STATE OF MISSOURI

PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Hearing

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Jefferson City, Missouri
Volume 2

In the Matter of an Investigation)
into an Alternative Rate Option)
for Interruptible Customers of) Case No.
Union Electric Company d/b/a) EO-2000-580
AmerenUE.)

LEWIS R. MILLS, JR, Presiding,
DEPUTY CHIEF REGULATORY LAW JUDGE.
SHEILA LUMPE, Chairperson,
KELVIN SIMMONS,
ROBERT G. SCHEMENAUER,
COMMISSIONERS.

REPORTED BY:

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P R O C E E D I N G S

JUDGE MILLS: We'll start with entries of appearance, and then we'll go right to opening statements. After that we'll take a brief break and mark exhibits. Opening statements, I propose that we go Interruptibles, then either Staff or AmerenUE. Does Staff and AmerenUE have a preference as to which goes first?

MR. COOK: No.

MR. FREY: I just as soon go first then.

JUDGE MILLS: Then we'll do Interruptibles, then Staff and then AmerenUE. So let's go ahead and do entries of appearances beginning with you, Mr. Johnson.

MR. JOHNSON: Robert C. Johnson, 720 Olive Street, St. Louis, Missouri 63101, appearing in this case for the MEG Interruptibles, which include Holnam Inc., River Cement Company and Lone Star Industries.

Judge Mills, I'd like to at this time introduce my associate, Lisa Langeneckert, who has recently passed the Missouri Bar exam and will be practicing with me.

JUDGE MILLS: Okay.

MR. JOHNSON: Lisa is at the same address, of course.

JUDGE MILLS: For Staff?

MR. FREY: Dennis L. Frey, Post Office Box 360, Jefferson City, Missouri 65101, representing the Staff of the Missouri Public Service Commission.

MR. COOK: James J. Cook, Post Office Box 66149, St. Louis, Missouri 63166, appearing on behalf of Union Electric Company doing business as AmerenUE.

JUDGE MILLS: Thank you.

Opening statements, Mr. Johnson.

MR. JOHNSON: Yes. May it please the Commission. My name is Robert Johnson. I represent the three cement companies in this case, Holnam Inc., River Cement, Lone Star Industries, which we're referring to in this case and on the record as the MEG Interruptibles. Each of these companies have been long time interruptible customers of Union Electric Company.

The amount at issue in this case is $2.4 million, which is the difference between what the MEG Interruptibles pay Union Electric under the firm rate that they are presently on, and the amount they have previously paid under the former rate 10M interruptible tariff.

Union Electric and these three and the MEG Interruptibles have had a long-standing dispute over the matter of the appropriate interruptible tariff that would apply to these companies and be acceptable to them and to Union Electric. The dispute between them have resulted in a series of cases before this Commission, including a part of the UE rate design case EO-96-15, a separate case dealing with interruptible tariffs that commenced in 1998, that's ET-99-96. Case ET-2000-666 in which Union Electric was successful in placing into effect a Rider 10M without any opportunity for a hearing and in spite of a number of challenges by the MEG Interruptibles. And lastly, this proceeding.

Following the failure of Union Electric and the MEG Interruptibles to negotiate a new interruptible tariff satisfactory to both, these companies initiated this proceeding. They did so reluctantly, but the impact of shifting from the former rate 10M interruptible tariff to the firm rate was so substantial that they felt they had no choice.

There are four tariffs that will be

involved in this case, and it will be identified from time to time in the proceedings. The first is the original tariff rate 10M under which the MEG Interruptibles were previously served and was in effect for more than 25 years. In order to accommodate the utility and conform the requirements of rate 10M, each of these companies has been required to adapt its manufacturing processes so as to be able to withstand interruptions and still maintain acceptable levels of production.

The basic concept of tariff rate 10M is protection of reliability of the system at times of system stress, which typically occurs in July and August of each year. A principal benefit of this tariff is that it reduces the need for construction of expensive generation capacity. This benefits all customers of the utility including the residentials, commercials and other industrials.

The MEG Interruptibles that we respect in this matter together made available for curtailment 40 megawatts of interruptible power under this tariff. The second tariff is Rider L that was placed in effect at the time of the settlement of the Union Electric rate design case. It was our understanding that this tariff was to replace rider 10M, which was terminated under the settlement agreement subject to the agreement of Union Electric and the MEG Interruptibles to enter into negotiations for the purpose of arriving at a mutually agreeable tariff that would address the concerns of both parties.

Rider L is essentially a voluntary tariff, which gives the customer the right to accept a curtailment in exchange for certain benefits. Rider L does not necessarily reduce the need for construction of additional generation because there is always uncertainty as to whether or not customers will voluntarily curtail at times when reliability may be threatened.

Following a series of meetings between Union Electric and representatives of the MEG Interruptibles, which were unproductive, UE brought forth a new tariff concept which has been reflected in Rider M and is dramatically different from former rate 10M.

Rider M establishes a complicated formula which sets price values for energy at times when Union Electric requires curtailment because of high energy costs. These values are established annually. Union Electric has the right to curtail, subject only to the right to pay the strike price to the respective customers. Because these values are determined once a year, they may or may not be relevant to the market price at the time curtailment is required.

The basic concept of this tariff is curtailment for economic reasons, not for system reliability reasons. This tariff is not keyed to protect the reliability of the system. It is possible under this tariff that Union Electric may exercise its right to curtail for a price that is significantly below the current market price of electric energy, and in effect sell a customer's energy off system in a competitive market.

The fourth and last tariff is the so-called Brubaker Tariff, which was drafted by Maurice Brubaker, our principal witness in this matter, and incorporates concepts of the original Rider 10M and also of the economic curtailment proposals of Union Electric. Under this tariff, approximately 40 megawatts of curtailment would be available to Union Electric in accordance with the terms of the tariff.

This tariff was prepared during the course of negotiations with Union Electric that were mandated by the settlement agreement in 96-15. But as I indicated previously, these negotiations were unproductive. During the course of negotiations, this tariff was submitted to Union Electric with the request for their comments. In our judgment they have essentially declined to do that and has become necessary to bring this proceeding in accordance with the settlement agreement in a rate design case.

It is the purpose of this case to consider and determine whether or not to implement the Brubaker Tariff as an alternative to existing tariffs. The Brubaker Tariff incorporates traditional interruptible tariff concepts, and thus makes available for reliability protection purposes up to 40 megawatts of electric power.

In addition, at times of extremely high energy costs, utility may determine the incremental cost of acquiring power in the market and charge the customer the incremental cost, plus a mark up of one cent in the event the customer elects to stay on the system.

If the customer elects to curtail, the utility will pay the customer approximately

90 percent of the quoted incremental cost times the number of kilowatt hours estimated to have been curtailed. This tariff incorporates concepts that are protective of the utility and of its customer.

The witness Maurice Brubaker, in his direct and surrebuttal testimony, has gone to great lengths to explain and support the proposal contained in the Brubaker Tariff. And we encourage the Commissioners and Judge Mills to ask Mr. Brubaker any questions that they wish to supplement the record in this case.

The actions of the utility in this case have proved very costly to the MEG Interruptibles. As a result, the switching from the former interruptible tariff 10M to firm power, these companies have sustained additional costs of approximately $2.4 million. This money does not flow to any class or group of customers. Because the billing determinants were determined prior to the tariff change, so that the only beneficiary of this additional revenue is Union Electric Company.

There is ample evidence that Union Electric Company requires greater generation capacity. They are presently seeking to acquire capacity from their Illinois operations for

Missouri customers. There is no question in our mind, at least, that reliability is a key issue in this case. We believe that the Commission should recognize that the protection of the customers is an extremely important matter.

While we have been fortunate to have minimal interruptions in a current year, this summer was very moderate and mild. And there was no serious threat to the customers, even though there were a number of outages that took place, some for substantial periods of time.

We submit that reliablity is a key feature of the Brubaker Tariff, and we ask the Commission to place Brubaker Tariff into effect and restore these clients to their previous rate situation, and also provide 40 megawatts of curtailable power to assist in protecting the reliability of the Union Electric System.

And, further, to protect Union Electric for volatility and the pricing of electric energy under our present economic situation. Thank you very much. That concludes my opening statement.

JUDGE MILLS: Thank you, Mr. Johnson.

Mr. Frey?

MR. FREY: Thank you, your Honor. May it

please the Commission. By way of background, on May 3rd, 1999 a stipulation and agreement was filed in Union Electric's most recent rate design case based on appeal 96-15. Stipulation and agreement was approved to the Commisson's report and order issued November 18, 1999 and was signed by all the parties to the instant including applications in this case, MEG Interruptibles.

Among other things the stipulation and agreement settled the faith of UE's interruptible rate provision, the so called rate 10M. Rate 10M addressed the conditions under which UE can manage its reserves by interrupting a curtailing power to some of its large industrial customers in order to reduce load. Reducing load time at time of system peak reduced UE's required reserves. Reducing load at other times freed up generation to provide needed reserves.

Under the terms of this stipulation and agreement, rate 10M was to be eliminated effective June 1st, 2000 and, indeed, that tariff provision is no longer with us. Also UE's voluntary curtailment rider known as Rider L, was to be effective on June 1, 1999. It was anticipated that UE would be filing an options-based curtailment rider at some point in the future. And the stipulation and agreement provided that the MEG Interruptibles could also offer for the Commission's consideration without objection on procedural grounds by any of the signatory parties an additional rate option for the interruptible customers.

On March 20 of this year, the MEG Interruptibles filed such a proposal and that's why we are here today. UE's options-based curtailment rider, Rider M, was filed subsequently on April 6, 2000 and became effective on May 6. The Staff opposes the adoption of the interruptible rate concept propounded by the MEG Interruptibles in this case for three general reasons.

First, the MEG Interruptibles have presented no evidence that UE needs a tariff such as the one being proposed in order to provide reliable service to its customer. Indeed, the evidence indicates that such a tariff is not necessary.

Second, notwithstanding contrary assertions by MEG Interruptibles, the basic interruptible rate concept here proposed is essentially the same as that contained in the now defunct Rate 10M. Accordingly, Staff takes the same view of this proposal as it did of Rate 10M.

The MEG Interruptibles offered prefiled testimony indicating that prior to its termination, the Rate 10M concept had been in effect for an extended period spanning well more than two decades. Mr. Johnson, I believe, referred to over 25 years in his opening statement.

However, the fact is that times have changed. As a result of the tariff provision crafted along the lines of Rate 10M as it's here proposed by the MEG Interruptibles, simply is out of step in the modern world following FERC Orders 888 to 2000. A world of power marketers, power exchanges, trading hubs, ISOs, RTOs, RTGs, transcos and looming retail competition.

In particular with the opening of the wholesale market competition, Union Electric Company have no longer counted on being able to purchase available power from its neighbors at what are now viewed as relatively low prices.

Moreover, as the price of wholesale power is not driven by market forces, power is now almost always available at some price as economists are fond of saying, in a free market, there are no shortages, only prices.

Thus, as the evidence shows in this new environment, an interruptible rate proposal such as has been presented here is wholly inappropriate to the realities of wholesale power market.

The third general reason Staff opposes adoption of the MEG Interruptible's proposal is that even if the concept had merit in today's environment, it is far from fully developed at this time. At the present time of discount to the MEG Interruptibles of $5 per kilowatt per month is being suggested, the evidence indicates that this figure is inordinately high.

Staff asserts that a study would be required in order to determine the true value to UE of the ability -- of the ability of it to curtail. The proposal has other deficiencies. For example, the conditions under which the company may curtail are not clearly specified.

Given the need then for additional analysis and clarification of key provisions, the proposal is at this point merely a concept, many of the details of which would still need to be specified in the actual tariff sheets. Disagreements among the parties as to those details will likely result in a need for further hearings.

For these reasons, the Staff submits that the Commission should not order the implementation of the MEG Interruptible's proposal at this time. Thank you.

JUDGE MILLS: Thank you.

Mr. Cook?

MR. COOK: Thank you, your Honor. On May the 3rd, 1999 in Case No. EO-96-15 the parties, including the three companies involved in this case represented by Mr. Johnson, filed a stipulation that included among many other things, an end to the old Rate 10M interruptible rate. The stipulation also called for the parties to meet to discuss other options that might be mutually beneficial and acceptable to all concerned parties.

The Commission accepted that stipulation on November the 30th of '99 and Rate 10M was terminated thereafter, and the meetings were held. No agreement was reached, however. At the same time, though, Ameren filed and the Commission has accepted two voluntary rate programs that allow customers to curtail their usage and receive certain benefits.

Currently under Rider L, there are approximately 150 megawatts that has signed up for that rider. And Rider M, something in excess of 20 megawatts. In both of those situations, obviously, if everyone would take advantage of a particular call for curtailment, there would be over 170 megawatts available for curtailment.

While it is true that on a particular call, individual customers might or might not curtail. In fact, the same was true under the old 10M, as true under the Brubaker proposal. While there will be a financial disincentive for a customer not to curtail under the old rate and under the proposed rate, there is still nothing that forces those customers off. So in effect, it's just a question of what is the incentive or the disincentive to either curtail or not.

So it is inappropriate to suggest that it is only the Brubaker Tariff which allows the company to somehow reap the benefit of curtailable power that is dependable to curtailable power.

These new alternatives may not provide -- the rate L and M may not provide the three customers here, but as much financial benefit as the former 10M rate did. Therefore, they have requested the Commission to, in effect, reinstitute the old 10M rate. Yes, there are certain differences between the former rate and the one proposed in this case. But those differences do not address the concerns that both UE and the Staff had about the old rate, and which caused UE and the Staff to press for its elimination in the stipulation in that rate design case.

The evidence in this case is clear that while the new rate proposed by the customers here would certainly benefit them, it is opposed by the Company and the Staff, because it is not cost based. It does not address the deficiencies of the old rate. It is, in fact, more restrictive for the utility than the old rate. It is not needed for reliability purposes. It would result in these three customers being subsidized by other customers or stockholders and it would, in effect, be a reversal of one element of a complex settlement of a rate design case barely a year after that settlement was approved.

The Company absolutely denies that it declined to discuss options including the Brubaker Tariff with the MEG Interruptibles. It should also be remembered that there really is only one rate in issue in this case. And, though, we will hear a lot of testimony about Rider M and about Rider L and about the old 10M and whether or not M and L are sufficient for the purposes of these customers. It should be remembered that M and L are currently in effect and have been approved by this Commission and are not on trial here. The question is whether or not the proposed rate by Mr. Brubaker is appropriate to be forced upon an unwilling utility.

The Commission should not force its rate on an unwilling utility, and the Commission should not reinstitute a rate that unfairly benefits only three customers when there is abundant evidence that the proposal is not cost justified or otherwise needed. Thank you.

JUDGE MILLS: Thank you.

At this point we will go off the record and mark the prefiled testimony, and then we'll begin with the MEG witness Mr. Brubaker first. Let's go off the record.

(OFF THE RECORD.)

(EXHIBIT NOS. 1 THROUGH 7 WERE MARKED FOR IDENTIFICATION BY THE REPORTER.)

JUDGE MILLS: Before we get to our first

witness, we have a few procedural housekeeping matters to take care of. First, there is the motion of Staff to file the list of issues, order of cross-examination document out of time. There were no objections to that. It was hardly late at all. That motion will be granted, and the list of issues will be accepted.

