

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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4
5 TRANSCRIPT OF PROCEEDINGS
6 Hearing
7 March 26, 2004
8 Jefferson City, Missouri
9 Volume 7
10 In the Matter of the Application)
11 of Union Electric Company, Doing)
12 Business as AmerenUE, for an Order)
13 Authorizing the Sale, Transfer and)
14 Assignment of Certain Assets, Real) Case No. EO-2004-0108
15 Estate, Leased Property, Easements)
16 and Contractual Agreements to)
17 Central Illinois Public Service)
18 Company, Doing Business as)
19 AmerenCIPS, and, in Connection)
20 Therewith, Certain Other Related)
21 Transactions.
22
23 KEVIN A. THOMPSON, Presiding,
24 DEPUTY CHIEF REGULATORY LAW JUDGE.
25
26 STEVE GAW, Chairman,
27 CONNIE MURRAY,
28 ROBERT M. CLAYTON,
29 COMMISSIONERS.
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33 REPORTED BY:
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1 P R O C E E D I N G S

2 JUDGE THOMPSON: We are on the record.

3 MS. SHEMWELL: Staff would like to request

4 that the liability issue be taken up on Friday morning.

5 That's an accommodation that Ameren indicated they would

6 not oppose. April 2nd for the liability issues.

7 JUDGE THOMPSON: Is that the one listed on

8 here as allocation of liabilities?

9 MS. SHEMWELL: That's correct.

10 JUDGE THOMPSON: Witnesses are Nelson,

11 Getz, Weiss, Fischer, Meyer?

12 MS. SHEMWELL: That's correct.

13 MR. COFFMAN: Are you moving that to

14 Friday?

15 MS. SHEMWELL: Friday, April 2nd.

16 MR. COFFMAN: I didn't know about that.

17 MS. SHEMWELL: It was discussed yesterday

18 morning on the record.

19 JUDGE THOMPSON: Pardon me. Why don't we

20 let counsel discuss that at the break, and then if that's

21 acceptable to everybody, that's fine with me, but it may

22 not be acceptable to everybody, in which case we may do

23 something different. I am imperfectly willing to be

24 absolutely flexible with the schedule, as long as we move

25 forward at an appropriate pace.

1 Mr. Dottheim, are you ready to resume your
2 cross-examination?

3 MR. DOTTHEIM: Yes, I think so.

4 JUDGE THOMPSON: Very well. Mr. Nelson,
5 I'll remind you you're still under oath, sir.

6 THE WITNESS: Yes, sir.

7 JUDGE THOMPSON: Thank you.

8 CRAIG NELSON testified as follows:

9 CROSS-EXAMINATION (RESUMED) BY MR. DOTTHEIM:

10 Q. Good morning, Mr. Nelson.

11 A. Good morning.

12 Q. I'd like to return to Case No. EM-2001-233,
13 the 2001 -- 2000 and 2001 case where Union Electric
14 Company sought to transfer its Illinois business to
15 AmerenCIPS.

16 MR. DOTTHEIM: And, Judge, if I might, I'd
17 like to approach the witness.

18 JUDGE THOMPSON: You may.

19 BY MR. DOTTHEIM:

20 Q. I'm going to hand you a copy of the
21 Unanimous Stipulation & Agreement respecting the
22 procedural schedule, and I'd like to direct you to the
23 second page, paragraph 4, the very first event which
24 states, UE supplemental direct testimony, and has a date
25 of February 8, 2001. And on the first page of this

1 document, the Unanimous Stipulation & Agreement Respecting
2 Procedural Schedule, shows that it was stamp filed on
3 January 16, 2001. Have I indicated that correctly?

4 A. Yes, you have.

5 Q. Do you recall what supplemental direct
6 testimony Union Electric Company was going to file on
7 February 8th, 2001?

8 A. No, not in particular.

9 Q. I'd like to hand you another document.
10 It's titled Request to Hold Procedural Schedule in
11 Abeyance. It's dated February 6, 2001 and was filed in
12 Case No. EM-2001-233, and it's indicated that it was
13 submitted by James J. Cook.

14 Now, I'd like to direct you in particular
15 to the first two numbered paragraphs on the first page,
16 and I'd like to ask you to read those two paragraphs into
17 the record.

18 A. Paragraph No. 1, the current schedule calls
19 for UE to file supplemental direct testimony on
20 February 8th, 2001. This filing requested by the Staff
21 requires significant effort by our witnesses once various
22 forecasts are developed. Those forecasts have not been
23 finalized, and thus the testimony cannot be completed.

24 Paragraph No. 2, although it is anticipated
25 that this work will be completed in approximately two

1 weeks, it is not possible to give the Commission and other
2 parties any assurance of an exact date when that work
3 will, in fact, be completed. Accordingly, the company
4 hereby informs the Commission and all parties that the
5 February 8, 2001 filing date cannot be met.

6 Q. And, Mr. Nelson, do you recall any of the
7 particulars of the items that are discussed in those first
8 two paragraphs?

9 A. Yes.

10 Q. Okay. Could you provide some detail as to
11 what is being described in those first two paragraphs of
12 that document?

13 A. Well, you said any of the particulars. I
14 do remember that this happened. Now that I've been
15 reacquainted with the schedule, I do remember the schedule
16 problem. I do remember that we were having trouble
17 getting the forecasts for the supplemental testimony as I
18 testified earlier. I don't remember exactly what we filed
19 in our direct testimony versus what we were planning to
20 file in the supplemental. I did not review this case.

21 Q. I'm going to hand to you another document,
22 and the one that I just handed to you again was identified
23 as Request to Hold Procedural Schedule in Abeyance,
24 February 6, 2001, submitted by -- with the signature of
25 James J. Cook for Ameren Services Company.

1 The next document is a status report. It
2 is dated February 20, 2001. It's submitted by James J.
3 Cook of Ameren Services Company.

4 MR. DOTTHEIM: May I approach the witness?

5 JUDGE THOMPSON: You may.

6 MR. RAYBUCK: Before you do that, your
7 Honor, I've held off for now, but I'm going to object at
8 this point as being not relevant to this case. There's
9 been no showing that these procedural issues have any
10 relevance to the present case. If Mr. Dottheim can make
11 such a showing, I'll withdraw that objection, but --

12 JUDGE THOMPSON: Mr. Dottheim?

13 MR. DOTTHEIM: Mr. Nelson, I think, refers
14 to these prior proceedings in his testimony. It's been
15 referred to in the opening statement by the company.

16 JUDGE THOMPSON: I think there was a
17 reference that this is the third attempt by the company to
18 do a similar transaction, but I don't know that there's
19 been any reference to the procedural roadblocks that may
20 have been encountered in a prior case.

21 MR. DOTTHEIM: And as we go through these
22 documents, it seems that Mr. Nelson's memory is refreshed
23 or he has some recollection of these documents. These are
24 the prior history of the company's filings with the
25 Commission to transfer its Metro East facilities.

1 JUDGE THOMPSON: See, my concern is this:
2 I am not persuaded that there's a great deal of relevance
3 to the fact that the company's tried to do this twice
4 before and has evidently not been permitted to by either
5 this Commission or by the Illinois Commission.
6
7 Whatever happens with respect to the
8 present application will have to depend upon the detriment
9 or lack thereof that is shown in this proceeding. And the
10 fact that a prior commission or a different commission
11 found detriments or did not find detriments on another
12 occasion is not relevant to this proceeding.
13
14 So consequently, in view of the fact that
15 we're already a half a day behind in our schedule, I'm
16 going to sustain the objection and urge you to move on to
17 another topic.
18
19 MR. DOTTHEIM: And if I can just state for
20 clarification, that case was withdrawn by the company.
21 The Commission did not prevent AmerenUE from making the
22 transfer that it originally had filed for.
23
24 JUDGE THOMPSON: Okay. That's fine. Thank
25 you.
26
27 BY MR. DOTTHEIM:
28
29 Q. Mr. Nelson, I'd like to refer you to
30 page 15, line 16 to 19 of your surrebuttal testimony,
31 which is Exhibit No. 6.

1 A. Page 15, line 16 through 19?

2 Q. Yes.

3 A. I'm there and I've read it.

4 Q. You state therein, do you not, that it is

5 not clear that the affiliate transactions rules apply to

6 the Metro East transfer?

7 A. Yes, I do.

8 Q. Is that statement based upon your own

9 knowledge or is it based upon what you have been told by

10 anyone?

11 A. Both.

12 Q. And if you are relying on someone else,

13 could you please identify that individual?

14 A. There's probably two individuals: Mr. Joe

15 Raybuck and Mr. Jim Lowery.

16 Q. Mr. Nelson, do you know whether the

17 proposed transaction of AmerenUE would fall under the

18 purview of Section 393.250?

19 A. I'm not familiar with that section

20 reference. I may have read the statute, but I don't know

21 it by the section references.

22 Q. And you don't know if anyone has discussed

23 that statutory section with you?

24 A. Well, without knowing the title of that

25 statutory section, I can't answer that question.

1 Q. AmerenUE proposes to transfer to AmerenCIPS
2 all of its gas utility service assets, including its
3 associated general plant assets, customers and related
4 liabilities in AmerenUE's Metro East service area; is that
5 correct?

6 A. Yes, that is correct.

7 Q. Is there anyone at AmerenUE who has
8 performed a study of the revenue requirement impacts of
9 the Metro East transfer on AmerenUE's remaining natural
10 gas customers?

11 A. We did not think it was necessary, and
12 because it's Illinois jurisdiction property transferring
13 to Illinois jurisdiction, we just didn't think it was
14 relevant.

15 Q. What capacity and energy needs has AmerenUE
16 made for the summer of 2004?

17 A. That's a difficult question to answer.
18 Obviously we have 8,000 -- about 8,000 megawatts of
19 supply.

20 MR. RAYBUCK: May I interrupt, your Honor?

21 JUDGE THOMPSON: You may.

22 MR. RAYBUCK: We may be getting into some
23 confidential information. I want to alert Mr. Nelson to
24 that and you, Judge, in case we need to go into an
25 in-camera session.

1 JUDGE THOMPSON: I appreciate you raising
2 that point, and the necessity of guarding highly
3 confidential information is one, of course, we take very
4 seriously. There is a protective order in this case. It
5 is up to counsel to police that. So you will need to ask
6 for us to go in-camera when you believe it is appropriate.
7 At that time we will turn off the broadcast and close the
8 doors to the room.

9 And it will also be incumbent on counsel to
10 clear the room of anyone who is not permitted to be in
11 here during the in-camera session. And I will remind you
12 that any Commission employees and Public Counsel employees
13 are bound by law not to disclose anything they hear, so
14 they may, of course, remain. People who don't work for
15 the Commission and the Public Counsel, you need to know
16 who they are and whether or not they can be in here when
17 we go in-camera. Okay?

18 MR. RAYBUCK: Thank you, Judge.

19 JUDGE THOMPSON: Thank you. So I assume
20 you're not asking for in-camera now?

21 MR. RAYBUCK: Not now.

22 JUDGE THOMPSON: Okay. Thank you. Please
23 proceed.

24 BY MR. DOTTHEIM:

25 Q. Mr. Nelson, could you answer my question?

1 A. Would you please repeat it.

2 Q. What capacity and energy needs has AmerenUE
3 made for the summer of 2004? What arrangements, what
4 provision has AmerenUE made to meet its capacity and
5 energy needs for the summer of 2004?

6 A. We've made many arrangements. For
7 instance, we have approximately 8,400 megawatts of
8 installed generation, and then I'd rather not go into the
9 details of the supply contracts while we're in this public
10 session, but we do have supply arrangements as well to
11 meet the load of AmerenUE.

12 Q. Have those means of meeting the capacity
13 and energy needs of AmerenUE been in existence always for
14 the summer of 2004?

15 A. No, they haven't always been in existence,
16 no. Obviously a plan's not in existence before it's
17 built.

18 Q. Were those means of meeting the capacity
19 and energy needs for the summer of 2004 available to
20 AmerenUE at the time that it initially filed its
21 application initiating this proceeding?

22 A. I think all the resources and contracts
23 that we have in place were in place when we filed this
24 proceeding. However, just for clarity, there are not
25 enough resources in place to cover AmerenUE's load and

1 reserve margin for '04. That's one reason for this
2 transfer.

3 Q. And how is AmerenUE's reserve margin for
4 2004 going to be met for the summer of 2004?

5 A. We hope through this transfer. That's why
6 we've asked for expedited treatment.

7 Q. When would AmerenUE need a decision from
8 the Commission in order for this transfer to meet the
9 energy and capacity needs -- excuse me -- and the reserve
10 margin needs of AmerenUE for the summer of 2004?

11 A Let me work backwards from a transfer date.
12 We would need to transfer the assets I'd say, to be safe,
13 by May 1st, no later than June 1st.

14 Q. And if you -- are you indicating, excuse
15 me, that you need a decision from the Commission by May 1
16 or June 1 or that the actual transfer must occur by May 1
17 or June 1?

18 A. I'm saying the actual transfer of the
19 assets needs to occur no later than June 1st, which means
20 the Order, of course, needs to come prior to that.

21 Q. How much advance time would the company
22 need from the Commission issuing an Order to meet its
23 capacity and energy needs through the proposed transfer by
24 June 1?

25 A. I'm going to have to speculate to answer

1 that, but since we're talking about the future, I imagine
2 that's okay to speculate.

3 Just to review, we do have approval from
4 the Illinois Commission for the electric part of the
5 transfer. There is an agreed order. There's no
6 controversy before the Illinois Commission on the gas
7 transfer. FERC has already approved this transfer. So
8 it's this Commission that we're awaiting an Order from and
9 then the SEC, and that's why I'm hesitating because I
10 don't know how long the SEC will take to issue its order
11 once this Commission approves the transfer.

12 Q. And that's the reason why you can't be more
13 specific?

14 A. Yes, sir.

15 MR. DOTTHEIM: Pardon me for the delay.

16 JUDGE THOMPSON: That's all right.

17 MR. DOTTHEIM: May I approach the witness?

18 JUDGE THOMPSON: You may.

19 BY MR. DOTTHEIM:

20 Q. Mr. Nelson, I'm going to provide you with a
21 copy -- in fact, you already may have it -- of AmerenUE's
22 Application for Transfer of Assets, Change in
23 Decommissioning Trust Fund, Waiver of Affiliate Rules, and
24 Motion for Expedited Treatment.

25 A. I have a copy.

1 Q. I'd like to direct you to page 10.

2 A. I'm there.

3 Q. Okay. And I'd like to go through each of

4 those sections and ask you some questions. The wherefore

5 section starts off, wherefore Union Electric Company,

6 d/b/a AmerenUE, respectfully requests that the Commission

7 issue its order, A, authorizing AmerenUE to perform in

8 accordance with the terms and conditions in the form of

9 the Asset Transfer Agreement attached as Schedule 1.

10 MR. RAYBUCK: Your Honor, if I could

11 interrupt. I'm going to object to this line of

12 questioning. It's calling for a legal conclusion on the

13 part of the witness. I don't have any problem with

14 Mr. Dottheim asking Mr. Nelson from a nonlegal perspective

15 what the company is seeking in this case, but I don't

16 think it's appropriate for him to go through items

17 A through M, and I don't think it's a good use of our time

18 either. So I object to this.

19 JUDGE THOMPSON: I don't think he's

20 actually asked him a question that calls for a legal

21 conclusion yet. So at this point I'm going to overrule

22 the objection. Please proceed.

23 BY MR. DOTTHEIM:

24 Q. Mr. Nelson, do you know whether the

25 Commission authorizing AmerenUE to perform in accordance

1 with the terms and conditions in the form of the Asset
2 Transfer Agreement attached as Schedule 1 would be a
3 ratemaking determination?

4 A. It's my understanding it would not be a
5 ratemaking determination.

6 Q. And what is the basis of your understanding
7 that it would not be a ratemaking determination?

8 A. Many previous orders by this Commission and
9 mergers, asset transfers, whatever where the Commission
10 always takes it upon itself to expressly say that it's not
11 a ratemaking determination.

12 Q. If the Commission made -- granted the
13 authorization that is requested, are you indicating that
14 the Commission would not be bound for ratemaking purposes
15 respecting that authorization that it had granted?

16 A. No. I think that goes beyond -- I'm a
17 businessman, not an attorney. I'm not going to make that.

18 Q. Although you have consulted with the
19 company's attorneys on various other items that you've
20 discussed in your testimony regarding the affiliate
21 transactions rule for one?

22 A. Yes, I have.

23 Q. Let's go to Item B.

24 MR. RAYBUCK: Your Honor, if I could follow
25 up on my objection, I'll just make this for the last time.

1 I do think we are getting into areas calling for a legal
2 conclusion on Mr. Nelson's part. It seems that the
3 question of whether this is a ratemaking or not a
4 ratemaking issue goes to a legal conclusion. In other
5 words --

6 JUDGE THOMPSON: I agree. I agree that the
7 question whether or not that's a ratemaking determination,
8 in fact, was calling for a legal conclusion, but you
9 didn't make the objection at the time.

10 MR. RAYBUCK: You are correct, your Honor.
11 I'm doing that now because it appears evident to me that
12 Mr. Dottheim is going to do this for all of the -- or at
13 least some of the remaining paragraphs in our prayer for
14 relief. Our prayer for relief is asking for legal relief
15 from the Commission, and therefore I think it's
16 intertwined with legal issues and legal conclusions.

17 Further, I believe this is beyond the scope
18 of Mr. Nelson's testimony. I know that's not necessarily
19 determinative. I just wanted you to understand what my
20 concern is.

21 JUDGE THOMPSON: I appreciate that, and all
22 I can say is that when he actually asks a question calling
23 for a legal conclusion, that's the time to object. What
24 he has done now is directed Mr. Nelson's' attention to
25 paragraph B, I believe, and he has not yet posed a

1 question about that paragraph. So I can hardly say,
2 Mr. Dottheim, we're not going to talk about paragraph B.
3 I have no idea what question he's going to ask him. Now,
4 if he should ask an objectionable question, I urge you,
5 jump in then and object.

6 Thank you. Please proceed.

7 BY MR. DOTTHEIM:

8 Q. Mr. Nelson, before we continue with
9 paragraph B, I'd like to direct you to the back of the
10 sheet that follows. If I could refer you to the back of
11 the signature page that bears the signature of Steven R.
12 Sullivan.

13 A. I see it.

14 Q. Does that page contain your verification?

15 A. The next -- you mean the page following?

16 Q. The page following.

17 A. Yes, it does.

18 Q. And excuse me. I have a double-sided copy,
19 so excuse me.

20 A. Let's be precise. I was trying to be
21 precise in answering.

22 Q. Thank you. I appreciate that. Would you
23 please read the verification into the record?

24 A. Verification. I, Craig D. Nelson, vice
25 president of Ameren Services Company, being first duly

1 sworn, state that I have authority to sign this
2 verification on behalf of AmerenUE, that I have read the
3 foregoing application, that I am familiar with the
4 statements therein, and that the statements therein are
5 true and correct to the best of my knowledge, information
6 and belief, signed Craig D. Nelson, subscribed and sworn
7 25th day of August 2003.

8 Q. Mr. Nelson, I'd like to direct you back to
9 paragraph B. If the Commission granted the authorization
10 sought by AmerenUE, do you know whether that would
11 constitute a ratemaking determination by the Commission?

