell  
9 adjustments.

10 And he asked you about the statement where  
11 it says over the duration of the SBIRE, Southwestern  
12 Bell never raised objections to the Commission over  
13 provisions of the plan as UE has in this proceeding.

14 And he asked you if there were any documents  
15 that referenced that, referenced -- I'm sorry -- more  
16 specifically Southwestern Bell's objections. And your  
17 response was no, there were no documents.

18 Looking at page 6 where you corrected your  
19 testimony this morning on line 21, based upon my own  
20 and other Staff members' memories and the  
21 documentation located by Staff, would it -- does your  
22 statement on page 7, line 7 through 10, is that based  
23 upon your or other person's -- other Staff members'  
24 memories of the negotiations that you had with  
25 Southwestern Bell that Southwestern Bell did not raise

1 any objections?

2 A. Well, with regard to the sharing period  
3 that's discussed in the documents attached to  
4 Mr. Schallenberg's testimony, I believe there are  
5 documents that do show that Southwestern Bell did not  
6 raise as an objection to the Staff's proposed expenses  
7 the concerns that UE has raised here that they're not  
8 appropriate, that they violate the agreement, that  
9 they're not items that should be brought forward for  
10 Commission resolution.

11 Q. And did you have anything else to add to  
12 that testimony, to that statement?

13 A. Well, now, in addition to that, my  
14 discussions with the individuals involved with the  
15 monitoring of the Southwestern Bell agreement during  
16 the time they were actually performing that also led  
17 me to that conclusion.

18 Q. And that's that conclusion referring to the  
19 statement you made on page 7, line 7 through 10?

20 A. Correct.

21 JUDGE REGISTER: I don't believe I have any  
22 other questions of Mr. Rackers. Commissioner Murray,  
23 anything else you have to ask before I return to  
24 recross?

25 COMMISSIONER MURRAY: Just give me a second.



1 JUDGE REGISTER: Okay. Everybody else gets  
2 it. We have to give it to you.

3 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

4 Q. Just a follow-up here, Mr. Rackers. Was it  
5 your testimony that a party to the agreement can bring  
6 to the Commission as a disputed item any category of  
7 cost in which there has been what that party would  
8 consider a significant increase for no other reason  
9 than that the costs have gone up?

10 A. I would add to that, for which we haven't  
11 received a reasonable explanation or an adequate  
12 explanation.

13 Q. And where is that language --

14 A. Well --

15 Q. -- that requires a reasonable explanation in  
16 the agreement?

17 A. Well, that language actually appears in the  
18 agreement in 3.f.vii.

19 Q. Is that in the sentence that's speaking  
20 about an allegation, what an allegation of  
21 manipulation could include?

22 A. Could include, yes. Now, in my opinion, you  
23 wouldn't have to meet that criteria that you had a  
24 significant variation in expense for which there was  
25 no reasonable explanation. You could still bring an

1 adjustment under item 7. It wouldn't have to meet  
2 that specific criteria.

3 Q. And why wouldn't it if that's the criteria  
4 that's set out in the language of the agreement?

5 A. Well, I believe that's an example of  
6 criteria.

7 Q. For?

8 A. For item 7 for adjustments that can be  
9 brought to the Commission. Item 7, the first six  
10 lines talk about bringing issues that cannot be  
11 resolved by them and which relate to the operation or  
12 implementation of the plan to the Commission for  
13 resolution.

14 Q. And the next sentence includes examples,  
15 correct?

16 A. Correct.

17 Q. And what do those examples include?

18 A. Examples include disagreements as to the  
19 mechanics of calculating the monitoring report,  
20 alleged violations of the Stipulation and Agreement,  
21 alleged manipulations of earnings results, or requests  
22 for information not previously maintained by UE.

23 Q. Okay. So would this be a disagreement about  
24 the mechanics of calculating the monitoring report?

25 A. Well, again, it says --

1 Q. Yes or no?

2 A. About the mechanics? No.

3 Q. Would it be a disagreement about alleged  
4 violations of the Stipulation and Agreement?

5 A. No.

6 Q. Would it be a disagreement about alleged  
7 manipulations of earnings results?

8 A. No.

9 Q. Would it be a request for information that  
10 wasn't previously maintained by UE?

11 A. No. I would probably have to change my  
12 answer with regard to mergers and acquisition costs.  
13 I think that's something that's sort of part of the  
14 mechanics of the agreement with the second EARP, and I  
15 believe Staff is interpreting those sections that deal  
16 with that in a different manner than UE is.

17 Q. I'm sorry. We weren't talking about mergers  
18 and acquisitions, were we? I thought we were talking  
19 about any category of costs that had gone up where the  
20 costs had risen.

21 A. Well, I'm sorry. I didn't realize you were  
22 limiting the discussion to that.

23 Q. No. I'm limiting the discussion to looking  
24 at a category of cost where the costs have increased  
25 and for what purpose or under what circumstances you

1 can look at a category of cost. And I'm trying to get  
2 an explanation from you since you say you're not  
3 alleging manipulation.

4 A. Correct.

5 Q. I'm trying to figure out what you are  
6 alleging. Simply that the costs have risen?

7 A. And that we haven't received a reasonable  
8 explanation about why they should be included in the  
9 third sharing period for the determination of credits.

10 Q. And you don't call that an allegation of  
11 manipulation?

12 A. Staff has not alleged manipulation.

13 COMMISSIONER MURRAY: Thank you.

14 JUDGE REGISTER: We're concluded with  
15 questions from the Bench. We return to recross, and  
16 Public Counsel, Mr. Coffman?

17 MR. COFFMAN: Yes, thank you.

18 RE-CROSS-EXAMINATION BY MR. COFFMAN:

19 Q. Mr. Rackers, have you read pleadings filed  
20 by my office regarding the interpretations of these  
21 various stipulation provisions?

22 A. Yes, I have.

23 Q. Referring to that Roman Numeral -- paragraph  
24 Roman Numeral vii, is it your understanding that  
25 Public Counsel believes its issues to be -- fall under

1 that first example as to the mechanics of calculating  
2 the monitoring report, or do you recall?

3 A. I don't specifically recall.

4 Q. With regard to the reconciliation procedure  
5 that is attached to the stipulation, it includes a  
6 list of various adjustments that should be reflected?

7 A. Yes.

8 Q. And is it your opinion that those  
9 adjustments are all-inclusive?

10 A. No.

11 Q. In other words, you don't believe the  
12 reconciliation procedure prohibits Staff from bringing  
13 issues that were not contemplated by the  
14 reconciliation procedure?

15 A. That's correct.

16 MR. COFFMAN: I think that's all I have.

17 JUDGE REGISTER: Thank you, Mr. Coffman.  
18 Intervenors, Ms. Schmidt?

19 MR. SCHMIDT: No questions.

20 JUDGE REGISTER: Mr. Fulton?

21 MR. FULTON: No, your Honor.

22 JUDGE REGISTER: Mr. Johnson?

23 MR. JOHNSON: No questions.

24 JUDGE REGISTER: Ms. Forrest?

25 MS. FORREST: No questions.

1 JUDGE REGISTER: Mr. Dottheim?

2 MR. CYNKAR: Your Honor, actually --

3 JUDGE REGISTER: I'm sorry. Recross. Thank  
4 you very much. I was losing my place here.  
5 Mr. Cynkar?

6 MR. CYNKAR: I do have a few questions, and  
7 then I don't know if your Honor would like me to then  
8 make my arguments concerning the objections to the  
9 testimony or wait until --

10 JUDGE REGISTER: Let's go all the way  
11 around.

12 MR. CYNKAR: Okay. Great.

13 RE-CROSS-EXAMINATION BY MR. CYNKAR:

14 Q. Mr. Rackers, if you could -- the copy of  
15 this transcript that I loaned to you from July of  
16 1995, if you could turn to page 7.

17 Now, Commissioner Drainer's questions, I  
18 believe she posed what would happen if the Commission  
19 ordered essentially a \$50 million permanent rate  
20 reduction. Did I understand that colloquy you had  
21 with her correctly?

22 A. You said 50 million?

23 Q. Didn't she originally suggest a -- she said  
24 that in terms of your overearnings calculation before  
25 the EARP went into effect, you suggested that there

1 were documents that suggested overearnings between  
2 60 and \$100 million, and she picked 50 as a middle  
3 ground in the way rate proceedings tended to end out  
4 and was trying to compare what would happen if the  
5 Commission ordered \$50 million rate reduction compared  
6 to what happened under the EARP; is that correct?

7 A. Okay.

8 Q. If I turn your attention first of all to  
9 page 7 of this document, which is the transcript again  
10 from July 1995, and particularly lines 14 to 15,  
11 Mr. Dottheim is speaking and is addressing the  
12 overearnings calculation that had been done by the  
13 Staff, and he makes the point, quote, the Staff's  
14 heightened earnings monitoring was less than a full  
15 scale financial audit, close quote.

16 Is it fair to say that the overearnings  
17 calculations you were talking about were, as  
18 Mr. Dottheim says, less than a full-scale financial  
19 audit?

20 A. That's correct.

21 Q. Okay. Now, if you turn the page to page 9,  
22 in explaining why the Staff was in favor of the EARP,  
23 if I can direct your attention to lines 8 to 12,  
24 Mr. Dottheim says, quote, there's also from the  
25 Staff's perspective the time value of money for a rate

1 reduction going into effect sooner than later, which  
2 would be the case if the rate reduction, the excess  
3 earnings situation had to be prosecuted, so to speak,  
4 by the Staff, close quote.