Then there is Union Electric Company's request to file its statement of positions on the issues out of time. Again, there were no objections to that and that one will be granted. The final motion pending is the motion of Union Electric Company to strike the position statement of the MEG Interruptibles.

The list of issues and the statements of positions are really a tool that help the Commission to sort of neatly categorize and briefly summarize what the issues in the case are. It appears in this case that the MEG Interruptibles did not avail themselves the opportunity to concisely tell the Commission their positions on the agreed upon list of issues. It really isn't the kind of document that's going to be stricken. It simply is a document that's not terribly helpful to the Commission, so will not be stricken. It doesn't do us much good, but there's nothing objectionable about it. So the motion to strike the position statement of the MEG Interruptibles is denied.

I think that's all the preliminary matters we have to take care of, so, Mr. Johnson, if you will call your first witness, please.

MR. JOHNSON: Yes. I'd like to call Maurice Brubaker.

(WITNESS SWORN.)

MAURICE BRUBAKER, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. JOHNSON:

Q. Would you state your name for the record, please?

A. Yes. My name is Maurice Brubaker.

Q. And would you give us your business address?

A. My business address is 1215 Fern Ridge Parkway, St. Louis, Missouri 63141.

Q. And by whom are you employed and in what capacity?

A. Brubaker and Associates as a consultant and president of the firm.

Q. Mr. Brubaker, have you previously filed in this proceeding a document that's been designated as Exhibit 1 by the court reporter?

A. Yes.

Q. And does that consist of 14 pages of your direct testimony plus Appendix A, and Schedule 1?

A. Yes, it does.

Q. And would you identify Schedule 1 for me, please?

A. Yes. Schedule 1 is a listing of the interruptible rate concepts that we ask the Commission to adopt and incorporate in a tariff.

Q. Mr. Brubaker, do you have any changes or modifications to your testimony that's reflected in Exhibit No. 1?

A. I do.

Q. And would you state those, please?

A. Yes. The first is on page 3 on line 11. There's a figure at the end of the line which is 60,000 kilowatts, which I can't explain why it's 60,000 kilowatts. It should be 40,000 kilowatts. And on page 13 of the testimony as well, on line 20 the same change should be made, striking 60,000 and substituting 40,000. 40,000 is the right number and it's used in other places in the testimony, so I ask to change that. Those are the only corrections I would have.

Q. Mr. Brubaker, Exhibit 1 as modified by the changes you have just described, is that your direct testimony in this case?

A. Yes, it is.

Q. And is it true and correct to the best of your knowledge, information and belief?

A. Yes.

Q. It is, okay.

I can tender this witness for cross and we can do the surrebuttal later or whichever you prefer.

JUDGE MILLS: Why don't you do the direct testimony on the surrebuttal and offer them both at the same time.

MR. JOHNSON: All right.

BY MR. JOHNSON:

Q. Mr. Brubaker, I'd like you to identify Exhibit 2 for me, please?

A. Yes. That's my prepared surrebuttal testimony.

Q. And that consists of 18 pages of your surrebuttal testimony; is that correct?

A. It does.

Q. And do you have any changes or

modifications you would like to make to that testimony?

A. I do. I have one change on page 17.

Q. What is that change, please?

A. On line 10, the sentence that begins in the summer of 1998 and continues through line 12 with the words firm load obligation. I would like to strike that one sentence.

Q. That's a sentence that begins in the middle of line 10 and concludes roughly in the middle of line 12; is that correct?

A. That is correct.

Q. Now, as so modified, is your surrebuttal testimony true and correct to the best of your information, knowledge and belief?

A. Yes.

MR. JOHNSON: At this point I tender Mr. Brubaker for cross-examination.

JUDGE MILLS: Thank you. Would you like to offer Exhibits 1 and 2?

MR. JOHNSON: Yes.

JUDGE MILLS: Are there any objections to Exhibit 1 or Exhibit 2?

Hearing none, they will be admitted.

(EXHIBIT NOS. 1 AND 2 WERE RECEIVED INTO

EVIDENCE.)

JUDGE MILLS: Cross-examination beginning with Mr. Frey.

MR. FREY: No questions, your Honor.

JUDGE MILLS: Thank you.

Mr. Cook?

MR. COOK: I have a few.

THE WITNESS: Good morning, Mr. Cook. I knew I could count on you.

CROSS-EXAMINATION BY MR. COOK:

Q. Good morning, Mr. Brubaker. See how quickly I stop.

Let's look at page 3 of your surrebuttal testimony, Exhibit 2, if you would, please? About line 10 you refer to pure speculation on Mr. Kovach's part concerning his opinion about the trade-offs in considerations made by these customers. As I recall the context of this statement, this was in the question of the settlement of the rate design case wherein the Rate 10M was eliminated, and I believe Mr. Kovach had suggested that all the parties got something, gave up something and you were suggesting that that was speculation on his part concerning your clients; is that correct?

A. Yes. As to the specific factors he enumerated as to what they might have perceived as benefits or pluses.

Q. And you did participate in that case, did you not?

A. I did.

Q. Is it true that part of that settlement of the rate design case, the cement companies that are part of this case were allowed to continue being billed on the interruptible rate through June of 2000 even though all the other customers' rates changed on April 1 of 2000. Do you recall that?

A. As I recall the 10M rates stayed in effect through the May billing period of 2000, not through June.

Q. Okay. I meant to say through June 1. So it would have been through May?

A. Through May.

Q. Is that correct?

A. Yes. I'm not sure about the other part of your statement that the rates of other customers changed in April. There was a reduction that other customers were able to achieve in April, which I think was not applied to the rate 10.

Q. Isn't it true that the large primary rate

11 that the cement companies were moving to after June 1 got a larger rate reduction than the overall rate reduction provided to all UE's customers in April?

A. On average it was slightly more. Not all -- not all customers on that rate got a decrease because of the way the allocation of the decrease between small primary and large primary was handled.

Q. Isn't it true that the three interruptible customers did receive lower -- some lower rates on that April 1 date, but were also allowed to have the 50 percent demand discount extended for those final two months?

A. The 50 percent demand discount stayed in effect. I don't recall without looking. I don't think I ever saw the bills for those months for those customers whether there was a decrease. If you represent to me that there was, I'll certainly accept that.

Q. Thank you.

Do you recall whether or not the Rate 11M was redesigned to implement a 1.7 percent reduction by reducing the demand charges by 1.3 percent and the energy charges by 3 percent, which would favor a large -- above average -- let me start that one again. All right.

Do you recall that the 11M rate was redesigned to implement the 1.7 percent reduction by reducing the demand charge by 1.3 percent and the energy charge by 3 percent which favored above average-load factor customers such as these three?

A. That was roughly the correct percentages, I think, and it would have a beneficial effect on high-load factor customers. That's not the only change in the rates.

Q. Correct.

A. However, there were changes in the high voltage discounts, which in general were not favorable to those customers.

Q. However, two of those three customers which received the Rider B billing credits, which you were just talking about -- that was Rider B you were referring to?

A. Correct.

Q. That the credits recommended in the settlement were still significantly higher than either UE or the Staff had been proposing in the rate case?

A. Yes. And lower than what was previously in effect.

Q. Correct. On page 5 of your testimony, question and answer at the bottom of that page in general, you indicate that you cannot recall anyone from UE providing a critique of the interruptible rate proposal of the cement companies. And, I believe, that something along that line was mentioned in Mr. Johnson's opening statement.

Do you recall attending a meeting in your office with various UE representatives on the afternoon of February 9, 2000, I believe attended by Mr. Nelson, Mr. Gully and you and Mr. Kovach?

A. Yes.

Q. Let me read to you several statements and please tell me if you have heard them before from UE personnel perhaps at that meeting or other places. That your proposal was too overly restrictive regarding curtailment criteria. Do you remember hearing that?

A. Yes.

Q. That it maintained the previous -- that your proposal maintains the previous level of demand discounts, which we believed to be too high?

A. Yes. In part.

Q. And that even with committing UE, some curtailments based upon high cost days, your proposal is still more costly to UE than other UE alternative Riders L and M for meeting firm customer loads?

A. Yes.

Q. So it is not your testimony that UE never provided those critiques to you; is that right?

A. No. I guess what I was trying to convey was that there was no discussion of the particular aspects of the proposal that we had made. There was no back and forth about the specific terms. It was more in the overall nature that you just indicated which basically was UE saying, Well, you know, we've decided we don't like this form of rate, and we don't want to talk about that form of rate. We want to talk about something else, which wound up to be ultimately filed as Rider M.

Q. All right. Thank you.

Page 11 of your testimony.

MR. JOHNSON: Is this the surrebuttal?

MR. COOK: Yes. I'm sorry. Exhibit 2.

BY MR. COOK:

Q. Excuse me a minute. On page 11 near the top, the end of the question was, that he states, referring to Mr. Kovach, I believe, that the discount is the largest given by any utility in the State of Missouri. How do you respond? And you said, Mr. Kovach advised no specific details in his answer.

Although, Mr. Kovach may not have done so, the record would show, does it not, that Mr. Watkins' testimony on page 5 includes that information?

A. Yes. In fact, I indicated that in a couple lines down in the same answer that you're referring to when I pointed out that while the credit is the largest, the firm rates against which the credit is applied is also the highest firm rate, so I'm not disagreeing with that. I'm simply saying he didn't give any details about the rates or the terms and conditions and so forth.

Q. All right. You're not suggesting, are you, that the discount and the rate should move in tandem, are you, by that last statement?

A. That's typically what happens.

Q. Still on page 11 at line 12, you indicate that the Company continues to offer a rate similar to 10M in its Illinois service territory; is that correct?

A. Correct.

Q. You are aware, are you not, that the Illinois restructuring law prohibits a utility from withdrawing its current rates?
A. Yes.
Q. Look at page 15 in this same testimony, please. This is a discussion, I believe, you have about the comparable reliability of CTs, combustion turbines and the capacity that would be freed up by interruptible rates. Is that generally the topic you're talking about there?
A. Yes. I was just responding to some testimony of Mr. Watkins about the benefits of physically curtailable interruptible power as compared to operations of combustion turbines. He was making an argument that they weren't as flexible -- interruptible tariffs weren't as flexible or useful as combustion turbines, and I was simply responding by saying that's not the whole story, as combustion turbines are not as reliable.
Q. And to support that, you, on generally lines six and below, refer to a generation availability data system that's provided by the North American Electric Reliability Council, NERC?
A. Yes.

Q. And you indicate that the August 1999 report shows forced outage rates of over 50 percent for units smaller than 50 megawatts and forced outage rates of over 30 percent for units larger than 50 megawatts; is that correct?

A. Correct.

Q. Let me show you something. I guess, let me mark this.

May I have this marked appropriately?

JUDGE MILLS: Yes. That will be Exhibit 8 and it will be described as data request No. MB10 from Mr. Kovach to Mr. Brubaker and the response thereto.

MR. COOK: Yes. Thank you.

(EXHIBIT NO. 8 WAS MARKED FOR IDENTIFICATION BY THE REPORTER.)

THE WITNESS: I do have it. Hold on.

MR. JOHNSON: Are you going to offer to admit this to the record?

MR. COOK: I believe so.

THE WITNESS: Okay. I have it.

MR. JOHNSON: We need to get some background on it so we can understand it.

BY MR. COOK:

Q. Would you identify Exhibit 8, please, sir?

A. Yes. It's a response that I gave to Union Electric to a data request No. MB10 in this case.

MR. COOK: Is it all right, Judge, that I wander around?

JUDGE MILLS: Feel free.

MR. COOK: Thank you.

JUDGE MILLS: Stay close enough that the court reporter can hear you.

BY MR. COOK:

Q. The question says if I read it correctly is, Please provide a complete copy of the NERC and GADS documents relied upon in referencing CT forced outage rates on page 15 of your surrebuttal testimony; is that correct?

A. Yes.

Q. And in response you indicate, quote, The entire NERC GADS document can be downloaded from their web site?

A. Yes.

Q. Attached. Please find a copy of the summary data from the August 1999 edition. And is that what you have -- well, explain briefly what is that you attached, where it came from, please?

A. Yes. The National Electric Reliability Council has a subgroup or a function called generation availability data study, I think it's called GADS for short. And annually they publish statistics on the various characteristics on generating units being operated in the United States. They publish a summary report, and they also publish a detailed report that used to be available in hard copy, but now it's just available on the web site.

Q. All right. And you then made copies of several pages of that?

A. I made a copy of all the pages of the summary brochure.

Q. Okay. Thank you.

Now, would you tell us which page and which column that you used to find the information that you used in your answer or in your statement in your testimony about the forced outage rates, please?

A. Yes. If your pages are in the same order as mine, it will be the last page.

Q. And the heading on that page is what?

A. The heading is 1994 to 1998 generating units statistical brochure.

Q. All right.

A. And down the left side is a description of different kinds of generating units. The first four are nuclear, different kinds of nuclear facilities. The next two labeled jet engine and gas turbine are the peaking-type units that I had referenced here. And if you look in the columns are labeled FOR and EFOR standing for forced outage rate and equivalent forced outage rate, you will see the forced -- you will see the forced outage rates that I referenced in my testimony being in one case higher than 50 percent. In the other case higher than, I think, it was 30 percent.

Q. All right. And what is the definition of forced outage rate or the formula that is used to determine that rate, do you know?

A. It's stated in the brochure.

Q. Where is that, please?

A. Let's see. I think it's really on the page that's entitled Equations, and about halfway down the first column that's a definition of both forced outage rate and equivalent forced outage rate.

Q. All right. And that very clearly says FOH slash FOH plus SH times 100 percent, right?

A. Right.

Q. And then do we find FOH definition -- the definition of FOH and SH on the next page; is that right?

A. I think so.

Q. Forced outage hours is FOH, sum of all hours during forced outages?

A. Right.

Q. SH being service hours, total number of hours a unit was electrically connected to the transmission system?

A. Right.

Q. This is then the information that you used to support your statement on page 15; is that correct?

A. Yes, it is.

MR. COOK: I would ask that Exhibit 8 be admitted into evidence, please.

JUDGE MILLS: Are there any objections to the admission of Exhibit 8?

Hearing none, it will be admitted.

(EXHIBIT NO. 8 WAS RECEIVED INTO EVIDENCE.)

MR. COOK: Thank you.

JUDGE MILLS: Now, Mr. Cook, at your earliest convenience, we need copies for the court reporter and for the Bench and the five commissioners, please.

MR. COOK: Yes. Thank you.

That's all I have. Thank you.

JUDGE MILLS: Thank you.

Redirect?

MR. JOHNSON: I have no redirect.

JUDGE MILLS: Thank you.

Mr. Brubaker, you may step down. I'd ask you to stick around, if you please. The Commission may have questions for you.

THE WITNESS: I'll be here.

JUDGE MILLS: Mr. Johnson, you may call your next witness.

MR. JOHNSON: Yes. I'd like to call Mr. Tom Rader.

(WITNESS SWORN.)

JUDGE MILLS: You may be seated.