12 A. It's my understanding it's not, but again
13 I'm not an attorney.

14 Q. I'd like to direct you to paragraph C.

15 JUDGE THOMPSON: Mr. Dottheim, I'm going to
16 interrupt here. I don't know what the value is to the
17 Commission of making its determination in this case to
18 hear an admitted non-attorney's opinion of the legal
19 effect of the relief that's being requested. Now, if
20 there is -- I'm going to allow you some rope here. I just
21 want you to know that I am troubled by this course of
22 questioning. Please proceed.

23 BY MR. DOTTHEIM:

24 Q. Again, I'd like to direct you to
25 paragraph C, which -- and would you read paragraph C into

1 the record.

2 A. Paragraph C, approving as reasonable and
3 prudent the consideration received by AmerenUE from
4 AmerenCIPS for the transferred assets and liabilities.

5 Q. Do you know whether AmerenCIPS would assert
6 that such approval constitutes a ratemaking determination
7 by the Commission?

8 MR. RAYBUCK: I am going to object to this,
9 your Honor, as calling for a legal conclusion. I'd also
10 observe that I believe Mr. Lowery stipulated in his
11 opening statement as to the items for which we were
12 seeking approval. I would like to ask him to follow up,
13 to clarify that if he could.

14 MR. LOWERY: If I may, if it pleases the
15 Court, your Honor, I believe I stipulated that we are not
16 requesting ratemaking treatment of any of the items in the
17 prayers for relief, with the exception -- and I don't know
18 if this is ratemaking treatment -- we are asking for
19 rulings on the decommissioning items that are in the
20 prayer, and I believe the record reflects that.

21 JUDGE THOMPSON: Very well. Thank you.
22 Mr. Dottheim, would you like to respond to the objection?

23 MR. DOTTHEIM: Yes. I believe that
24 Mr. Nelson has been rendering statements, opinions on
25 these matters in his testimony and -- in his prepared

1 testimony and in his testimony in response to questions
2 from me in this proceeding.

3 JUDGE THOMPSON: Okay. Well, and it's up
4 to counsel to object. So I'm going to sustain the
5 objection. Please proceed.

6 MR. DOTTHEIM: Pardon me for a moment.

7 JUDGE THOMPSON: Yes, sir.

8 BY MR. DOTTHEIM:

9 Q. Mr. Nelson, I'd like to return to a line of
10 cross-examination from yesterday involving Cilco and the
11 merger between Ameren and Cilco, and there was an
12 objection raised, and I believe sustained at that time,
13 when I was asking you some questions on due diligence on
14 the matter of relevance.

15 Again, I'd like to refer you to paragraph
16 C, which you read into the record. It states that
17 approving as reasonable and prudent the consideration
18 received by AmerenUE for -- from AmerenCIPS for the
19 transferred assets and liabilities. And I first would
20 like to ask you again whether you have engaged in due
21 diligence involving any of Ameren's mergers beginning with
22 and subsequent to the Union Electric/CIPSCO, Inc. merger
23 case.

24 MR. RAYBUCK: Object to the question, your
25 Honor, on grounds of relevance for the same reasons

1 presented yesterday.

2 JUDGE THOMPSON: Well, Mr. Dottheim, it
3 seems to me that you need to lay some sort of foundation
4 as to what you mean by the phrase due diligence and what
5 its relationship to paragraph C is, and that was the basis
6 of my sustaining the objection yesterday, and that's why
7 I'm going to sustain it again today. Please proceed.

8 BY MR. DOTTHEIM:

9 Q. Mr. Nelson, I'd like to refer you to
10 page 16, lines 11 through 12 of your surrebuttal
11 testimony.

12 A. Page 16, lines 11 and 12?

13 Q. Yes, of Exhibit 6, your surrebuttal
14 testimony.

15 A. Okay.

16 Q. And I'd like to refer you in particular to
17 the phrase, the JDA condition which the condition -- which
18 the Commission might impose. Those words appear on
19 lines 11 and 12, do they not?

20 A. Yes, they do.

21 Q. Is that language intended to indicate that
22 AmerenUE would not voluntarily seek to change the JDA
23 that's presently in existence?

24 A. No, that language doesn't suppose or
25 presuppose that the JDA will be changed or not changed

1 without this transaction. All I'm saying is that
2 Mr. Proctor put forth two proposals in regard to the JDA,
3 and I'm saying the company is willing to accept one of
4 those proposals. By accepting that proposal, this
5 transfer is a clear winner for Missouri retail.

6 Q. And when you say the company is willing to
7 accept one of those proposals, are you indicating that the
8 company would only accept that proposal if it were ordered
9 by the Missouri Public Service Commission?

10 A. No, not necessarily.

11 Q. You said no, not necessarily. Can you
12 indicate conditions other than an Order of the Commission
13 or a conditional approval of the Metro East transfer where
14 AmerenUE would change or alter the JDA in a manner that
15 Dr. Proctor indicated?

16 A. I was okay with the question until in the
17 manner Dr. Proctor indicated. What I'm trying to say in
18 response to your earlier question is that JDA is a
19 contract between two parties, Union Electric and Genco,
20 actually three parties. CIPS is involved because of
21 transmission. And I can't sit here and say that that
22 document will never be changed and never be altered, since
23 it involves three parties. It could possibly be changed
24 or altered as economic conditions change.

25 Q. Would AmerenUE change the JDA in the manner

1 that it has indicated in the testimony of your -- that you
2 have filed without a direct order from the Missouri Public
3 Service Commission?

4 A. Again, I don't know. There are three
5 parties involved and there are three regulatory agencies
6 involved. AmerenUE cannot change it on its own.

7 Q. And even if I think are you indicating that
8 is a matter that would have to be presented to the other
9 jurisdictions, other regulatory agencies?

10 A. And the other parties to the JDA, and until
11 you have a specific change in mind, I really can't predict
12 whether that change would be acceptable by all those
13 different parties.

14 Q. The --

15 A. Without talking to those parties.

16 Q. Have you had yourself any discussions with
17 any personnel at AmerenCIPS respecting this matter?

18 A. Yes, I have.

19 Q. Have you received any indication from
20 AmerenCIPS what it might likely do if AmerenUE were to ask
21 to change the JDA?

22 A. Yes. Obviously we've agreed if this
23 condition is imposed on the company to make this change,
24 and I've talked to the officers of Genco, CIPS and UE, and
25 we are willing to make this change.

1 Q. And could you identify those individuals?

2 A. Similar to the ones identified yesterday,

3 Mr. Gary Rainwater, Tom Voss, Warner Baxter, Steve

4 Sullivan and David Whiteley.

5 Q. And those individuals are officers of more

6 than AmerenUE, including AmerenCIPS and possibly if you

7 could indicate Ameren Energy Generating Company?

8 A. Some are officers of all of those

9 corporations. Some are officers of one and not another.

10 If I had a copy of the 10K or annual report, we could

11 probably go through and differentiate.

12 Q. I'd like to direct you to page 18, line 6

13 to 8 of your surrebuttal testimony. You state therein, do

14 you not, that the ATA provides that a schedule be prepared

15 immediately before the closing that will detail all of the

16 assets used or related to the operation of the business at

17 the facilities?

18 A. Yes.

19 Q. What do you mean by the phrase "immediately

20 before the closing"?

21 A. I think that means the month end prior to

22 the closing.

23 Q. Would the Staff --

24 A. It would be as of that date, sir. Prepared

25 days before the closing, but as of the prior month.

1 Q. Would the Staff be permitted to review that
2 schedule before the closing?

3 A. I think that's a reasonable request.

4 Q. Would there be a filing with the Commission
5 before the closing indicating the matters covered in
6 specificity in the documents that are generated, produced?

7 A. I would hope that wouldn't be necessary,
8 although I would think it would be very reasonable to
9 supply that information to Staff once we have an Order
10 from the Commission in this proceeding.

11 Q. I'd like to direct you to page 19,
12 line 16 -- lines 11 and 16 of your surrebuttal testimony.

13 A. I'm sorry. Could you say that again?

14 Q. I'm sorry. Yes. Page 19.

15 A. Yes.

16 Q. Lines 11 and 16 --

17 A. Okay.

18 Q. -- of your surrebuttal testimony.

19 A. Okay.

20 Q. You use the term "incidental," do you not?

21 A. Yes, I did.

22 Q. What do you mean by the term incidental in
23 the context that you are using it on page 19?

24 A. What I was trying to provide in 11 through
25 16 were examples of things that we might not list item by

1 item, not through intention. Our intention is to list all
2 of the assets and liabilities, but keep in mind there are
3 thousands of assets and probably hundreds of liabilities,
4 and if we were to omit something, we'd like the Commission
5 approval to transfer those incidental ones that we don't
6 identify, that are related to the TD business in Illinois.

7 Q. And again, by incidental you mean?

8 A. I thought I just explained that.

9 Q. And I'm sorry. Would you state that again,
10 please, for me?

11 A. By incidental I meant things that are not
12 hugely significant that were not listed on the asset
13 transfer, the schedule related to the asset transfer
14 agreement, the schedule of assets and liabilities.

15 Q. What do you mean by hugely significant?

16 A. I did not have a dollar impact in mind.
17 Relatively minor is what I thought incidental meant.

18 Q. Would a dollar impact at any point be
19 associated with the word incidental as you are using it in
20 your testimony?

21 A. A dollar impact?

22 Q. Yes. I thought you indicated that you did
23 not have a dollar impact in mind. At the time of the
24 closing or when these incidental items are identified,
25 will there at that time be a dollar value associated with

1 those items?

2 A. If the item has a book value, yes. Some
3 operating lease agreements may not have a book value, may
4 not be reflected on the books.

5 Q. I'd like to refer you now to page 20,
6 lines 10 to 14 of your surrebuttal testimony.

7 A. Lines 12 to 14?

8 Q. Yes, sir.

9 JUDGE THOMPSON: What page was that? I'm
10 sorry.

11 MR. RAYBUCK: Page 20.

12 MR. DOTTHEIM: Page 20, lines 10 to 14.

13 JUDGE THOMPSON: Thank you.

14 MR. DOTTHEIM: May I have a moment, please?

15 JUDGE THOMPSON: You may.

16 MR. DOTTHEIM: May I approach the witness?

17 JUDGE THOMPSON: You may.

18 BY MR. DOTTHEIM:

19 Q. Mr. Nelson, I'm going to hand you a copy of
20 the case that you refer to, Case No. GM-94-252, and I'd
21 ask you if you could locate in that document the language
22 that you're referring to? Let me first ask you, do you
23 recognize that document?

24 A. No. I relied on two things as I wrote this
25 paragraph. One was my experience with subsequent

1 transactions approved by this Commission, for example, the
2 CIPS merger, the transfer of generation to our Genco prior
3 requested for the Metro East transfer, and we had this
4 type of language in all of those proceedings, and the
5 first two that I mentioned, the Commission did approve
6 this language. But this specific cite was provided by
7 counsel, and I did not review this, this case.

8 Q. Okay.

9 A. But it was consistent with what I'd seen
10 the Commission order in previous proceedings. So to
11 answer your earlier question, probably it would take me a
12 while to find that language in this particular document.
13 I would have to read it.

14 Q. And I won't ask you to do that. Thank you.

15 I'd like to address -- or direct you, I
16 should say, again to page 20 of your surrebuttal
17 testimony, line 24, carrying over to the next page,
18 page 21, line 1.

19 A. Right.

20 Q. And you state therein, do you not, that the
21 Staff's concerns about the proposed transfer relate to
22 future possible impacts that might result from the
23 transfer. As a result, we do not believe that the
24 Commission needs to address them in here. Did I state
25 that correctly?

1 A. Yes, you did.

2 Q. Where does the Commission need to address
3 those concerns?

4 A. I don't think the Commission does. They're
5 not valid concerns, as Mr. Pfeiffer points out in his
6 testimony.

7 Q. Do you know whether the Staff has had
8 discussions or indicated to the company that it would seek
9 to open investigations regarding those concerns?

10 A. Not in these -- on this particular concern,
11 no.

12 Q. There are other concerns, though, that
13 relate to the pending case?

14 A. Yes. I'm aware of a statement Staff made
15 in settlement discussions where they said they might open
16 a proceeding.

17 Q. I'd like to --

18 A. Or request to open a proceeding.

19 Q. Do you know whether Ameren will oppose the
20 opening of investigations regarding those items?

21 A. I guess it depends on what Staff is
22 requesting. We'd have to see the request first.

23 Q. I'd like to refer you to page 23 of your
24 surrebuttal testimony.

25 MR. RAYBUCK: Did you say 23?

1 BY MR. DOTTHEIM:

2 Q. 23, lines 9 to 10. Excuse me. I'm sorry.

3 Lines 13 to 14.

4 A. I've read it.

5 Q. You state therein, do you not, that OPC

6 witness Ryan Kind is engaged in conspiracy theory

7 thinking, do you not?

8 A. Yes, I do.

9 Q. What do you mean by conspiracy theory

10 thinking?

11 A. As I read Mr. Kind's testimony, that's

12 what -- those words came to mind. He seems to be accusing

13 the company of affiliate abuse when there is no affiliate

14 abuse, and so I coined that phrase.

15 Q. You've identified Mr. Kind. Are there any

16 members of the Staff that you would characterize as

17 engaged in conspiracy theory thinking?

18 A. No.

19 Q. I'd like to refer you to page 24, line 23

20 of your surrebuttal testimony, page 25, line 1.

21 A. Yes.

22 Q. And you state therein, do you not, that

23 EEI, Inc. is not able to sell at a price less than market

24 price?

25 A. Yes, I do.

1 Q. And still act responsibly to its
2 shareholders?

3 A. Correct.

4 Q. Is AmerenUE able to sell at a price less
5 than market price and still act responsibly to its
6 shareholders?

7 A. For regulated generation, I suppose it's
8 quite possible and occurs at times that AmerenUE is
9 selling to regulated retail customers at a price that's
10 less than market. But in that case, the Public Service
11 Commission takes the place of the market, and that's the
12 theory behind the monopoly.

13 Q. Are there other situations such as when UE
14 is selling to entities other than resale -- retail
15 customers, such as in the JDA?

16 A. The price for power transfers in the Joint
17 Dispatch Agreement is a price that runs both ways. Genco
18 marginal costs for energy transfers and UE pays marginal
19 costs for energy transfers. As we've testified again and
20 again, there's a benefit for the JDA, and that's why this
21 Commission and other commissions --

22 Q. Thank you, Mr. Nelson.

23 A. -- approved the transfer.

24 Q. I think you're going beyond what I asked.

25 A. Okay.

1 Q. And the situation you described, though, is
2 where power is sold at a price less than market price by
3 AmerenUE; is that correct?

4 A. That's correct, and purchased at a price
5 less than market price.

6 Q. Who are the AmerenUE shareholders?

7 A. Ameren Corporation owns the common stock of
8 AmerenUE, although there are public preferred stock
9 shareholders.

10 Q. Has EEI, Inc. been a part of Union Electric
11 Company's system, franchise or work since its inception in
12 1953?

13 A. No.

14 MR. RAYBUCK: Object to calling for a legal
15 conclusion on Mr. Nelson's part.

16 MR. DOTTHEIM: I think --

17 JUDGE THOMPSON: Read back the question,
18 please.

19 THE REPORTER: "Question: Has EEI, Inc.
20 been a part of Union Electric Company's system, franchise
21 or work since its inception in 1953?"

22 JUDGE THOMPSON: I don't see that as a
23 legal conclusion. I'm going to overrule the objection.
24 Please answer if you're able.

25 THE WITNESS: I did answer no already, your

1 Honor.

2 JUDGE THOMPSON: Thank you.

3 BY MR. DOTTHEIM:

4 Q. What is the nature of the relationship
5 between EEI, Inc. and Union Electric Company?

6 A. There's two kinds of relationship. One is
7 as we've discussed, Union Electric owns 40 percent of the
8 common shares of Electric Energy, Inc. And then there's a
9 second relationship where there's a long-term power
10 purchase agreement where EE, Inc. supplies power to Union
11 Electric under that agreement.

12 Q. Now, Mr. Nelson, I'd like to refer you now
13 back to your direct testimony, your Schedule 1, which is
14 the Asset Transfer Agreement, I believe.

15 A. Okay. I've got the Asset Transfer
16 Agreement.

17 Q. And I'd like to direct you to page 12 of
18 34, as it's identified as an attachment to your prepared
19 direct testimony.

20 A. I'm there, sir.

21 Q. And I'd like to direct you to paragraph D,
22 liabilities and obligations.

23 A. I'm there.

24 Q. And I'd like to direct you to that section,
25 but in particular to the word relate that appears in the

1 third line.

2 A. Correct. I'm there.

3 Q. Does the word relate in the third line
4 include liabilities that were allocated to the Illinois
5 business prior to the transfer?

6 A. It's my understanding of paragraph D that
7 this paragraph covers liabilities before or after the
8 closing identified for these specific things,
9 environmental permits, variances and so on. Mr. Weiss,
10 though, is also very expert at what this document means.

11 Q. I'd like to refer you next to paragraph E,
12 litigation, and line 1, where the word "relating" appears
13 but the paragraph in general also. Does the word relating
14 as used in the paragraph E, line 1, including litigation
15 liabilities that were allocated to the Illinois business
16 prior or would be allocated to the Illinois business prior
17 to the proposed transfer occurring?

18 A. As I understand paragraph E, pre-close
19 liabilities of the nature identified in paragraph E would
20 stay with Union Electric, and liabilities after the date
21 hereof, meaning after the date of closing, would be the
22 responsibility of the CIPS.

23 Q. I'd like to refer you next to paragraph F,
24 line 1, and in particular the word relating. Does the
25 word relating in paragraph F, line 1, include

1 environmental liabilities that would be allocated to the
2 Illinois business prior to the proposed transfer?

3 A. I think there's two things going on in this
4 paragraph. The Alton gas, town gas liabilities, that
5 liability before and after the closing is the
6 responsibility of CIPS after the transfer, and then the
7 reference to the environmental rider relates to
8 manufactured gas plant sites, for instance, and any
9 liability before or after the closing would be a
10 responsibility of CIPS.

11 Then as I read this, other environmental
12 liabilities related to the T&D property being transferred,
13 liabilities before the transfer are the responsibility of
14 UE, and liabilities after the transfer are liabilities of
15 CIPS.

16 Q. Has the Asset Transfer Agreement changed in
17 any manner since it was filed with the Commission as an
18 attachment to your direct testimony?

19 A. Not that I'm aware of.

20 JUDGE THOMPSON: Mr. Dottheim, can I ask
21 where we're going with this?

22 MR. DOTTHEIM: Well --

23 JUDGE THOMPSON: I mean, the agreement is
24 in the record. The Commission can and I sure you will
25 read the agreement for itself, and in your brief you're

1 able to point out that perhaps the company's selling a pig
2 in a poke or buying one or what have you. I don't see
3 that the cross-examination is really elucidating anything.

4 MR. DOTTHEIM: It's attempting to elucidate
5 how AmerenUE interprets the language of those particular
6 paragraphs.

7 JUDGE THOMPSON: Okay. Do you have much
8 more on this line?

9 MR. DOTTHEIM: No, I don't, and since --

10 JUDGE THOMPSON: Okay. Why don't you
11 finish it up?

12 MR. DOTTHEIM: Since Mr. Nelson was offered
13 as a policy witness, his testimony also addresses other
14 areas of the case, and the Asset Transfer Agreement is
15 attached to his testimony rather than some other witness'
16 testimony.