5 Do you agree with that statement?

6 A. That would have to be considered, the time  
7 value of money, yes.

8 Q. And if you go down the page further to the  
9 paragraph on lines 16 through 21, Mr. Dottheim there  
10 points out that even if a case were to be settled,  
11 that normally doesn't happen until after a full-scale  
12 financial audit has been completed.

13 Is that a correct understanding of that  
14 paragraph?

15 A. Yes.

16 Q. And then he goes on to say, quote,  
17 evidentiary hearings are almost always required, close  
18 quote, correct?

19 A. Correct.

20 Q. So if, picking up on Commissioner Drainer's  
21 questions, we were positing a \$50 million rate  
22 reduction that the Commission wanted to put in place,  
23 that would not happen in July of 1995, would it?  
24 That's the beginning of the EARP, correct?

25 A. The rate decrease would not have taken



1 effect then?

2 Q. That's correct.

3 A. I believe that's likely, yes.

4 Q. Because as we've just discussed, there would  
5 have to be a full-scale financial audit first,  
6 correct?

7 A. Some work had already been done. So it  
8 wouldn't be like we were starting from scratch.

9 Q. But it would require a full-scale financial  
10 audit, correct?

11 A. Yes.

12 Q. And as Mr. Dottheim suggested, then to order  
13 that kind of a rate decrease, you would have to have  
14 evidentiary hearings, correct?

15 A. Well, I think your assumption is that  
16 Staff's investigation would have to have culminated  
17 into a complaint case that would have had to have been  
18 ruled on by the Commission and for a rate reduction to  
19 take effect.

20 Now, there have been situations particularly  
21 with UE where we have put together a revenue  
22 requirement and the Company has -- we've negotiated  
23 and reduced rates.

24 Q. And do you recall that in recent years the  
25 largest settlement involving a rate reduction for UE

1 was \$40 million? That was in 1993, by the way.

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

3 Q. And so let's for the sake of comparison  
4 here, if you would, assume that UE would not agree to  
5 a \$50 million rate reduction.

6 A. Okay.

7 Q. Okay. And with that assumption, you would  
8 have to do a full-scale financial audit, correct,  
9 complete what you'd already started?

10 A. Complete what we've already started.

11 Q. Have evidentiary proceedings, correct?

12 A. If UE didn't agree anywhere along the  
13 process.

14 Q. Absolutely.

15 A. Yes.

16 Q. And there is an 11-month deadline for  
17 proceedings under a complaint case; isn't that true?

18 A. I don't think that is true.

19 Q. So it could be longer?

20 A. Yes.

21 Q. Okay. So how long do you think it would  
22 take to complete that full-scale financial audit if  
23 you wanted to justify a \$50 million rate reduction?

24 A. Well, I think I made the statement that at  
25 least one iteration of that review showed

1       \$100 million.

2           Q.     Right.

3           A.     So I would suggest that it probably wouldn't  
4     take that long, a few months --

5           Q.     So --

6           A.     -- to get that in in order to support  
7     50 million.

8           Q.     So is 50 million a fairly large rate  
9     reduction in your view?

10          A.     Yes.

11          Q.     And so you say it would take a couple months  
12     to produce the data needed to support a significant  
13     rate reduction like that; is that what you're saying?

14          A.     Yes.

15          Q.     Okay.  And then after that, how long do you  
16     think evidentiary proceedings would take?

17          A.     Well, it depends on the schedule the Company  
18     set up.  If Staff is in a position to file testimony  
19     in a couple of months, the Company would be given at  
20     least a month to respond.  Could have hearings.

21          Q.     And don't you think it's fair to say with a  
22     significant rate reduction the size of \$50 million,  
23     the evidentiary proceedings would be fairly involved?

24          A.     Well, we're concerned about time periods,  
25     correct.  They might only take a week.

1 Q. So it's your testimony that the evidentiary  
2 proceedings for a \$50 million rate reduction would  
3 only take a week?

4 A. What you're suggesting is how long a hearing  
5 in front of the Commission would take?

6 Q. That's exactly right.

7 A. Potentially only a week, yes.

8 Q. Potentially only a week. And now I realize  
9 you're not a lawyer, so feel free to say you have no  
10 idea to this question. But if this Commission after  
11 only a week's worth of hearings ordered a \$50 million  
12 rate reduction and UE challenged that in court, do you  
13 have any idea how long the court proceedings would  
14 take after that?

15 A. No.

16 Q. Okay. So at the very least, with what you  
17 said, you could be -- wouldn't it be fair to say that  
18 you'd be eating up at least the remainder of 1995 in  
19 proceedings before the Commission, correct?

20 A. Now, when you say proceedings before the  
21 Commission, you're talking about the entire process  
22 where the Commission issues an Order or just the  
23 hearings?

24 Q. The Commission issues an Order, not  
25 including court appeals and challenges to that.

1           A.     I think it's fair to say that we would use  
2     the rest of '95.

3           Q.     Okay.  And so I certainly don't mean to  
4     suggest that I think that's accurate, but at the very  
5     least your \$50 million rate reduction would not have  
6     gone into effect by the beginning of 1996, correct?

7           A.     Well, I thought we just used as an example  
8     that it would -- the Commission would come out with  
9     its Order and that the rates would take effect.

10          Q.     Well, no.  I'm talking about the Commission  
11     coming out with its Order.  When the rates take effect  
12     is a totally different question.  Let's assume that  
13     that part of the process is completed and UE goes to  
14     court.

15                 Okay.  So the rates are not -- I take it it  
16     wouldn't be your testimony that, both because you're  
17     not a lawyer and it would be speculation, that the  
18     \$50 million rate reduction would go into effect even  
19     if there was a challenge on appeal?  There's no way  
20     for you to know that, right?

21          A.     I don't think I can answer your question,  
22     but if you want me to assume that the Company took the  
23     Commission to court and that the Commission had its  
24     Order out by the end of '95, would the rates take  
25     effect January 1?  I would say no.

1 Q. You'd say no. Okay. So then you have the  
2 unspecified time, possibly unknowable amount of time  
3 for proceedings up the court system, correct?

4 A. Correct.

5 Q. Okay. And so is it fair to say that those  
6 proceedings might stretch on through much of 1996  
7 based on your experience?

8 A. I don't think I know the answer to your  
9 question.

10 Q. Okay. But going back to your recognition  
11 and Mr. Dottheim's recognition of the time value of  
12 money here, that it's fair to say that by virtue of  
13 the EARP, at the very least consumers by the end of  
14 '96 have benefited to the total of \$104 million; is  
15 that fair? To refresh your recollection, that's the  
16 \$30 million permanent rate reduction, the up-front  
17 \$30 million credit, plus the credit for the first  
18 year.

19 A. You're saying by the end of '96?

20 Q. Yes, sir. I recognize, by the way, just so  
21 there's no confusion, that the first sharing period  
22 would have ended June 30, '96, but I'm just for common  
23 sensical purposes saying by the end of '96 the  
24 benefits of the first sharing period were \$104 million  
25 to consumers; isn't that true?

1           A.     I agree.

2           Q.     Okay.  Now, if I could ask you to turn your  
3           attention to page 37 in the transcript that we have  
4           before us, and I'm directing your attention to lines  
5           12 through 25 on page 37 and through line 5 on page  
6           38.  And if I may, just so everyone knows what we're  
7           looking at, if I may just briefly read this and then  
8           I'll ask my final question.

9                    JUDGE REGISTER:  Is it relevant to the  
10           recross?

11                   MR. CYNKAR:  It's relevant to exactly what  
12           we're talking about in this whole question of  
13           comparing alternative actions by the Commission.

14           BY MR. CYNKAR:

15           Q.     Okay.  Quote, and Chairman Mueller asked  
16           this question:  As far as the effective date, if we're  
17           talking about a \$30 million rate reduction at the  
18           present time in addition to a credit, and I just did  
19           some back figuring as to how much it is per day, per  
20           month, et cetera, I assume that we're talking about a  
21           three point something million, 3.2 million a month as  
22           we wait for, just based on the 30 million, that we're  
23           going to have \$30 million rate reduction.

24                   Mr. Dottheim:  Yes.

25                   Chairman Mueller:  Okay.  As soon as we

1 approve The order, ten days later new rates go into  
2 effect. That's \$30 million a year that's not going to  
3 be collected?

4 Mr. Dottheim: Correct.

5 Chairman Mueller: So for every day, for  
6 every week?

7 Mr. Dottheim: 3.2 million per month. What  
8 are we looking at?

9 Chairman Mueller: And that's just taking it  
10 on a flat basis.

11 Now, my question is, do you agree with  
12 Chairman Mueller's understanding of the benefit of the  
13 EARP?

14 A. He's talking about considering the time  
15 value of money of giving the \$30 million reduction up  
16 front as opposed to having to wait some amount of time  
17 to give the \$30 million reduction.