TOM RADER, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. JOHNSON:

Q. Would you state your name for the record, please?

A. Tom Rader.

Q. And by whom are you employed and in what capacity?

A. I'm employed by River Cement Company. I'm vice president of manufacturing.
Q. What is your business address?
A. Business address is 1000 River Cement Road, Festus, Missouri. I think there was a mistake in -- the zip code should be 63028.
Q. Mr. Rader, I'd like to hand you the document that's been designated by the court reporter as Exhibit 3 consisting of four pages, and could you identify that for me?
A. Yes, I can. It's testimony that I gave.
Q. That's your direct testimony; is that correct?
A. Yes.
Q. And do you have any changes or modifications you would like to make to that testimony?
A. The only thing I had was the zip code for the plant should be 63028.
Q. 63028 on line 3?
A. Yes.
Q. Page 1; is that correct?
A. That's correct.
Q. Okay. As so modified is that testimony of yours true and correct to the best of your

knowledge, information, belief?

A. Yes, it is.

MR. JOHNSON: I'd like to offer Exhibit No. 4.

JUDGE MILLS: Are there any objections -- I'm sorry. You're on Exhibit No. 3, I believe.

MR. JOHNSON: Excuse me. Exhibit No. 3.

JUDGE MILLS: Are there any objections to the admission of Exhibit No. 3?

Hearing none, it will be admitted.

(EXHIBIT NO. 3 WAS RECEIVED INTO EVIDENCE.)

MR. JOHNSON: Okay. And I tender Mr. Rader for cross-examination.

JUDGE MILLS: Mr. Frey?

MR. FREY: No questions, your Honor.

JUDGE MILLS: Mr. Cook?

MR. COOK: I have a few questions. Thank you.

CROSS-EXAMINATION BY MR. COOK:

Q. Morning, Mr. Rader.

A. Morning.

Q. Would you look at page 2 of your testimony, please?

A. Yes.

Q. Around line 7 you indicated the lower charge referring to the former 10M rate compensates River Cement for loss of production during the curtailment periods; is that correct?
A. That's correct.
Q. Is it your belief that UE's interruptible rate should be designed to compensate you for the economic value of your lost production?
A. Yes, I do.
Q. Would that be true for other customers as well?
A. I think that for the benefit of the system much like buying an insurance policy to ensure reliability, that if you request somebody to curtail their manufacturing process to benefit the system, that I think it is fair compensation, yes, to compensation them for the loss of production.
Q. I assume that different companies providing even the same type of product, certainly different companies providing different products have different economic value of loss production?
A. Yes, it would.
Q. So should --
MR. JOHNSON: I'd like to object to this line of questions. I don't think Mr. Rader can

testify with respect to other companies. He can testify with respect to River Cement, but certainly not with respect to either competitors in the cement industry or manufacturing plants in unrelated industries.

JUDGE MILLS: I don't believe there's a question currently pending. If you want to review that objection when there is a question pending, we'll take it up then.

MR. COOK: The question I was asking is not on my script. I ask if what I started could be read back, please?

JUDGE MILLS: It was my understanding that you completed the question and the witness answered yes.

MR. COOK: Thank you.

JUDGE MILLS: We can certainly have the court reporter confirm that that's correct.

MR. COOK: That's fine. I believe that's true.

BY MR. COOK:

Q. If the utility rate, in this case an interruptible rate, is to be designed to compensate its customer for its economic value of its lost production should it curtail, wouldn't you have to have a different rate for each customer?

A. I don't know. I think this system worked pretty well. I think it's the same system that's used throughout most of the country. Even in Pennsylvania where it's completely deregulated, still uses the same type of interruptible rates, 50 percent.

Q. Well, let me put it this way: If a utility offered an interruptible rate and the discount did not compensate you for your lost production, you would not take advantage of that?

A. We would not take advantage of it.

Q. Now, the discount or the -- and you have indicated that the 10M rate did adequately compensate you for your lost production; is that right?

A. Yes. We felt that it did.

Q. The discount that we're talking about here is the $5 per kilowatt month discussed in various witness's testimony under the old 10M rate; is that correct?

A. I think so.

Q. Do you have your response to the Company's data request TR5 with you?

A. No, I do not.

Q. I'm not planning on putting this into evidence, but let me just show you.

MR. JOHNSON: May we see copies of that?

MR. COOK: I didn't make any copies. I will show it to you before I ask any questions about it.

MR. JOHNSON: Okay.

THE WITNESS: Uh-huh.

BY MR. COOK:

Q. Have you had a chance to glance at it?

A. Yes.

Q. Is it true that in that data request you indicate that River Cement must receive a break-even amount of at least 80 cents per kilowatt month credit to cover its lost production?

A. Yes. This is the calculation, just a rough calculation I did for my boss was to evaluate about where the break-even point would be. The way I calculated it was about 80 cents total comparing it for the voluntary program.

Q. Okay. So is it true that Mr. Brubaker's $5 proposal would compensate River Cement by over six times its break-even point?

MR. JOHNSON: I've got an objection. I'm not sure the witness understood your question.

That's per hour.

MR. COOK: Uh-huh. Well, I'll object that if there's an error, we can be correct on redirect.

JUDGE MILLS: I don't think you can object on the basis that you think the witness might not understand. If there's some other objection to the form of the question, then you can raise that.

THE WITNESS: That's on a per kilowatt basis.

BY MR. COOK:

Q. The most recent question I asked, I don't know if I got an answer to was that you calculated that you have a break-even point of 80 cents. Mr. Brubaker's proposal is $5. Does that over compensate by six times?

A. I'm not too sure what the -- I'd have to look at what the actual relationship is there.

Q. At the bottom of page 2 of your testimony, please, you state that River Cement's annual savings of $800,000 under the old 10M rate were partially offset by production losses during curtailment periods?

A. Yes.

Q. That was under the old 10M rate; is that correct?

A. That's correct.

Q. And is it true that lost revenue ranged from 71,000 in '97 to a high of a 1,100,000 in '95 during the '95, '99 period for an average of about 586,000 as a result of the curtailments. Let me show you your response to data request No. 4.

I'll show you that one also, Bob. Sorry.

Do you recognize that?

A. Yes, I do.

Q. In this answer to this data request you indicate lost revenue figures -- and let me back up.

Lost revenue would be the cost to you of curtailment; is that correct?

A. Yes. Or in this case this is monies lost based only on Cement production, revenues that would come in with that product. It does not take into consideration other losses. This was a rough calculation only on cement. There were other losses that could be figured in. Kiln down time that occurred on several occasions, which is more intangible type of losses.

Q. And obviously if the combination of those losses or costs exceed the discount, then there's no incentive for you to take a discount, is that right or to take the curtailment?

A. There is an incentive to try to recoup some of those losses. I mean, there was nothing else available to take advantage of, so you would try to come up with a program that would compensate you for as much as possible on those losses. If indeed this program went on and we were incurring much larger losses each year, yeah, we would definitely step out of the program. But over the years this has worked, I think on both sides.

Q. Okay. The figures that you gave us indicate that in 1995 the lost revenue was 1,137,974; is that correct?

A. That's correct.

Q. And 1996 it was $291,066?

A. Correct.

Q. And in '97 it was $71,117?

A. That's correct.

Q. '98 it was $865,190?

A. That's correct.

Q. And in '99 it was $565,963?

A. That's correct. And that is based only on cement operations. Nothing else was figured in.

Q. Then since River Cement was not on the 10M rate this past summer, these annual production

losses, which you might assume to be an average of those numbers, were not incurred by River Cement; is that correct?
    A.   That's true.
    Q.   So the net annual savings would be the difference between the average of those production losses and the discount; is that right?
    A.   It would be the difference between that average and the -- yes, the additional cost of the power, which would be a reduction. So I still -- if you had a $500,000 savings on, let's say, cement, but an additional $800,000 cost for power then it's minus $300,000.
    Q.   And that additional $800,000 cost for power is the loss of the discount that was provided by UE?
    A.   Yes, that's true.
    Q.   Turn to page 3 of your testimony, please. There you discuss UE's option base curtailment Rider M, and you state the service under that rider would increase the likelihood of River Cement being interrupted as a result of market pricing situation; is that correct?
    A.   That is my view, yes.
    Q.   Were you aware of making that statement

that River Cement's options under the rider were to select a curtailment strike price ranging from $100 to $1,000 per megawatt hour?

A. Yes, I was.

Q. And the limitation of weekday curtailments ranging from one day to five days?

A. That's correct.

Q. And the curtailment duration of either 8 or 16 hours a day; is that right?

A. That's correct.

Q. And then a buy-through option as well?

A. That's correct.

Q. Isn't it true that if a customer wants to limit the number of curtailments with a high-strike price, choosing a high-strike price choosing the one day a week and the eight-hour option combination would do that?

A. Yes, it would. At the same time it would reduce any benefit because the likelihood of being, I guess, curtailed was eliminated, but also the benefit was no longer there.

Q. So your concern is that value -- it's not just the question of being interrupted a lot, it is that you could still choose an option -- a combination of options that would have some ability to limit the number of interruptions, but you felt that the discount was not appropriate?

A. That the discount was not sufficient.

Q. On the bottom of page 3 of your testimony, you state that the Brubaker Tariff would be beneficial to River Cement; is that right?

A. I did indicate that it would be more beneficial than the proposed Rider M, yes.

Q. Isn't that because it is essentially the same as UE's old Rider M rate?

A. Yes, it is. That's one part of it. It allowed -- I guess, the compensation was adequate to allow us to take advantage of it. At the same time it also allowed Ameren the ability to curtail somewhat for economic reasons, whereas the old rider was for reliability only.

Q. Well, let me show you a document that is, I believe, a response No. 7 to data request and it's marked privileged and confidential, and I don't want to put it into evidence, and I'm only going to raise one point of it.

Could we go off the record for a moment, please?

JUDGE MILLS: Sure. We're off the record.

(OFF THE RECORD.)

MR. COOK: Let me show you what I'm going to be marked -- asked to be marked as Exhibit what?

JUDGE MILLS: We are up to Exhibit No. 9. Before we go too far down this road, let me point out that there is not a protective order as far as I know in place in this case. And that any information at this point placed in the record will be considered public information.

MR. COOK: This document on the top is listed as privileged and confidential. I've asked Mr. Johnson if that is a problem in this particular situation, and I believe it is not.

MR. JOHNSON: Correct.

MR. COOK: It is okay to put this on the record.

JUDGE MILLS: Okay.

MR. COOK: Thank you, Mr. Johnson.

BY MR. COOK:

Q. Do you recognize this document, sir?

A. Yes.

Q. And it is your response to data request No. 7; is that right?

A. That's correct.

Q. And I'll ask that the entire document be placed on the record, but the last sentence would you read that, please?
A. The Brubaker rate was the same as the 10M rate which counted for the main similarity in savings.
Q. Okay. Thank you.
I'll ask that that be admitted, please.
JUDGE MILLS: Exhibit No. 9 has been offered. Is there any objections?
Hearing none, it will be admitted.
(EXHIBIT NO. 9 WAS RECEIVED INTO EVIDENCE.)
MR. COOK: I will provide you with the appropriate number of copies, and I apologize for not doing so earlier.
JUDGE MILLS: Thank you. And just so the record is perfectly clear, no party is any longer contending that the information on this is either privileged or confidential; is that correct?
MR. JOHNSON: We are not, correct.
MR. COOK: Thank you.
JUDGE MILLS: Thank you.
BY MR. COOK:
Q. Several times in your testimony, of

course, expressed concern about rate options that would tend to increase the number of curtailments; is that right?

A. Yes.

Q. Isn't it true that under the Company's Rider L, increase curtailments would be of no concern since you can simply decline to participate when the price offerings were sent out?

A. We could decline, yes.

Q. And there wouldn't be no cost to you for having made that decision; is that correct?

A. Other than losing the original 10M, yes.

MR. COOK: That's all I have. Thank you.

MR. JOHNSON: I'd like to have a few minutes, and then we'll have some redirect for Mr. Rader. If we could go off the record for about three minutes?

JUDGE MILLS: Well, we'll go off the record for a couple of minutes.

(OFF THE RECORD.)

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

REDIRECT EXAMINATION BY MR. JOHNSON:

Q. Mr. Rader, I have a few questions on redirect. I'd like to refer you to response No. 4

of the data request that Mr. Cook asked you some questions about. And with reference to the first schedule headed as 1995?

A. Uh-huh.

Q. And would you read into the record that information beginning with total finish mill?

A. Total finish mill hours down?

Q. Yes, please.

A. Average mill production rate for both mills, the total hours down was 112.5 hours. The average mill production rate for that period of time was 86 tons per hour per mill. Lost production then was calculated to be two mills times 86 tons per hour times 112.5 hours, which gave a total of 19,350 ton of cement. At that time the average price was 58.81, so the calculation of the total revenue was $1,137,974.

Q. Thank you. Now, I'd like you to refer you to response No. 5, and I'd like you to refresh your memory on that. And the last sentence of the first paragraph, would you read that to me, please?

A. The last sentence of the first paragraph, the lost production of the mills?

Q. Correct.

A. Would be 182 tons per hour or $10,920 per hour. And then did the calculation of $10,920 divided by 13,500 KW, which is equal to 81 cents per KW.

Q. That's per --

A. Per hour.

Q. That's per hour?

A. Yes.

MR. JOHNSON: I have no further questions.

JUDGE MILLS: Thank you, Mr. Rader. You may step down. Let's go ahead, and we'll take a 10-minute recess. We'll be back at 10 after 10 by the clock on the wall on the back of the hearing room. And we're off the record.

(A BREAK WAS TAKEN.)

JUDGE MILLS: Mr. Johnson, if you would call your next witness, we're ready to go.

MR. JOHNSON: Yes. I'd like to call Mr. Don Schuette.

(WITNESS SWORN.)

JUDGE MILLS: Mr. Johnson, please go ahead.

DON SCHUETTE, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. JOHNSON:

Q. Would you state your name for the record, please?

A. Don Schuette Junior.

Q. And your business address?

A. P.O. Box 520, Cape Girardeau, Missouri, 2524 South Sprigg, Cape Girardeau, Missouri.

Q. And by whom are you employed and in what capacity?

A. Lone Star Industries, electrical/electronic superintendent.

Q. And, Mr. Schuette, have you previously filed in this case a direct testimony consisting of five pages?

A. Yes, I have.

Q. And that testimony was prepared by you?

A. Yes, sir, it was.

Q. And do you have any changes or modifications you would like to make to that testimony?

A. Yes, sir. On the first page, line 3, the address of 2534 South Sprigg is incorrect. It should be 2524 South Sprigg.

Q. 2524?

A. 2524 South Sprigg, yes, sir.

Q. Are there any other changes?

A. No, sir, that is all.

Q. Now, Mr. Schuette, is that testimony true and correct to the best of your information, knowledge and belief?

A. Yes, sir, it is.

MR. JOHNSON: I tender this witness for cross-examination, and ask that his testimony be accepted as an exhibit in the record.

JUDGE MILLS: Exhibit 4 has been offered. Are there any objections to the admission?

Hearing none, it will be admitted.

(EXHIBIT NO. 4 WAS RECEIVED INTO EVIDENCE.)

JUDGE MILLS: Cross-examination, Mr. Frey?

MR. FREY: No questions, your Honor.

JUDGE MILLS: Mr. Cook?

MR. COOK: I have a few. Thank you.