17 MR. RAYBUCK: Your Honor, the only
18 observation I would make is to just to repeat what
19 Mr. Nelson said. To the extent that Mr. Dottheim has more
20 detailed accounting questions, it would be wiser to put
21 those to Mr. Weiss who will be appearing later on.

22 JUDGE THOMPSON: He can ask him any
23 question he wants, and if the witness is able to answer,
24 then the witness must answer, whether he's the preferred
25 witness for the topic or not. My concern is that we not

1 undertake a deposition here during the hearing that
2 perhaps should have been done prior to hearing.

3 So if what we need to know is what Ameren
4 understands the word relating to mean, to me that's a
5 deposition question rather than a hearing question,
6 because his answers are not frankly startling or casting
7 doubt on his testimony or serving any of the purposes that
8 cross-examination is typically understood to serve.

9 So I would simply urge you to move more
10 quickly towards the end result that you seek, and if your
11 cross-examination is not going to cause the Commission to
12 doubt some important part of what he's testified to, then
13 perhaps you shouldn't proceed with it.

14 MR. RAYBUCK: Company fully agrees with
15 your concern, Judge.

16 JUDGE THOMPSON: And I'd like all counsel
17 to understand that we just don't have the time here to
18 take depositions of the witnesses during hearing. Okay?

19 MR. DOTTHEIM: Judge, the timing has always
20 been a matter of concern to the Staff. It's been an
21 expedited case. So the Staff has proceeded as quickly as
22 possible, and on the basis of a different schedule they
23 have been able to proceed differently.

24 JUDGE THOMPSON: I understand,
25 Mr. Dottheim, and that's precisely why I've given you the

1 leeway that I have this morning.

2 MR. DOTTHEIM: Thank you.

3 JUDGE THOMPSON: Please proceed.

4 BY MR. DOTTHEIM:

5 Q. I just have a few more questions about the

6 Asset Transfer Agreement. And I'd like to direct you to

7 page 13, in particular the paragraph 2.2, small A.

8 A. I'm lost, sir.

9 JUDGE THOMPSON: Page 13 of 24.

10 MR. DOTTHEIM: I'm sorry. Page 13 --

11 JUDGE THOMPSON: Of 34, excuse me, small

12 paragraph A labeled pre-closing, is that the one?

13 THE WITNESS: I'm with you. 2.2a, I'm

14 there.

15 BY MR. DOTTHEIM:

16 Q. My question goes to that paragraph.

17 A. And what is your question?

18 Q. Does that paragraph commit AmerenUE for all

19 future liabilities and obligations related to natural gas

20 or electric service that AmerenUE provides Illinois

21 consumers prior to the closing?

22 A. As I read section 2.2 in paragraph A, the

23 general -- the general understanding is that generation

24 liabilities stay with UE, except for the ones stated

25 below, particularly like the riders that we talked about,

1 and that in general T&D liabilities go with the business
2 because it's a T&D business. Paragraphs A, B, C, D and E
3 lay out how they're split in particular. But the
4 pre-closing -- the general rule is pre-closing liabilities
5 stay with UE, after-closing liabilities go to CIPS, but
6 then in the paragraphs that follow, it's further defined
7 about the particulars of each of those liabilities. For
8 instance, as I understand it, T&D direct liabilities, ones
9 tied to the business, tied to the assets go with CIPS
10 whether they're pre or post closing, as I said in the
11 earlier explanation.

12 JUDGE THOMPSON: T&D, transmission and
13 distribution?

14 THE WITNESS: Yes, and gas.

15 BY MR. DOTTHEIM:

16 Q. Do you know whether AmerenUE will seek to
17 recover from its Missouri customers any costs related to
18 the assumption of the liability in that paragraph?

19 A. If it's a generation liability that
20 become -- that is included in cost of service in a test
21 year in a rate case at some future period related to the
22 generation that stays, yes, we would expect to recover it.
23 If it's a generation liability that's it's outside a test
24 year, there wouldn't be any specific recovery. If it's a
25 T&D related liability, UE would not be responsible for it.

1 Q. And I'd like to refer you just to one last
2 paragraph, and it's on that same page, paragraph 2.2,
3 small B, and could you identify what it is your
4 understanding of the meaning of that paragraph?

5 A. I'm not exactly sure what particular
6 liabilities are being talked about in that section.

7 Q. Is the company presenting a witness during
8 these proceedings who might be able to answer that
9 question?

10 A. I think Mr. Weiss would do a better job
11 than I.

12 Q. I'd like to refer you to page 7 of your
13 direct testimony, lines 11 to 13.

14 MR. RAYBUCK: I'm sorry. What page?

15 MR. DOTTHEIM: Page 7, lines 11 to 13.

16 MR. RAYBUCK: Thank you.

17 THE WITNESS: Okay.

18 BY MR. DOTTHEIM:

19 Q. And you state therein, do you not, that
20 AmerenUE will retain ownership of the generator lead line
21 and related equipment connecting the Venice and Keokuk
22 plants to the transmission grid?

23 A. Yes, I do.

24 Q. Could you identify what you are referring
25 to, what you mean by the words generator lead lines and

1 related equipment?

2 A. Only in a general sense. I'd be happy to
3 do it in a general way. The transmission system,
4 transmission lines and system we're proposing transfer to
5 CIPS, and then the generation related equipment, including
6 these lead lines and generation related equipment would
7 stay with UE, along with the power plants.

8 Q. Does that phrase include the switch yard at
9 Venice, if you know?

10 A. I think it does. I think Mr. Weiss could
11 be more precise.

12 Q. Does that phrase include the switch gear
13 building at Venice?

14 A. We're down to a level of detail that this
15 policy witness does not know the answer to.

16 Q. Thank you.

17 MR. RAYBUCK: One observation, your Honor.
18 Mr. Getz is probably in a better position to answer that.
19 He is relating -- he is going to address the issue of the
20 listing of the assets.

21 JUDGE THOMPSON: Thank you, sir.

22 BY MR. DOTTHEIM:

23 Q. Mr. Nelson, could you identify how
24 AmerenUE's best interests are protected and implemented
25 under the current Ameren corporate structure?

1 MR. RAYBUCK: Object to this on grounds of
2 relevance, your Honor.

3 JUDGE THOMPSON: Read back the question,
4 Kellene.

5 THE REPORTER: "Question: Mr. Nelson,
6 could you identify how AmerenUE's best interests are
7 protected and implemented under the current Ameren
8 corporate structure?"

9 JUDGE THOMPSON: Sustain the objection.

10 MR. DOTTHEIM: If I could have a moment?

11 JUDGE THOMPSON: You may.

12 BY MR. DOTTHEIM:

13 Q. Mr. Nelson, do you have a copy of the
14 one-page sheet of paper document that Mr. Lowery used in
15 his opening statement?

16 A. Yes, sir, I do.

17 Q. I'd like to refer you in particular to the
18 paragraph item 2A and the third bullet. It's an arrow
19 more than a bullet.

20 A. I see it.

21 Q. Yesterday you made reference to, I believe,
22 a top-down approach analysis. Would you characterize the
23 analysis that appears in that bullet as a top-down
24 approach?

25 A. No. I think this is just a statement of

1 fact that 374 per KW is 26 percent less than 471 per KW.

2 Q. Thank you.

3 A. I don't know if necessarily that's a
4 top-down analysis.

5 JUDGE THOMPSON: Simple math, something a
6 lawyer could do?

7 THE WITNESS: In fact, one did check it,
8 yes.

9 MR. RAYBUCK: Even a mathematically
10 challenged lawyer.

11 BY MR. DOTTHEIM:

12 Q. Mr. Nelson, was a study performed regarding
13 the financial impact of the Metro East transfer on
14 AmerenCIPS?

15 A. What I'm struggling with, there was no
16 revenue requirement study. I know that for sure. What I
17 don't know is whether we projected return on equity for
18 the next five years for AmerenCIPS as a result of this
19 transaction, and I think we did, yes. I do recall we did
20 do that.

21 Q. Do you recall the results of that study?

22 MR. RAYBUCK: Object to this on grounds of
23 relevance, your Honor.

24 JUDGE THOMPSON: Kellene, could you read
25 that back?

1 THE REPORTER: The last question was, "Do
2 you recall the results of that study?"

3 JUDGE THOMPSON: What was the preceding
4 question?

5 THE REPORTER: "Question: Mr. Nelson, was
6 a study performed regarding the financial impact of the
7 Metro East transfer on AmerenCIPS?"

8 JUDGE THOMPSON: I'm going to overrule the
9 objection. You may answer if you're able.

10 THE WITNESS: And I answered there was no
11 revenue requirement study, but we did supply a study
12 filing with the Illinois Commission as required by law
13 that projected the return on equity with and without the
14 transfer. The purpose of that study is to show whether we
15 fall below the statutory floor that would call for an
16 automatic rate increase, and we did not fall below that
17 floor.

18 BY MR. DOTTHEIM:

19 Q. Do you recall the rate of returns that were
20 identified in the filing that was made with the --

21 A. No, I don't.

22 Q. -- Illinois Commission?

23 MR. RAYBUCK: I was just going to alert you
24 that we may be getting into confidential areas, but I
25 believe my concern is moot.

1 JUDGE THOMPSON: Very well.

2 BY MR. DOTTHEIM:

3 Q. I'd like to ask you the same question as

4 far as whether there was a study performed of the

5 financial impact of the Metro East, proposed Metro East

6 transfer on Ameren Energy Generating?

7 MR. RAYBUCK: Object again on grounds of

8 relevance, your Honor.

9 JUDGE THOMPSON: Isn't Ameren Energy

10 Generating an unregulated entity?

11 THE WITNESS: It's not regulated by this

12 Commission. Obviously power contracts are regulated by

13 FERC, but in general it's unregulated, yes.

14 JUDGE THOMPSON: Not regulated by this

15 Commission?

16 THE WITNESS: That's correct.

17 JUDGE THOMPSON: I sustain the objection.

18 MR. DOTTHEIM: If I could have a moment,

19 please?

20 JUDGE THOMPSON: You may.

21 BY MR. DOTTHEIM:

22 Q. Mr. Nelson, again, you're the policy

23 witness, and I think your testimony covers the various

24 issues that have been raised by the intervenors or other

25 parties in this case. I'd like to ask you a question

1 regarding the decommissioning trust fund issue, which I
2 believe has been identified as an issue in amount of
3 \$272,000. And I would ask you whether you consider that
4 dollar value, \$272,000, as being material or immaterial?

5 A. Material or immaterial to what?

6 Q. Mr. Nelson, you tell me how you would
7 define it for purposes of this case.

8 A. Since we're talking about 138 million in
9 assets that are being transferred, which is the amount of
10 the T&D property being transferred to CIPS. And we're
11 talking about, if I remember correctly, about 240 million
12 of generating assets that would be allocated to the
13 Missouri retail jurisdiction, in that context it's
14 immaterial.

15 MR. DOTTHEIM: One moment again, please?

16 JUDGE THOMPSON: Certainly.

17 MR. DOTTHEIM: Thank you, Mr. Nelson. I
18 have no further questions.

19 JUDGE THOMPSON: Thank you, Mr. Dottheim.
20 We will take a five-minute recess at this time, and then
21 return for Mr. Coffman's cross-examination. You will
22 still be on the stand, Mr. Nelson.

23 (A BREAK WAS TAKEN.)

24 JUDGE THOMPSON: Mr. Nelson, you're still
25 under oath. Mr. Coffman, cross?

1 MR. COFFMAN: Thank you.

2 CROSS-EXAMINATION BY MR. COFFMAN:

3 Q. Good morning, Mr. Nelson.

4 A. Good morning.

5 Q. Before I get into more specific questions,

6 let me just ask an important but general question. Is

7 this proposed asset transfer or the proposed transaction

8 with the Metro East Illinois properties, do you believe

9 that it is an arm's length transaction?

10 A. Clearly in one respect it is arm's length,

11 because you have the Illinois Commerce Commission on one

12 end of the arm and the Missouri Public Service Commission

13 on the other end of the arm, both with conflicting

14 interests, both wanting to make sure the transaction's

15 fair, both keenly interested in the -- in their own retail

16 customers in their state. So from that perspective, I

17 think it is very arm's length.

18 Q. Let me stop you, Mr. Nelson.

19 A. You asked me a question. I was answering

20 it.

21 JUDGE THOMPSON: Were you finished with

22 your answer, sir?

23 THE WITNESS: No, I wasn't finished.

24 JUDGE THOMPSON: Please finish your answer.

25 BY MR. COFFMAN:

1 Q. Go ahead.

2 A. So from that perspective, I think it is
3 very arm's length. What we've tried to do from the
4 company's standpoint, meaning the UE and CIPS standpoint,
5 is to fashion a transaction that will be acceptable to the
6 Illinois Commerce Commission and to the Missouri Public
7 Service Commission, and they both, as a regulated
8 monopoly, they're going to make sure that customer
9 interests are represented, and I think we've done so.
10 It's fair to both.

11 Q. So is your answer yes to my question? Is
12 it an arm's length transaction?

13 JUDGE THOMPSON: I believe he said yes.

14 THE WITNESS: Yes, it is, given that the
15 two Commissions are on each end of the arm.

16 BY MR. COFFMAN:

17 Q. But the two commissions, the Illinois
18 Commerce Commission and the Missouri Public Service
19 Commission are not parties to the asset transfer
20 agreement, are they?

21 A. They're not parties to the agreement, but
22 they both have to approve the agreement.

23 Q. Okay. You would agree with me that the two
24 parties to the transfer agreement are AmerenUE and
25 AmerenCIPS, correct?

1 A. Correct.

2 Q. And did you state earlier that the decision
3 was made to pursue this transaction by -- did you say it
4 was three members of the senior team, or did you say?

5 A. I said it was made by our senior team, and
6 I believe I mentioned three senior team members that are
7 officers of both of those companies.

8 Q. Is that Mr. Rainwater, Mr. Baxter and
9 Mr. Sullivan?

10 A. Yes, but the rest of the senior team
11 members were involved in the decision.

12 Q. And those senior team members or at least
13 most of them wear many hats? Isn't it true that most of
14 them are officers in all of the Ameren Corporation
15 subsidiaries?

16 A. Some are officers in all; some are not.

17 Q. Can you tell me which members of the senior
18 team are not officers of all subsidiaries?

19 A. Gary Randolph is a senior VP of AmerenUE
20 only. Tom Voss is a -- is the president of the
21 unregulated companies, but is not an officer of UE.

22 Q. Okay. Let me ask more specifically how
23 this decision was made to pursue the transaction. Was it
24 the entire senior team that decided to go forward? Were
25 they the ones that initiated this proposal within Ameren?

1 MR. RAYBUCK: Your Honor, I'm going to
2 object to this for two reasons. No. 1, I believe it's
3 repetitive, as compared to what Mr. Dottheim has been
4 inquiring about. Second, I believe it's been asked and
5 answered a number of times. It's a senior team decision,
6 that is in the record. I believe it's repetitive.

7 MR. COFFMAN: Your Honor, similar questions
8 have been asked, and I believe different answers have been
9 given, confusingly similar answers perhaps, and I just
10 would like to get a definitive answer.

11 JUDGE THOMPSON: I'm going to overrule the
12 objection. I would urge you, Mr. Coffman, to please not
13 cover ground that has been well plowed already.

14 MR. COFFMAN: I'll do my best.

15 JUDGE THOMPSON: Thank you. Please
16 proceed.

17 BY MR. COFFMAN:

18 Q. Can you in direct terms explain to me how
19 this decision was made to go forward with the asset
20 transfer proposal within Ameren?

21 A. I'll try. Go back to testimony that I gave
22 yesterday. This is really the third time. We thought
23 this was a good deal when we did the CIPS/UE merger.
24 That's when the first decision was made. We've continued
25 to think this was a good deal for Missouri retail since

1 then.

2 Q. When you say we, who are you referring to?

3 A. Senior management of AmerenUE, AmerenCIPS

4 and Ameren Corporation.

5 Q. And when Mr. Baxter, Mr. Sullivan and

6 Mr. Rainwater get together in a room to discuss this

7 transaction, are they -- don't each sit down and focus on

8 one of these entities, do they, or do they? Or do they

9 sits down and at one time represent all AmerenUE,

10 AmerenCIPS and other Ameren subsidiaries?

11 A. They're fully conscious of their

12 responsibilities as officers of AmerenUE, AmerenCIPS and

13 Ameren Corporation. They understand the different

14 stakeholders involved in those corporations, including

15 retail customers and including our shareholders.

16 Q. Was there at any time -- was there any time

17 in the decision-making process where one of these

18 individuals sat down and focused only on AmerenUE's

19 interests or were they at the same time also representing

20 other subsidiaries as well as Ameren Corporation itself?

21 A. There was a thorough discussion in regard

22 to the Metro East transfer on the impact for UE's retail

23 customers, and we think it's a clear winner for UE's

24 retail customers, as we've testified.

25 Q. Does the senior team ever meet to discuss

1 AmerenUE exclusively?

2 A. Ameren -- I don't know if there is a
3 special meeting -- I don't know whether there's been a
4 special meeting solely for -- yes, I do. I remember
5 instances now where we have had a meeting with only UE
6 topics in it.

7 Q. How often did they meet to have AmerenUE
8 exclusive topics?

9 MR. RAYBUCK: Your Honor, I'd like to
10 object again on the grounds that this is repetitious, and
11 further, I believe your observation made with regard to
12 Mr. Dottheim's cross-examination is fully applicable here.
13 What Mr. Coffman is doing appears to me is inquiring as if
14 this were a deposition, and I believe this needs to be
15 expedited if we're going to be finishing within the five
16 days allotted. So I believe certainly some latitude is
17 appropriate for Mr. Dottheim or Mr. Coffman, but I believe
18 we're way beyond that it's entirely repetitious.

19 MR. COFFMAN: Your Honor, I don't believe
20 this question has ever been asked yet, and I don't believe
21 I should be disadvantaged simply because of where we are
22 at this moment. This is my first opportunity to ask
23 cross-examination questions of Mr. Nelson.

24 JUDGE THOMPSON: I have no intention of
25 disadvantaging you, Mr. Coffman. However, I will point

1 out that the general question, how often do you have
2 special meetings relating to AmerenUE topic is only
3 loosely relevant to this particular case, and so I will
4 allow you to proceed, but I urge you to tie it to the
5 issues in this matter as quickly as you can.

6 MR. COFFMAN: I understand.

7 JUDGE THOMPSON: Please proceed.

8 BY MR. COFFMAN:

9 Q. Can you tell me generally how often the
10 senior team meets to discuss AmerenUE topics exclusively?

11 A. No. I can remember two or three meetings
12 with senior management, maybe four, maybe five, dedicated
13 solely to AmerenUE topics, especially related to resource
14 planning. I'm not -- I do not attend all meetings of the
15 Ameren senior team, so I don't know what's on their
16 agenda. So I really can't answer your question.

17 Q. But you're at least aware that at least on
18 one occasion they have discussed AmerenUE topics only?

19 A. Yes, and as I testified earlier, we fully
20 vetted the benefits for AmerenUE for the Metro East
21 transfer with the senior team.

22 Q. Let me direct you to your direct testimony,
23 page 11, lines 9 through 14. If I'm understanding your
24 testimony there -- and correct me if I'm wrong.