18 Q. Yes, sir.

19 A. And I agree that there is a time value of  
20 money consideration.

21 MR. CYNKAR: Thank you. I have no further  
22 questions, your Honor.

23 JUDGE REGISTER: That completes recross.

24 Mr. Dottheim?

25 MR. DOTTHEIM: One moment, please.



1 JUDGE REGISTER: Certainly.

2 REDIRECT EXAMINATION BY MR. DOTTHEIM:

3 Q. I'd like to direct you to your surrebuttal  
4 testimony, Exhibit 2, I believe, and I'd like to  
5 direct you to page 7, and I'd like to direct you in  
6 particular to lines 7, 8 and 9.

7 Is your statement about Southwestern Bell  
8 never raising objections to the Commission or  
9 interpreting the provisions of the plan as UE is doing  
10 in this proceeding, is that in part based upon Staff  
11 adjustments that were proposed and accepted by  
12 Southwestern Bell in the sharing period covered by the  
13 plan?

14 A. Yes.

15 Q. I'd like to direct you to the first EARP,  
16 page 9, and I'd like to direct you to 3.f.vii.

17 JUDGE REGISTER: That's Attachment A?

18 MR. DOTTHEIM: Yes, your Honor.

19 JUDGE REGISTER: I just was wondering.

20 BY MR. DOTTHEIM:

21 Q. And I'd like to direct you to the examples  
22 that are listed in addition to the first sentence.  
23 Would any of those examples either explicitly or  
24 implicitly suggest that parties can seek changes in  
25 the sharing grid?

1 MR. CYNKAR: Objection, leading.

2 JUDGE REGISTER: Do you have a response,  
3 Mr. Dottheim?

4 MR. DOTTHEIM: Well, yes. I can rephrase  
5 the question.

6 JUDGE REGISTER: Withdraw that question and  
7 rephrase?

8 MR. DOTTHEIM: I withdraw the question.

9 JUDGE REGISTER: Thank you, Mr. Dottheim.

10 BY MR. DOTTHEIM:

11 Q. Mr. Rackers, are the examples listed in  
12 3.f.vii as far as you understand an exhaustive list?

13 A. No.

14 Q. Do the examples that are set out in 3.f.vii  
15 place any limitations on what the Staff can bring for  
16 resolution to the Commission?

17 A. No.

18 MR. DOTTHEIM: One moment. I'm sorry.

19 JUDGE REGISTER: That's fine.

20 BY MR. DOTTHEIM:

21 Q. Mr. Rackers, I think you've been asked some  
22 questions regarding the credits for years one and two  
23 and this year and various scenarios if there were no  
24 alternative regulation plan in place.

25 If there were no incentive reg-- excuse me.

1 If there were no alternative regulation plan in place  
2 and the Staff performed an audit, would the Staff look  
3 at all items?

4 A. Yes.

5 Q. Would that include return on common equity?

6 A. Yes, it would.

7 Q. Do you know what returns on common equity  
8 the Staff has been proposing in the most recent rate  
9 increase case or rate decrease cases?

10 A. Yes.

11 Q. And could you please identify what rate --  
12 what returns on common equity the Staff has been  
13 recommending?

14 A. In the -- I would say that Staff has been  
15 recommending returns on equity of approximately  
16 10 percent.

17 Q. With respect to questions that you received  
18 on injuries and damages, the Staff's adjustment, is  
19 the Staff's adjustment based solely on the increase in  
20 the third sharing period?

21 A. No.

22 Q. Could you explain that?

23 A. A portion of Staff's adjustment relates to  
24 the average balance of the injuries and damages  
25 reserve during the first two years of the EARP in

1 comparison to the portion of the expense related to  
2 restoring the reserve to an appropriate level.

3 Q. Is there anything in the experimental  
4 alternative regulation plan that limits what Union  
5 Electric Company can do with its earnings above  
6 12.61 percent?

7 A. Would you ask me that again, please?

8 Q. Is there anything in the experimental  
9 alternative regulation plan that limits -- that limits  
10 Union Electric Company in what it can use its earnings  
11 above 12.61 percent for, that part that is not flowed  
12 to the ratepayers?

13 A. No.

14 Q. Could Union Electric Company use it to  
15 mitigate asserted stranded costs?

16 A. Yes, it could.

17 Q. Could it use those earnings to write down  
18 reported at-risk generating investment?

19 A. Yes, it could.

20 MR. DOTTHEIM: I have no further questions.

21 JUDGE REGISTER: Okay. Thank you,  
22 Mr. Dottheim.

23 I believe that concludes the examination of  
24 this witness on this issue. You may step down.  
25 Mr. Rackers. Of course, you are subject to recall and

1 are still under oath.

2 (Witness excused.)

3 JUDGE REGISTER: Off the record.

4 (A recess was taken.)

5 JUDGE REGISTER: Go on the record.

6 Let the record reflect that Mr. Schallenberg  
7 has come to the witness stand according to our list.

8 MR. DOTTHEIM: Your Honor, we still have to  
9 the rule on the admissible sections of Mr. Rackers'  
10 testimony. I don't know if you want to do that before  
11 we swear Mr. Schallenberg.

12 JUDGE REGISTER: Yeah. I'm sorry,  
13 Mr. Schallenberg. If you want to have a seat.

14 Thank you for reminding me about that.  
15 Exhibit No. 2, you had an objection you wanted to  
16 state, Mr. Cynkar?

17 MR. CYNKAR: Yes. Your Honor, I would  
18 object to the admission of a portion of Mr. Rackers'  
19 surrebuttal testimony going from line 16 on page 6  
20 through line 11 on page 7.

21 I have two bases for my objection to this  
22 testimony. One is that it is hearsay, and the second  
23 is that it may also involve knowledge coming from  
24 settlement negotiations.

25 Hearsay, the evidence shows that there's no

1 written documents that describe the position of  
2 Southwestern Bell on any of those disagreements.  
3 Mr. Rackers said that there might be other documents,  
4 but they're not in evidence. So at best he would be  
5 relying on hearsay statement from a document that's  
6 not in evidence. So I believe this is objectionable  
7 on that grounds.

8 In addition, your Honor, as the testimony  
9 explains, the issues that are in -- that are  
10 identified in the attachment to Mr. Schallenberg's  
11 testimony ultimately resolved in the context of  
12 settlement negotiations. Those are obviously  
13 confidential, and indeed we have approached  
14 Southwestern Bell, and they view them as confidential  
15 and refuse to at all divulge the nature of those  
16 discussions.

17 And so I think that insofar as any of these  
18 oral representations that were hearsay to Mr. Rackers  
19 come from knowledge from discussing face-to-face the  
20 issues in that case as part of a settlement, it  
21 breaches the confidentiality of settlement.

22 So on both grounds I think those portions of  
23 Mr. Rackers' surrebuttal testimony is inadmissible.

24 JUDGE REGISTER: Let me clarify. You're not  
25 claiming that it breaches the confidentiality of the

1 settlement that UE has had with Staff or any other  
2 party in this case, but you're claiming that it  
3 breaches the confidentiality of Southwestern Bell?

4 MR. CYNKAR: That's correct, your Honor.  
5 It's not so much, frankly, claiming that we have a  
6 right to protect their interests, but because they  
7 view it as confidential, they are unwilling to  
8 disclose their part of those conversations. So we are  
9 disabled from challenging any representation of the  
10 Staff concerning what those conversations might have  
11 been.

12 I think that's basically unfair, and  
13 consistent with the rules of evidence, I think that  
14 would be inadmissible from that perspective. So both  
15 of those points.

16 JUDGE REGISTER: Thank you. Mr. Dottheim?

17 MR. DOTTHEIM: Your Honor, I have no  
18 knowledge, I've not been apprised, completely unaware  
19 of any discussion that Union Electric Company has had  
20 with Southwestern Bell.

21 Mr. Rackers in his deposition tracked  
22 matters involving the Southwestern Bell alternative  
23 regulation plan, even reviewing draft documents, which  
24 he's testified to. He also indicated on redirect that  
25 part of his knowledge is based upon, in addition to

1 the documents which are attached to Mr. Schallenberg's  
2 testimony, objections that were not raised by  
3 Southwestern Bell respecting other adjustments during  
4 the course of that incentive regulation plan.

5 JUDGE REGISTER: Okay. Do any --  
6 Mr. Coffman, do you have any contributions to this  
7 objection response?

8 MR. COFFMAN: No.

9 JUDGE REGISTER: Intervenors, does anyone  
10 else want to comment?

11 MR. FULTON: Judge, the only comment I would  
12 make with regard to the point about the, quote,  
13 confidential settlement negotiations, it's my  
14 understanding of the rules of evidence in the State of  
15 Missouri that rule, evidentiary rule deals solely with  
16 negotiations between parties to a particular lawsuit.  
17 That does not have anything to do with negotiations  
18 between other unrelated parties that are not a part  
19 and parcel of the lawsuit.

20 So I do not believe that that part of the  
21 objection is well taken under the rules of evidence in  
22 the State of Missouri.

23 MR. COFFMAN: I guess I would add one thing,  
24 that I guess the -- it doesn't seem to me from the  
25 statements that were identified for striking that



1 settlement discussions are mentioned. It appears that  
2 Mr. Rackers is referring to the implementation, the  
3 duration of the plan itself.

4 I'm not really sure exactly what settlement  
5 discussions actually occurred, and certainly there's  
6 some hearsay involved, but the Commission is a  
7 sophisticated trier of fact that doesn't need to  
8 necessarily concern itself with hearsay as far as  
9 admitting evidence. Rather, it can consider that for  
10 the weight of the evidence.