CROSS-EXAMINATION BY MR. COOK:

Q. Morning, Mr. Schuette.

A. Morning, sir. How are you?

Q. Fine, thank you.

Let's look at page 2 of your testimony, if you would, please? Approximately line 16 you state it was a burden -- you use the word burden to shut down parts of your plant under UE's old 10M rate.

While it may have been a burden, your company nevertheless curtailed a portion of your plant this past summer on a voluntary basis under the provisions of the company's voluntary curtailment Rider L; is that correct?

A. Yes, sir, it is. But during that time we already had a scheduled outage coming up for that period of interruption that you were requesting, so we basically sold you back air.

Q. Well, we will give you a bill for that, I suspect.

A. I'm sure you will.

Q. So that voluntary curtailment program worked to your benefit, did it not?

A. Not really, beings we were going to be down, we just took advantage of the situation in order to take a little bit more savings back beings we lost a 10M.

Q. Take some savings back, in other words, though, that rate is gone, and you were given a small amount of money for this --

A. Yes, sir, we were.

Q. When you were going to be curtailed anyway. All right.

A. We were going to be down for PDM anyway, yes, sir, that's right.

Q. On the bottom of page 3 of your testimony you state that you estimated that over the last three years a savings to Lone Star on the basis of the old 10M rate, I guess, it was about $1.5 million; is that right?

A. Yes, sir, that is correct.

Q. That would be an average of 500,000 a year if it was all average?

A. Yes, sir, that's correct.

Q. Now --

A. That is just electric savings now.

Q. Now, those savings were also partially offset by production losses; is that correct?

A. That is correct, sir.

Q. Let me ask you off the top of your head what the average annual -- the average production losses were that you would offset that bi-annually?

A. Say that again, sir. I'm sorry.

Q. Did you calculate for us in response to a data request what those production losses were?

A. In dollars or in tons, sir?

Q. Dollars.

A. In dollars, I believe I calculated it to be $238,400 in 1999.

Q. All right.
A. I didn't do the other years.
Q. And that's the number that you responded to us in a data request; is that correct?
A. Yes, sir. If you're referring to this one dated No. 5.
MR. JOHNSON: Can you identify that data request?
MR. COOK: Well, I can. It is data request No. DS5. It has at least one page of a lot of figures and it is indicated that it's privileged and confidential. And although we don't have a protective order, I have no interest in putting anything that might be confidential. That's the only number I wanted from this witness.
THE WITNESS: I understand.
BY MR. COOK:
Q. Since Lone Star was not on the 10M rate this past summer, those annual production losses were not incurred; is that right?
A. I'm sorry. Say it one more time, sir.
Q. Since you were not in 10M rate this year, those annual production losses were not incurred; is that right?
A. That is correct, sir.

Q. Look on page 4 of your testimony, please. Generally lines 11 to 14. The quote, Furthermore, the fact that these interruptions are market driven and not for the purpose of addressing reliability of the system are of great concern to my company. You go on to say, We were particularly concerned that increasing frequencies of curtailment due to market prices rather than system reliability creates a greater risk of operating losses for my company. Is that an accurate reading of your testimony?
A. Yes, sir, it is.
Q. Is your concern really why there is an interruption or is it the frequency of the interruption?
A. It is both, sir.
Q. Is the reason that your concern is to why as well as the frequency the fact that the why affects the frequency?
A. That is correct, sir.
Q. Okay. What level of curtailment frequency will adversely affect your company's profits and how did you determine that or have you determined that?
A. I don't know that I've actually determined

it other than to compare the rates given on the new M rider to the old 10M to try to compare them out together and try to beat them together and see how they would fall out. But then again, I don't have any specific numbers for the amount of interruptions that could occur, because it could happen at any time, not necessarily off of system constraints, but off of market-driven pricing. So basically I don't know how many times I could be interrupted in any of those other options.

Q. Let me go back a bit. The reason for the interruption being system constraints are price -- or market condition really has no bearing, does it, on whether or not a particular curtailment will adversely affect your company's profits, it's just the fact that it's an interruption?

A. That's correct, yes, sir.

Q. But you do not know how many of those interruptions you can withstand without adversely affecting your profits?

A. At whichever level we choose on the options, that's correct.

Q. On page 5, line 6 of your testimony, you state that you find the Brubaker rate proposal beneficial. You say it would be beneficial to Lone

Star Industries and permit it to achieve operational savings.

Is that because it is about the same as the old 10M rate as far as the discount goes?

A. It's very similar, but also it brings into play the shorter period for the off peak -- I mean, a longer off peak time, bringing it down from ten o'clock down to eight o'clock. That helps us considerably as well. Two more hours of off peak means a lot of savings.

Q. And two hours less of on peak may have an adverse effect to utilities; is that right?

A. Basically most of the time whenever we're interrupted by six o'clock, everything is back to system normal. So I would speculate strictly on my own speculation that after about six o'clock, things start to settle back down. And, no, I don't think it would make that big of a deal to utilities. There's several utilities that do have an eight o'clock off peak.

MR. COOK: I will object to the last part of the statement after the words, I will speculate and ask that it be stricken.

JUDGE MILLS: Well, I think the witness used the phrase I will speculate, but I don't believe that the entirety of the answer was speculation. The objection is overruled.

BY MR. COOK:

Q. You don't know the effect on Union Electric of changing the two hours from on peak to off peak, do you?

A. No, sir, I do not.

Q. You don't know the various load characteristics of Union Electric versus the other utilities that may have different on and off peak hours, do you?

A. No, sir, I do not.

MR. COOK: That's all I have. Thank you.

JUDGE MILLS: Thank you.

Redirect, Mr. Johnson?

MR. JOHNSON: I just have a couple questions.

REDIRECT EXAMINATION BY MR. JOHNSON:

Q. Mr. Schuette, with respect to the Brubaker Tariff, you mentioned in response to Mr. Cook that there were some provisions that were similar to the old rate 10M. But isn't it not also true that there are provisions that authorize Union Electric to conduct economic -- interruptions for economic reasons?

A. Yes, sir, it does.
Q. And isn't that about 60 hours per year?
A. Yes, sir, it is.
MR. COOK: I'm going to object to the improper form of the redirect question. It's leading.
JUDGE MILLS: Can I have the question read back, please?
(THE LAST QUESTION WAS READ BACK BY THE REPORTER.)
JUDGE MILLS: Yes, that was leading. Could you rephrase it, please?
MR. JOHNSON: Yes. I'd be happy to.
MR. COOK: I'd like the witness to forget the answer.
BY MR. JOHNSON:
Q. Can you tell the Commission and those gathered here in the room today if there are other bases for interruption in addition to the the bases that were reflected in the old rate 10M?
A. Yes, sir. There's an economic interruption that they can do for 60 hour a year.
Q. Thank you.
A. You're welcome.
Q. There were also some questions by

Mr. Cook relating to how many interruptions would it take to adversely impact the profits of your operation. Are you familiar with the pattern of interruptions, say, over the last three or four years?

A. With the 10M, sir?

Q. Yes. Correct.

A. Yes, sir, I am.

Q. Okay. And based upon that information, you have concluded that under the Brubaker Tariff --

MR. COOK: Objection. Leading.

JUDGE MILLS: Let's hear the rest of the question.

MR. JOHNSON: Yes.

MR. COOK: Just have you. Just make it have you concluded, not you have. I'm sorry.

BY MR. JOHNSON:

Q. Have you concluded that you can operate profitably under the Brubaker Tariff?

JUDGE MILLS: Does your objection go to that question?

MR. COOK: No.

JUDGE MILLS: Thank you.

THE WITNESS: Yes, sir, I believe it does.

MR. JOHNSON: I have no further questions.

JUDGE MILLS: Thank you. You may step down. I believe we're up to Mr. Dorris.

(WITNESS SWORN.)

JUDGE MILLS: Thank you. You may be seated.

DAVID DORRIS, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. JOHNSON:

Q. Would you state your name for the record, please?

A. My name is David Dorris.

Q. And what is your address?

A. My company's address is Highway 79 North, Clarksville, Missouri, zip code 63336.

Q. And by whom are you employed and in what capacity?

A. I'm the plant manager of Holnam, Incorporated, cement manufacturer in Clarksville, Missouri.

Q. Mr. Dorris, have you previously filed in this case direct testimony consisting of five pages, which has been designated as Exhibit 5?

A. I can verify the five pages. I'm not sure if it's Exhibit 5, but I would think so, yes.

Q. Would you accept subject to check that it's been identified as Exhibit 5?
A. Yes, sir, I would.
Q. With respect to your direct testimony, do you have any changes or modifications you would like to make at this time?
A. No, sir, I don't.
Q. And is the information contained in that direct testimony true and correct to the best of your knowledge, information and belief?
A. Yes, sir, to the best of my knowledge.
MR. JOHNSON: I offer this witness for cross-examination, and ask that his testimony be accepted into evidence.
JUDGE MILLS: Exhibit 5 has been offered. Are there any objections?
Hearing none, it will be admitted.
(EXHIBIT NO. 5 WAS RECEIVED INTO EVIDENCE.)
JUDGE MILLS: Cross-examination, Mr. Frey?
MR. FREY: Just a few, your Honor. Thank you.
CROSS-EXAMINATION BY MR. FREY:
Q. Mr. Dorris, I believe you offered some

direct testimony to the effect that your company has the flexibility back down on your electrical demand when UE asks you to do so; is that correct?

A. Yes, sir it is.

Q. And I would just like to explore a little bit in a little detail what's involved here. Without giving away any trade secrets or anything, can you briefly describe the processes involved in manufacturing cement?

A. Sure. If I get too lengthy, just shut me off. There's several main processes. You have got a crusher system where your rock is brought in from the quarry, large motor, 1,000 horse power up in most cases. From that system it goes to a raw mill system, 6,600 horse power, large motor, again, high-power usage. From that system it goes into a kiln. Our plant has a single kiln. Two 1,200 horse power motors running the system.

Once the clinker, which is the product that comes out of the kiln is produced, it goes to finish mills. Each finish mill also has 6,600 horse power motors that basically you can shut them down in a matter of 60 minutes of less, your entire system. Once the material comes out of the finished mill system, it is a finished product and it is ready for shipment.

Q. Is that a rotary kiln?

A. Yes, sir. It is a rotary kiln. Largest in the world.

Q. Yours is the largest?

A. Yes, sir, largest in the world.

Q. Okay. Can you tell us then the procedures your company uses to reduce its power requirements when UE calls for curtailment? You don't shut down the entire operation?

A. No, sir. We had the agreement under the 10M rule, I guess that's what we're calling it, that we had to get down to seven meg, 7,000 kilowatt power usage. We continue to run our crusher system. We continue to run our raw mill -- not our raw mill system -- only our kiln system and crusher system. But we shut down our finish mills, and we shut down any other small operations. The larger operations are what gives us our power that we can shut down. Two 6,600 horse power motors we can shut down, and the entire system to go with them in less than an hour.

Q. Okay. You're saying that you can shut down in less than an hour?

A. Yes, sir.

Q. So the implication there is that you would need an hour's notice then?
A. Yes, sir. That use with the agreement that we had.
Q. And this agreement that you speak of, is that a written document or --
A. Yes, sir.
Q. Can you identify the document where that agreement exists?
A. I don't have it with me, but I can get a copy of it, I'm sure.
Q. Can you describe it?
A. It's basically a contract between us and AmerenUE where they allow us one hour to get down to our predetermined seven meg usage.
Q. So that is not part of the tariff then?
A. Not that I can see, no, sir.
Q. So what is the shortest amount of time that a shut down could take?
A. Depends on what's going on that day, if we're running one mill, two mills or if we're having any problems. If everything went perfectly well, we might be able to do it in 30 minutes. But sometimes it's a struggle to get it within the 60-minute limit that we're required to meet.

Q. So it's possible then a minimum of 30 minutes at least in certain situations under certain conditions?
A. Under certain circumstances.
Q. You mentioned -- well, let me just ask you this: Did UE always provide at least one hour's notice of its curtailment, let's say in the last five years?
A. No.
Q. Where they required to provide -- well, you've testified that they were required?
A. They were required in writing.
Q. But they haven't done so?
A. No, sir.
Q. What was the minimum amount of time, can you estimate that?
A. We've actually been just -- it was through the grapevine that we found out we were supposed to be under curtailment. At times when we find out, we've got five minutes left before we're supposed to be actually shut down. And we've had to call AmerenUE and let them know that they never notified us that there was a curtailment, and we were never penalized for that.
Q. So you did not shut down on those

occasions?

A. We went ahead and shut down, but we did not meet the hour time frame from when we were supposed to be shutting down, because we weren't notified. From the time we were notified, we were always able to take at down within an hour.

Q. So you were not taking it down then in five minutes?

A. Absolutely not.

Q. You were taking it within an hour, let's say or something like that.

What would be the effect under your plant operations if you were to lose power or you would be shut down immediately?

A. Any number of things could happen. We've got a rotary kiln that's 3,400 degree air temperature on the inside. If that thing stops turning -- 760 feet long supported in seven positions. If that thing stops turning, all your heat is on the top. Have you ever seen a banana 760 feet long? It's not a pretty sight. So you could do extreme damage to your kiln system.

Everything that's in your system would virtually stop where it's moving in the system. Systems would be plugged up. The major damage

would be your kiln system.
Q. How long do you think it would take just to clean out the kiln?
A. Four hours. From the time you put feed into the kiln, till the time you get the material out the other end is four hours.
Q. I mean, if you shut down, how long -- would that create a tremendous problem in terms of cleaning out the kiln or could you use --
A. Cleaning it out is not the detrimental problem. It's the damage. You will actually warp this kiln that's 760 feet long. Physically warp the kiln. That's why we do have an emergency generator as a back up for the kiln system.
Q. That was my next question.
A. Absolutely. I can't trust UE with that.
Q. Just for the kiln, though, you don't have for your other --
A. We have it for several critical pieces of equipment. Mainly the kiln, the ID fan at the back of our kiln to make sure we keep air moving through our kiln. And for some of the smaller items, we have other generating stations throughout the plant, but they are very small.
Q. If you have a curtailment and you're

responding to that, how long could you stay down before things really start to get, let's say messy or expensive?

A. Depends on the market. If it's in the middle of June or July when we can ship 200,000 tons a month, and our storage capacity is much less than that, it gets to you after the first 24 hours. One day basically is 12 hours is the most they take you down in one day for curtailment. One day you start to sweat and if you get back-to-back curtailments, then you start calling marketing to see what jobs they have planned, can you postpone some of the jobs, and you're going out to the market to the customers to find out can the customers hold off on some of the jobs they have planned.

Q. So you don't have an inventory, finished goods inventory then?

A. We do have a finished goods inventory, but when you're moving it out as fast as we are, it can get very touchy.

Q. Like about a half a day's supply?

A. No. We actually have probably closer to seven- or eight-day supplies, but it's always sold 30 to 40 days out. So you got the people that are

10 and 15 and 20 days out that it may not affect them for the first 10 days, but it's going to affect them about 10 days down the road. So you've got to get with them to see can they postpone a job that they have 10 or 20 days out, because we are not going to have the product that they are looking for 10 or 20 days out.

Q. So you have obviously problems in meeting your obligations to customers --

A. Absolutely.

Q. -- if you get shut down?

What about internally in terms of cost? Is the cost -- let's say flat X amount of dollars per hour you shut down or does it start to increase, let's say non-linearly or whatever you want to call it? Is there a point? Is there a discontinuity when the manufacturing costs would start to soar?