25 A. Direct page 11?

1 Q. Direct testimony, page 11.

2 A. And then what lines?

3 Q. Lines 9 through 14.

4 A. Okay. Thank you.

5 Q. You state there that the primary purpose

6 for the transfer is to effectuate an electric resource

7 plan in a manner beneficial to Missouri customers. You

8 still believe that?

9 A. Yes, I do, although the secondary purpose

10 is almost of equal weight.

11 Q. Can you tell me which of these purposes

12 drove the decision to pursue the transfer? Am I

13 understanding you correctly that the primary purpose, the

14 main driver is to find the most efficient source of

15 resources for AmerenUE?

16 A. That's correct.

17 Q. Do you believe that the Public Service

18 Commission should approve this transfer simply because

19 Illinois has restructured its electric market in a manner

20 that's different from Missouri's for electricity?

21 A. We're not asking the Commission to approve

22 it solely for that purpose.

23 Q. You say that the second purpose you state

24 here is almost equal weight is the purpose of

25 restructuring business functions to be more in line with

1 the status of customer choice in the respective states.

2 Why should -- why should the Missouri Public Service

3 Commission care about that purpose?

4 A. I can give you one example, practical
5 example. As UE has resource needs, meaning additional
6 generation needs to serve its load, and it wants to either
7 build or buy generation or else go out for long-term power
8 contracts, we get conflicting -- there's conflicting
9 desires from those two commissions. As you'll notice in
10 the Stip & Agreement in Missouri, the Missouri Commission
11 wants us to have company-owned generation. That is not
12 the desire nor the statutory intent in Illinois, where the
13 delivery service companies which have no generation are
14 going to use an RFP process to purchase power.

15 So UE has split regulatory regimes, because
16 it needs to add power capacity, generating capacity to
17 serve its customer needs, it needs to go to both
18 commissions and they have different goals, different
19 themes, different purposes, and it's very difficult, as we
20 experienced with adding generation at our Venice site, a
21 relatively small amount of generation, to get the two
22 Commissions to agree.

23 Q. And is it your understanding that the
24 Illinois Commerce Commission would like to see this
25 transfer take place?

1 A. They've already approved the electric and
2 we have an agreed order with Staff with no lingering
3 objections. I'm confident they will approve the gas side.

4 Q. Is it your understanding that the Illinois
5 Commerce Commission believes that this will further their
6 regulatory goals of retail choice market in Illinois?

7 A. Yes, it turns the Metro East territory into
8 a delivery service territory only that has no generation,
9 and then the wholesale market will bid on supplying that
10 generation.

11 Q. Okay. Now, then --

12 A. I'm sorry. I said that wrong. The
13 wholesale generation market will bid on serving that Metro
14 East load beginning in 2007.

15 Q. Now, the Illinois customers of AmerenUE do
16 not have many options for their electric service, do they,
17 at the moment?

18 A. I don't agree with that at all.

19 Q. Okay. Residential customers? Do
20 residential customers have options as to their electric
21 provider?

22 A. Yes, they do.

23 Q. How many options?

24 A. They're free to choose whoever they want to
25 supply their power.

1 JUDGE THOMPSON: Mr. Coffman, is this
2 relevant to this Commission?

3 MR. COFFMAN: I'll move on.

4 JUDGE THOMPSON: Thank you.

5 BY MR. COFFMAN:

6 Q. Let me follow up on a couple of questions
7 that Mr. Dottheim asked relating to Ameren's offer to
8 amend the Joint Dispatch Agreement. Did I understand your
9 testimony earlier that this offer to amend the JDA is an
10 offer that would be made only if the Commission ordered it
11 as a condition in this case, or is it an offer that would
12 stand alone from this case?

13 MR. RAYBUCK: Object to this as being asked
14 and answered, your Honor.

15 JUDGE THOMPSON: Read it back, Kellene.

16 THE REPORTER: "Question: Let me follow up
17 on a couple of questions that Mr. Dottheim asked relating
18 to Ameren's offer to amend the Joint Dispatch Agreement.
19 Did I understand your testimony earlier that this offer to
20 amend the JDA is an offer that would be made only if the
21 Commission ordered it as a condition in this case, or is
22 it an offer that would stand alone from this case?"

23 JUDGE THOMPSON: I'm going to allow it.
24 Overruled. Proceed.

25 THE WITNESS: As I explained in my

1 testimony, Mr. Coffman, we think the proposal we put
2 before this Commission achieves a 2.4 million revenue
3 requirement savings for Missouri retail is enough to
4 convince the Commission to approve the transfer and
5 reallocation of generation to Missouri retail.

6 We're hoping the Commission will approve
7 this transaction based on that evidence. However, if the
8 Commission wants more, we've offered to split off-system
9 sales based on generation within the JDA, and we are
10 willing to make that change assuming the other regulatory
11 agencies will approve that.

12 BY MR. COFFMAN:

13 Q. I'm still not exactly sure that that
14 answers my question. Is this a change that AmerenUE is
15 willing to pursue regardless of how the Commission --

16 A. I don't know.

17 Q. -- addresses it?

18 A. I don't know is the answer.

19 Q. Would this change that we're discussing --
20 and by this change I want to be more exact and that is the
21 statements that we've heard in this hearing that profits
22 from off-system sales would be allocated to AmerenUE based
23 on generation output rather than load. Do you believe
24 that this change would be a substantive change in the JDA?

25 A. Yes, it is.

1 Q. Has Ameren developed a new draft JDA that
2 reflects this concept?

3 A. We are working on it.

4 Q. Is there --

5 A. I personally worked on it.

6 Q. Is there a current draft?

7 A. There's not a definitive draft.

8 Q. Would it be fair to say the draft is not
9 ready for Staff or Public Counsel to review?

10 A. That's correct.

11 Q. Will it be ready for the parties in this
12 case to review before the record is closed in this case?

13 A. I don't know, but I --

14 Q. Will it be ready for the Commission to
15 review before it makes its decision?

16 A. It can be.

17 Q. Okay. You do understand that the devil is
18 in the details and the precise drafting of wording can
19 sometimes make a big difference in how these particular
20 documents are put together, don't you?

21 A. Yes, I do.

22 Q. As to this conditional proposal that you're
23 making regarding a change to the JDA, is Ameren proposing
24 that it would come back to this Commission for approval of
25 the proposed transfer after it has gotten other regulatory

1 approvals of the modified JDA, or would the specific
2 approval be made about the specific language in this
3 particular case before it went to other regulatory
4 agencies?

5 MR. RAYBUCK: I'm going to object to this.
6 I've given Mr. Coffman some latitude, but I think we're
7 getting into procedural issues which do not relate to
8 Mr. Nelson's testimony. They would apply to future events
9 if and when we do get an Order from the Commission
10 approving the transfer, and I believe it's calling for
11 speculation and it's premature to delve into this
12 procedural issue.

13 MR. COFFMAN: Your Honor, I think this is
14 extremely relevant. Ameren is basing its conclusion that
15 this --

16 JUDGE THOMPSON: I agree. The objection is
17 overruled. Please proceed.

18 MR. COFFMAN: Thank you.

19 BY MR. COFFMAN:

20 Q. Do you recall my question, Mr. Nelson?

21 A. I'm not exactly sure procedurally how this
22 change will be implemented. I do understand that we need
23 approval from the Illinois Commerce Commission and the
24 Federal Energy Regulatory Commission, but I'm not sure on
25 the order of how we submit that to the various commissions

1 will be carried out.

2 Q. Are there any other regulatory agencies
3 that would need to approve the change besides those two
4 and the Missouri Public Service Commission?

5 A. Those are the only three I know of.

6 Q. Is it your belief that before a change
7 would be made, the very specific language of the new JDA
8 would need to be approved by this Commission here?

9 A. I'm not sure to that answer. I'm not
10 completely sure of whether we're asking for approval in
11 this proceeding, whether that's an absolute approval or we
12 need to come back to this Commission with a definitive
13 plan.

14 Q. I'm not sure either. You have stated that
15 Ameren would use its best efforts to see that the
16 modification would be put in place; is that correct?

17 A. Yes.

18 Q. If this Commission decided that the
19 transfer would be detrimental to the public without such a
20 condition, and the condition would be that Ameren will use
21 its best efforts to make that amendment to the JDA, would
22 Ameren be willing to go further to commit that if
23 somewhere along the lines another agency did not approve
24 it and it did not actually come to pass that this
25 amendment was changed in the JDA, that in future

1 ratemaking proceedings it would be assumed as if it had
2 here in Missouri?

3 MR. RAYBUCK: Object, calls for a legal
4 conclusion.

5 JUDGE THOMPSON: Read that one back,
6 Kellene.

7 THE REPORTER: "Question: If this
8 Commission decided that the transfer would be detrimental
9 to the public without such a condition, and the condition
10 would be that Ameren will use its best efforts to make
11 that amendment to the JDA, would Ameren be willing to go
12 further to commit that if somewhere along the lines
13 another agency did not approve it and it did not actually
14 come to pass that this amendment was changed in the JDA,
15 that in future ratemaking proceedings it would be assumed
16 as if it had here in Missouri?"

17 JUDGE THOMPSON: I'm going to sustain the
18 objection to the question because I think it's
19 unintelligible. Why don't you go at it again?

20 BY MR. COFFMAN:

21 Q. If this pub-- and this is, I suppose, a
22 hypothetical question. Assuming that this Public Service
23 Commission believes that the proposed transfer by itself
24 would be detrimental to the public, but would not be
25 detrimental to the public with the condition relating to

1 what Ameren is proposing to change the JDA, how -- let me
2 ask you, how can we be positive that it ultimately would
3 be not detrimental, given the fact that there are other
4 regulatory approvals that would need to be made pursuant
5 to your best efforts?

6 A. So you placed two conditions, one is that
7 the Commission finds that it's detrimental without this
8 change?

9 Q. Yes.

10 A. And the second condition is that it's not
11 approved by some regulatory agency?

12 Q. Yes.

13 A. And then what was the finish of that
14 question?

15 Q. How can we be certain, how can the Public
16 Service Commission be certain that it was not -- it -- the
17 transaction would be not detrimental if the change to the
18 JDA was still pending?

19 JUDGE THOMPSON: Didn't your hypothetical
20 include an assumption that the transaction was not
21 approved?

22 MR. COFFMAN: My assumption and my
23 hypothetical is the Public Service Commission comes to the
24 conclusion that --

25 JUDGE THOMPSON: In other words, the

1 transaction's conditioned on the change to the JDA?

2 MR. COFFMAN: Yes. It is my understanding

3 that the Commission could offer essentially to Ameren that

4 it could go forward with the transaction conditioned on a

5 change in the JDA. As I'm understanding what Ameren is

6 willing to offer, is that it would use its best efforts to

7 propose a change to the JDA.

8 BY MR. COFFMAN:

9 Q. My question to you is, how can they be

10 certain that it would be not detrimental if that was their

11 assumption if it's still pending?

12 A. I guess my answer is, I don't know.

13 Q. Okay. Would Ameren agree that granting

14 conditional approval of the application based on Ameren's

15 best efforts, withholding final approval until all other

16 regulatory approvals had been granted?

17 A. I'm not authorized to make that commitment.

18 Q. Okay. There was a question earlier, I

19 believe in response to Mr. Dottheim, about reserve margins

20 for AmerenUE in the future. Do you know if AmerenUE has a

21 separate reserve margin from AmerenCIPS?

22 A. Yes, I do.

23 Q. And what's the basis of that belief?

24 A. Because I work in the area extensively with

25 Mr. Voytas, I understand the terms of the Joint Dispatch

1 Agreement. The terms are that each company, meaning
2 Ameren UE and Genco, has enough assets to serve its own
3 load independently of the JDA.

4 Q. What is the source of the reserve margin
5 restriction placed on these entities?

6 A. There's actually two sections in the Joint
7 Dispatch Agreement that make it very clear that each
8 company must stand up on its own for long-term planning
9 purposes, meaning having secured enough generation to
10 serve its own load.

11 Q. What are the consequences if one of these
12 entities missed its reserve margin by, say, a percentage
13 point?

14 A. I may be stepping into an area of law, but
15 let me conjecture that if there are two parties to the
16 agreement, one party doesn't think the other party's
17 fulfilling its obligation on the agreement, I imagine
18 there are some remedies, such as suing the other member --
19 I don't know -- terminating the agreement. Terminating
20 the agreement is obviously a remedy that's allowed under
21 the agreement.

22 Q. And that's allowed based on one entity not
23 meeting its reserve margin?

24 A. They have the right, each company has the
25 right to issue a notice to terminate. I'm saying if the

1 other company were not fulfilling its obligation, that
2 right would be available to the party that was being hurt.

3 Q. Okay. Let me move on. Would you agree
4 that if the Metro East transfer is approved, that in
5 subsequent rate cases there would be implication, as based
6 on the various components of the cost of service, in a
7 rate case?

8 A. Yes.

9 Q. Let me turn you to your surrebuttal
10 testimony, page 3, last lines, 24 and 25. You state there
11 that future and uncertain ratemaking consequences are not
12 properly an issue in this case. I assume you're not
13 stating a legal opinion there?

14 A. That's correct.

15 Q. What is the basis of that opinion?

16 A. I explained that yesterday to Mr. Dottheim.

17 Q. Is that based on the reading of past Public
18 Service Commission decisions?

19 A. Yes, it is. And as I said yesterday,
20 education from counsel, the reading of the decisions and
21 discussions with company counsel.

22 Q. Okay. But it is -- it is your opinion, I
23 understand from reading your testimony -- and correct me
24 if I'm wrong -- that you believe that the proposed
25 transfer would actually have a positive ratemaking effect

1 for Missouri ratepayers?

2 A. Yes. I firmly believe that revenue
3 requirements after the transfer are less for Missouri
4 retail than they would have been without the transfer.

5 Q. And if you're so firm in your conviction,
6 why wouldn't AmerenUE simply offer as a general condition
7 in this case that the transfer be approved and that rates
8 would be based upon -- rates would be no higher than an
9 assumption as if the transfer had not occurred?

10 A. Because that would be something impossible
11 to prove one way or the other.

12 Q. I'm not disagreeing with you on that point,
13 but if it were possible, would you have a -- would you
14 have a problem in agreeing to such a hold harmless
15 condition?

16 MR. RAYBUCK: I object as being asked and
17 answered. It's also argumentative, your Honor. He's
18 asking to assume it's possible and Mr. Nelson is saying
19 it's not.

20 JUDGE THOMPSON: Why don't you read it
21 back, Kellene?

22 MR. COFFMAN: I'll withdraw the question.

23 JUDGE THOMPSON: Very well. Please proceed

24 BY MR. COFFMAN:

25 Q. Your tasks within Ameren include strategic

1 planning; is that correct?

2 A. Yes, sir.

3 Q. And there is a strategic business plan for
4 Ameren, is there not?

5 A. Yes, there is.

6 Q. Is there a separate document for AmerenUE's
7 strategic planning?

8 A. We have one Ameren strategic plan that
9 covers all the entities. Business lines may have lower
10 level plans, and by business lines I mean the energy
11 delivery business line or a generation business line.

12 Q. And those business lines cross over the
13 various affiliates?

14 A. Correct.

15 Q. Okay. Let me ask you a couple of questions
16 about EEI, and I guess I should probably call it EE, Inc.
17 to distinguish it from a trade organization. And by that
18 I mean the Electric Energy, Inc. entity.

19 In your surrebuttal testimony at page 24,
20 about line 23 on to the next page, you state that EE, Inc.
21 is not able to sell at a price less than market price and
22 still act responsibly to its shareholders; is that
23 correct?

24 A. That's correct.

25 Q. Is AmerenUE one of EE, Inc.'s largest

1 shareholders?

2 A. Yes. It owns 40 percent of the stock of

3 EE, Inc.

4 Q. Okay. And that makes AmerenUE EE, Inc.'s

5 largest shareholder, doesn't it?

6 A. Right now it does.

7 Q. Has it always been the largest shareholder?

8 A. I think so, yes.

9 Q. Is it correct that AmerenUE needed the

10 Missouri Commission's approval before it could acquire the

11 stock in EE, Inc.?

12 A. I don't know.

13 Q. Have you reviewed past Missouri Commission

14 decisions relating to EE, Inc.?

15 MR. RAYBUCK: Object to this on grounds of

16 relevance, your Honor. There's no showing that this

17 relates to the Metro East transfer.

18 JUDGE THOMPSON: Mr. Coffman, what is the

19 relevance?

20 MR. COFFMAN: Relates to the least cost

21 planning issue. Perhaps --

22 JUDGE THOMPSON: We've established that

23 Ameren is presently the largest single shareholder. What

24 is the relevance of whether or not he's reviewed past

25 Commission decisions respecting EE, Inc.?

1 MR. COFFMAN: There's a dispute about
2 whether or not this was an existing known resource
3 available to AmerenUE, relates directly and significantly
4 to whether or not this was an option available when they
5 decided to propose the Metro East transfer. They would
6 like us to not be discussing it.

7 JUDGE THOMPSON: That would indeed be
8 relevant, but your questioning goes to his review of past
9 Commission orders relating to that company, and I don't
10 find that relevant. I'm going to sustain the objection.

11 BY MR. COFFMAN:

12 Q. Would you agree with me that EE, Inc. is a
13 very low cost power resource for AmerenUE at the moment?

14 A. Yes, it is.

15 Q. And hasn't AmerenUE or in the past Union
16 Electric stated to this Commission that it's a very
17 efficient and economical source of power?

18 A. I'm not positive, but I wouldn't doubt it.

19 Q. Is it your testimony that EE, Inc. has
20 determined that it is not able to sell its output at cost
21 plus a return if this price is less than market?

22 A. Through discussions with the Chairman of
23 Electric Energy, Inc., it's not inclined to sell at a
24 price less than market, plus EE, Inc. doesn't like the
25 concept of selling to an affiliate where it's going to get

1 the lesser of cost or market. So it really doesn't know
2 what it's going to get. The affiliate rules really
3 deterred the transaction, the possible extension of the
4 contract.

5 Q. The basis of this opinion is based on your
6 discussions with the chairman of EE, Inc.?

7 A. Plus two past experiences where AmerenUE
8 issued an RFP for power to the general -- not the general
9 public, but to power suppliers in the region, including
10 EE, Inc. and they refused to bid. And after questioning
11 by Mr. Voytas they said they did not want to bid on
12 supplying its affiliate UE.

13 Q. So you have been involved in discussions
14 with employees of EE, Inc., and have other employees of
15 AmerenUE been involved in these discussions?

16 A. I don't know for sure. However, Mr. Voytas
17 and I are the ones arranging power supply for UE.

18 MR. COFFMAN: Your Honor, I'd like to mark
19 an exhibit at this point.

20 JUDGE THOMPSON: You may. This will be
21 Exhibit No. 31.

22 (EXHIBIT NO. 31 WAS MARKED FOR
23 IDENTIFICATION BY THE REPORTER.)

24 JUDGE THOMPSON: And this is what, Public
25 Counsel's Data Request No. 617?

1 MR. COFFMAN: Yes.

2 JUDGE THOMPSON: And UE's response?

3 MR. COFFMAN: Yes.

4 JUDGE THOMPSON: Do you have copies for the
5 Commissioners?

6 MR. COFFMAN: I have three more.

7 JUDGE THOMPSON: Thank you.

8 BY MR. COFFMAN:

9 Q. Have you identified yourself with what's
10 been marked as Exhibit 31, Mr. Nelson?

11 A. In part.

12 MR. RAYBUCK: Your Honor, before
13 Mr. Coffman gets into any questions, I want to alert you
14 that I intend -- I do object now to the discussion of this
15 on grounds of relevance. This does not relate in any way
16 to the Metro East, and in particular does not relate in
17 any way to least cost issue. It relates to the
18 organization, the corporate offerings of EE, Inc. and that
19 is beyond the scope of this proceeding and has no
20 relevance to it.