11 MR. CYNKAR: Could I very briefly respond?  
12 To clarify as I did before, we're not claiming that  
13 confidentiality of Southwestern Bell, but rather  
14 because of that we do not have access to evidence  
15 concerning those conversations. The written record  
16 shows no arguments by Southwestern Bell on those  
17 positions, except we know there were disagreements on  
18 those issues.

19 And given that there were settlement  
20 discussions and so forth, and I wouldn't be surprised  
21 that Southwestern Bell expressed its point of view in  
22 those discussions, we are unable to have access to  
23 evidence to rebut the characterization that  
24 Southwestern Bell's arguments included some things but  
25 not other things.

1                   And I think under any rules of evidence  
2 anywhere that I know of, that the trier of fact has a  
3 duty to apply the rules of evidence fairly and to do  
4 substantial justice, and it is unjust to allow  
5 evidence in that we do not have the ability to rebut.  
6 And so I think that's a substantial ground for keeping  
7 this out, along with hearsay.

8                   JUDGE REGISTER: Hearing all the arguments,  
9 the Commission will admit Exhibit No. 2 into the  
10 record in its entirety.

11                   (EXHIBIT NO. 2 WAS RECEIVED INTO EVIDENCE.)

12                   JUDGE REGISTER: Is there anything further  
13 on Exhibit No. 2?

14                   MR. DOTTHEIM: No.

15                   JUDGE REGISTER: Mr. Schallenberg, we're  
16 back to swearing you in.

17                   (Witness sworn.)

18                   JUDGE REGISTER: Please spell your name for  
19 court reporter.

20                   THE WITNESS: It's Robert E. Schallenberg.  
21 It's S-c-h-a-l-l-e-n-b-e-r-g.

22                   JUDGE REGISTER: Mr. Dottheim?

23                   MR. DOTTHEIM: Yes, thank you.

24                   ROBERT E. SCHALLENBERG testified as follows:

25                   DIRECT EXAMINATION BY MR. DOTTHEIM:

1 Q. Would you please state your name for the  
2 record.

3 A. Robert E. Schallenberg.

4 Q. And would you please state your address and  
5 place of employment.

6 A. Post Office Box 360, Jefferson City,  
7 Missouri. I'm employed by the Missouri Public Service  
8 Commission.

9 Q. Mr. Schallenberg, do you have a copy of what  
10 has been marked as Exhibit 3, your surrebuttal  
11 testimony --

12 A. Yes, I do.

13 Q. -- in this proceeding?

14 Do you have any corrections or changes to  
15 make to Exhibit 3 at this time?

16 A. No, I do not.

17 Q. If I were to ask you the same questions that  
18 are contained therein, would your answers today be the  
19 same?

20 A. Yes, they would.

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

23 A. Yes, it is.

24 MR. DOTTHEIM: At this point I tender  
25 Mr. Schallenberg for cross-examination and offer

1 Exhibit 3.

2 JUDGE REGISTER: Okay. Are there any  
3 objections to the admission of Exhibit 3 into the  
4 record?

5 MR. CYNKAR: Your Honor, I don't know if  
6 it's necessary since the Commission has already ruled  
7 on our Motion to Strike Mr. Schallenberg's testimony  
8 whether I need to reiterate the hearsay objection. If  
9 I need to, I do so for the record, and I understand  
10 the ruling of the Commission.

11 JUDGE REGISTER: Any other comments at this  
12 time?

13 MR. DOTTHEIM: Other than the Staff would  
14 make the same arguments in response to renewed hearsay  
15 arguments.

16 JUDGE REGISTER: We'll consider the Motion  
17 to Strike and the responses that were made both by  
18 OPC, Public Counsel and Staff previously ruled on and  
19 renewed in its entirety, and the ruling would remain  
20 the same, and Exhibit No. 3 will be admitted into the  
21 record.

22 (EXHIBIT NO. 3 WAS RECEIVED INTO EVIDENCE.)

23 JUDGE REGISTER: Cross-examination, Public  
24 Counsel. Mr. Coffman?

25 MR. COFFMAN: No questions.

1 JUDGE REGISTER: And the parties other than  
2 Public Counsel and UE, Interveners, Ms. Schmidt?

3 MS. SCHMIDT: No questions.

4 MR. FULTON: No questions.

5 MR. JOHNSON: No questions.

6 JUDGE REGISTER: All right.

7 MS. SCHMIDT: Ms. Forrest had to leave to  
8 teach a class. She asked me to let you know that she  
9 didn't have any questions for Mr. Schallenberg.

10 JUDGE REGISTER: Thank you, Ms. Schmidt. So  
11 we are ready for Union Electric's cross-examination.  
12 Mr. Cynkar?

13 CROSS-EXAMINATION BY MR. CYNKAR:

14 Q. Hello again, Mr. Schallenberg. It is true,  
15 isn't it, that you did not participate in the  
16 negotiations over the first or second Union Electric  
17 EARP, correct?

18 A. That's correct.

19 Q. You never spoke with Mr. Brandt about the  
20 EARP, true?

21 A. True.

22 Q. And you also never spoke to anyone else  
23 negotiating for Union Electric?

24 A. True.

25 Q. And your knowledge of who the players were

1 in those negotiations come from looking at the  
2 documents that are now available, true?

3 A. Yes. From the documents from both sides,  
4 yes. Excuse me. And the on-the-record presentation.  
5 I've read the on-the-record presentation. There's  
6 some mention of people in that as well.

7 Q. Okay. Now, you did not know presumably  
8 until Mr. Brandt's testimony here that he personally  
9 wrote most of that proposal of January 1995, true?

10 JUDGE REGISTER: Can you clarify which  
11 proposal you're speaking of?

12 MR. CYNKAR: The January letter that is  
13 Exhibit 21, I believe it is, your Honor.

14 JUDGE REGISTER: Thank you. Do you have a  
15 copy of Exhibit No. 21, Mr. Schallenberg?

16 THE WITNESS: I have one.

17 MR. CYNKAR: I'm not going to refer to it.

18 JUDGE REGISTER: Can you answer the question  
19 without reviewing the document?

20 THE WITNESS: I can answer the question that  
21 I did not know how much of that document Mr. Brandt  
22 wrote before he testified today.

23 BY MR. CYNKAR:

24 Q. Okay.

25 A. Now, if you asked me if he wrote most of it,

1 I didn't understand his testimony to be that he wrote  
2 most of it.

3 Q. As you said in your deposition on page 22,  
4 lines 5 to 6, at the time you viewed Mr. Brandt as,  
5 quote, nothing more than a conveyer, close quote, of  
6 UE's proposal; isn't that fair?

7 A. Yes.

8 Q. And you do not know what Union Electric  
9 actually knew about the text of the Southwestern Bell  
10 plan at the point of negotiations, do you?

11 A. The point you're talking about in January of  
12 1995?

13 Q. The negotiations all the way up to but not  
14 including the presentation of the EARP to the  
15 Commission.

16 A. I do not know the state of Union Electric's  
17 understanding of the Southwestern Bell incentive plan,  
18 no.

19 Q. Now, in your testimony on page 6, line 1 to  
20 3, you say, quote, the Staff made representations  
21 prior to EARP's adoption that it intended to operate  
22 the monitoring functions in a manner consistent with  
23 its past practice under SBIRE, close quote. I read  
24 that accurately?

25 A. I'm sorry. I'm still trying to find it.

1 Q. I'm sorry. Page 6, lines 1 to 3.

2 A. Yes.

3 Q. Okay. Now, do you recall that in your  
4 deposition you identified those representations as the  
5 ones being made by the Staff during the presentation  
6 of the EARP in July of 1995; is that correct?

7 A. Yes. I think I mentioned the quote that's  
8 on page 6.

9 Q. Exactly right. Now, if I could direct your  
10 attention to page 7 of your testimony, starting at  
11 line 28 on page 7, going through line 7 on page 8,  
12 there's a reference to an internal Staff memorandum?

13 A. Yes.

14 Q. Do you see that?

15 A. Yes, I do.

16 Q. Okay. And do you recall that it was your  
17 testimony in your deposition that that internal Staff  
18 memo was not shared with Union Electric during the  
19 negotiations of the EARP; is that true?

20 A. I'm not aware it was shared.

21 Q. So not to your knowledge?

22 A. Not to my knowledge.

23 Q. Okay. And it is your position that the  
24 Staff can propose adjustments to the earnings  
25 calculation in the reconciliation procedure that in



1 the Staff's judgment it feels are necessary; isn't  
2 that true?

3 A. Yes. I think in my deposition I even  
4 referred to, is it paragraph 6 of EARP that talks  
5 about that the --

6 Q. Actually, I'm referring to page 50 of your  
7 deposition, lines 13 through 17.

8 A. Okay. You said which lines?

9 Q. Lines 13 through 17.

10 JUDGE REGISTER: What page was that?

11 MR. CYNKAR: Page 50.

12 THE WITNESS: Oh, yes. In fact, that's what  
13 I was just looking for.

14 BY MR. CYNKAR:

15 Q. That's why I told you that because I thought  
16 you were.

17 A. There's a part of the -- of EARP that talks  
18 about the Commission's rights.

19 Q. Excuse me. I just want to make sure, we're  
20 in the deposition on page 50.

21 A. What I was referring to, the part of the  
22 EARP that talks about that the Commission rights and  
23 whatever the Staff believes that was necessary to make  
24 sure that none of that took place --

25 Q. That's fine.

1           A.     -- it would have the right to bring forward  
2 to the Commission, yes.

3           Q.     Now, it's also true, isn't it, that it's  
4 your view that the corporate independence of Union  
5 Electric, and by that I mean not being a subsidiary of  
6 a larger national firm, is not really an important  
7 consideration; isn't that true?