A. Sure. Your costs are distributed across the entire year. And the more you can produce, that's the bigger divisor that you've got. So your cost per ton goes down by the amount of product that you can make. And that's the way we sell our product is a cost per ton. And that's the way when we produce our product, we're graded on or we're evaluated on cost per ton, and what it costs us to make and what it costs -- what we profit for selling that's our --

Q. What you're talking here about the spreading, like, overhead costs over a smaller output, let's say --

A. Absolutely.

Q. -- is that right?

A. Absolutely.

Q. What I'm asking you is are there actual costs that will accelerate the longer a curtailment lasts?

A. No, I really don't think so.

Q. Is the maximum 12-hour curtailment part of your agreement with UE? Is there any kind of a maximum?

A. I want to say yes, but I'm not positive of that. It's normally from 10 in the morning till 10 at night.

Q. Are you speaking again of this written document --

A. Yes, sir.

Q. -- contract?

Your testimony indicated, I believe, on page 2, that your company was curtailed for about, I guess, three to five times a year over the last five years; is that correct?

A. Over the last five years, yes, sir.

Q. Would you be willing to commit to remain on this streak for five years no matter how many curtailments were called?

A. Absolutely not. We have another year in 1995 when we had 13 curtailments. It becomes very difficult to make a system like this be a win-win situation. It becomes a win for AmerenUE, but it's no longer a win for us.

Q. Once again, the main concern would be the ability to serve your customers --

A. Absolutely.

Q. -- under such a situation?

A. We're in the business to make cement. We're not in the business to play around with the power issues. That's the pennies on it. The dollars are with our customers.

MR. FREY: Thank you, Mr. Dorris. No further questions.

JUDGE MILLS: Mr. Cook?

MR. COOK: Yes, sir. Thank you.

CROSS-EXAMINATION BY MR. COOK:

Q. Morning, Mr. Dorris.

A. Morning, sir.

Q. Let me clear up right away an impression that may have been given by some of the questions and answers that you just went through.

When UE calls for a curtailment and if, let's say as you indicated, UE didn't call you, and you found out five minutes before it was time to start to curtail, for whatever reason you can't curtail at the time that we've asked you to do so, we don't send anybody out there and cut you off, do we?

A. No, sir.

Q. So it is a voluntary thing, even under 10M, you would make an economic decision at the time we called that said, I guess I can get off or, no, I can't. And there were certain penalties involved in that and they may be --

A. From the time we're notified by the contract, we've got 60 --

Q. Let me finish my question.

A. Okay, sir.

Q. If we can't -- if for whatever reason you decide you cannot get off or don't want to get off, that's a decision you make each time that call is made; is that correct?

A. Never made the decision but one way. I think the cost would be totally prohibitive on our part.

MR. JOHNSON: I have an objection to this line of questioning. I think the tariff speaks for itself. I mean, the tariff has certain provisions and the whole philosophy of the tariff is when you're called and you are to curtail, and if you don't, you pay very severe penalties. I think that's what the witness has already indicated.

JUDGE MILLS: Well, I think that's what you just testified to. There's been some testimony that there's a written agreement that's not in the tariff and apparently is not in the record in this case. And I don't know where this line of questioning is going. If you have objections to specific questions, we can raise them as they go.

MR. JOHNSON: Okay.

BY MR. COOK:

Q. Are you aware of any provision in any agreements, and I'm not sure which one you're talking about either, that would allow -- under the 10M rate would have allowed Union Electric to forcibly cut you off?

A. I'm not aware of one, no.

Q. And are you aware that Union Electric ever did that?

A. No, sir, I'm not.

Q. Are you also aware that if under the old 10M rate you did not curtail when asked to, that you would then pay a rate for 12 months with a new level of assurance power; is that correct?

A. Yes, sir.

Q. Is it also true that that rate was -- the new level of assurance power rate would be no higher than the basic large general service rate or primary rate that you were on absent the 10M rate?

A. I'm not exactly sure how it all works, but I would -- if that's the way it reads in our contract, yes.

Q. Let's look at page 2 of your testimony, please. On the second line you refer to the 10M rate, and then you have in parentheses suspended. You are aware that -- are you aware that the 10M rate is not suspended, it is no longer a rate that is available?

A. It has been suspended to me.

Q. All right. You are not an expert in rates, obviously?

A. Absolutely not.

Q. Okay. Thank you.
On line 9 of that page --
MR. JOHNSON: Are you on page 2?
MR. COOK: Yes. This is of your Exhibit 5.
BY MR. COOK:
Q. Page 2, now I'm talking about line 9. You state there that, quote, Reduced cement production creates operating losses in terms of lost revenues from sales of cement; is that correct?
A. Yes.
Q. And then the last sentence in that paragraph you state that Holnam felt that the rate 10M curtailment credit coupled with the frequency of curtailments tied primarily to system reliability was a fair balance with the production losses realized during the curtailments; is that right?
A. Yes, sir.
Q. Do you remember receiving data requests from Mr. Kovach?
A. No, sir. I didn't receive the data request. Mike Morrison, our senior process engineer, handled the data requests that came in to Holnam. I believe that's the way it worked. If

you've got it, I'd be more than happy to look at it and tell you if I received it.
Q. I'll show you DD3.
A. Can we give a copy of this to Mike Morrison, our senior process engineer also?
Q. Let me ask a foundation question. Mr. Dorris, the company sent a variety of data requests directed to the witnesses. This one being DD 3, and the company received answers through your attorney. Did you provide those answers?
A. I'm not sure if I did or if I passed them on to Mike Morrison, our senior process engineer, sir.
Q. Let me show you the answer that was provided and maybe that will help you refresh your memory.
A. I don't remember these, but I could very well. They are very general answers here.
Q. You don't know if you provided that answer or not?
A. No, sir, I don't.
Q. Well, let's look at the question and answer?
A. Sure.
Q. Question says on page 2 of your

testimony -- strike that.

Page 2 of your testimony also refers to operating losses in terms of lost revenue from the sales of cement following interruption under the 10M tariff. Please provide a detailed summary of such operating losses and lost revenues actually sustained by Holnam as a result of each of AmerenUE's individual curtailments of Holnam during each of the years 1995 through 1999. Is that an accurate reading of what I've showed you?

A. Yes, sir.

Q. Now, the answer that I would suggest that the company was provided to DD3 says this: We worked well under the 10M tariff and wish to continue with that arrangement, because the limited curtailments did not cause any losses. The new Rider M tariff is the problem. The number of curtailments under this rider could potentially increase to a level where losses could be sustained.

Whether you provided that answer or not, do you agree with it?

A. Yes, sir, I agree with that. There were probably no losses. Based on the layout of our plant, we have extreme excess grinding capacity. I can produce 4,000 tons of clinker a day, and I can grind 7,000 tons of clinker a day. So to say that there were any losses, there were no losses. I just had to run my mills in a different manner to make up for the cement production that couldn't be made during the time when we were under curtailment.

Q. And do you wish to modify your statement on page 2, which apparently is not true of your testimony where you say reduced cement production creates operating losses and where you say that Holnam felt that the rate 10M was a fair balance with the production losses realized during curtailments. You either had losses or you didn't, Mr. Dorris. Which was it?

A. We didn't have monetary losses through the entire year. There were losses for a period of time. And if I've got 100,000 tons sold for one day, and I get a curtailment, I could very possibly have loss of customers. I will not lose the cement. I can grind the cement later, but a customer could very well possibly go somewhere else and purchase that cement.

Q. So should your testimony be changed or not? You either incurred losses or not, and I can't tell whether you did or not. You say you did in the testimony, you say you did not in the data request.

MR. JOHNSON: I think he's answered the question, Judge Mills. He told them he had short-term losses, but on long term he was able to overcome those losses.

JUDGE MILLS: I haven't heard a clear answer to that question, and I'd like to have an answer for the record.

MR. JOHNSON: Why don't we read back what he -- have the reporter read back what he said.

JUDGE MILLS: We can certainly have the reporter read it back, but I heard it. If you want to hear it again, you can. Would you like the reporter to read it back?

MR. JOHNSON: Please.

JUDGE MILLS: Mindy, go ahead.

(THE LAST ANSWER WAS READ BACK BY THE REPORTER.)

THE WITNESS: I don't want to oversimplify this, sir.

MR. JOHNSON: Why don't we let Mr. Cook restate the question.

MR. COOK: I'll be happy to do that.

JUDGE MILLS: Thank you.
BY MR. COOK:
Q. Mr. Dorris, your testimony says on line 9, Reduced cement production creates operating losses in term of lost revenues from sales of cement. It was a business decision which led Holnam to accept AmerenUE's rate 10M. Holnam felt that the rate 10M curtailment credit, coupled with the frequency of curtailments tied primarily to system reliability, was a fair balance with the production losses realized during curtailments.
Do you wish to keep those three sentences in your testimony as true when the data request says that you experienced no such losses?
A. I'll keep my testimony like it is. But we're oversimplifying things here. In a sold-out market, I can sell my cement, and I won't have any losses at the end of the year. But there are times when there's not a sold-out market, when I'm stuck with the cement at the end of the year and there are losses. Even though I've made it, I can't sell it. But if I don't have it when the customer wants it, then there could very well be losses.
Q. The data request, Mr. Dorris, asked for information concerning operating losses during the

years 1995 through 1999. The answer to that data request said there were no losses. So there were no losses for any of that period of 1995 through 1999?

MR. JOHNSON: I'd like to object, because the data request is very clear. His answer in the data request was that we work well under the 10M tariff and wish to continue with that arrangement, because the limited curtailments did not cause any losses. And then he goes on and the Rider M tariff is the problem.

JUDGE MILLS: What's the nature of your objection, Mr. Johnson?

MR. JOHNSON: He didn't correctly state the response to the data request.

JUDGE MILLS: Could you please ask the question again?

MR. COOK: Sure.

BY MR. COOK:

Q. The data request asked for information about losses --

JUDGE MILLS: I'll tell you what, why don't we do this: Does anyone have an objection to placing that data request and the response into the record?

MR. JOHNSON: We do not, no.

MR. COOK: I do not.

JUDGE MILLS: Mr. Cook? Mr. Frey?

Let's do that. I think maybe we can sort through a lot of this when we actually have the documents in the record.

BY MR. COOK:

Q.   My question, however, still remains, that the data request asks for information about losses sustained by Holnam as a result of each of AmerenUE's individual curtailments during each -- about each curtailment during each of the years, '95 through '99, and the answer says, We worked well under the 10M tariff and wish to continue with that arrangement because the limited curtailments did not cause any losses.

Does that mean then that you sustained no losses under any of these curtailments nor any other time during '95 through '99 because of those curtailments?

A.   I don't know.

Q.   Okay. Thank you.

Should we give these two documents numbers prior to making copies?

JUDGE MILLS: We can or we can hold off

until you're done with your questioning.

MR. COOK: Okay.

BY MR. COOK:

Q. The second question and answer on page 2 you indicated that Holnam was asked to curtail down to levels of 7,000 kilowatts or less with one-hour notice?

A. Yes, sir.

Q. And you indicated under cross-examination from Mr. Frey that that was sometimes actually even less than an hour; is that right?

A. Yes, sir.

Q. And is it not also true that very often it was more than an hour?

A. No, sir. Not that I'm aware of that it took us more than an hour to get down to our seven meg limit.

Q. Okay. First, let me make sure we understand the question, and I understand the answer. The question was not how long it took you to get down, the question was how long prior to the time of requested curtailment you were notified?

A. Oh, I'm sorry, sir. Yes. Sometimes we were notified well in advance of an hour.

Q. Thank you.

A. I'm sorry. I misunderstood the question, sir.

Q. Good. That saved a lot of trouble. Thank you.

In the same answer you also state in the last sentence, Holnam abided by AmerenUE's request for curtailments during all of these curtailment requests; is that an accurate reading?

A. Yes, sir.

Q. On that same page above on line 6 -- start with line 5, Holnam was able to purchase portions of its electrical requirements on this basis because, in some instances, cement production requirements have the flexibility to allow us to back down electrical demand when asked to do so by AmerenUE.

Now, that seems inconsistent, Mr. Dorris, when you say that all of these -- you abided by all of the requests, and yet up here you indicated in some instances you were able to do that when asked to do so by UE.

Are you aware of any situations such as in June of 1998 when there was a problem with Holnam being able to stay curtailed for the amount of time requested?

A. Vaguely, yes.

Q. And there was a great deal of -- were you with the company then?

A. I was with the company then. I was not the plant manager then.

Q. Were you aware of a dispute between Holnam and Union Electric about whether or not Holnam came back on too soon and what that meant and why?

A. Vaguely, yes.

MR. JOHNSON: I'd like to object. I don't know where this line of questioning is going. It's irrelevant to the issues in this case, and I object to this line of questioning.

MR. COOK: Well, he says in his testimony that they complied with all of these curtailment requests, and I've already brought up one that apparently they did not.

JUDGE MILLS: I don't know if I agree with your description of this, you brought up where they may not have. I think there was some discussion about whether or not they did. I don't know if the record will clearly reflect that they didn't. And as to the objection, I think curtailment and abiding by a request for curtailment certainly are relevant, under the old Rider 10M certainly are relevant to the issues in the case, so the objection is overruled.

BY MR. COOK:

Q. Let me ask you directly. Do you know whether or not Holnam was able to get off and stay off for the full amount of time it was requested in that situation in June of '98?

A. For the full amount of time as discussed with an AmerenUE employee, we were allowed to go back on line, and that's when we went back on line before the ten o'clock deadline.

Q. And that's where you found an employee that gave you authority; is that right?

A. Yes, sir, we did.

Q. And there was a dispute whether that was appropriate or not?

A. It was a dispute over whether or not that employee had the power to give us permission to come back on line.

Q. Okay. Thank you.

Let's look at still page 2, line 19. This is the discussion about the new Rider M, and you list there, you say, Holnam decided against accepting service under this rider for the following reasons. The first one you list there is, Curtailments were based on power market prices rather than AmerenUE's system reliability requirements.

No. 2, since curtailments were tied to power market prices rather than system reliability, the frequency and likelihood of curtailments was much greater under the new rider than they were under 10M, in Holnam's judgment.

And then 3, the increased probability of curtailments without a significant increase in the curtailment credit offered by AmerenUE made the existing rider economically unattractive; is that correct?

A. Yes, sir.

Q. This is a similar question that I've previously asked. Isn't it true that the only reason you are concerned about the curtailments being based on power market prices, is that you believe that will cause an increased frequency in curtailments?

A. Economic curtailments as opposed to system reliability curtailments, yes, sir.

Q. Do you really care why or do you just care how often?

A. I care how often.

Q. Okay. So if the credit was high enough which -- or the likely frequency of curtailments were low enough, you wouldn't care at all why the curtailments occurred, would you?
A. That would be AmerenUE's responsibility, not mine.
Q. Thank you.
Now, I just read a portion of your testimony, page 3, lines 5 and 6 that talked about how the new rider increased probability of curtailments without a significant increase in the curtailment credit, quote, made the existing rider economically unattractive, and by existing rider you mean the Rider M, right?
A. Yes, sir.
Q. Now, we sent you a -- or somebody sent someone a data request DD6, which referenced this particular statement in your testimony and asked you to please provide copies of all studies, analyses, memos and other documents, electronic files, et cetera, on which this economic conclusion was based. Also please state what annual level of Rider M payments and credits from AmerenUE would result in Rider M becoming economically attractive to Holnam and provide all supporting

documentation.