21 MR. COFFMAN: Your Honor, this --

22 JUDGE THOMPSON: At this point all we've
23 done is mark it, so your objection, I think, is premature.
24 Now, when he actually asks a question about it that you
25 believe is irrelevant, that would be the time to object.

1 MR. COFFMAN: I'll just in advance explain
2 to the Bench that the -- it is very much at issue based on
3 Mr. Nelson's surrebuttal testimony exactly the degree of
4 control that Ameren may have over decision-making at EE,
5 Inc. and that is the basis of my inquiry here.

6 JUDGE THOMPSON: Well, what's the relevance
7 of that to this case?

8 MR. COFFMAN: To the least cost decision
9 about whether the Metro East transfer is the least cost
10 option available to AmerenUE, as opposed to extension of
11 the current contract with EEI.

12 JUDGE THOMPSON: I'm going to give you some
13 leeway to pursue that, but you need to kind of sequence
14 your questions so that the relevance is clear. So fire
15 away.

16 BY MR. COFFMAN:

17 Q. Okay. Mr. Nelson, I assume you have had a
18 chance to review this --

19 A. Yes, I did.

20 Q. -- Data Request and response to Public
21 Counsel No. 617?

22 A. Yes, sir.

23 Q. Do you believe this to be -- and you were
24 the individual -- well, have you seen this before?

25 A. I have.

1 Q. And do you believe this accurately reflects
2 the board of directors for EE, Inc.?

3 MR. RAYBUCK: Judge, just so the record is
4 clear, I will renew my objection, as I stated earlier, on
5 grounds of relevance.

6 JUDGE THOMPSON: Read back his question.

7 THE REPORTER: "Question: And do you
8 believe this accurately reflects the board of directors
9 for EE, Inc.?"

10 JUDGE THOMPSON: At this point, the
11 relevance of that question is not clear because you
12 haven't tied EE, Inc. into this transaction. Do you
13 understand?

14 MR. COFFMAN: I --

15 JUDGE THOMPSON: You need to follow the
16 thread from this transaction out to EE, Inc. Don't follow
17 it from EE, Inc. into the transaction. Do you see what
18 I'm saying?

19 I'm trying to be helpful here. I'm
20 sustaining the objection.

21 BY MR. COFFMAN:

22 Q. Mr. Nelson, is it not true that a majority
23 of the board of directors for EE, Inc. are either the CEO
24 of AmerenUE or someone who reports directly to him?

25 MR. RAYBUCK: Same objection, your Honor;

1 relevance.

2 JUDGE THOMPSON: Sustained.

3 MR. COFFMAN: Your Honor, this is one of

4 the most crucial issues in this case, and the issue is

5 whether or not AmerenUE can control decision-making at EE,

6 Inc. and have available to --

7 JUDGE THOMPSON: I understand that, but you

8 have to lay a foundation by showing some relationship

9 between EE, Inc. and Ameren other than who's on the board.

10 In other words -- do you understand where I'm coming from?

11 MR. COFFMAN: Yes.

12 BY MR. COFFMAN:

13 Q. Mr. Nelson, who is the primary decision-

14 maker for resource planning at AmerenUE? Who is the

15 ultimate resource planning decision-maker at AmerenUE?

16 A. Mr. Gary Rainwater.

17 Q. Okay. And does Mr. Rainwater ultimately

18 have or does every individual that works for Ameren

19 Holding Corporation and all of its subsidiaries ultimately

20 report to him?

21 A. Yes.

22 MR. COFFMAN: I'd like to mark another

23 exhibit.

24 JUDGE THOMPSON: Absolutely. What's this

25 one? This will be 32.

1 MR. COFFMAN: This will be Public Counsel
2 Data Request 614 and the response.

3 MR. COFFMAN: I'll note that this is a
4 proprietary.

5 (EXHIBIT NO. 32P WAS MARKED FOR
6 IDENTIFICATION BY THE REPORTER.)

7 JUDGE THOMPSON: Again, I'll advise
8 counsel, it's your obligation to make sure nothing is said
9 in open hearing that needs to be protected.

10 MR. RAYBUCK: Absolutely, your Honor. I
11 don't know if we'll ever get there because I may well
12 object to this. You may well sustain my objection, but I
13 note that there's no one in the room who should not belong
14 here, if we do get into proprietary issues.

15 JUDGE THOMPSON: But it's also being
16 broadcast to the entire planet over the Internet.

17 MR. RAYBUCK: I forgot about that detail.

18 JUDGE THOMPSON: Now, you can't say there's
19 anybody on the planet who cares and is listening, but the
20 potential is there.

21 MR. COFFMAN: I may get into a question
22 that would require a proprietary answer, so I will stop
23 beforehand.

24 JUDGE THOMPSON: I appreciate that. If you
25 believe you are getting there, why don't you ask that we

1 go in-camera before you pose the question?

2 MR. RAYBUCK: That would be appreciated,

3 Judge. Thank you.

4 MR. COFFMAN: I would have no objection to

5 going in-camera at this moment.

6 JUDGE THOMPSON: Let's do it right now.

7 Okay.

8 We are going to go in-camera. Is the door

9 shut back there? Okay. We have turned off the Internet

10 connection.

11 (REPORTER'S NOTE: At this point, an

12 in-camera session was held, which is contained in

13 Volume 8, pages 488 through 495 of the transcript.)

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1 JUDGE THOMPSON: Okay. We're back in
2 public session at this time. Please proceed.

3 MR. COFFMAN: Thank you.

4 BY MR. COFFMAN:

5 Q. Is it true that AmerenUE currently does own
6 transmission facilities between the state of Missouri and
7 the EE, Inc. Joppa plant in southern Illinois?

8 A. Yes.

9 Q. Do you know precisely how many transmission
10 lines, AmerenUE transmission lines are connected to the
11 Joppa plant?

12 A. No. I think it's either one or two, but
13 I'm not positive.

14 Q. Would you agree with me that an extension
15 of the current contract that AmerenUE has with EE, Inc.
16 is at least a possible resource option that's available to
17 AmerenUE?

18 A. Not unless EE, Inc. is a willing party.

19 Q. And can you state with absolute confidence
20 that EE, Inc. would not consider AmerenUE as a partner in
21 the future under any circumstances?

22 A. I think I've already testified at least
23 twice now that EE, Inc. did not bid on the latest two
24 RFPs, and in discussions with Mr. Alan Kelley, he's not
25 interested in selling at the lower of cost or market.

1 Q. And you know Mr. Kelley because he works
2 for Ameren, doesn't he?

3 A. Yes.

4 Q. Can you tell me if you have frequent
5 contact with anyone else at Ameren who is also a decision-
6 maker for EE, Inc.?

7 A. Yes, I do.

8 Q. Okay. Would you please tell me who those
9 individuals are?

10 A. Mr. Dan Cole, Gary Rainwater, Chuck Naslund
11 and David Whiteley.

12 Q. Okay. Are all those --

13 A. On the board of directors.

14 Q. And all those individuals are on the board
15 of directors?

16 A. Yes.

17 Q. And do they constitute a majority of the
18 board?

19 A. Looks likes they do, five out of nine.

20 JUDGE THOMPSON: Is this EEI's board?

21 MR. COFFMAN: Yes.

22 BY MR. COFFMAN:

23 Q. The board of EEI. And didn't you state
24 earlier in this proceeding that the president of EE, Inc.
25 Is also an employee of Ameren?

1 A. That's correct, and he's an employee of
2 Electric Energy, Inc.

3 Q. And how many -- how many individuals serve
4 on the EE, Inc. board? Would be that nine?

5 A. I'm not positive.

6 MR. RAYBUCK: Object on grounds of
7 relevance, your Honor. Whether it's nine or eight, we're
8 getting pretty far afield, I believe.

9 JUDGE THOMPSON: I think the appropriate
10 objection is asked and answered, since he just said that.
11 Please proceed.

12 MR. COFFMAN: So I got a yes answer?

13 JUDGE THOMPSON: He had previously
14 testified that five out of nine were employees of Ameren.

15 MR. COFFMAN: All right. With that, I
16 think I can move on. Although I would like to offer into
17 evidence Exhibit 32, which is proprietary.

18 JUDGE THOMPSON: Do I hear any objections
19 to receipt of Exhibit 32?

20 MR. RAYBUCK: Yes, you do, your Honor. I
21 object to this for two reasons, on grounds of relevance,
22 No. 1, for reasons we've gone over before. I won't
23 belabor the record again. Also, I object on grounds that
24 this is speculative and for that ground also.

25 JUDGE THOMPSON: Well, as to relevance, I

1 understand this to be an Ameren document showing
2 generating resources available to Ameren at a point in
3 time.

4 MR. RAYBUCK: I'm sorry. So we're clear,
5 you were offering 32; is that correct?

6 MR. COFFMAN: Yes. Public Counsel Data
7 Request 614. Yes.

8 JUDGE THOMPSON: Isn't that the one with
9 the chart?

10 MR. RAYBUCK: 32 is not the chart. 31 is
11 the chart, correct?

12 JUDGE THOMPSON: No. 31 is the list of
13 directors at EEI. 32 is the power generating asset chart.

14 MR. RAYBUCK: So 32 -- I apologize.

15 JUDGE THOMPSON: That's quite all right.

16 MR. RAYBUCK: You are correct, Judge, 32 is
17 the one with the chart. I object on grounds of relevance
18 because it involves EE, Inc. and AEM. These are two
19 non-regulated affiliates. There's been no showing that it
20 relates to the Metro East transfer. And for the reasons
21 Mr. Nelson indicated, this is a possible plan and,
22 therefore, it's speculative.

23 With respect to that second objection, if
24 you do accept it, I guess I would ask that if you overrule
25 my objection, that you accept it for the weight of the

1 evidence, given the fact that there is -- it is a possible
2 plan.

3 JUDGE THOMPSON: Thank you. I overrule
4 both objections. Exhibit 32 is received and made a part
5 of the record of this proceeding.

6 (EXHIBIT NO. 32 WAS RECEIVED INTO
7 EVIDENCE.)

8 BY MR. COFFMAN:

9 Q. Is it your understanding, Mr. Nelson, that
10 if there's a concern with the inability to achieve a -- or
11 to find a market price, that Ameren can always seek a
12 waiver from the Commission's affiliate transaction rule,
13 as that requires that the lesser of cost or market be the
14 basis of affiliate transactions?

15 A. Yes, I understand they can ask for a
16 waiver.

17 MR. COFFMAN: Excuse me for a second.

18 JUDGE THOMPSON: Absolutely.

19 BY MR. COFFMAN:

20 Q. When you stated earlier that you were aware
21 of a plan for Ameren Energy Marketing to use a particular
22 resource, are you aware of any other possible plans that
23 AmerenUE has, any other possible scenarios?

24 MR. RAYBUCK: Can I ask for clarification?
25 I would object -- rather I would object on grounds of

1 vagueness. You were talking about AEM and then you
2 referred to AmerenUE. So I object as being confusing and
3 vague.

4 JUDGE THOMPSON: I would ask you restate
5 your question, Mr. Coffman. I'm also confused.

6 MR. COFFMAN: I was being intentionally
7 general in the way I asked the question. I didn't -- I
8 was hoping not to open up any highly confidential
9 information we had in the record or any new.

10 BY MR. COFFMAN:

11 Q. While we were in-camera, we discussed a
12 particular resource option that is a possible option for
13 the future for Ameren Energy Marketing; is that correct?

14 A. That's correct.

15 Q. Are you aware of any other alternatives
16 that Ameren Energy Marketing may have to that particular
17 resource?

18 MR. RAYBUCK: Object on the grounds of
19 relevance.

20 JUDGE THOMPSON: What's the relevance,
21 Mr. Coffman?

22 MR. COFFMAN: The relevance goes to the
23 certainty with which the decision-makers at Ameren Energy
24 Marketing have about what occurs subsequent to December
25 2005. And I just have to reemphasize again that the

1 ultimate resource planning individuals, as I understand
2 it, at AmerenUE and at Ameren Energy Marketing at Electric
3 Energy, Inc. to a majority extent are the exact same
4 individuals.

5 JUDGE THOMPSON: Well, let's assume that to
6 be true. Ameren Energy Marketing, are they involved with
7 the regulated load of Union Electric?

8 MR. COFFMAN: Not that I understand.

9 JUDGE THOMPSON: Then where's the
10 relevance?

11 MR. COFFMAN: That the individuals who make
12 those decisions for Ameren Energy Marketing are the
13 precise individuals who make the decisions for AmerenUE,
14 and the decisions faced by those very same individuals are
15 very relevant in this proceeding.

16 JUDGE THOMPSON: I think I've given you a
17 lot of leeway on this. I don't know that you've shown --
18 I mean, okay. Let's assume, or let's say it's shown that
19 it's the same person who makes these planning decisions.
20 Nonetheless, I think you have to show more to make the
21 activities of the unregulated affiliates relevant to this
22 case. I think you have to show that decisions are being
23 made that are detrimental or that decisions are being made
24 that somehow affect the regulated load, right?

25 In other words, not just that it's the same

1 person, but that load is being transferred in a way back
2 and forth, something of that kind. Am I making sense?

3 MR. COFFMAN: Maybe.

4 JUDGE THOMPSON: I realize this is
5 important to your case, but we just can't keep beating a
6 horse that's not relevant.

7 MR. COFFMAN: I will move on to one last
8 line of questioning, but I would like to make another --
9 another attempt to offer Exhibit 31 into evidence. And I
10 understand Mr. Raybuck will likely object, and this is the
11 Data Request response that includes the --

12 JUDGE THOMPSON: We've already got it in
13 that five out of nine work for Ameren. Do we need to know
14 exactly who they are?

15 MR. COFFMAN: I think that it would be
16 helpful information for the Commission to see.

17 JUDGE THOMPSON: Well, okay. Do I hear any
18 objections to the receipt of Exhibit 31?

19 MR. RAYBUCK: You do, your Honor. I object
20 on grounds of relevance.

21 JUDGE THOMPSON: Okay. I'm going to
22 sustain that objection.

23 MR. COFFMAN: I would like to offer it as
24 an offer of proof.

25 JUDGE THOMPSON: Very well. Exhibit 31 is

1 received as an offer of proof.

2 (EXHIBIT NO. 31 WAS RECEIVED INTO EVIDENCE

3 AS AN OFFER OF PROOF.)

4 MR. COFFMAN: Do I need to submit copies?

5 I guess copies are already in the record.

6 JUDGE THOMPSON: I think we've already got

7 them.

8 BY MR. COFFMAN:

9 Q. One last series of questions I would make.

10 Mr. Nelson, you had a rather unflattering characterization

11 of Mr. Kind in your testimony. You claim that to some

12 extent you believe that he was engaged in conspiracy

13 theory thinking. Do you recall that?

14 A. I did not mean it as a -- to

15 mischaracterize Mr. Kind. I was talking about his

16 testimony, and I did think his testimony had the tone of

17 conspiracy theory thinking.

18 Q. And I understand that you believe that that

19 related to allegations that you characterize as affiliate

20 abuse?

21 A. That's the tone of the -- that's what I

22 read into his testimony, that he was accusing Ameren of

23 affiliate abuse.

24 Q. Can I ask you -- I'm sorry. Were you

25 finished?

1 A. Yes. I'm sorry.

2 Q. Could I ask you to be more specific? Could

3 you identify specific passages in Mr. Kind's rebuttal

4 testimony that you believe constitute conspiracy theory

5 thinking?

6 A. I think I could if I had the testimony.

7 JUDGE THOMPSON: Is this useful,

8 Mr. Coffman?

9 THE WITNESS: If I had the time to go

10 through.

11 MR. COFFMAN: Well, yes. I think if there

12 are specific passages, that I think I have a right to

13 inquire into exactly what passages they are and exactly

14 what way they constitute conspiracy theory thinking or

15 affiliate abuse allegations.

16 JUDGE THOMPSON: I'll give you a little

17 leeway on this. Okay?

18 MR. COFFMAN: Okay.

19 BY MR. COFFMAN:

20 Q. Let me ask, was this rather just a

21 generalized characterization or was it related to specific

22 allegations in Mr. Kind's testimony?

23 A. In general, it was generalized based on the

24 tone of the testimony.

25 MR. COFFMAN: I'll leave it at that.

1 That's all I have, thanks.

2 JUDGE THOMPSON: Okay. Thank you. We're
3 now ready for questions from the Bench. I'm the only one
4 here at the moment, so we'll start with me, but we're
5 going to make sure that the other Commissioners, or the
6 Commissioners -- I'm not a Commissioner -- get a shot at
7 you as well.

8 QUESTIONS BY JUDGE THOMPSON:

9 Q. Now, then, are you familiar with the
10 generating assets of AmerenUE?

11 A. Yes, I am.

12 Q. And what are they?

13 A. They're listed on the exhibit Mr. Voytas
14 provided.

15 Q. You're looking at direct testimony?

16 A. Well, I'm looking at his surrebuttal, but I
17 guess they're not listed.

18 Q. Okay.

19 A. The sum total is listed. They're listed by
20 category, Callaway, fossil steam, combustion turbine and
21 so on.

22 Q. And this is where? What are you looking at
23 exactly?

24 A. I'm looking at Mr. Voytas' surrebuttal
25 testimony, Schedule 1, marked highly confidential.

1 Q. It is highly confidential?

2 A. Yes.

3 Q. Do we need to go in-camera to discuss this

4 matter?

5 MR. RAYBUCK: I don't believe we do, your

6 Honor. If all you want to establish are the UE generating

7 units, Mr. Nelson could refer to Schedule 1.

8 JUDGE THOMPSON: If I ask something that

9 you believe needs to be in-camera, please, jump in right

10 away.

11 MR. RAYBUCK: I will. Thank you.

12 BY JUDGE THOMPSON:

13 Q. I guess what I want to establish is Union

14 Electric owns generating assets of its own?

15 A. Yes, it does.

16 Q. And can you give me just a ballpark

17 percentage idea as of this moment what percentage of its

18 load is served by the generating assets it owns?

19 A. Yes, I can. If you'd like to go to that

20 schedule, I think I can --

21 Q. Okay. I'm looking at Schedule 1 on

22 Mr. Voytas' surrebuttal.

23 A. Right. I can walk you through this, sir.

24 MR. RAYBUCK: Mr. Nelson, I'm going to rely

25 on you to indicate what is highly confidential and what is

1 not.

2 JUDGE THOMPSON: I assume it's the specific
3 numbers that are highly confidential.

4 THE WITNESS: I'm just going to go with
5 subtotals, Mr. Raybuck, so I think we'll be safe.

6 MR. RAYBUCK: Okay.

7 THE WITNESS: Let's look in the 2004
8 forecast column, and you'll see in the middle of the page
9 where it says capability at time of peak, and you'll see
10 Callaway has 1136 megawatts.