8           A.     I don't remember it was defined as that way.  
9 I didn't -- I think I said I didn't find the corporate  
10 independence to be a major factor one way or the  
11 other.

12          Q.     Well, if I could direct your attention to  
13 pages 33 and 34 of your deposition.

14          A.     Yes.

15          Q.     First on page 33, if I can direct yourself  
16 -- your attention to page 16 and through line 20 --  
17 I'm sorry. Line 16 through line 20 on page 33 where I  
18 ask you this question, quote, now, from the  
19 perspective of Missouri's, of the Missouri sort of  
20 electric customer, is Union Electric's corporate  
21 independence an important thing?

22                 Answer: I would say no. And then you go on  
23 and answer that, and we're talking about in terms of  
24 the merger with CIPSCO. And on page 34, line 7  
25 through line 15, I clarify and I say, quote, well, I'm

1 not sure CIPSCO is an example of losing corporate  
2 independence. More what I was thinking of is if an  
3 outside company acquired UE and sort of made it a  
4 subsidiary of a larger national firm perhaps. That's  
5 the kind of corporate independence or dependence I was  
6 talking about. Answer: I would still say no.

7 Is that still accurate?

8 A. Yes.

9 MR. CYNKAR: I have no further questions,  
10 your Honor.

11 JUDGE REGISTER: Questions from the Bench  
12 then, Vice Chair Drainer?

13 QUESTIONS BY COMMISSIONER DRAINER:

14 Q. Good evening, Mr. Schallenberg.

15 A. Good evening.

16 Q. Mr. Schallenberg, with respect to the  
17 Stipulation and Agreement, paragraph 6, that goes to  
18 the Commission rights, that states that nothing in the  
19 Stipulation and Agreement is intended to impinge or  
20 restrict in any manner the exercise by which the  
21 Commission to -- exercise the manner -- excuse me --  
22 restrict in any manner the exercise by the Commission  
23 of any statutory right, including the right of access  
24 to information and any statutory obligation, period.

25 Since you just referenced that, would you

1 please tell me why you believe that that paragraph is  
2 important and what it meant to you?

3 A. Yes. EARP, unlike the Southwestern Bell  
4 agreement, did not have the Commission as a party.  
5 The Commission was a party to a large portion of the  
6 Southwestern Bell agreement, not the Staff, and so  
7 that's why the monitoring and procedures were  
8 something that were developed for the Commission, but  
9 it was a Commission agreement, not a Staff agreement.

10 EARP is not an agreement of Southwestern  
11 Bell. While it uses the language and the concepts, it  
12 is agreement reached between the Staff and Public  
13 Counsel and Union Electric. Therefore, while the  
14 Commission has still the statutory requirements  
15 obligation, it is dependent on its staff to bring to  
16 it information that would be necessary to keep and  
17 stay in compliance with paragraph 6.

18 So given the open-ended nature of the way  
19 the monitoring agreement was set for Southwestern Bell  
20 and applying it to the fact that now the Commission's  
21 no longer a party, that would give a broad -- that  
22 would give the catch-all or the safety net to the  
23 Commission that the Staff will be under an obligation  
24 to bring to the Commission anything it was aware of  
25 that would be necessary for the Commission to stay in

1 compliance with paragraph 6.

2 Q. So let me be clear. Where we have  
3 referenced some other sections in the Stipulation and  
4 Agreement or the reconciliation, Section G and those  
5 areas, that it is your -- is it your opinion that it  
6 is this paragraph 6 that really is more to the point,  
7 the catch-all as you would say that should there be an  
8 issue that the Staff believes the Commission needs to  
9 be aware of, that this allows you to bring it to us?

10 A. I think it's an obligation of the Staff. I  
11 think it's an obligation of the Staff to do that, and  
12 that the open-ended nature to the monitoring agreement  
13 allows the Staff to do it. But I think it's an  
14 obligation under paragraph 6 that we have to bring it  
15 to your attention.

16 Q. And then how does this not in some way  
17 become single-issue ratemaking when we look at just  
18 certain areas and not the Company's entire revenues,  
19 when you look at the computer costs or the territorial  
20 agreements?

21 A. I can't tell you it doesn't have some of the  
22 characteristics of single-issue ratemaking because you  
23 do not have an examination that has the breadth and  
24 scope of a rate case or complaint case.

25 So to the extent that it's limited in the

1 scope of the investigation and the issues that do come  
2 out through these type of plans, it has the limited  
3 nature of single-issue ratemaking other than the fact  
4 that it's not limited to a single issue, but you do  
5 not have the full examination that would take place in  
6 a rate case or complaint case.

7 COMMISSIONER DRAINER: All right. I have no  
8 other questions at this moment.

9 JUDGE REGISTER: Thank you. Commissioner  
10 Murray, do you have any questions?

11 COMMISSIONER MURRAY: Thank you, yes.

12 QUESTIONS BY COMMISSIONER MURRAY:

13 Q. Mr. Schallenberg, do you -- is it your  
14 understanding that the parties to the agreement  
15 entered into a binding agreement to abide by the terms  
16 of that agreement?

17 A. Yes.

18 Q. Okay. And then is it also your  
19 understanding that this Commission approved that  
20 agreement?

21 A. Yes.

22 Q. Okay. So if you look at paragraph 6 on  
23 page 17 of the Attachment A that Vice Chair Drainer  
24 referenced a few moments ago, that nothing in this  
25 Stipulation and Agreement is intended to impinge or

1 restrict in any manner the exercise by the Commission  
2 of any statutory right, including the right of access  
3 to information and any statutory obligation.

4           You would not have to look at that paragraph  
5 to mean that the Commission could go back and change  
6 an agreement that it had approved; is that correct?

7           A.     I guess that's correct. I don't look at it  
8 as that, from the Staff's perspective, the Commission  
9 has to change an agreement. I look at it from the  
10 Staff's perspective, that to the extent that I  
11 encounter something during operation of the plan that  
12 would cause the Commission to have -- be at odds with  
13 its requirement under paragraph 6, I have to bring it  
14 to the Commission's attention.

15           Q.     When the parties agreed to the terms that  
16 are in this agreement, the parties all agreed that if  
17 they -- if everyone complied with those terms, that  
18 that agreement would not be a detriment to the public;  
19 is that right?

20           A.     I know they agreed. I don't know that they  
21 agreed to that detriment part, but they may have.

22           Q.     Well, let me ask you this. Would Staff and  
23 OPC have agreed to terms that they felt were  
24 detrimental to the public interest?

25           A.     I'd say -- at times I'd say I don't know

1 because there are times when that issue is not  
2 considered by the Staff. I can't speak for Public  
3 Counsel.

4 Q. Well, when Staff is working with parties to  
5 come up with an agreement, what are you considering?

6 A. In agreements such as these, you would  
7 consider what your options were.

8 Q. And whose interests would you be looking at?  
9 Would you be considering the interests of the Company?

10 A. In part, yes.

11 Q. Would you be considering the interests of  
12 the ratepayers?

13 A. Yes.

14 Q. And would you be considering the obligation  
15 to balance the interests?

16 A. Yes.

17 Q. So would you enter into any agreement that  
18 would be detrimental to any of the constituencies  
19 involved, in your opinion?

20 A. The reason I say that is, detriment's like  
21 beauty. It's like in the eye of one of those groups.  
22 I can say I balance it. Somebody will say it's  
23 detrimental. I don't know that we go through that  
24 process to say that we believe that the whole -- the  
25 product is a balanced product.



1 Q. Well, when you go through the process of  
2 entering into a Stipulation and Agreement, do you  
3 intend to be bound by the terms of the agreement?

4 A. Yes, I would say the Staff views that it's  
5 always bound by any agreement it entered into.

6 Q. So you would want to be careful that the  
7 terms of that agreement didn't require you to do  
8 something that was not in the public interest,  
9 wouldn't you?

10 A. If that was one of the goals, yes.

11 Q. And if there were Stipulations and  
12 Agreements entered into and approved by the  
13 Commission, would those agreements have any value if  
14 the parties couldn't rely on the terms of the  
15 agreement?

16 A. They would have a reduced value. I don't  
17 know. I wouldn't say they have no, but they would  
18 have a reduced value.

19 Q. Significantly reduced, would it not be?

20 A. Well, it would depend on what the residual  
21 value is. I mean --

22 Q. If the -- let me follow that up. If this  
23 Commission were to approve agreements and then decide  
24 that really, because one party may have benefited a  
25 little more than was anticipated in the beginning,

1 that the Commission would make -- would order changes  
2 in the way the agreement was carried out, changes that  
3 were not in the original terms, would any other  
4 parties in the future be able to look to the  
5 Commission and think there would be any value in  
6 entering into Stipulations and Agreements and getting  
7 them approved by the Commission?

8 I mean, what good -- what value would  
9 approval by the Commission be to parties in terms of  
10 relying on expectations, relying on there being no  
11 surprises, that kind of thing? Would that diminish  
12 the value of Stipulations and Agreements, in your  
13 opinion, if the Commission could just decide to change  
14 them because they didn't like the outcome?