Do you recall that your response to this was that Holnam objects to this request to the extent that it is not relevant and immaterial and requests proprietary information and is not reasonably calculated to lead to the discovery of admissible evidence.

And I guess I asked counsel if it's the MEG's position that the question of what would make Rider M economically -- or what makes the Rider M economically unattractive is, in fact, immaterial and irrelevant, and I would move that all testimony by their witnesses concerning Rider M be stricken. If I'm not -- if we are not allowed -- if this objection would stand as to concerning why Rider M is economically unattractive, then certainly all discussion of Rider M would be inappropriate and irrelevant.

JUDGE MILLS: Let's back up here. First, you started out by saying you were going to ask counsel something, but I never heard you ask counsel anything.

MR. COOK: I'm sorry.

JUDGE MILLS: And second, I don't believe there was ever a Motion to Compel or response to this data request. I don't think up to this point there has been any objection to the testimony of this witness or any other witness as to Rider M. I think it's too little too late. I'm not going to allow you to object now to this testimony if you didn't have a Motion to Compel the answer to that data request, and you didn't previously object to the testimony.

I think Rider M from the testimony of your witness, the other witnesses in the case, has at least some relevance to the issues in this case, and I'm going to allow the testimony. Motion to Strike, if that's what it was, is overruled.

MR. JOHNSON: Thank you, your Honor.

MR. COOK: I'm not disputing your ruling and would never do so, but let me be clear.

JUDGE MILLS: Wise choice.

MR. COOK: Let me be clear that I'm not objecting that Rider M is irrelevant. I think it is relevant. My concern was the answer to the data request seems to suggest from counsel before the companies that they believed it was, and the way they were treating the data request and the way they were putting in testimony seemed to be inconsistent, and, I guess, inartfully requested a clarification from counsel on that as to whether they were still believing -- still holding that type of information is irrelevant, but I think your ruling addresses that as well.

JUDGE MILLS: Thank you.

MR. COOK: Thank you for letting me explain that. All right.

BY MR. COOK:

Q. Mr. Dorris, Holnam has chosen not to participate in the Rider L program; is that correct?

A. Yes, sir, that is correct. I think we signed up for it, but we have not utilized it.

Q. Oh, all right. Have you not found any of the offers to be effective enough?

A. Not even close.

Q. It's not a -- never mind. Thank you.

Would you look at page 5, please, of your testimony? Line 6, the question is really you summarize your evaluation of Rider M and the last sentence says, Even if we did opt for Rider M, we felt that we would still incur a loss for the year 2000 because the amounts offered by AmerenUE were lower than what was given in rider -- I mean, in rate 10M?

A. Yes, sir.

Q. How many curtailments did you assume under Rider M in support of that statement?

A. We didn't assume any under Rider M.

Q. Let me rephrase the question. You said that you felt that you would incur a loss if you took Rider M; is that right?

A. Strictly a gut feeling, sir.

Q. Okay. So you had to assume that there would be some curtailments?

A. Absolutely.

Q. And if there were none, you would certainly not lose anything?

A. Right.

Q. Can I have just a moment? I think I'm done.

Do you know, Mr. Dorris, curtailments for Rider M customers in the year 2000?

A. I'm not sure about Rider M, no, sir. I know there was some offered on Rider L.

Q. If there were no curtailments during that year, then the customers who were on Rider M received their discount, other options, the payments?

MR. JOHNSON: That's speculative. There's no basis for this question at all.

JUDGE MILLS: Do you have a response, Mr. Cook?

MR. COOK: It's a hypothetical.

JUDGE MILLS: Could you rephrase it as a hypothetical?

BY MR. COOK:

Q. Hypothetically, if there were no curtailments during the year 2000, customers who were on Rider M would receive the benefits thereof and not have incurred any of the costs which might occur if there had been curtailments; is that right?

A. Hypothetically, yes.

MR. COOK: That's all. Thank you.

JUDGE MILLS: Thank you.

Redirect?

MR. JOHNSON: No redirect.

JUDGE MILLS: Mr. Dorris, you may step down.

Let's go ahead and take a five-minute recess until 11:15, and we'll come back, and we'll go until roughly noon with Mr. Kovach. We're off the record.

(A BREAK WAS TAKEN.)

JUDGE MILLS: We're back on the record. We're continuing with cross-examination. And the next witness is AmerenUE Witness Kovach.

(WITNESS SWORN.)

JUDGE MILLS: Thank you. You may be seated.

Please proceed, Mr. Cook.

MR. COOK: Thank you, your Honor.

RICHARD KOVACH, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. COOK:

Q. Could you state your name, please, sir?

A. Richard J. Kovach.

Q. And by whom are you employed and in what capacity?

A. I'm employed by Ameren Services. My title is manager of rate engineering.

Q. Mr. Kovach, let me show you what's been marked as Exhibit No. 6, and ask you if that is, in fact, a copy of the rebuttal testimony of Richard J. Kovach that has been submitted in this case?

A. Yes, it is.

Q. And did you prepare that testimony?

A. Yes, I did.

Q. And did you prepare or have prepared under your direction the schedules that are attached thereto?

A. Yes.

Q. And is the testimony -- well, let's back up.

Are there any changes to be made -- or corrections to be made of your testimony?

A. Yes. I have one correction.

Q. Tell me what that is, please.

A. On page 6 of my testimony, line 11, the number of customers indicated there of 200, that should be 100. And unfortunately, that number carries through to a few other placed in my testimony, and I'd like to give those references at this time.

Q. Okay.

A. Page 9 line 8, again, the 200 should be changed to 100. And that would also change the numbers on line 12, the 100,000 kilowatts number would be changed to 50,000 kilowatts. And the 200 in parentheses would be changed to 100. While that number appears again on page 14, line 5, again, the 200 should be changed to 100. And on line 18 on that same page, the same change should be made.

The final page is page 21, line 9, again, the 200 should be changed to 100. And I believe that picks up all of the locations in the testimony where that number was used and referred to.

Q. All right. Are there any other changes or corrections you wish to make?

A. No.

Q. And is there anything in the schedules that are affected by that change?

A. No, I don't believe so.

Q. With that correction is the testimony that you have presented here true and accurate in all respects?

A. Yes.

Q. And is the information that is contained in the schedules attached thereto also true and accurate?

A. Yes.

MR. COOK: I ask that Exhibit No. 6 be admitted into evidence and tender Mr. Kovach for cross-examination.

JUDGE MILLS: Are there any objections to the admission of Exhibit 6?

Hearing none, it will be admitted.

(EXHIBIT NO. 6 WAS RECEIVED INTO EVIDENCE.)

MR. COOK: Thank you.

JUDGE MILLS: Cross-examination, Mr. Frey?

MR. FREY: No questions.

JUDGE MILLS: Mr. Johnson?

MR. JOHNSON: Yes, I do have a few questions for Mr. Kovach.

CROSS-EXAMINATION BY MR. JOHNSON:

Q. Mr. Kovach, I'd like to hand you a document here, and I'm going to ask you to identify it in a few minutes. And I have extra copies for your counsel.

Mr. Kovach, would you identify that document that I just handed to you?

A. Well, the cover sheet is an affidavit of Craig D. Nelson. The testimony sheet says direct testimony of Craig D. Nelson, Union Electric Company, d/b/a AmerenUE, case number, blank.

Q. Okay. Can you identify that case for us?

A. No, I really can't.

Q. Okay. Would I be accurate if I stated that case is a restructuring case that was recently filed by Union Electric Company with this Commission?

MR. COOK: Let me -- I don't need to

bicker about this. I would just indicate that's not necessarily a restructuring case. The title indicates that it's a request by Union Electric for an order authorizing the sale or transfer and assignments of certain assets, real estate, et cetera, et cetera. I would just argue that -- I will stipulate that this is testimony filed in a Union Electric case seeking authority of this Commission to transfer the UE Illinois properties to Ameren.

MR. JOHNSON: That would be fine.

JUDGE MILLS: Thank you.

MR. JOHNSON: Can you recall the case number on that?

MR. COOK: No, I cannot.

MR. JOHNSON: Is it 2001?

MR. COOK: We can check it.

BY MR. JOHNSON:

Q. Mr. Kovach, am I correct then that this is the prepared direct testimony of Craig D. Nelson in the case that Mr. Cook has just described?

A. Apparently so. I'll accept what Mr. Cook said about it.

Q. And can you identify Mr. Nelson for me?

A. Mr. Nelson is vice president of corporate planning.

Q. Of?

A. Of Ameren Services Company.

Q. Can you identify the date on or about which the testimony was filed with this Commission?

A. Well, the affidavit has a date on it of October 5, 2000.

Q. Correct.

A. That's the cover sheet.

Q. I'd like to refer you to page 10 of Mr. Nelson's testimony.

The information in my files indicates that the docket number on that case is EM-2001-233.

MR. COOK: I don't dispute that.

BY MR. JOHNSON:

Q. Mr. Kovach, I'd like to have you read into the record that portion of the prepared direct testimony of Mr. Nelson begins on page 10, line 7 through line 14.

A. Line 7 begins paragraph 3, which reads as follows: The transfer results in an increasing -- let me start again.

The transfer results in an increase in existing AmerenUE capacity available to serve Missouri customers. This allows the current

Missouri retail customers of AmerenUE to achieve greater benefits from an installed generating base currently valued at approximately $350 per KW rather than constructing additional gas-fired capacity at a current cost of at least $420 per KW.

A 520 megawatt peak demand reduction would defer the construction of 218,000,000 of new plants. The avoided cost at $350 per KW versus $420 per KW or 520 megawatts at a 16.39 percent carrying cost results in a savings of $6 million per year in fixed costs.

Q. Thank you, Mr. Kovach.

Would you agree then that Mr. Nelson indicates that the cost of construction of additional gas-fired capacity today is about $420 a kilowatt based on his testimony?

A. That appears to be his estimate.

Q. And is it also correct that he indicates that the appropriate carrying charge is 16.39 percent?

A. That's what the document says.

Q. If you were to calculate the annual carrying costs based upon those numbers submitted by Mr. Nelson, would you agree that the annual carrying cost is approximately $70?

A. I haven't made the calculation.

Q. Would you make that calculation for us?

A. Please repeat for me again what it is you want me to calculate.

Q. I'd like for you to calculate the annual carrying cost of construction of gas fire -- to the new gas fire generation based upon the numbers that were contained in Mr. Nelson's prepared direct testimony.

A. Applying the carrying charge rate of 16.39 percent to Mr. Nelson's $420, if that's the correct calculation you asked me to make, indicates in terms of dollars $68.84.

Q. Thank you, Mr. Kovach.

I'd like to refer you to page 12 of Mr. Nelson's testimony, beginning at line 15 and concluding at line 23?

A. I read it.

Q. Would you read that into the record for us, please?

A. Beginning with line 15?

Q. Please.

A. Question, Are there reasons to plan for reserve margins in the 17 to 20 percent range?

Answer, Planning reserve margins as low as 15 percent may be acceptable under perfect planning in a, quote, normal, unquote, market where market energy prices do not exceed 100 to $200 per megawatt hour.

However, in a highly volatile market where prices may swing to the $5,000 per megawatt hour range as they did in the 1998 and 1999 summer periods, unexpected unit outages can result in very significant energy costs for electric utilities and their customers. Even worse for customers, power may not be available at any price during periods of high demand. Therefore, reserve margins in the 17 to 20 percent range further cushion customers from non-normal, and non-normal is in quotes, market conditions.

MR. JOHNSON: We have no further questions of this witness.

JUDGE MILLS: Thank you.

Mr. Cook -- excuse me. We'll do questions from the Bench first beginning with Chair Lumpe.

QUESTIONS BY CHAIR LUMPE:

Q. Mr. Kovach, I think I just have a couple here. Mr. Brubaker's testimony, I think it's on page 3, and you may have already responded to these, and I apologize if you have, on page 3 of his testimony he --

A. Excuse me, ma'am. His direct or his surrebuttal?

Q. I'm sorry. His direct.

A. I need to get that out of my briefcase.

Q. Let me read the line, and if you still need it, then I'll be happy to let you do that. But the sentence that is there is that it talks about as a result of the withdrawal of the rate 10M and the inability of customers to utilize Rider M, UE no longer has a reliability call on approximately 40,000 kilowatts of load within its territory.

If you need to get that to respond to it, fine --

A. I remember that statement. Yes, I remember that statement.

Q. Would you respond to that for me?

A. The 40,000 kilowatts is a correct number, and that represents the interruptible load of the three cement companies in this case. However, what was not mentioned, but was brought out earlier this morning, our voluntary curtailment Rider L has approximately 100 customers on it and interruptible capability of 150 megawatts on Rider L. And then Rider M, which was also discussed earlier, has another five customers with interruptible capability of 24 megawatts.

So the combination of those two riders gives us a capability of 170 megawatts or so of interruptible power. And, of course, the cement companies are free to join those two riders and add to it, if they wish.

Q. But the 170 then in effect overcomes a deficiency of the 40 that is being talked about?

A. Well, we believe it does so, yes.

Q. In your testimony, and I think it's your rebuttal testimony, you talk about the MEG customers achieved other rate benefits as part of the negotiations in the latter case, and that's on page 3 down at the bottom.

What were the other rate benefits that they received as part of the negotiation process in the other case?

A. Well, the three cement companies transferred -- at the end of the case transferred to the large primary rate. And that large primary rate received an above-average rate reduction. In other words, more than the average reduction of the other customer classes. So that was one benefit.

And also we did not go across the board on the reduction in that rate for the energy and demand charges. We actually reduced the emergency charges by more than we did the demand charges, which is a benefit to high-load factor customers. And these three cement companies fall into that category.

There was also an issue on high voltage credits, which refer to as our Rider B credits. There was a wide range of proposals in the rate design case as to how high those credits should be for high voltage customers, and that rider affects two of the three cement companies.

Generally, the Staff had the lowest credits. The company was proposing credits reasonably close, but slightly higher than the Staff, and the industrial customers were proposing credits at least as high as they formerly had been, if not somewhat higher. We wound up agreeing to high voltage credits above what the Staff recommended and above what the company recommended. So we think that was an additional benefit that accrued to those customers as a part of that case.

And then it was also pointed out that they were allowed to retain the 10M rate for an additional two months beyond the time that the rates changed for everyone else, which was in April of the year 2000.

Q. Okay. On page 6 of your testimony, it talks about the fees provided under the -- this is the new Rider M, correct? It's at the top of the page.

A. Yes.

Q. Okay. Are agreed upon in advance by the company and the customer. Is there a different fee for each customer or is it not a set tariff?

A. Well, in the tariff, there are a series of options that the customer can select from. And, for example, there's a strike price option, and the range in the tariff on these options starts at $100 per megawatt hour and goes up to 1,000, and it's in increments -- I believe there's five increments or five choices that the customer has.

And then the customer also has the option to select how many curtailments in a normal week that he could elect to take. And he can select anywhere from one day a week to five days a week, and these are weekdays.