11 BY JUDGE THOMPSON:

12 Q. Okay.

13 A. And fossil steam 5362, and so on, and then
14 a total install generating capability of 8087 megawatts.

15 Q. Does the term total install, what does that
16 mean exactly?

17 A. That's what UE actually owns, hard assets
18 that it owns.

19 Q. Very well.

20 A. So 8087 megawatts. And then further up the
21 page, you'll see a line that says, net integrated adjusted
22 demands, 8161 megawatts.

23 Q. Okay.

24 A. So basically in answer to your question,
25 your Honor, UE owns enough generation at 8087 to about

1 meet its real demands.

2 Q. Okay.

3 A. And then below that you'll see unreserved
4 purchases section?

5 Q. I see that.

6 A. Those are long-term purchase contracts that
7 are essentially there to supplement the real assets and
8 help us get to the 15 or 17 percent reserve market that we
9 think is necessary to meet demands on a peak day.

10 Q. Because, of course, you can't accurately
11 predict what demand is going to be?

12 A. Correct. There could be a unit down for
13 whatever reason, it could be very hot weather, and we
14 think we need a 15 to 17 percent reserve margin.

15 Q. Okay. So in other words, it's simply
16 prudent for the company to have more capability than it
17 thinks it would need?

18 A. Absolutely prudent.

19 Q. Okay. Now, when I look at the unreserved
20 purchases, I see that one of these is net Electric Energy,
21 Inc.

22 A. That's correct.

23 Q. Is this the same EE, Inc. that Mr. Coffman
24 was inquiring about?

25 A. Yes, it is.

1 Q. So EE, Inc. as of today constitutes part of
2 Ameren's array of generating assets that are available to
3 meet its load requirements; is that correct?

4 A. Via a power contract, yes.

5 Q. And Union Electric owns 40 percent of that
6 plant, or of that concern?

7 A. It owns 40 percent -- let me be careful in
8 answering that.

9 Q. Sure.

10 A. It does not own 40 percent of the plant.
11 It owns 40 percent of the stock of that company.

12 Q. And thank you for making that distinction
13 clear. Now, Electric Energy, Inc., if you know, how many
14 plants does it own?

15 A. It owns -- within Electric Energy, Inc.
16 Itself, there are six units that aggregate to
17 1014 megawatts.

18 Q. Okay. And EE, Inc., of course, decides
19 which of its units it's going to use to meet its contract
20 demands to Union Electric, isn't that correct, or does the
21 contract specify which unit would be used?

22 A. The answer to both questions is yes. EE,
23 Inc. entered into that contract, so it decides, but yes,
24 the contract itself specifies that all those units are
25 intended to meet the demands under the contract. It's a

1 piece of its entire system. Under the contract, we get
2 40 percent of the output of the 1014 megawatts.
3 40 percent of the 1014 is the 405.

4 Q. And if you know, and if this is not highly
5 confidential, is the cost per unit of power, whatever that
6 might be, produced by EE, Inc. equivalent to the cost of
7 Ameren's owned units? Is it more or is it less?

8 A. It's clearly less than some, and maybe
9 about the same as some, but it is very low cost.

10 Q. Okay. Now, it's my understanding in
11 electric generation that there is an order of dispatch,
12 isn't there?

13 A. Yes, there is, sir.

14 Q. And there are, for example, base load
15 plants that are always online, correct?

16 A. Yes, very cheap production costs, so
17 they're online as much as they can be.

18 Q. And then there are other production units
19 that are more expensive that are brought online only as
20 necessary; is that correct?

21 A. Yes, sir.

22 Q. So in that order of dispatch, if EEI and
23 its plants would be placed in the Ameren order of
24 dispatch, where would they go?

25 A. The EE, Inc. units would be running all the

1 time they were available. Very low, marginal cost.

2 Q. Okay. Now, when this contract that we've

3 heard talk about expires, it's my understanding your

4 testimony is EE, Inc. is then going to be selling its

5 power to the highest bidder?

6 A. Yes.

7 Q. What --

8 A. But -- I'm sorry, your Honor, but I might

9 point out, in the exhibit we're looking at, the schedule,

10 that this is another possible playing scenario, the

11 contract does expire at the end of '05, but in this

12 exhibit we showed the contract as being extended.

13 Q. Right. I see that. So do I understand

14 your testimony correctly, at this point we do not know

15 whether we'll be extended or not?

16 A. We do not know with absolute certainty.

17 There has to be two parties to a contract, your Honor, as

18 I know, as you know. EE, Inc. so far is unwilling to

19 enter into a contract.

20 Q. Okay. Now --

21 A. They've told us their intentions are not to

22 enter into a contract given the lower of cost or market

23 affiliate rules in Missouri.

24 Q. Now, Ameren, and by that I mean the holding

25 company and all of the affiliates, all of the

1 subsidiaries, controls a majority of the stock in EE,
2 Inc.; is that not correct?

3 A. Yes, AER owns -- Ameren Energy Resources
4 owns 20 percent of its stock.

5 Q. And Union Electric owns 40 percent?

6 A. Yes, sir.

7 Q. So if Ameren Energy Resources and Union
8 Electric acted in concert, could they not force EE, Inc.
9 to enter into or extend this contract?

10 A. I'm not sure.

11 Q. Okay.

12 A. There's a minority shareholder and I don't
13 know what legal rights that minority shareholder has.

14 Q. I understand. You also testified, did you
15 not, that --

16 A. Nor am I sure what fiduciary rights -- I'm
17 sorry for interrupting.

18 Q. No. That's quite all right.

19 A. I'm not sure what fiduciary rights under
20 state law that the shareholders are held to in regard to
21 corporate governance.

22 Q. So in other words, there may be state or
23 federal law preventing that?

24 A. There very well could be.

25 Q. Or if they did do that, they might be

1 liable in some way?

2 A. Yes, sir.

3 Q. Okay. That's fine. But I also heard, did

4 I not, that you testified that without this transfer,

5 Ameren will lack sufficient resources to cover its load

6 and reserve margin for this coming summer?

7 A. Correct.

8 Q. So let's say this transfer is not approved.

9 Ameren still has an obligation -- or Union Electric --

10 I've got to keep them separate. Union Electric has an

11 obligation to find that capacity somewhere, does it not?

12 A. Yes, it does.

13 Q. And where would it turn?

14 A. It has two choices, as I see it. One

15 choice is to -- for Union Electric to procure the power

16 and energy in the market to meet its planning reserve

17 requirements.

18 Q. In other words, go to the competitive

19 marketplace?

20 A. Correct.

21 Q. Okay. What's the other?

22 A. Second choice would be for Union Electric

23 to go to its affiliate, Ameren Energy Genco, and ask

24 forbearance on its part in letting it drag on Genco

25 through the summer. Obviously the generation we're

1 talking about is there within Ameren. It's just that UE
2 was --

3 Q. In other words, if I could just -- I'm
4 sorry to interrupt you. It's either we go buy it or we
5 get our unregulated generating affiliate to loan us some
6 power basically?

7 A. That's the general economic concept, yes.

8 Q. And we're lawyers, so I'm dealing with
9 simple concepts here. Got to keep it simple. Is there
10 any possibility, in your opinion, if this transfer is not
11 approved, that Union Electric would be unable to secure
12 sufficient assets to meet its load and reserve
13 requirements for the upcoming summer?

14 A. Yes, I think there is a possibility,
15 because I'm not sure of the state of the transmission
16 system. Obviously if we -- if UE wants to secure
17 generation, it wants firm transmission and a firm power
18 contract. And I really don't know what's available. I
19 think Mr. Voytas and Mr. Pfeiffer would have more
20 knowledge of that subject than I.

21 Q. So in other words, Union Electric would
22 want to know exactly what's going to be available rather
23 than, gosh, we've got to go out and try to buy it?

24 A. Yes.

25 Q. Okay. And as a professional in this field,

1 do you consider that a serious or critical situation?

2 A. I consider it very important. Well, yes, I
3 consider UE's reliability needs to be critical, yes.

4 Q. Now, Union Electric engages in forward
5 planning in terms of its resource needs, does it not?

6 A. Yes, it does.

7 Q. And so how is it that we find ourselves in
8 March of 2004 wondering how we're going to meet demands
9 for summer of 2004?

10 A. Well, we find ourselves in that position
11 because this proceeding has not been quite as expedited as
12 we'd hoped.

13 Q. Okay. Was -- if you know, is Union
14 Electric surprised that Public Counsel and Staff opposed
15 the transaction?

16 A. Yes.

17 Q. Had there been talks between Union Electric
18 and Staff and/or Public Counsel prior to the filing of the
19 application?

20 A. Yes, sir.

21 Q. And at that time, if you know, were there
22 indications that there was going to be opposition?

23 A. I think I could characterize my response as
24 cautious optimism based on resource planning discussions
25 with Missouri Staff and several meetings, including one in

1 January of '03, and then the meeting I've talked about in
2 July of 2003, we thought this third time would be a charm.

3 Q. Okay. And you've indicated that the
4 transaction's already been approved by the Illinois
5 Commerce Commission and by the FERC; is that correct?

6 A. In part. The electric part by the ICC; gas
7 almost there with the ICC FERC approved.

8 Q. And was there any opposition in either of
9 those forums?

10 A. There was -- I don't think there was any
11 opposition at FERC. Staff in Illinois did their normal
12 good job, as Missouri Staff does, and is very cautious
13 that we were able to work out any difference, and it was
14 an agreed order in Illinois on the gas side, yes.

15 Q. Now, it's my understanding there are some
16 Union Electric-owned assets, generating assets that have
17 been up to now serving the load in the Metro East service
18 area; is that correct?

19 A. You said Union Electric assets?

20 Q. Right. In other words, you owned some
21 power plants that you've been using to serve your electric
22 customers in Metro East?

23 A. Right. In fact, sir, on this schedule, all
24 8437 megawatts have been used to serve both the Missouri
25 and Illinois side of the river.

1 Q. So in other words, this schedule doesn't
2 distinguish between Metro East and the Missouri service?

3 A. Right. It's just a portfolio system
4 approach and it's used to serve the entire load.

5 Q. In terms of your dispatch order, where do
6 the plants that have been serving the Metro East load,
7 where do they fit in the dispatch order?

8 A. That's what I'm trying to explain, and not
9 doing a good job.

10 Q. Okay.

11 A. The whole --

12 Q. Doubtless due to my lack of familiarity.

13 A. UE owns a variety of plants, Callaway,
14 Labadie, Rush Island, which are fossil steam plants,
15 turbine generators, the hydro plants. You're correct that
16 when you talked to me earlier that we dispatch them in
17 order of economic merit, lowest cost first. And then we
18 view the Missouri load and the Illinois load as basically
19 one load, and the whole system is dispatched, all the
20 generating units are dispatched to serve that entire load.
21 We don't specifically identify a particular unit for the
22 Metro East load.

23 Q. And, in fact, you don't even know where the
24 power produced by a given plant is being used?

25 A. That's correct. It flows through the path

1 of least resistance.

2 Q. Goes into the net, gets used somewhere, but
3 no one can say where?

4 A. Well, some might, but I don't.

5 Q. Okay.

6 A. If I might, it's just the Metro East load
7 is about 6 percent of UE's overall load. 6 percent of
8 that slice of every generating unit is used to serve Metro
9 East load.

10 Q. So that's a way to look at it
11 statistically?

12 A. Yes.

13 Q. All right. But if this transfer is
14 approved, the Metro East will then become, what do they
15 call it, a pipes and wire operation?

16 A. Yes, sir.

17 Q. And so it would be a sort of different sort
18 of operation than it has been up to this moment?

19 A. That's correct.

20 Q. There's not going to be -- CIPS doesn't
21 have any negative generating assets?

22 A. That's correct.

23 Q. And so that 6 percent of every Union
24 Electric plant that has been serving Metro East will then
25 become available to serve simply Missouri?

1 A. That's the offer we've got on the table.

2 Q. And that's why you would then be able to

3 meet a higher peak day demand expectancy this summer; is

4 that correct?

5 A. That's correct. That load related to Metro

6 East goes away. The load is about 590 megawatts, that

7 would go away, so that 6 percent of the generation that's

8 unavailable to serve the Missouri load.

9 Q. And does that serve -- the anticipated peak

10 day for this coming summer, does that comfortably meet

11 that requirement?

12 A. Yes, sir.

13 JUDGE THOMPSON: Okay. I think that's all

14 the questions that I have. You've had a grueling time

15 there. The Commissioners have a special agenda at

16 noontime today, and so we're probably going to take a

17 somewhat longer lunch break than we otherwise would.

18 Why don't we break until -- normally we

19 break until 1:15. Let's break until 1:30. Okay? And

20 when we come back, if the Commissioners are not here, then

21 we will go right into recross based on questions from the

22 Bench for Mr. Nelson.

23 Sir?

24 MR. LOWERY: Your Honor, can I just advise

25 the Bench of a development in the case?

1 We have agreed with Staff to settle the
2 Ameren Services issue, and I don't know when would be the
3 most convenient time to handle that, but perhaps if we
4 have a little dead time before the Commissioners get back
5 after lunch, we were going to put the two witnesses on for
6 probably literally a minute or two apiece to confirm the
7 terms of the settlement, put an exhibit into the record,
8 and that will get us back on schedule.

9 JUDGE THOMPSON: That's a great idea. You
10 can remind me at that time exactly what that issue is.

11 MR. LOWERY: Okay. I'll do it.

12 JUDGE THOMPSON: I appreciate it. We'll go
13 ahead and go into recess now until 1:30.

14 (A BREAK WAS TAKEN.)

15 JUDGE THOMPSON: I think that you-all were
16 going to present the settlement of an issue; is that
17 correct?

18 MS. SHEMWELL: Yes. Thank you, Judge.
19 Judge, we'd like to mark an exhibit, please.

20 JUDGE THOMPSON: Certainly. This will be
21 Exhibit 33.

22 (EXHIBIT NO. 33 WAS MARKED FOR
23 IDENTIFICATION BY THE REPORTER.)

24 JUDGE THOMPSON: There you are, Lera. Now
25 for people all over the world, how should we describe this

1 Exhibit No. 33?

2 MS. SHEMWELL: I think we should describe
3 this exhibit as agreements between the company and the
4 Staff on the AMS issue.

5 JUDGE THOMPSON: Okay.

6 MS. SHEMWELL: We propose to read it into
7 the record.

8 JUDGE THOMPSON: Go ahead.

9 MS. SHEMWELL: Thank you. The first bullet
10 point, the Staff will review the 900 construction service
11 requests and verify that those requests which Ameren has
12 identified should be transferred to Illinois represents
13 the entire group.

14 Bullet point No. 2 is that AmerenUE will
15 identify the costs and allocations which will change as a
16 result of the new allocation inputs, which include things
17 such as customers' revenues and so on, for the 30 days
18 prior to the transfer and 30 days after the allocation
19 factors have been updated to reflect the transfer.

20 No. 3, the Staff will review the analysis
21 within 30 days of receipt to verify that the allocation
22 changes have resulted in the reassignment of costs to
23 AmerenCIPS as AmerenUE claims.

24 AmerenUE will implement the allocation
25 input changes within 30 days of the approval of the

1 transfer.

2 No. 5, AmerenUE will review the service
3 requests which may require scope changes and identify
4 those service requests which do require a change. The
5 Staff will also review the service requests to verify the
6 company's list and will work with the company to provide
7 new scope language.

8 AmerenUE will provide the list to the Staff
9 within 15 days of the approval of the transfer. The Staff
10 will verify the company's analysis within 45 days within
11 receipt of the information.

12 AmerenUE will provide to Staff written
13 instructions to be given employees regarding the impacts
14 the transfer will have on their reporting requirements.
15 The Staff will provide input to the company regarding the
16 lists within 10 days of receipt, and this document --
17 which has been marked Exhibit 33, I believe?

18 JUDGE THOMPSON: Yes, it has.

19 MS. SHEMWELL: -- is signed by Ameren
20 Witness Gary Weiss and Staff Witness Greg Meyer.

21 JUDGE THOMPSON: Okay.

22 MS. SHEMWELL: The two witnesses are
23 available if anyone has questions.

24 JUDGE THOMPSON: Well, the Commissioners
25 aren't here, so I don't know what questions they might

1 have. Perhaps they'll have some when they come down. And
2 for myself, will you just summarize for me what the AMS
3 issue is?

4 MS. SHEMWELL: AMS is the services company
5 that was formed when Ameren became a holding company. AMS
6 provides a variety of services to the holding company and
7 all of the affiliates, including construction and
8 engineering, legal services, things of that sort.

9 The issue was how the transfer, were it
10 approved by the Commission, would affect the allocation of
11 AMS between Missouri and Illinois, all of the services
12 that they provide to the various affiliates, because a
13 request that might have been for AmerenUE would possibly
14 include both Missouri and Illinois services. If the two
15 were split, then those costs will go over to Illinois CIPS
16 if the Commission were to approve this.

17 JUDGE THOMPSON: So the Staff concern was
18 simply to make sure that if the transaction was approved,
19 that the services rendered to the Illinois service area
20 are allocated to CIPS or charged to CIPS, rather than to
21 Union Electric?

22 MS. SHEMWELL: That is correct. And there
23 are a variety of ways that they can be allocated, things
24 like payroll or employees, to make sure that all of it
25 that should be allocated to Illinois are.

1 JUDGE THOMPSON: Okay. Thank you. I
2 appreciate your explanation. We've marked it as an
3 exhibit. Did you want to offer it?

4 MS. SHEMWELL: I will offer it. Thank you,
5 Judge.

6 JUDGE THOMPSON: Do I hear any objections
7 to the receipt of Exhibit 33?

8 MR. COFFMAN: No, your Honor.

9 JUDGE THOMPSON: Hearing no objections,
10 Exhibit 33 is received and made a part of the record of
11 the proceeding. Obviously the receipt of it into the
12 record doesn't mean the Commission necessarily will
13 approve it.

14 (EXHIBIT NO. 33 WAS RECEIVED INTO
15 EVIDENCE.)

16 MR. COFFMAN: For your information, Public
17 Counsel has no objection to the settlement.

18 JUDGE THOMPSON: I'm happy to hear that,
19 because frankly I didn't know. So this takes care of the
20 AMS services issue that remains from the first day of
21 hearing.

22 MR. LOWERY: Your Honor, can I address two
23 minor other points?

24 JUDGE THOMPSON: Absolutely.

25 MR. LOWERY: Just for clarification of the

1 record, I believe that Witness Greg Meyer of the Staff is
2 the Staff witness that had expressed the concerns that
3 Ms. Shemwell indicated that the settlement addresses, and
4 Ameren Witness Gary Weiss in his surrebuttal testimony
5 addressed the AMS services issues.

6 Mr. Weiss' testimony has been marked as an
7 exhibit but has not been offered and entered, and I'd like
8 to go ahead and offer his testimony at this time and go
9 ahead and have it entered into the record.

10 JUDGE THOMPSON: Okay. That's Exhibits 7
11 and 8, surrebuttal and supplemental surrebuttal?

12 MR. LOWERY: That is correct, your Honor.

13 JUDGE THOMPSON: Okay. Do I hear any
14 objections to Exhibit 7 or 8 at this time?

15 (No response.)

16 JUDGE THOMPSON: Hearing no objections,
17 those exhibits are received and made a part of the record
18 of this proceeding.

19 (EXHIBIT NOS. 7 AND 8 WERE RECEIVED INTO
20 EVIDENCE.)