15 A. It would -- it would cause the parties to  
16 enter into agreements in a different manner to the  
17 extent that they believe the Commission would change  
18 the agreement within its terms. I'm not aware of that  
19 ever happening, but if that happened, I know the Staff  
20 would look at agreements differently, but it would  
21 adjust to it. I'm assuming other parties would as  
22 well.

23 Q. But if you knew that the terms of the  
24 agreement didn't mean anything in terms of whether it  
25 would -- whether you would really have to abide by

1       them, what value would the agreement be?

2           A.     I guess it depends on the relationship of  
3       the parties.  I'm aware that the Staff has operated  
4       under an agreement that it was told it no longer had  
5       to use, but it did abide to the terms of the agreement  
6       even though it was told it was no longer effective,  
7       and I know that was done for several years.

8                        So in that case, it was still valuable to  
9       the parties because the parties still operated under  
10      it even though they didn't need to.  So I guess the  
11      answer to your question, and I'm not trying -- would  
12      be it would depend on the way the parties acted.

13          Q.     Well, the parties under an agreement can  
14      mutually agree to change the terms of the agreement,  
15      correct?

16          A.     Yes.

17          Q.     And that would not be a violation or a  
18      breach of the agreement in your opinion, right?

19          A.     Yes.  Yes.

20          Q.     But that's a mutual agreement to act under  
21      changed terms?

22          A.     Right.

23          Q.     On page 12 of your rebuttal testimony -- or  
24      surrebuttal testimony, at lines 24 through 27, you  
25      speak about the Company's interpretation, and you say,

1 this restrictive interpretation centers around the  
2 Company's assertion that there was an agreement  
3 between Staff, OPC and UE regarding accounting  
4 methodologies or practices, underlined, EARP.

5 Are you saying that there was not agreement  
6 between the parties regarding accounting methodologies  
7 and practices?

8 A. Yes.

9 Q. And why would the parties leave out such a  
10 critical part of implementation of the agreement?

11 A. I can't speak to why -- I can speak to why  
12 they did it is they used the Bell agreement, and it  
13 didn't exist in Bell either.

14 Q. And what evidence do you have that they used  
15 the Bell agreement?

16 A. The comparison of the monitoring procedures  
17 from Bell to what was used in EARP, and there was no  
18 underlying agreement as to accounting methodologies  
19 and practices.

20 And two is, there is no specific mention in  
21 EARP that there is such an agreement. And then three  
22 is there's that no acquiescence paragraph in EARP that  
23 says people didn't agree to underlying principles.  
24 It's in paragraph 8 in EARP.

25 JUDGE REGISTER: For the record,

1 Mr. Schallenberg, you're referring to page 18 of 23 of  
2 Exhibit No. 13?

3 THE WITNESS: I have a different copy, but  
4 it's whatever paragraph 6 was for the Commission  
5 rights, paragraph 8 is no acquiescence, which is also in  
6 Bell.

7 JUDGE REGISTER: In the Stipulation and  
8 Agreement?

9 THE WITNESS: Right. In fact, I have a  
10 notation at the bottom of mine, says Attachment A,  
11 page 18 to 23.

12 JUDGE REGISTER: Thanks.

13 THE WITNESS: Now, I guess I would add that  
14 the last thing is, I'm aware that Mr. Dottheim on  
15 behalf of the Staff represented to the Commission at  
16 the presentation that there were no side agreements  
17 that weren't contained within the document. So that  
18 would be the basis for my answer.

19 BY COMMISSIONER MURRAY:

20 Q. So there were no side agreements that  
21 weren't contained in the agreement. Where is the  
22 reliance upon Southwestern Bell's monitoring  
23 procedures contained in the agreement?

24 A. It's -- I get it from the representation  
25 made by Mr. Dottheim that Mr. --

1 Q. No. I'm talking about in the agreement.

2 A. In the agreement is the similar paragraphs  
3 from Southwestern Bell.

4 Q. Are you saying that -- okay. Let's go to  
5 those similar paragraphs. Let's go to the first one,  
6 if you can recall which one you would come to first.

7 A. If you go to using EARP, first paragraph  
8 would be under -- it's 3.f. Roman Numeral ii.

9 JUDGE REGISTER: Do you have a page number  
10 on the bottom?

11 THE WITNESS: I'm sorry. It's Attachment A,  
12 page 8 of 23, and it's got those Roman Numeral ii.

13 JUDGE REGISTER: Thank you,  
14 Mr. Schallenberg.

15 BY COMMISSIONER MURRAY:

16 Q. Would you read that one.

17 A. It says, Staff, OPC, UE have conferred and  
18 determined what items based on prior Commission Orders  
19 should be excluded from the calculation of UE's return  
20 on equity. These items are identified in Attachment C.

21 Q. Okay. And those are set out in Attachment C  
22 in this agreement?

23 A. Right. That's the same format that Bell  
24 used.

25 Q. Okay. And you are alleging that the Company

1 is not complying with that Section 2, that there's any  
2 disagreement that this was included?

3 A. No. I'm not the one that's alleging that  
4 someone's violating this agreement.

5 Q. Okay. Are you -- is everyone in agreement  
6 that Section 3.f.ii is included in the terms of the  
7 agreement and that the parties have to abide by it?

8 A. I can't speak for everybody.

9 Q. Okay. What's the next section that --

10 A. If you go to Attachment A, page 9 of 23, in  
11 fact, both what is called -- what's listed as 6 and 7,  
12 both can be traced back to Bell.

13 Q. Okay. And there's specific language in  
14 there about finding evidence that operating results  
15 have been manipulated in 6, is that right, and that  
16 Staff can -- Staff, OPC or other signatories may file  
17 a complaint requesting an investigation?

18 And then in 7, UE, Staff and OPC and other  
19 signatories reserve the right to bring issues which  
20 cannot be resolved by them related to the operation or  
21 implementation of the plan. And we get into the fact  
22 that this is -- there were some examples that are  
23 nonexclusive that are set out here, and then further  
24 on the language about what can be included in an  
25 allegation of manipulation.

1                   Okay. Now, tell me this. Is this the  
2 section that you are claiming that you are relying  
3 upon to bring the adjustments that you're  
4 recommending?

5           A. Now, the specific adjustments, they've gone  
6 through different parts. The different Staff  
7 witnesses have gone through different parts of the  
8 agreement that they used. It would be one of the  
9 paragraphs that would allow the Staff to bring the  
10 issues to you.

11          Q. And if this language does allow that, it's  
12 not necessary to go back to the Southwestern Bell  
13 agreement, is it, to say that you were relying on that  
14 agreement? You're actually relying on the language of  
15 this agreement; is that correct?

16          A. That's true.

17          Q. So is there any place in this -- any place  
18 that you are relying upon language that appears in the  
19 Southwestern Bell agreement that does not appear in  
20 this agreement?

21          A. You mean -- you're asking in terms of  
22 supporting the adjustments to Staff?

23          Q. Yes.

24          A. No. No.

25          Q. Okay. So I'm still having trouble



1 understanding why it is that Staff is trying to tie  
2 this case to the Southwestern Bell case rather than  
3 just use the specific language in this agreement.

4 A. And I would say that that -- the  
5 Southwestern Bell agreement is used based on, at the  
6 time I filed the testimony, the belief that UE was  
7 asserting that we had had an agreement, a meeting of  
8 the minds to adopt UE's interpretation of these  
9 paragraphs.

10 And the reason Southwestern Bell was used is  
11 to show that consistently throughout the negotiation  
12 of EARP, up until the presentation, Staff's frame of  
13 mind of these paragraphs was from the Southwestern  
14 Bell experience. That doesn't mean it was UE's, but  
15 it was definitely Staff's.

16 And for UE to assert that we had accepted  
17 another interpretation that would be different than  
18 the UE would not be true.

19 Q. So you're saying there was not a meeting of  
20 the minds as to the agreement regarding accounting  
21 methodologies or practices underlying EARP at the time  
22 that it was entered into?

23 A. Yes.

24 Q. Now, Section 8, 3.f.viii, was that also  
25 language that was taken from similar language in the

1 Southwestern Bell agreement?

2 A. Yes. You're talking about page 10 of 23?

3 Q. Yes.

4 A. Yes.

5 Q. And is it Staff's position that any category  
6 of cost, whether or not it has been previously  
7 included in a ratemaking proceeding, can be brought in  
8 for an adjustment simply on the basis that the cost  
9 has increased?

10 A. I would say no.

11 Q. Under what circumstances can -- does the  
12 agreement provide for an adjustment to be made to a  
13 category of cost?

14 A. It would be that you'd have to have a  
15 concern about that category. In fact, it could be a  
16 decrease.

17 Q. And is there anything in the agreement that  
18 could help the parties know what level of concern or  
19 what is -- you know, what is a reasonable concern?  
20 Can somebody just say, oh, I don't like the No. 5, so  
21 I'm concerned? I mean, is there a standard? How can  
22 you determine what's a reasonable concern under the  
23 terms of the agreement?

24 A. I guess to answer your question, there is no  
25 standard definition to determine what is a genuine

1 concern by one party or a concern that's not genuine.  
2 That issue was one that has to be resolved between the  
3 parties as to how they operate under this agreement,  
4 and to the extent they can't resolve it, then it goes  
5 to you.