And also in addition to that, the curtailment period, he has the option to select either an eight-hour curtailment period or a 16-hour curtailment period. So depending on the combination of all of those options that the customer would select, different customers selecting different combinations of options would realize different benefits under that rider.

Q.   And they don't have to come in and negotiate that, they can say, I want this part and that part?

A.   That's correct.

Q.   They don't have to negotiate with UE back and forth, they just can pick from that tariff pieces they want?

A.   Let me -- it's part correct and part not, and let me clarify that. The selected options are all laid out in the tariff. It's like a menu, and anyone can go to it and see what the options are. Depending upon what point in time the customer comes in and elects to go on that rider, we have an economic model that we run those options through. It is a forward-looking model based upon anticipated prices for the forthcoming summer period. And that, of course, projections are subject to change based on the time you make the projection.

So if someone comes in with a certain set of options in January and asked to be placed on that rider, we will run the model, and we will quote the price. Now, if another customer comes along with the same options in January, he will get the same price. But if a customer comes in in March where we have better information as to what the anticipated summer prices are going to be, the price that we quote would likely be different for the same identical set of options. So it has variability in terms of improved information.

Q. But it's not negotiated, it's I come in and I ask for this menu and then you run the --

A. We run the model and we quote the output.

Q. -- model and say, Here's the output?

A. Yes.

Q. I think I have one more here. Let me see. On 17, page 17 of, again, same rebuttal, down towards the bottom you say, I have indicated that virtually all of the rate concepts contained in Mr. Brubaker's schedule has been incorporated in full or in part in the Company's Rider L, Rider M. Virtually, what might not be in there?

A. Off the top of my head I can't think of anything that's not in there, and maybe that was a poor choice of words on my part. But generally the company was looking entirely for more flexibility and how it can deal with its customers regarding curtailments. And the customers we spoke with were generally interested in the more flexibility on curtailments and options or a way to avoid the curtailments, a way to buy through. And we think generally that the two tariffs that are currently in effect in Missouri, which this Commission has approved, addresses those issues from both perspectives.

Now, of course, this case the reason we're here is, that the dollar magnitude that may be earned by different customers may not be exactly as high or to their liking. But nevertheless in terms of operational value, we think those two products do a good job for both the company and its customers.

Q. Let me ask one more. In the opening statement this morning, the comment was made that UE is shifting from reliability to an economic measure. In other words, more interested in off-system sales then in reliability. Would you care to comment on that?

A. I wouldn't say we're shifting. What we're really doing is our interest in reliability for our customers is the same as it always was. We do intend to provide firm service to the customers in our service territory, those that want firm service.

But as I said before, the old tariff was overly restrictive and did not give us the opportunity to take advantage of some market opportunities that are out there now. And it also allows us to offer -- make offerings to customers. Customers benefit when we can offer to pay them for curtailments. And as I say, these two new riders, we picked up over 100 customers. And those customers are enjoying the benefits of our additional flexibility to reflect market prices and what we offer them.

But reliability is still very important to us, and we're not doing anything to shirk our responsibility in that area.

Q. And your testimony that in effect you have perhaps picked up 170 megawatts as opposed to the 40 that that addresses the reliability issue, as well as giving you the opportunity to make off-system sales, et cetera?

Q. Well, it addresses it -- yes. It addresses it in part. And I'm not to say that all we needed was 170 megawatts. We have other needs to carry the right level of reserve on the system, and we're constantly evaluating and working on that. But we do consider a portion of this 170 megawatts in our planning in terms of what we need to maintain that reliability level.

CHAIR LUMPE: Thank you, Mr. Kovach. That's all I have.

JUDGE MILLS: Thank you.

Commissioner Schemenauer?

COMMISSIONER SCHEMENAUER: Thank you, your Honor. I just have one question.

QUESTIONS BY COMMISSIONER SCHEMENAUER:

Q. Mr. Kovach, in your testimony you say that this tariff 10M has been eliminated from and debated from Missouri tariffs. Is there a similar tariff available in Illinois to deal 10M?

A. Yes. We had a similar tariff that was in effect in both states. And we would have taken similar action in Illinois except the legislation that's in effect in Illinois today precludes us from doing so at this time. But over the long run it would be our intention to move in the same direction in Illinois as we have in Missouri.

COMMISSIONER SCHEMENAUER: Thank you. That's all I have.

JUDGE MILLS: Thank you.

Further cross-examination based on questions from the Bench. First, Mr. Frey?

MR. FREY: No questions.

JUDGE MILLS: Mr. Johnson?

MR. JOHNSON: Yes. I have several questions for Mr. Kovach.

RECROSS-EXAMINATION BY MR. JOHNSON:

Q. Mr. Kovach, I want the record to be clear on the question of reliability issue that Chair Lumpe has raised. It's my understanding that under the old rider 10M, that that tariff was primarily structured on the basis of reliability of the system, preservation of reliability of the system, am I correct on that?

A. Well, if you tie reliability and capacity planning together, and you go back 25, 35, 40 years, that, I think, provided some of the genesis --

Q. Please answer yes or no.

A. -- for the origin of that rate.

Q. Your counsel can take you back. Just give me yes or no answers if you would, please.

Under the old tariff 10M, rate 10M, is it not true that Union Electric had the right to mandate curtailments?

A. We had the right to call for curtailments. Whether the customer complied or not, was up to the customer.

Q. But that was up to Union Electric? The decision to curtail or not was the Union Electric decision; is it not true?

A. Yes, I'd say generally it was.

Q. All right. With respect to Rider L and also Rider M, the two tariffs that are presently in effect, does Union Electric have the right to call for curtailments?

A. These are -- let's take them one at a time.

Q. All right. Let's take Rider L.

A. Rider L is referred to as a voluntary curtailment rider.

Q. Correct.

A. And I think if you just focus on the word voluntary, you have the answer to your question. These are offers between the company and the customer, and the customer -- it's the customer's option whether they want to take advantage of the offer or not.

Q. The option is with the customer, not with the utility; is that correct?

A. That's correct.

Q. Now, with respect to Rider M, is it not voluntary on the part of the customer as to whether or not the customer participates in that rider?

A. Yes. That's the customer's election.

Q. Furthermore, with respect to the pricing that you described for Chair Lumpe, is it not correct to state that those prices are not approved by the Public Service Commission?

A. The pricing concepts are approved by the Public Service Commission.

Q. But not the prices?

A. Not the price itself.

Q. Correct.

A. The strike prices, of course, that are in the tariff were approved by the Commission.

Q. But not the option price? That's not --

A. The option price is the variable that comes out of the economic model.

Q. That's right. And that's determined by

Union Electric and not by the Public Service Commission?

A. That's determined by Union Electric in accordance with the provisions of the tariff that had been approved by the Commission.

Q. But in point of fact, isn't it not true that Union Electric sets the price?

A. Somebody at Union Electric or somebody at Ameren calculates the price to be offered to the customer, but it's the customer's option whether that price is acceptable or not. That's what makes the whole thing voluntary.

MR. JOHNSON: No further questions.

JUDGE MILLS: Thank you.

Mr. Cook, redirect based on the first round of cross-examination and the questions from the Bench and the final round of cross-examination?

MR. COOK: Thank you.

REDIRECT EXAMINATION BY MR. COOK:

Q. Mr. Kovach, under the old rate 10M, if a customer is called upon to curtail by Union Electric and they did not do so, what happens?

A. Well, if they did not do so, the level of usage that they were supposed to get down to which is referred to as assurance power, that would be increased up to the level that they maintained during the curtailment period. And they would pay the normal tariff rate on that higher usage for at least a 12-month period until they could demonstrate during some future curtailment period that they could get back down to a lower level.

Q. Was there any penalty for failure to get off in excess of being put back on the basic rate they would have been on had they not been on the interruptible rate?

A. No. There was no such penalty provided for in the tariff.

Q. They basically would go back to the basic rate; is that right?

A. Yes.

Q. Union Electric under 10M did not come and cut people off if they didn't get off, did they?

A. No.

Q. Mr. Johnson had you calculate an annual carrying charge on cost of gas fired generation based on the information of Mr. Nelson's testimony in that other case. Is that the correct analysis in making a determination as to the value of curtailable load?

A. No, it isn't.

Q. Why not?

A. That's simply a capital cost for new capacity. Once that expenditure is made, those units are sitting there, the only value to the utility for those units is the value that it can extract from them in meeting its hourly system loads. And that basically relates back to hourly cost and market cost. If market power can be achieved at a lower cost, then using that type of capacity, that would be the better way to go. That would be the more cost effective way of meeting our system loads.

MR. COOK: That's all I have.

JUDGE MILLS: Thank you.

Mr. Kovach, you may step down.

Let's go off the record.

(OFF THE RECORD.)

JUDGE MILLS: We're back on the record.

Mr. Brubaker, you can come back up. You're still under oath.

THE WITNESS: Yes.

JUDGE MILLS: Questions from the Bench, Chair Lumpe?

CHAIR LUMPE: Actually I had different

questions for Mr. Brubaker than what I had for Mr. Kovach.

MR. JOHNSON: He'll take anything.

CHAIR LUMPE: He'll take anything. Okay.

THE WITNESS: Well, let's not go that far.

QUESTIONS BY CHAIR LUMPE:

Q. Mr. Brubaker, the current tariffs, Rider L, Rider M, are they unjust?

A. I wouldn't say that they are unjust. I would say they are entirely different from the reliability based rate 10M, and they certainly don't seem to be usable by the customers who provided the reliability interruptions under 10M.

Q. And one of the questions I did ask was about the shift from reliability to an economic issue, specifically off-system sales. Did you wish to address that?

A. Well, I think that's exactly where the company is coming from of taking opportunities to market power and the off-system market to other utilities or to other suppliers at prices that are available on a daily basis. When, in fact, that was not something they could do previously.

And my observations on Rider L is that the prices offered under Rider L were only a fraction of what the market prices were. So that gave the company an opportunity to reap significant rewards without really sharing them particularly with the customer.

Q. And your proposed Rider M -- if I get the right alphabet here -- did you not or was it not stated that you would be supplying both reliability and also the ability to do off-system sales?

A. Yes. The other thing I'd like to respond there is to point out that the problem with -- one of the problems with economic only interruption approach, is that customers may not be willing to curtail. As the company's own testimony in another case pointed out, there are some times when you can't just go out and buy power in the market. It's just not there for reliability purposes.

L and M are strictly voluntary. The 10M, I'll call it 10M. It's 10M modified, that I've proposed, as you suggest, does have economic overlay on to the reliability interruptions, which is to the clear benefit of the utility because it allows them not to supply power when the market prices get to be extremely high. So we did recognize that in our tariff proposal. We think that added significant benefit from the company's prospective.

Q. Did you have a response to the question who will pick up the 2.4 million that the Interruptibles would be benefitting?

A. As I understand it when we designed the rates at the end of the rate design case, the assumption was that the interruptible rate would continue in effect. So the rates overall were designed assuming that they got the 2. -- they did not get the $2.4 million from the interruptible customers. When you come in and eliminate the interruptible rate, you increase the tariff revenues by $2.4 million. Presumably some part of that is a cost the company incurs to go replace the interruptible feature by buying in the market and the rest, I guess, would go through the earnings sharing plan.

Q. And it would not go to some other classification of no customer?

A. Not directly.

Q. Not shift directly?

A. Due to the extent that you have the earnings sharing in effect, then it would flow back.

Q. It comes back to that?
A. Yes.
Q. All right. Staff implied that your proposed tariff was not really complete, that there were unknowns in it, that studies should be done further on it if it were to be adopted, that the $5 is not cost based and other deficiencies. What's your response?
A. With all due respect to Mr. Watkins, I disagree. I think that current credit of $5 is well supported. I think the rest of the tariff features are fairly easy to incorporate into the former 10M structure. I personally don't see a need for further study of those matters.
CHAIR LUMPE: I'll ask Mr. Watkins then. Thank you that's all I have.
JUDGE MILLS: Thank you.
Cross-examination based on questions from the Bench. Mr. Frey?
MR. FREY: No questions.
JUDGE MILLS: Mr. Cook?
CROSS-EXAMINATION BY MR. COOK:
Q. Mr. Brubaker, your clients did object to Riders L and M, though, didn't you, and ask that they be suspended and not go into effect even

though they are voluntary?

A. Rider L, as I recall, was explicitly approved in the rate design case. I don't recall that there was any objection. There may have been an objection to Rider M.

Q. You don't recall the -- I stand corrected on L. You don't recall your folks objected to Rider M?

A. There may have been an objection filed.

MR. JOHNSON: We will stipulate that we asked for a hearing on that rider. That we objected and we asked for a hearing. The record is there. It's a docketed case.

MR. COOK: Thank you. That's all.

JUDGE MILLS: Redirect based on questions for the Bench?

MR. JOHNSON: No redirect.

JUDGE MILLS: Thank you.

Mr. Brubaker, you may be excused at this time.

Let's call Mr. Watkins, please.

(WITNESS SWORN.)

JUDGE MILLS: You may be seated.

Please go ahead.

MR. FREY: Thank you, your Honor.

JAMES WATKINS, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FREY:

Q. Will you please state your name for the record, sir?

A. My name is James Watkins.

Q. And, Mr. Watkins, by whom are you employed and in what capacity?

A. Missouri Public Service Commission. I'm a Regulatory Economist III.

Q. And are you the same James Watkins who prepared and caused to be prefiled in this case Watkins rebuttal testimony, which has been marked for purposes of identification as Exhibit 7?

A. Yes, I am.

Q. Do you have any corrections to make to that prefiled testimony?

A. No, I do not.

Q. If I asked you the same questions as are contained in that document, would your answers be the same?

A. Yes, they would.

Q. And are those answers true and accurate to the best of your knowledge, information and belief?

A. Yes, they are.

MR. FREY: Thank you.

Your Honor, I would offer Exhibit 7 into the record and tender Mr. Watkins for cross-examination.

JUDGE MILLS: Are there any objections to Exhibit 7 into the record?

Hearing none, it will be admitted.

(EXHIBIT NO. 7 WAS RECEIVED INTO EVIDENCE.)

JUDGE MILLS: Cross-examination, Mr. Cook?

MR. COOK: Yes. Just one or two brief questions.

CROSS-EXAMINATION BY MR. COOK:

Q. Mr. Watkins, on page 3 of your testimony, you have a discussion, a brief discussion of the question of reliability and whether or not the company is experiencing any reliability problems since the interruptible rate was cancelled; is that right?

A. That's correct.

Q. And you have heard testimony, have you not, concerning the relative reliability of the curtailable load that has been lost because of the termination of rate 10M versus, for instance, gas fire turbines; is that correct?

A. Would you repeat that? I'm not sure I understand the question.

Q. The discussion of reliability has included, not necessarily right here, but in further discussion of reliability, the question has arisen concerning relative reliability of the lost curtailable power, the 40 megawatts versus gas fired turbines. Does that subject sound familiar to you?

A. Yes. In my testimony I talked about the availability of the interruptible power as compared to the availability of power from combustion turbine.

Q. Correct.

A. I think there was some discussion in Mr. Brubaker's testimony about the reliability.

Q. Okay. That's what I meant to say was availability, I think, instead of reliability.

Earlier I showed Mr. Brubaker Exhibit 8, and I believe that's been admitted into evidence, which was identified as a NERC GADS document, which stands I believe for North American Electric Reliability Council Generating Availability Data System; is that right?