21 MR. LOWERY: Thank you.

22 MS. SHEMWELL: Judge, has Mr. Meyer's
23 testimony been received?

24 JUDGE THOMPSON: It has, yes, Exhibit
25 No. 4, offered and received.

1 MS. SHEMWELL: Thank you.

2 JUDGE THOMPSON: Thank you. You may step
3 down. Now, I think we're back to Mr. Nelson, and I don't
4 see any Commissioners. So we'll go ahead and do recross
5 based on questions from the Bench. Why don't you come
6 back up to the stand, sir?

7 And, Mr. Lowery, I'd like to go ahead and
8 get this marked so that we don't misplace it or lose it.

9 MR. RAYBUCK: Certainly, your Honor. I
10 have extra copies if you would need them.

11 JUDGE THOMPSON: And this will then be
12 Exhibit No. 34.

13 MR. RAYBUCK: Yes. And you're referring to
14 the AmerenUE summary of benefits.

15 JUDGE THOMPSON: Summary of benefits,
16 correct.

17 MR. RAYBUCK: Okay.

18 JUDGE THOMPSON: Would you like to offer
19 that now?

20 MR. RAYBUCK: Yes, your Honor. I would
21 like to offer Exhibit 34 entitled AmerenUE Illinois
22 service territory transfer summary of benefits to Missouri
23 ratepayers, and this is what Mr. Lowery had referred to
24 during his opening statement.

25 JUDGE THOMPSON: Do I hear any objections

1 to the receipt of Exhibit 34?

2 (No response.)

3 JUDGE THOMPSON: Hearing no objections,

4 Exhibit 34 is received and made a part of the record in

5 this proceeding.

6 (EXHIBIT NO. 34 WAS MARKED AND RECEIVED

7 INTO EVIDENCE.)

8 JUDGE THOMPSON: Mr. Dottheim, you are up

9 first.

10 MR. DOTTHEIM: No recross.

11 JUDGE THOMPSON: Very well. Mr. Coffman?

12 MR. COFFMAN: No recross at this time.

13 JUDGE THOMPSON: Mr. Raybuck, any redirect?

14 MR. RAYBUCK: Yes, your Honor, I do have

15 redirect.

16 JUDGE THOMPSON: Okay. Step up to the

17 podium, sir.

18 MR. RAYBUCK: If we could go off the record

19 for a moment, I just wanted to alert you to some

20 housekeeping things.

21 JUDGE THOMPSON: Sure.

22 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

23 JUDGE THOMPSON: You may inquire.

24 You're still under oath, sir.

25 THE WITNESS: Yes, sir.

1 REDIRECT EXAMINATION BY MR. RAYBUCK:

2 Q. Mr. Nelson, you were asked by Mr. Dottheim
3 yesterday afternoon about the Commission's -- about the
4 stipulation and the Order in the recent electric complaint
5 case involving Union Electric, EC-2002-1. Do you recall
6 questions about that?

7 A. Yes.

8 MR. RAYBUCK: Judge, I would like to mark
9 as Exhibit No. 35 the Report and Order approving the
10 stipulation in EC-2002-1.

11 (EXHIBIT NO. 35 WAS MARKED FOR
12 IDENTIFICATION BY THE REPORTER.)

13 BY MR. RAYBUCK:

14 Q. And do you have a copy of that now,
15 Mr. Nelson?

16 A. No.

17 Q. I see that you've been handed a copy of
18 that. Is that the stipulation and order that you were
19 discussing yesterday in your cross-examination with
20 Mr. Dottheim?

21 A. Yes, it is.

22 Q. All right. And Mr. Dottheim also asked you
23 about an Order in which you referred to the Commission's
24 having previously approved the Joint Dispatch Agreement.
25 Do you recall questions and answers with Mr. Dottheim

1 about that?

2 A. Yes, I do.

3 MR. RAYBUCK: And I would like to mark now

4 as Exhibit 36 the Commission's order approving the

5 stipulation in Case No. EA-2000-37. Mr. Lowery will be

6 circulating copies.

7 (EXHIBIT NO. 36 WAS MARKED FOR

8 IDENTIFICATION BY THE REPORTER.)

9 BY MR. RAYBUCK:

10 Q. And you have that in front of you; is that

11 correct?

12 A. Yes.

13 Q. Yesterday you indicated in that order that

14 the Commission stated that it had previously approved the

15 Joint Dispatch Agreement; is that correct?

16 A. Yes, it is.

17 Q. Would you please point out what page you

18 were referring to of the order?

19 A. It's page 11, or it's also labeled

20 Schedule 2-11.

21 Q. You're referring to page 11 of the order;

22 is that correct?

23 A. Yes.

24 Q. Next, Mr. Nelson, you were asked a series

25 of questions by Mr. Dottheim about the various attempts

1 that the company, that Union Electric has made to transfer
2 the Metro East service area, and you were referring to the
3 first attempt that was made in the course of the Union
4 Electric/CIPSCo, Inc. merger proceeding. Do you recall
5 your testimony on that?

6 A. Yes.

7 Q. And I'd like to hand you what's been marked
8 as Exhibit 37.

9 (EXHIBIT NO. 37 WAS MARKED FOR
10 IDENTIFICATION BY THE REPORTER.)

11 JUDGE THOMPSON: Could you describe that
12 for me, please.

13 MR. RAYBUCK: Yes. This is an or -- this
14 is a Report and Order issued by the Missouri Commission in
15 Case No. EM-96-149. I believe Mr. Dottheim gave you that
16 citation in cross-examination yesterday.

17 JUDGE THOMPSON: Okay. Thank you.

18 BY MR. RAYBUCK:

19 Q. Do you recall that case citation,
20 Mr. Nelson?

21 A. Yes, I do.

22 Q. And this is -- are you familiar with
23 this -- were you familiar with the UE/CIPSCo proceeding?

24 A. Yes, I was very familiar.

25 Q. And does this -- do you know whether this

1 order reflects any support or approval by the Commission
2 with regard to the Metro East, the transfer of the Metro
3 East service area?

4 A. Yes, I do, and I refreshed my memory last
5 night, just to make sure I had it right. There was a
6 Stipulation & Agreement entered into by Staff and the
7 company, and then there was a Commission Order approving
8 that Stipulation & Agreement. Part of the request that
9 the company made and part of the Stipulation & Agreement
10 was for the Metro East transfer to take place, and the
11 Commission approved the Metro East transfer in this
12 proceeding, and the system support agreement related to
13 that.

14 So this transfer case has been before this
15 Commission before, as we discussed, and it was actually
16 approved by this Commission.

17 Q. And is there any reference in the
18 stipulation or the Order to the system support
19 agreement --

20 A. Yes.

21 Q. -- to which you just referred?

22 A. It's section 10 on page 33, is where the
23 system support agreement is.

24 Q. Is this page 33 of the Stipulation?

25 A. Yes, it is. And just for sake of

1 explanation, in Round 1 of the Metro East transfer, UE
2 wanted to transfer its Metro East property to CIPS, but
3 instead of allocating generation to Missouri retail, UE
4 would enter into a system support agreement and UE would
5 continue to supply the Metro East load. And that's what
6 the Commission approved in this transaction, was that
7 system support agreement, so UE could continue to supply
8 the load of the Metro East.

9 Q. And with regard to that first attempt, did
10 the Illinois Commission approve the Metro East transfer?

11 A. No.

12 Q. And what's your recollection as to why it
13 was a problem for Illinois?

14 A. The Illinois Commission Staff was concerned
15 with the system support agreement.

16 Q. And with regard to the system support
17 agreement, did it provide for any generation savings to
18 Missouri?

19 A. In this transaction -- I'm sorry. Let me
20 be specific. In the UE/CIPS merger transaction, UE would
21 continue to supply the generation needs for its former
22 Metro East territory. So there were no generation savings
23 in that example. The status quo was maintained in regard
24 to generation. Whereas in this transaction before the
25 Commission, again we're asking for the Metro East

1 territory transfer, but there is a substantial benefit in
2 that UE's low cost generation is being allocated to the
3 Missouri retail jurisdiction. So in summary, this deal is
4 better than the deal the Commission already approved.

5 Q. The Missouri Commission?

6 A. Yes.

7 Q. You were asked yesterday about a least cost
8 analysis for gas. Do you recall getting a question to
9 that effect?

10 A. Yes, I do.

11 Q. And I believe you indicated that for the
12 present attempt to transfer the Metro East service area,
13 you did not perform such an analysis for the gas business;
14 is that correct?

15 A. Correct. We did not do a least cost
16 analysis.

17 Q. And why was that not done?

18 A. It wasn't necessary. We should all keep in
19 mind that we're talking about Illinois jurisdictional gas
20 distribution property and customers, and we're just
21 transferring, asking to transfer Illinois gas property and
22 customers to another regulated utility where it would
23 continue to be Illinois-regulated gas distribution. The
24 revenue requirements related to gas before or after this
25 transfer are going to be essentially the same, no

1 difference.

2 Q. You were asked by Mr. Dottheim about the
3 fact that Ameren currently has a single control area. Do
4 you recall questions along that line?

5 A. Yes, I do.

6 Q. And by single control area, we're talking
7 about the AmerenUE and the AmerenCIPS service territories
8 being under one control area for electrical purposes; is
9 that correct?

10 A. That is correct.

11 Q. Does the company have any plans to split
12 the single control area?

13 A. No, it does not.

14 Q. Does the company have any plans to continue
15 with this single control area?

16 A. We plan to continue the one control area.

17 Q. And do you have any specifics as to how or
18 why you plan to continue with the single Ameren control
19 area?

20 A. I don't know where you're going with that,
21 Counsel, but we intend to join the MISO. As part of the
22 MISO that single control area continues.

23 Q. Well, with the -- if the Joint Dispatch
24 Agreement continues, what impact, if any, does that have
25 on whether Ameren has a single control area?

1 A. Are you talking about for resource planning
2 purposes?

3 Q. Yes, for the resource planning purpose and
4 the purpose of designating network resources.

5 A. Right. Now I understand your question.
6 The way that MAIN looks at Ameren since it has a single
7 control area is that it looks at it as one bucket rather
8 than two. For MAIN purposes, Ameren has enough generation
9 to meet its reserve margin requirements. Ameren overall
10 has enough generation. I believe we have about a 16
11 percent reserve margin for this summer. Mr. Voytas can
12 confirm that. However, as I mentioned earlier, the Joint
13 Dispatch Agreement requires that each company maintain its
14 own level of generation and its own reserve, but again,
15 MAIN looks at it in one bucket.

16 Q. So your testimony is that MAIN looks -- and
17 please identify what MAIN is.

18 A. MAIN is the reliability regulatory council
19 that we're a part of.

20 Q. And for purpose -- is it your testimony
21 that for purposes of meeting the reserve requirements,
22 MAIN looks at Ameren as a control area and does not look
23 at AmerenUE in isolation?

24 A. That's correct.

25 Q. And the last -- well, I'll come back to

1 that. You were asked some questions by Mr. Dottheim about
2 the company's transmission assets located in the state of
3 Illinois. Do you recall questions about that?

4 A. Yes, I do.

5 Q. And I believe you stated that it was your
6 understanding that that Illinois transmission is subject
7 to the jurisdiction of the Illinois Commerce Commission?

8 A. Yes, it is. Before we build transmission
9 in Illinois, it's permission from the Illinois Commerce
10 Commission that we need to build it. So the transmission
11 we talked about in my testimony yesterday was Illinois
12 jurisdictional transmission, certified -- before we could
13 build it, it had to be certified by the Illinois Commerce
14 Commission.

15 Q. You referred -- moving to another topic,
16 Mr. Nelson, Mr. Dottheim inquired of you as to your
17 understanding about the standard in this case, and the
18 issue about the effect of uncertain ratemaking
19 consequences. Do you recall questions along those lines?

20 A. Yes.

21 Q. And you referred to two orders of the
22 Missouri Commission; is that correct?

23 A. Correct.

24 Q. And one of those two orders was involving
25 the Gascosage Electric Cooperative and Union Electric; is

1 that correct?

2 A. Yes.

3 MR. RAYBUCK: And I would like to mark

4 now -- are we up to 37?

5 JUDGE THOMPSON: This will be 38.

6 MR. RAYBUCK: I would like to mark as

7 Exhibit 38 the Report and Order in Case No. EO-2002-178,

8 and this involves those two entities that I mentioned,

9 AmerenUE and Gascosage Electric Cooperative.

10 (EXHIBIT NO. 38 WAS MARKED FOR

11 IDENTIFICATION BY THE REPORTER.)

12 BY MR. RAYBUCK:

13 Q. Do you have an copy of that order in front

14 you, Mr. Nelson?

15 A. I do.

16 Q. And was this the Order that you were

17 referring to yesterday?

18 A. Yes.

19 Q. And is there a -- is there anything

20 specifically that you would like to point out in this

21 order as to the basis for your testimony that you gave

22 yesterday?

23 A. I don't think there's anything above and

24 beyond what I said yesterday, Mr. Raybuck.

25 Q. All right. You were also asked about an

1 Order involving Kansas City Power & Light company. Do you
2 recall that testimony, Mr. Nelson?

3 A. Yes, I do.

4 MR. RAYBUCK: Judge, I would like to mark
5 as Exhibit No. 39 the Order approving the Stipulation &
6 Agreement Case No. EM-2001-464.

7 (EXHIBIT NO. 39 WAS MARKED FOR
8 IDENTIFICATION BY THE REPORTER.)
9 BY MR. RAYBUCK:

10 Q. Mr. Nelson, do you have a copy of this
11 order involving Kansas City Power & Light in front of you?

12 A. Yes, I do.

13 Q. And was this the Order that you were
14 referring to yesterday?

15 A. Yes.

16 Q. And I don't recall, was there a specific
17 passage from this order that you cited yesterday, or were
18 you just generally referring to it?

19 A. I did refer to a specific passage, but the
20 photocopy I've got is different from the one in front of
21 me, so I don't know where it is. But it dealt with a
22 property owner's right. A property owner shall be allowed
23 to do such things unless it will be detrimental to the
24 public, and that sentence dealt with the right to transfer
25 property.

1 Q. Let me direct you to the top of page 11 of
2 Exhibit No. 39. Does that refresh your memory as to what
3 you were testifying about yesterday?

4 A. It's one of the things, yes. It's not the
5 same reference as I read, but this is on the topic about
6 being be no direct or present public detriment in the
7 record.

8 Q. And this was the basis of your
9 understanding as to the testimony that you gave yesterday
10 afternoon?

11 A. Yes, part of it.

12 MR. RAYBUCK: Now we're up to Friday, about
13 halfway through, Judge.

14 JUDGE THOMPSON: Yes, we're up to Friday
15 until Mr. Voytas takes the stand.

16 MR. RAYBUCK: I think you're right.

17 BY MR. RAYBUCK:

18 Q. Mr. Nelson, this morning in response to
19 questions from Mr. Dottheim, you were asked some questions
20 about the company's willingness to amend the JDA
21 independent of the Metro East transfer case. Do you
22 recall questions to that effect?

23 A. Yes, I do.

24 Q. And by your answers to Mr. Dottheim's
25 questions, did you mean to correct or change or supplement

1 in any way what you indicated on this issue in your
2 surrebuttal testimony?

3 A. No, I did not.

4 Q. Absent this proceeding, does Union
5 Electric have any reason to amend the Joint Dispatch
6 Agreement?

7 A. None. We have no plans, other than this
8 proceeding.

9 Q. After you filed your surrebuttal testimony
10 in this case, did you receive any Data Requests from the
11 Staff or Public Counsel or any party with regard to your
12 proposal to amend the JDA as referenced in your
13 surrebuttal?

14 A. I did not receive any such requests.

15 Q. What degree of confidence, Mr. Nelson, do
16 you have for obtaining the regulatory approvals that would
17 be needed to amend the JDA, if that is a condition imposed
18 by this Commission in an Order approving the Metro East
19 transfer?

20 A. I'm highly confident it would be approved
21 by the various regulatory agencies, and I'll just give you
22 a little discussion on each one. The Illinois Commerce
23 Commission is involved in a very small way, in that CIPS
24 transmission is mentioned in the Joint Dispatch Agreement.
25 This transaction has very little impact on transmission.

1 I don't see this posing a problem for the Illinois
2 Commerce Commission at all.

3 FERC also will need to approve an amendment
4 to the JDA. I'm very confident that if the company used
5 its best efforts to propose this change to FERC, and the
6 Missouri Public Service Commission supported the change,
7 that FERC would not have an objection, because we're
8 simply shifting more of the profit from off-system sales
9 from Genco to UE. So again, I'm highly confident that it
10 would be approved by the various regulatory agencies.

11 Q. Thank you. Just a point of clarification,
12 you were referring -- you were referring yesterday and
13 today to the Metro East, the assets related to the Metro
14 East service area as being T&D-related assets. Do you
15 recall answers to that effect?

16 A. Yes. I used T&D frequently.

17 Q. And to clarify, by T&D, what did you mean?

18 A. Unless I was talking about gas
19 specifically, when I said T&D I meant electric
20 transmission, electric distribution and gas distribution.

21 Q. So it was your intent to describe all of
22 the gas and electric utility assets in the Metro East
23 service area?

24 A. Yes, it was.

25 Q. You were asked a series of questions by

1 Mr. Coffman about Electric Energy, Inc. and its current
2 power account with Union Electric. Do you recall those
3 questions?

4 A. Yes, I do.

5 Q. And you indicated that it was your
6 understanding that Electric Energy, Inc. was not
7 interested in bidding on UE -- AmerenUE's resource needs
8 after the existing contract ends at the end of 2005; is
9 that correct?

10 A. That is correct.

11 Q. And assume for the moment that after 2005
12 there is a new contract or an extended contract between
13 AmerenUE and EE, Inc. for electricity that EE, Inc. would
14 sell to AmerenUE. Do you have that assumption in mind?

15 A. Yes, I do.

16 Q. In that event, would you expect to undergo
17 any regulatory scrutiny from the Missouri Staff and the
18 Missouri Office of the Public Counsel with regard to the
19 compliance -- with regard to AmerenUE's compliance with
20 the Missouri affiliate rules relating to that contract?

21 A. I would expect intense scrutiny for that
22 affiliate transaction.

23 Q. And can you explain the basis for that
24 statement?

25 A. I would expect scrutiny for -- based on the

1 lower of cost or market rule as to what market is. If
2 there was some agreement to use cost, I would expect
3 scrutiny, and I can't see any agreement in regard to what
4 the return on equity would be in that cost-based contract.
5 So it's very problematic.

6 Q. In the event that, again, under this
7 hypothetical, if the -- AmerenUE were to seek a waiver of
8 the Missouri's affiliate rules regarding the lower of cost
9 or market standard, do you -- what is your degree of
10 confidence as to whether the company, AmerenUE, could
11 obtain such a waiver?

12 A. I don't know whether the Commission would
13 grant a waiver. I'm very pessimistic we could agree on
14 the terms for a contract, though, that would be acceptable
15 to Electric Energy, Inc.

16 Q. Now, would this be -- you referred in your
17 testimony to reverse affiliate abuse. Would this be an
18 example of that, in your judgment?

19 A. If the Missouri Public Service Commission
20 were to order UE to unilaterally attempt to force its
21 minority-owned sub to enter into a contract, I think that
22 would be a form of reverse affiliate abuse. Essentially
23 the Commission would be asking Electric Energy, Inc. to
24 subsidize the regulated company, hypothetically speaking.