6 Q. So any concern, whether it's reasonable or  
7 logical or has any basis in fact, can be the subject  
8 of a proceeding before the Commission under the terms  
9 of the agreement?

10 A. Assuming that the parties don't resolve it,  
11 is that --

12 Q. Uh-huh.

13 A. Yes, and assuming the Commission hears it,  
14 chooses to hear it.

15 Q. Why do you think -- scratch that.

16 COMMISSIONER MURRAY: I think that's all my  
17 questions. Thank you.

18 JUDGE REGISTER: Vice Chair Drainer, did you  
19 have any questions?

20 FURTHER QUESTIONS BY COMMISSIONER DRAINER:

21 Q. I just want to finish up with a couple  
22 things with respect to the questions about  
23 Southwestern Bell and why Staff is using the  
24 comparison with the Southwestern Bell plan, and I want  
25 you to tell me if you agree with this.

1                   It seems to me that what you're really  
2                   saying is it's like the parent that has a teenager  
3                   that you let them drive a car, but you say, here's the  
4                   agreement. You drive the car. You pay for the gas.  
5                   So little SWBT drives the car, and every time SWBT  
6                   finishes driving the car for the evening, fills it  
7                   back up with gas and life goes on. And the one time  
8                   SWBT doesn't do it, I tell them in the morning you've  
9                   got to go fill up the car. Oh, yeah. I'll go do it  
10                  now. So the experience is that worked.

11                  Teenager No. 2 comes along, same agreement,  
12                  and all of a sudden I get my Shell charge card and I  
13                  find that this agreement they've taken -- expensed it  
14                  different and charged it all on my charge card and  
15                  said -- all I'm seeing is that it's being filled up  
16                  with gas, and then I find out that child No. 2 charged  
17                  it and then we have to get into the dispute of, well,  
18                  now you owe me \$50 and they don't have \$50 today. And  
19                  a lot of us have teenagers, so we know how that goes.

20                  And the experience was different, and so we  
21                  say, well, why -- why did you assume it would work?  
22                  Well, I assumed it would work because it worked the  
23                  first time so well, and now that same agreement isn't  
24                  working so well.

25                  Is that what I'm dealing with here is when

1 Staff tries to tell us the experiences, its experience  
2 of Bell and how that plan worked and that this isn't  
3 working the same way? Is that what we're dealing with  
4 the comparison of?

5 A. I would say yes. I mean, we -- the  
6 agreement in Bell when structured had a lot of  
7 viability to it. I remember that very clearly. In  
8 hindsight, though, the Bell monitoring worked beyond,  
9 I think, anybody's expectations, especially given the  
10 adversarial nature that existed between the Staff and  
11 Southwestern Bell.

12 I think the expectation for UE probably was  
13 that, if it worked for Bell it will work for UE. And  
14 we never got to the stage with UE, but that's just one  
15 of the risks people take.

16 Q. But that's why there's this comparison,  
17 because there was this expectation and you don't feel  
18 that that's been met with UE?

19 A. Well, I think that's -- that's what  
20 happened. Now, the reason the comparison was made is  
21 the assertion that the Staff made an agreement with UE  
22 that it's now going back on, and the Staff never made  
23 that agreement. I cannot find any evidence that the  
24 Staff ever agreed to the interpretation that UE is  
25 espousing in this hearing.

1                   Now, you may interpret that you want the  
2                   Staff to operate from this day forward under that, and  
3                   we will, but I cannot find -- and the reason I use  
4                   that is we've been operating under this agreement  
5                   somewhat the way we operated under Southwestern Bell.

6                   Q.       Okay. And then a final question. Let me  
7                   ask you the same final question I had asked the chief  
8                   financial officer for UE. As division director over  
9                   the case, is there anything here that hasn't been  
10                  asked that you feel you need to clarify or make a  
11                  statement on? And don't go to the meaning of life.  
12                  Just short answer would be nice.

13                  A.       I don't have anything I could think of right  
14                  now I need to add.

15                  COMMISSIONER DRAINER: Thank you very much.  
16                  I appreciate your answers.

17                  JUDGE REGISTER: Anything further,  
18                  Commissioner Murray?

19                  COMMISSIONER MURRAY: I don't think so.

20                  JUDGE REGISTER: Okay. Since the  
21                  examination from the Bench is completed, we're back to  
22                  recross, and so Public Counsel, Mr. Coffman?

23                  MR. COFFMAN: Yeah, just one question.

24                  RE-CROSS-EXAMINATION BY MR. COFFMAN:

25                  Q.       Mr. Schallenberg, you were asked some

1 questions about, I guess, whose interest you -- or  
2 whose perspective you looked out for when you were  
3 negotiating or analyzing the case. Are you aware of  
4 the court cases which identify the public interest as  
5 the primary concern of public utility regulation?

6 A. No.

7 Q. Okay. Never mind, then.

8 MR. COFFMAN: Thank you.

9 JUDGE REGISTER: Intervenors, Ms. Schmidt?

10 MS. SCHMIDT: No questions.

11 JUDGE REGISTER: Mr. Fulton?

12 MR. FULTON: No questions.

13 JUDGE REGISTER: Mr. Johnson?

14 MR. JOHNSON: No questions.

15 JUDGE REGISTER: Okay. UE, Mr. Cynkar?

16 MR. CYNKAR: Just a couple.

17 RE-CROSS-EXAMINATION BY MR. CYNKAR:

18 Q. Actually taking a page from Mr. Coffman's  
19 book, treading where he feared to tread, I just want  
20 to clear up a couple things you said at the beginning  
21 of your testimony.

22 And you testified that in your view the  
23 Commission was not a party to this agreement. By  
24 saying that, you weren't attempting to offer testimony  
25 that, regardless of how you characterize the

1 Commission, this agreement might impose binding legal  
2 obligations on you, were you?

3 A. No. I meant that the Commission entered  
4 into the agreement with Southwestern Bell. The  
5 Commissioners entered into the Southwestern Bell  
6 agreement. They did not have that role in EARP.  
7 That's what I meant by saying in Southwestern Bell  
8 when you see a signature, that was on their behalf.  
9 In EARP when you see the signature, it's on the  
10 Staff's behalf. That's what I meant by they were not  
11 a party.

12 Q. So you were not attempting to offer any  
13 opinion concerning the legal consequences of all this?

14 A. When I said party, I meant it to be what I  
15 just told you it meant. Whether that's the legal  
16 interpretation or not, I don't know.

17 MR. CYNKAR: That's all I have, your Honor.

18 JUDGE REGISTER: Thank you, Mr. Cynkar.  
19 Okay. So we are then on to redirect. Mr. Dottheim?

20 MR. DOTTHEIM: Yes, I have a few questions.

21 REDIRECT EXAMINATION BY MR. DOTTHEIM:

22 Q. Mr. Schallenberg, Mr. Cynkar asked you some  
23 questions referring you to your deposition about the  
24 corporate independence of Union Electric Company. Can  
25 I refer you to your deposition transcript?



1 A. I think he said on 34 and 33?

2 Q. 33 and 34.

3 A. Yes.

4 Q. Where Mr. Cynkar asked you the question not  
5 from the perspective of Missouri, but the Missouri  
6 sort of electric customer, is Union Electric's  
7 corporate independence an important thing? And you  
8 answered, I would say no. Mr. Cynkar asked you why  
9 not, and you responded. Could you please provide your  
10 explanation as you gave it to Mr. Cynkar?

11 A. What I said then and what I believe is I see  
12 that the customer would look at the service, the  
13 quality of service and the rate of service as being  
14 important. The corporate entity isn't a key element.  
15 In fact, we changed the corporate entity for UE's  
16 customers when we allowed UE to be merged to CIPSCO  
17 and never noticed a customer, other than name change  
18 confusion, to find that to be significant.

19 Q. And you provided further explanation in the  
20 deposition on page 34?

21 A. When he asked me about the national firm, is  
22 that the one you're referring to?

23 Q. Yes. Correct. Would you please provide  
24 your response? Mr. Cynkar said, Well, I'm not sure  
25 CIPSCO is an example of losing corporate independence.

1 More what I was thinking of is that -- is if an  
2 outside company acquired UE and sort of made it a  
3 subsidiary of a larger national firm perhaps. That's  
4 the kind of corporate independence or dependence I was  
5 talking about, and you responded.

6 A. I would say -- I would still say no. We've  
7 had examples -- we haven't had it with UE, but we've  
8 had examples where we've lost, and I said I guess my  
9 corporate entity. We lose the corporate management  
10 and get a new set of managers. We've had those  
11 changes in other utilities.

12 Now that I say that, the reason I make my  
13 answer is that we have one corporate change like that  
14 where the resulting quality of service declined. I  
15 think that was a negative, but that's not necessarily  
16 a product of the corporate entity, the management  
17 being there. It was just a result of the new  
18 corporate entity. Entity I just added.

19 Q. Do you have anything to add to those  
20 responses?

21 A. No.

22 Q. In regards to some questions respecting your  
23 role, if any, in the Union Electric Company first  
24 EARP, did you review any Staff documents other than  
25 the one that you excerpted in your surrebuttal

1 testimony? Were you routed internal Staff documents  
2 dealing with the negotiations with Union Electric  
3 Company?