A. That's correct.

Q. Are you familiar with that document generally?

A. Generally?

Q. Yes.

A. These are the gray books, they were last I saw them. I understand they are now available over the Internet.

Q. And in the course of your responsibilities with the Commission, do you have occasion to deal with that type of information?

A. I have in the past.

Q. And did you hear Mr. Brubaker refer to the forced outage rate calculation that was listed and set out in the last page of this exhibit?

A. Yes. I was here for that.

Q. Do you have an opinion on whether or not the forced outage rate calculations that he's referring to is the appropriate calculation to look at concerning availability of these units?

A. I don't have any problem with the data, and you could use it if you knew how. I think there are other statistics that would be more appropriate and more straight forward in terms of availability.

Q. Are those statistics on that document?

A. Yes. It's been a long time since I've looked at these, and some of the formulas are kind of complicated. I think the EAF, I believe, is the equivalent availability factor. And that considers -- that's basically percentage of time that the unit is available when you consider the forced and partial outages on the unit. It's equivalent because the partial outages have been converted to a full-time equival.

In terms of combustion turbines, my understanding from the engineers that I have worked with in the fuel modeling, is that primarily a unit will either start or it won't. That it doesn't have the same kind of problems as a coal plant where you have leaky boilers or, you know, valves or fans or those kinds of things that can go wrong. Basically with a combustion turbine, it's an engine. It either runs or it doesn't run.

And so all those considerations are not involved there. I think the SR in this document is the starting reliability. I'd have to check those, but I believe that's what it is. So for combustion turbines over 50 megawatts, the starting reliability is in excess of 95 percent. That's probably a better measure of availability.

MR. COOK: Thank you. That's all.

JUDGE MILLS: Thank you.

Mr. Johnson?

MR. JOHNSON: Yes. I just have a brief question or two.

CROSS-EXAMINATION BY MR. JOHNSON:

Q. Mr. Watkins, I'd like to refer you to the schedule that was attached to your testimony, which is I will identify as a copy of Union Electric tariff No. 10M. And is that the former curtailment interruptible tariff that was in effect prior to the time of the stipulation that there's been discussed here at the hearing today?

A. These tariff sheets represent what folks have been referring to as rate 10M, that's correct.

Q. Right. That was in effect previously; is that correct?

A. Yes.

Q. And in 1999 when that settlement stipulation was entered into in the rate design case, the tariff was terminated except that the MEG Interruptibles remained on the tariff for one more year, I believe, approximately one more year?

A. That's correct. No other new customers were allowed at that point to take service under that tariff.

Q. Okay. Fine.

I'd like to refer you to the second page of that tariff.

A. That would be tariff sheet No. 63?

Q. 63, correct. And at the very top there's a paragraph that's numbered 2?

A. Uh-huh.

Q. And if you'd come down to the second sentence that begins, If requested. Would you read that into the record for us, please?

A. If requested by company, customer will also at its own expense, provide suitable relays and signal system on its premises to operate the circuit breakers on the circuits supplying the interruptible power, such relays and signals to be arranged for automatic or remote controlled by company's load dispatcher. Did you want me to continue?

Q. Continue with the next sentence, please.

A. Company will at customer's expense, supply the controlled circuits to customer's premises to effect energizing of the relay system. Equipment installed for this purpose by customer shall be approved by company's engineers and company shall at all --

Q. That's sufficient. Fine.

If Union Electric had a concern about compliance with their curtailment request, could they not implement curtailment under this section by controlling the flow of power to the particular customer?

A. It would be my opinion that that would certainly be their right, and perhaps their responsibility.

Q. That's precisely the answer we were looking for. Thank you very much, sir.

A. Oh, I'm sorry.

MR. JOHNSON: We have no further questions of this witness.

JUDGE MILLS: Questions from the Bench, Chair Lumpe?

QUESTIONS BY CHAIR LUMPE:

Q. Mr. Watkins, on page 5 and 6 of your rebuttal, you talk about the deficiencies of the old interruptible power rate. And the question was, I'm talking about four and five of the deficiencies. When you talk about these deficiencies and you say other utilities do it differently, are you talking about Missouri utilities?

A. Yes, ma'am.

Q. And so this one that was UE's, was really unique to all the other interruptible programs that the other utilities in the State of Missouri had; is that correct?

A. Yes, ma'am. I believe that Union Electric is --

Q. Because on page 5 you say, First form of the rate proposed is different, then you mention credit versus something and then you talk about second and say others did it differently and, third, none of the other utilities are limited to when they can interrupt and then, four, you go on. So what you're telling me there is that all the other interruptible programs in Missouri were really different from the UE program?

A. They are. And I believe always were different from the rate 10M program that Union Electric paid for interruptibles. The rate 10M is not the only rate that Union Electric has had for interruptible curtailable power. There have been others.

Q. On page 7 of that testimony on about line 11, Furthermore since power is always available at some price, it would seem that the MEG Interruptibles have proposed an interruptible rate under which no customer would ever be interrupted. Would you explain that to me?

A. Yes. First I will admit that I'm an economist in the world of engineers, and I believe that there are two factors involved. One, with the competition in the wholesale market. I believe that there is always energy to be purchased if you're willing to pay the price. Now, there may be a question about whether you can get it delivered to where you want it because of constraints on the transmission system. But in terms of buying power, you can always buy power if you're willing to pay the price.

There is a provision in the old 10M rate, which I presume will remain in the proposal, which requires Union Electric Company to purchase power to meet the interruptible load as long as it's available. So my point here is Union Electric will not be able to interrupt the customers under this proposal if power is available. And I maintain --

Q. And on that assumption that it's always available, then there would not be any interruption?

A. That's correct.

Q. I guess I follow that logic. All right.

And the last one then, you raise the issue of the 2.4 million and who would pick it up?

A. Yes, ma'am.

Q. How do you respond to Mr. Brubaker's comments that it's really 2.4 million windfall to UE that they have been receiving?

A. There's a lot of things going on here. One of them is that the Staff doesn't, I guess, totally hate the concept of, you know, the fixed payment to customers for curtailments. But I believe what Mr. Brubaker's answer was, was that only a portion of that $2.5 million that was being credited to the three interruptible customers was cost based. The significant portion of it was -- I don't think he said what it was. He kind of waved his hands and said, I don't know what the other part was.

The Staff believes that the rate should be cost based. And I think that's an indication that shouldn't be $5, because we don't know what that other part is. You know, it should be lowered to where it is cost based.

Q. And so I think your testimony says that there are deficiencies in the new plan that the interruptibles are proposing and that's one of them, and then others -- you said something about needing a study. What kind of further study would you have to do other than the cost-based issue?

A. It is the cost-based issue. And the question would be is this: If you're going to set the rate at the equivalent of what a combustion turbine would be worth to the company, then I've been through these studies before, and you need the hourly loads of the company and you do their production cost run to find out what the costs are in every hour. And then you look at where you can save money if you had additional capacity. It's not a minor thing to pin down what that should be, and that's the way that Union Electric has justified the rate level before. The rate level in the other offerings that they had in the past.

I want to go back to the other question about the two-and-a-half-million dollars, if I could just a second, and say that Union Electric is in a unique situation in being in an experimental alternative regulation plan, whereby if Union

Electric were to save two-and-a-half-million dollars, customers assure that immediately -- not immediately exactly -- without a rate proceeding. That revenue would be putting it back.

CHAIR LUMPE: Thank you for that clarification. Thank you, Mr. Watkins. That's all I have.

JUDGE MILLS: Further cross-examination based on questions from the Bench, Mr. Cook?

MR. COOK: No, sir.

JUDGE MILLS: Mr. Johnson?

RECROSS-EXAMINATION BY MR. JOHNSON:

Q. Mr. Watkins, do you anticipate there's going to be another rate case any time in the immediate future involving this utility?

A. I really don't know how to answer that. I mean --

Q. You're not aware of any plans for another rate case filed by --

A. Well, partly -- I mean, if someone from the company had told me that, I'm not sure that I should be divulging it, but --

Q. But as far as the Staff is concerned --

A. I'm not aware of any formal plans for Union Electric to file a rate case.

Q. Mr. Kovach was kind enough to read into the record testimony from the vice president of Union Electric Company, Mr. Craig Nelson, for Ameren Services.

MR. COOK: Is this a question related to a question from the Bench?

JUDGE MILLS: I don't know yet. I haven't heard a question.

MR. JOHNSON: Yes.

BY MR. JOHNSON:

Q. And Mr. Nelson stated that there are times when you cannot buy power for any price. Do you disagree with that?

A. I disagree with those literal words. I'm not sure I disagree with him, because I don't know the context in which he was saying that.

Q. Well, we could -- I'd be glad to read that section back again.

MR. FREY: Your Honor, I'm not sure this is responsive to his question that is connected with any questions from the Bench.

JUDGE MILLS: Well, his concept is connected to a question from the Bench. There isn't a question pending, so we'll wait and see what he's going to ask next, and see if you want to object to it.

MR. COOK: May I interpose that at least if there's going to be a question to which I might want to object that it be accurately stated of the quote of Mr. Nelson.

MR. JOHNSON: I'd be happy to read that quote into the record to satisfy Mr. Cook.

MR. COOK: I appreciate that.

BY MR. JOHNSON:

Q. Mr. Nelson's, I'm reading directly from his testimony, page 27 of his testimony. And he states, Even worse for customers, power may not be available at any price during periods of high demand, period.

Do you disagree agree that statement?

A. I do.

MR. JOHNSON: Thank you. I have no further questions.

JUDGE MILLS: Redirect, Mr. Frey?

MR. FREY: No redirect, your Honor.

JUDGE MILLS: Thank you.

Mr. Watkins, you may step down.

That's our last witness. Mr. Cook, I believe you owe copies of at least Exhibit Nos. 8 and 9 to the court reporter and for the Bench. We are going to reserve for late filing Exhibit No. 10 for, I believe they were DRs 4 and 5 to Mr. Dorris.

MR. COOK: I had --

JUDGE MILLS: Are those the correct numbers?

MR. COOK: I don't know. That's not what I have here. Maybe we can go off the record and clarify it.

JUDGE MILLS: We can clarify it on the record. Just go ahead and tell me what you have.

MR. COOK: I thought it was DD3.

JUDGE MILLS: Was it 3?

MR. COOK: Yes. It was the question request and answer to documents the question DD3 and then the response.

JUDGE MILLS: Okay. We will have you file those -- will the copies get to the court reporter as soon as possible?

MR. COOK: Yes.

JUDGE MILLS: If you can get them before you leave town that would be great. Otherwise mail them in as soon as possible.

MR. COOK: They will be here today.

JUDGE MILLS: The late filed exhibit, that shouldn't take much longer. Why don't we say that's due a week from today, which would be December 7. Objections, if any, to that will be due December 15.

MR. COOK: I'm sorry. I don't understand if I'm going to actually provide them to everyone today.

JUDGE MILLS: Oh, you're going to have copies of that today?

MR. COOK: The DD3?

JUDGE MILLS: Uh-huh.

MR. COOK: Yes.

JUDGE MILLS: Let's have that filed today, and objections will be due 10 days from today or we'll call it December 8.

The next question is briefing. The Commission's rule is sort of by default set 20 days from the date of transcript for initial briefs, 10 days from that for reply briefs. Does anyone propose anything different in this case?

MR. JOHNSON: No. We'd like to get the case briefed as promptly as possible.

JUDGE MILLS: It does bring in the Christmas question, yes. If we assume that the transcript takes about two weeks, we can guess that it will be filed December 14. 20 days from that is roughly the first of the year. Do you want initial briefs due, let's say, the 9th or 10th of January?

MR. JOHNSON: I'm sure that we can -- can the transcript be ready the 14th?

JUDGE MILLS: Yes. That's about two weeks. So we'll say initial briefs due January 9, reply briefs let's make them January 19.

MR. JOHNSON: Okay. Then rebuttal briefs?

JUDGE MILLS: Reply briefs would be -- there's just two rounds of briefs.

MR. JOHNSON: Just two rounds.

MR. COOK: 9 and 19?

MR. JOHNSON: Yes.

JUDGE MILLS: Mr. Frey, you look like you want to say something?

MR. FREY: I think I'm going to be out of town several days, maybe five, six days ahead of the 19th. So if we could have a couple extra days would be great. Is that possible?

MR. JOHNSON: I don't have any objection.

MR. FREY: What day is the 19th?

JUDGE MILLS: The 19th is a Friday. Why don't we make it the following Tuesday, the 23rd?

MR. FREY: That would be great.

MR. JOHNSON: 23rd?

MR. FREY: Great. That would be fantastic. Thank you.

MR. JOHNSON: This case is really important to us. Can't we have an opportunity to file a reply brief, say, in 10 days after they file their brief?

JUDGE MILLS: Typically the Commission's briefings are simultaneous initial briefs and simultaneous reply briefs. We can certainly go off the record and allow the parties time to discuss an alternative briefing format if you want to?

MR. COOK: Every rate case that we've had including those worth several billion dollars were important to us, too. I don't remember us getting final briefs. I can't let you have the last word, Bob.

MR. JOHNSON: Come on, Cook. You don't have any objection. 10 days we'll file a reply brief; is that okay?

MR. COOK: No.

MR. FREY: Is that a third?

MR. COOK: Yes, that's the third one for him.

MR. JOHNSON: Well, that's typical in

court cases.

JUDGE MILLS: It may be typical in court cases. It would be atypical here.

MR. JOHNSON: I understand.

MR. COOK: So I don't appear to be totally erratical, given your statement of position filing, I'm certainly not likely to agree to let you have an unresponded to final word. Unless you just want to refile that?

MR. JOHNSON: Okay. Let's take a look and see what he files. I may come back with something after I see what he --

MR. COOK: That's not impressive.

JUDGE MILLS: You can certainly ask for leave to file something additional, if you want to. The Commission will rule on that at that time.

MR. JOHNSON: All right. That's fine.

JUDGE MILLS: You can ask for leave to do almost anything.

Anything further?

MR. JOHNSON: It's not that I don't trust him.

JUDGE MILLS: I think we're degenerating. Why don't we adjourn. We're off the record.

WHEREUPON, the hearing was concluded.

(EXHIBIT NO. 9 WAS MARKED FOR IDENTIFICATION BY THE REPORTER.)

I N D E X

STAFF'S EVIDENCE

E X H I B I T S

	MARKED	REC'D
EXHIBIT NO. 1 Direct Testimony of Maurice Brubaker	24	28
EXHIBIT NO. 2 Surrebuttal Testimony of Maurice Brubaker	24	28
EXHIBIT NO. 3 Direct Testimony of Tom Rader	24	44
EXHIBIT NO. 4 Direct Testimony of Don Schuette	24	61
EXHIBIT NO. 5 Direct Testimony of David Dorris	24	72
EXHIBIT NO. 6 Rebuttal Testimony of Richard J. Kovach	24	107
EXHIBIT NO. 7 Rebuttal Testimony of James Watkins	24	135
EXHIBIT NO. 8 Data Information Request MB10	37	41
EXHIBIT NO. 9 Data Request DD3	56	154
EXHIBIT NO. 10 Tom Rader's Response to DR No. 7	*	

* Late Filed Exhibit.