4 A. Are you asking me in preparation of my  
5 testimony or are you asking me at the time when EARP  
6 was negotiated?

7 Q. At the time that the EARP was negotiated?

8 A. I did review some documents at the time that  
9 EARP was negotiated.

10 Q. Are you shown as being cc'd on certain  
11 internal Staff documents dealing with the negotiation  
12 with Union Electric Company?

13 A. Yes.

14 Q. Were you approached by anyone internally at  
15 the time of the negotiations who sought your opinion  
16 regarding those negotiations?

17 A. Yes.

18 Q. Did Mr. Rademan ever ask any questions in  
19 relation to the negotiations with Union Electric  
20 Company on the EARP?

21 A. Yes.

22 Q. Your surrebuttal testimony contains a direct  
23 reference to Southwestern Bell at the time of the --  
24 at the time of the on-the-record presentation  
25 respecting the Union Electric Company EARP?

1 A. If you're referring to page 6 --

2 Q. Yes.

3 A. -- it does.

4 Q. Could you summarize what that excerpt is?

5 MR. CYNKAR: Your Honor, I object.

6 Mr. Schallenberg's testimony is already in the record,  
7 so that excerpt is in the record. I don't know what  
8 we gain by having it summarized.

9 JUDGE REGISTER: Mr. Dottheim, do you have a  
10 response?

11 MR. DOTTHEIM: Well, I think there was a  
12 question relating to, one, in particular what  
13 knowledge did Union Electric Company have respecting  
14 the Staff using the Southwestern Bell incentive  
15 alternative regulation plan as a reference point, and  
16 that is the reason for my asking Mr. Schallenberg to  
17 refer to his surrebuttal testimony and the excerpt  
18 because there is a direct reference that was made at  
19 the on-the-record presentation.

20 JUDGE REGISTER: Okay. Refresh me. Where  
21 are you asking Mr. Schallenberg to look to?

22 MR. DOTTHEIM: It is on page 6 of his  
23 surrebuttal testimony.

24 JUDGE REGISTER: Beginning on line 18?

25 MR. DOTTHEIM: Line 18 and continuing -- and

1 continuing to the next page.

2 JUDGE REGISTER: Okay. I'm going to sustain  
3 the objection. What I prefer to have is, if you want  
4 him to look to the testimony that's already in the  
5 prefiled, make reference to that, and then ask your  
6 next question, not necessarily to read that into the  
7 record. It is already in the record.

8 MR. DOTTHEIM: Okay. Fine. Thank you.

9 JUDGE REGISTER: You're at the location he  
10 wanted; is that right?

11 THE WITNESS: Yes, I am.

12 JUDGE REGISTER: Go ahead, Mr. Dottheim.

13 BY MR. DOTTHEIM:

14 Q. Again, there was direct reference at the  
15 on-the-record presentation to the Southwestern Bell  
16 incentive regulation plan?

17 A. I would say yes, there was direct reference  
18 and representation made.

19 Q. And the representations made were?

20 A. That the monitoring of EARP would be similar  
21 to the monitoring that took place under Southwestern  
22 Bell. Now, when I said representations, they were  
23 Staff representations. I'm not alluding that --

24 Q. And in particular the representation was  
25 made by who?

1           A.     By you.

2           Q.     Mr. Schallenberg, do you believe that the  
3           Staff by its conduct in the review, the monitoring of  
4           the third year of the first EARP is advocating a  
5           change in the terms?

6           MR. CYNKAR:  Objection, leading.

7           JUDGE REGISTER:  Your response?

8           MR. DOTTHEIM:  And my response is I'll  
9           rephrase the question.  I'll withdraw it.

10          JUDGE REGISTER:  Thank you, Mr. Dottheim.  
11          Please proceed.

12          BY MR. DOTTHEIM:

13          Q.     Mr. Schallenberg, how would you characterize  
14          the basic dispute between Union Electric Company and  
15          the Staff in the third year of the first experimental  
16          alternative regulation plan?

17          A.     I guess I would say in regards to this issue  
18          or all the issues?

19          Q.     In regards to all the issues?

20          A.     Well, there's one issue that's about the  
21          rights and what the terms and conditions of EARP allow  
22          the parties to do, which is this issue that we're  
23          going to finish up sometime today.  Then there's the  
24          validity as to the separate adjustments that will  
25          start, I assume tomorrow.  I don't recall the number,

1 five, six adjustments that still remain. That's my  
2 understanding.

3 Q. Are the disputes ones of interpretation?

4 A. I understand in the separate adjustments  
5 there may be an interpretation issue on the one about  
6 the merger. I heard Mr. Rackers discuss this issue as  
7 one of interpretation. I'm not sure this is an issue  
8 of interpretation, but --

9 Q. Is the dispute one to the proper application  
10 of the term?

11 MR. CYNKAR: Objection, leading.

12 MR. DOTTHEIM: I'll withdraw the question.  
13 I have no further questions.

14 COMMISSIONER MURRAY: I know it's past the  
15 time. I have about three follow-up questions for  
16 Mr. Schallenberg.

17 JUDGE REGISTER: Does anybody have any  
18 objections to the Bench?

19 (No response.)

20 JUDGE REGISTER: Commissioner Murray.

21 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

22 Q. Mr. Schallenberg, assuming that UE knew  
23 about the Southwestern Bell document and the language  
24 in it and voluntarily incorporated provisions of that  
25 document into the language in the Stipulation and

1 Agreement that we have before us here, did that in any  
2 way indicate that UE knew how the Staff was  
3 interpreting the SWBT agreement?

4 A. Not at all.

5 Q. So when Mr. Dottheim made the representation  
6 that the monitoring would be the same as that applied  
7 to Southwestern Bell, do you know what the date -- I  
8 guess it was stated here. Do you recall what the date  
9 of that representation was?

10 A. July 19th, 1995.

11 Q. And at that time, had there been any  
12 proposals for adjustments brought to the Commission or  
13 brought to SWBT under the SWBT agreement?

14 A. Yes. In fact, SWBT would have been finished  
15 by that date.

16 Q. Okay. And would UE have had any access to  
17 any of the neg-- any of the material regarding the  
18 Staff negotiations with Southwestern Bell under  
19 Southwestern Bell's agreement? Would they have had  
20 any way to access that information and understand how  
21 the Staff was monitoring under the Bell agreement?

22 A. They would have access to the documents that  
23 are attached to my surrebuttal testimony, and they  
24 would have access to the publicly filed statements  
25 that were filed each year under the Southwestern Bell



1 plan.

2 Q. And the documents that were filed with your  
3 testimony indicated that there were some disputes  
4 about certain categories of costs but that those  
5 disputes were resolved; is that correct?

6 A. Yeah. It listed the different types of  
7 areas that were in dispute, and later on it was  
8 resolved.

9 Q. And is there any document on record that  
10 shows how they were resolved?

11 A. Just the total settlement.

12 Q. So that there was no public document that UE  
13 could look to to see whether they were resolved in  
14 accordance with Staff's interpretation; is that  
15 correct?

16 A. There would be no document that would do  
17 that. I mean, they never asked either, but the -- if  
18 you look at the public document and you compare it to  
19 the schedule of adjustments that were in the Bell  
20 agreement, you can see that the public document has  
21 adjustments in it or areas of dispute that do not  
22 match up with adjustments that are listed in the Bell  
23 monitoring procedures.

24 Q. Okay. One last question. Since this is a  
25 written agreement and the parties were trying to get

1 down in writing everything that they were going to  
2 abide by or all of the terms of the agreement, parties  
3 wanted it in writing, I would assume, so that they  
4 would understand what they were supposed to do under  
5 the agreement. Would that not be your assumption?

6 A. That wouldn't be my assumption for EARP, no.

7 Q. So you think that the contract does not have  
8 to be totally in writing, that negotiations and  
9 statements made outside of the writing should be  
10 incorporated into it?

11 A. No, I don't mean that either. I thought you  
12 meant that the parties were very diligent in making  
13 sure that they had checked and crossed and dotted  
14 their t's and all levels of details to make sure it  
15 was incorporated in the agreement.

16 Q. What I was getting at is, apparently  
17 Mr. Dottheim made an oral representation somewhere,  
18 well, he said July 19, 1995. If that -- if it were  
19 the case that the monitoring procedures were to be the  
20 same as those applied by the Staff to Southwestern  
21 Bell, why were they not in writing? Was that  
22 statement not in writing in the agreement, do you  
23 know?

24 A. From the Staff's perspective, it would be in  
25 writing to the extent that the Bell monitoring

1 procedures were used into the -- into EARP.

2 Q. I'm saying why was it not in the EARP  
3 agreement stating that that's how -- that is the  
4 monitoring procedures that would be used?

5 A. That was just the response Mr. Dottheim gave  
6 to the Commissioners when they asked that question.

7 Q. Okay. And there's no place that that is  
8 stated in writing in this agreement?

9 A. There is no statement similar to  
10 Mr. Dottheim's presentation in this agreement, no.

11 COMMISSIONER MURRAY: Thank you.

12 JUDGE REGISTER: I think that we are  
13 concluded for today. We will go off the record. We  
14 will reconvene tomorrow at 8:30. And is there  
15 anything else that we need to address this evening on  
16 the record?

17 (No response.)

18 Okay. Off the record.

19 WHEREUPON, the hearing of this case was  
20 adjourned until 8:30 a.m., Thursday, June 3, 1999.

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