25 Q. Going back to the topic of MAIN for a

1 moment, the regional reliability council that you referred
2 to, I believe it was your testimony earlier that MAIN
3 looks at Ameren as a control area in terms of whether
4 Ameren as a whole is meeting its reserve -- electric
5 generating reserve requirements. Is that your testimony?

6 A. Yes.

7 Q. And you referred in response to questions
8 from Mr. Coffman about forbearance on the part of Ameren
9 Energy Generating Company in terms of allowing UE to, in
10 effect, use some of that -- use some of AEG's generating
11 capacity for purposes of meeting the reserve requirements.
12 Was that your -- was that your testimony?

13 A. Yes. I did discuss that.

14 Q. And do you -- do you view this as involving
15 a subsidy?

16 A. Clearly it would be, if UE asked its
17 counter party in this agreement, Genco, to let it use some
18 of its capacity for this summer, it would be a subsidy,
19 Genco to UE. Genco could be out selling that capacity and
20 energy in the market, earning a profit on it.

21 Q. And would this be another example of
22 reverse affiliate abuse, in your judgment?

23 A. Yes.

24 MR. RAYBUCK: I think I'm almost finished,
25 Judge, if I could just have a minute.

1 JUDGE THOMPSON: Absolutely.

2 MR. RAYBUCK: I am finished, your Honor,

3 but I would like to offer into the record Exhibit

4 No. 35 -- I'm sorry. I think we start at 34.

5 JUDGE THOMPSON: No, 35, 36, 37, 38, 39 are

6 the ones we marked for you.

7 MR. RAYBUCK: 34 has been admitted already;

8 is that correct?

9 JUDGE THOMPSON: Yeah.

10 MR. RAYBUCK: Thank you, Judge. I would

11 offer Exhibits 35 through 39 into the record.

12 JUDGE THOMPSON: Do I hear any objections

13 to the receipt of Exhibit 35 through 39?

14 MR. COFFMAN: Well, I don't really see it

15 as necessary, but I have no objection. Just an excessive

16 waste of paper, but I can't see any reason why they

17 shouldn't be.

18 JUDGE THOMPSON: The trees are already

19 dead.

20 Hearing no objection, Exhibit Nos. 35

21 through 39 are received and made a part of the record in

22 this proceeding.

23 (EXHIBIT NOS. 35 THROUGH 39 WERE RECEIVED

24 INTO EVIDENCE.)

25 JUDGE THOMPSON: Thank you. You may step

1 down, Mr. Nelson.

2 Mr. Voytas. Remind me of your name.

3 MR. BYRNE: I'm sorry. I'm Tom Byrne, your
4 Honor, for AmerenUE.

5 JUDGE THOMPSON: I should know that. I've
6 met you many times. You may inquire.

7 Oh, wait a minute.

8 (Witness sworn.)

9 JUDGE THOMPSON: Would you please state
10 your name and spell it for the reporter.

11 THE WITNESS: My name is Richard A. Voytas.
12 The last name is V-o-y-t-a-s.

13 JUDGE THOMPSON: Thank you. Now you may
14 inquire.

15 MR. BYRNE: Thank you, your Honor.

16 RICHARD A. VOYTAS testified as follows:

17 DIRECT EXAMINATION BY MR. BYRNE:

18 Q. Mr. Voytas, by whom are you employed?

19 A. I'm employed by Ameren Services.

20 Q. And in what capacity are you employed?

21 A. My title is manager of corporate analysis.

22 Q. Okay. And, Mr. Voytas, are you the same
23 Richard A. Voytas who has caused to be filed in this
24 proceeding direct testimony?

25 A. Yes, I am.

1 Q. Consisting of nine pages and five schedules
2 that has been marked Exhibit 9NP and Exhibit 9HC in this
3 proceeding?

4 A. I am the sponsor of that testimony. I
5 don't have the exhibit numbers in front of me. I will
6 take your word that that's the exhibit numbers that apply.

7 Q. Okay. And similarly, Mr. Voytas, are you
8 the same Richard A. Voytas that caused to be filed in this
9 proceeding surrebuttal testimony that has been marked as
10 Exhibit 10NP and 10HC?

11 A. Yes, I am.

12 Q. Do you have any corrections to that
13 prefiled testimony at this time?

14 A. Yes, I have two. On the surrebuttal
15 testimony, on page 21, line No. 7, I refer to a docket
16 where the last four letters are 0515. Those letters
17 should be 0516.

18 Q. And that's on line 7, page 21?

19 A. Correct.

20 Q. Of your surrebuttal?

21 A. Correct. The second correction is on
22 page 23, line 13 of my surrebuttal, and the correct case
23 number there, I believe I used a designation of EP. It
24 should be EO. That's all.

25 Q. Okay. Mr. Voytas, as corrected, is the

1 information provided in your direct testimony and your
2 surrebuttal testimony true and correct to the best of your
3 knowledge and belief?

4 A. Yes, it is.

5 Q. Mr. Voytas, if I was to ask you the
6 questions contained in your prefiled testimony, direct and
7 surrebuttal testimony, today when you're here under oath,
8 would the answers be the same as contained in that
9 testimony as you've corrected it?

10 A. Yes, they would.

11 MR. BYRNE: Your Honor, I would offer
12 Exhibits 9NP and HC and 10NP and HC and tender Mr. Voytas
13 for cross-examination on the issue of emission allowances.

14 JUDGE THOMPSON: Thank you. Do I hear any
15 objection to the receipt of Exhibit 9 or 10?

16 (No response.)

17 JUDGE THOMPSON: Hearing no objection,
18 those exhibits are received and made a part of the record
19 of this proceeding.

20 (EXHIBIT NOS. 9 AND 10 WERE RECEIVED INTO
21 EVIDENCE.)

22 JUDGE THOMPSON: And first up would be
23 Mr. Dottheim.

24 MR. DOTTHEIM: Staff has no questions for
25 this witness.

1 JUDGE THOMPSON: Thank you, Mr. Dottheim.
2 Mr. Coffman?
3 CROSS-EXAMINATION BY MR. MICHEEL:
4 Q. Mr. Voytas, is it correct for the Metro
5 East service transfer revenue analysis that the most
6 current year end rate base revenue requirements were used?
7 A. The 2002 year revenue requirements were
8 used.
9 Q. Could you turn to page 5 of your direct
10 testimony, which has been marked as Exhibit 9 in this
11 matter.
12 A. I'm sorry. Can you give me that citation
13 again?
14 Q. Your direct testimony, Exhibit 9, page 5,
15 and focusing on lines 1 through 4.
16 MR. LOWERY: Your Honor, can I ask a
17 clarifying question for the record?
18 JUDGE THOMPSON: Please.
19 MR. LOWERY: It's my understanding that the
20 issue that we have on today is SO2 allowance, the SO2
21 allowance issue. And when the -- when the schedule was
22 put together between myself and counsel for the other
23 parties, it's my understanding we would take up issues
24 related to trading and sales and so on of SO2 allowances,
25 but the least cost issues would be taken up next week.

1 I'm just wondering, based on the first
2 couple questions I've heard, whether it's Public Counsel's
3 intention to take up the least cost issues today, which I
4 don't believe would be appropriate.

5 MR. MICHEEL: Am I supposed to respond? Is
6 he questioning me now, Judge? Is that how this is working
7 today?

8 JUDGE THOMPSON: I wasn't part of the
9 agreement, so why don't you respond to that?

10 MR. MICHEEL: Oh, well, no. This all
11 relates to foundation for the SO2 questions that I'm going
12 to pose, your Honor.

13 JUDGE THOMPSON: Very well. Please
14 proceed.

15 THE WITNESS: I've got Schedule 2, page 1
16 of 1. Is that what you're referring to?

17 BY MR. MICHEEL:

18 Q. Once again, stick with me. Your direct
19 testimony, page 5. Your direct testimony has been marked
20 as Exhibit 9.

21 A. Okay.

22 Q. And I'm focusing on the first few lines up
23 there. Do you see what you said there, sir?

24 A. Yes.

25 Q. And is it correct that you say that for the

1 Metro East service revenue requirement analysis, the most
2 current year end rate base revenue requirements were used?

3 A. That's my testimony.

4 Q. And would you agree with me that that was
5 year end December 31, 2002; is that correct?

6 A. That's correct.

7 Q. Would you agree with me that those revenue
8 requirements were normalized to more accurately reflect
9 future expectations since AmerenUE experienced several
10 extraordinary costs in 2002?

11 A. That's correct.

12 Q. Would you agree with me that the Illinois
13 generation rate base and revenue requirement adjusted
14 12 months ending December 31st, '02 is depicted on
15 Schedule 2 of your direct testimony?

16 A. That's correct.

17 Q. When you say that the revenue requirements
18 were normalized, what do you mean?

19 A. Extraordinary items were normalized to
20 reflect a more normal year. Things such as the company's
21 voluntary retirement program, where there were
22 extraordinary expenses, those were normalized. If there
23 were any other outliers, those were normalized to the best
24 of our ability.

25 Q. What does it mean when you normalize

1 something, sir?

2 A. To make it look more like expectations,
3 like budgets, like it either has in the past or expected
4 to look like in the future.

5 Q. Is it correct that the -- you've only
6 explicitly identified two extraordinary costs that were
7 identified or included in normalization of the 2002
8 AmerenUE Illinois rate base revenue requirement?

9 A. On Schedule 2?

10 Q. On Schedule 2 and in your testimony.

11 A. On Schedule 2, we made the two
12 normalizations mentioned.

13 Q. Did you mention any other normalizations in
14 your direct testimony other than those two?

15 A. Not in my direct testimony.

16 Q. Do you mention any other normalizations in
17 your surrebuttal testimony other than those two?

18 A. I'm not aware. I don't remember.

19 Q. Other than those two adjustments, did you
20 make any other adjustments to the Illinois generation rate
21 base and revenue requirements on Schedule 2?

22 A. On these adjustments, there was one other
23 additional just meant and that was pertaining to the SO2
24 allowance issue, the magnitude of sales -- or the
25 magnitude of revenue in 2002.

1 Q. In your direct testimony, where is that
2 adjustment mentioned?

3 A. This is in work papers that were attached
4 to the direct testimony. It's not in the direct
5 testimony.

6 Q. Is it mentioned in your surrebuttal
7 tomorrow, Mr. Voytas?

8 A. I don't believe it is.

9 Q. Is it mentioned anywhere on Schedule 2,
10 Mr. Voytas?

11 A. No, it is not.

12 Q. Is it correct that your analysis did not
13 include nitrogen oxide emission compliance costs?

14 A. That is correct.

15 Q. Is it correct that your analysis did not
16 include carbon dioxide emission compliance costs?

17 A. That is correct.

18 Q. Is it correct that your analysis did not
19 include mercury admissions compliance costs?

20 A. That is correct.

21 Q. Is it correct that your analysis did not
22 include particulate emission compliance costs?

23 A. That is correct.

24 Q. Is it correct that your analysis did not
25 include sulfur dioxide compliance costs?

1 A. That is correct.

2 Q. Correct that you didn't make any
3 adjustments to your analysis because you believe that
4 there is no way to determine what future regulations will
5 be in place; isn't that correct?

6 A. That is correct.

7 Q. Is it correct that you made an SO2
8 adjustment in your revenue requirement analysis of the
9 transfer alternative relating to SO2?

10 A. Yes, I did.

11 Q. Could you turn to Schedule 2 of your direct
12 testimony, sir?

13 A. I'm there.

14 Q. Could you tell me or show me where that SO2
15 adjustment appears on that schedule?

16 A. The SO2 adjustment on this schedule would
17 appear on the fuel and purchased power for load that would
18 be embedded in that number.

19 Q. And there's no way from looking at that
20 schedule that I can tell it's embedded in that number; is
21 that correct?

22 A. That's correct.

23 MR. MICHEEL: I need to get an exhibit
24 marked, your Honor. I believe it will be Exhibit 40.

25 JUDGE THOMPSON: Okay.

1 (EXHIBIT NO. 40 WAS MARKED FOR
2 IDENTIFICATION BY THE REPORTER.)
3 BY MR. MICHEEL:
4 Q. Mr. Voytas, I've handed you what's been
5 marked for purposes of identification as Exhibit 40. It
6 is AmerenUE's response to Staff DR 02. Do you see that,
7 sir?
8 A. Yes, I do.
9 Q. And does this response request all of the
10 company's work papers?
11 A. Yes, it does.
12 Q. And could you look at the second page
13 there. Is that an e-mail from a Mary Hoyt to Mr. Kind
14 indicating that that's a response to OPC Data Request 501?
15 A. Yes, it is.
16 MR. MICHEEL: May I approach the witness,
17 your Honor?
18 JUDGE THOMPSON: You may.
19 BY MR. MICHEEL:
20 Q. I'm handing you a copy of Public Counsel
21 Data Request 501. Does that request copies and responses
22 to all of Staff Data Requests, sir, for Data Requests
23 No. 001 and 002?
24 A. Do you want me to read the response?
25 Q. Sure.

1 A. Responses to MPSC Data Request Nos. 1 and
2 2, including all work papers, were sent by e-mail to John
3 Coffman and Ryan Kind on Wednesday November 12th, 2003.

4 Q. And that would be the work papers that I've
5 handed you that's been marked as Exhibit 40; is that
6 correct?

7 A. If you say so. I did not put together
8 those work papers.

9 Q. Well, why don't you look at that? Are
10 those your work papers, Mr. Voytas?

11 A. Again, I'm just looking at the section that
12 Mary Hoyt signed.

13 Q. Well, look at the subject tag there, the
14 section that Mary Hoyt signed on page -- the third page
15 there. Do you see that, sir?

16 A. Yes, I do.

17 Q. Do you see the subject tag there, sir?

18 A. Yes, I do.

19 Q. And could you read that into the record?

20 A. The subject tag says work papers, Richard
21 Voytas, EO-2004.

22 Q. And does it indicate that attached are
23 Richard Voytas work papers in docket EO-2004-0108?

24 A. Yes, it does.

25 Q. Is that this case?

1 A. Yes, it is.

2 Q. Are those that those work papers?

3 A. Yes, they are.

4 Q. Are they your work papers?

5 A. Can I have a chance to look through them?

6 Q. Take as much time as you need Mr. Voytas.

7 A. Yes, they are.

8 MR. MICHEEL: I'd move the admission of

9 Exhibit 40, sir.

10 JUDGE THOMPSON: Do I hear any objection to

11 the receipt of Exhibit 40?

12 MR. BYRNE: No objections, your Honor.

13 JUDGE THOMPSON: Hearing no objections, the

14 same is received and made a part of the record of this

15 proceeding.

16 (EXHIBIT NO. 40 WAS RECEIVED INTO

17 EVIDENCE.)

18 BY MR. MICHEEL:

19 Q. Now earlier, Mr. Voytas, you told me your

20 adjustment for the SO2 allowances were contained in your

21 work papers; is that correct?

22 A. Yes, they were.

23 Q. Can you show me in those work papers where

24 you made an adjustment regarding SO2 sales allowances?

25 A. I do not see it in this set of work papers.

1 Q. So there is no adjustment in those work
2 papers, is there, Mr. Voytas?

3 A. The work papers I have in front of me, no,
4 there is no such adjustment.

5 Q. And those were the work papers that you
6 provided the Office of the Public Counsel in response to a
7 Data Request that requested all work papers for your
8 direct testimony; is that correct?

9 MR. BYRNE: Your Honor, I'm going to object
10 here for a second. Mr. Micheel has handed probably
11 40 pages of documents to Mr. Voytas, and I'm just
12 concerned that in the short period of time that Mr. Voytas
13 has looked at it, he may not know every line item that's
14 in this 40 pages.

15 JUDGE THOMPSON: Mr. Voytas, do you need
16 additional time to look over the exhibit?

17 THE WITNESS: No, I think I can work with
18 this.

19 JUDGE THOMPSON: So what's your objection,
20 Mr. Byrne?

21 MR. BYRNE: I have no objection, your
22 Honor.

23 JUDGE THOMPSON: Thank you. Were you able
24 to answer the question as posed, or do you need it read
25 back?

1 THE WITNESS: Please read that back.

2 THE REPORTER: "Question: And those were
3 the work papers that you provided the Office of the Public
4 Counsel in response to a Data Request that requested all
5 work papers for your direct testimony; is that correct?"

6 THE WITNESS: I don't know if that's the
7 complete response. I don't know if there are supplemental
8 work papers sent. I don't know if work papers were sent
9 to the Missouri Public Service Commission Staff that may
10 or may not have been copied to the Office of Public
11 Counsel. I just don't have a log of all the work papers
12 that were sent.

13 BY MR. MICHEEL:

14 Q. Well, look at the first question there on
15 the front page of Exhibit 40. Mr. Bax asked for all work
16 papers in support of the company's filings; is that
17 correct?

18 A. That's correct.

19 Q. And the Office of the Public Counsel asked
20 for complete response to Staff Data Request No. 002; is
21 that correct?

22 A. That's correct.

23 Q. And your company would provide all the work
24 papers, would they not?

25 A. Yes, we would.

1 Q. And in the work papers that they provided
2 in response to this, there was no mention of an SO2
3 allowance adjustment, isn't that correct?

4 MR. BYRNE: I'm going to object to the
5 question, your Honor, it was already asked and answered.
6 He said he wasn't aware if this was the entire set of work
7 papers that was sent.

8 JUDGE THOMPSON: Read back the last
9 question.

10 THE REPORTER: "Question: And in the work
11 papers that they provided in response to this, there was
12 no mention of an SO2 allowance adjustment, isn't that
13 correct?"

14 JUDGE THOMPSON: He did already testify
15 that he did not find the SO2 allowance adjustments in the
16 exhibit, so I'm going to sustain the objection. Please
17 proceed.

18 BY MR. MICHEEL:

19 Q. Is it correct that subsequent to providing
20 your work papers you provided work papers that apparently
21 supported your original work papers?

22 A. I don't remember. The least cost, the
23 analysis that you're referring to, was an on an Excel
24 spreadsheet that had several work sheets within it. If
25 one was omitted, I don't know why. They're all tied

1 together. But I don't remember the Data Request that
2 you're referring to.

3 MR. MICHEEL: I need to get another exhibit
4 marked, your Honor. This would be Exhibit 41.

5 (EXHIBIT NO. 41 WAS MARKED FOR
6 IDENTIFICATION BY THE REPORTER.)

7 JUDGE THOMPSON: Could you describe that
8 for me, please, Mr. Micheel?

9 MR. MICHEEL: Supplemental work papers to
10 work papers, supplemental work papers of Mr. Richard
11 Voytas.

12 JUDGE THOMPSON: Thank you. You may
13 proceed.

14 BY MR. MICHEEL:

15 Q. Mr. Voytas, I've handed you what's been
16 marked for purposes of identification as Exhibit 41. Do
17 you have a copy of that in front of you?

18 A. Yes, I do.

19 Q. And does that appear to be supplemental
20 work papers that you provided to Mr. Kind?

21 A. Yes, it does.

22 Q. And those were provided subsequent to your
23 first provision of work papers; isn't that correct?

24 A. It appears that way.

25 Q. And have you had a chance to look through

1 these work papers?

2 A. I'll do that now.

3 Yes, I've looked through them.

4 Q. And are those copies of your supplemental

5 work papers?

6 A. Yes, they are.

7 Q. And these are work papers that apparently

8 support your initial work papers; is that correct?

9 A. That's my understanding.

10 MR. MICHEEL: I'd move the admission of

11 Exhibit 41.

12 JUDGE THOMPSON: Do I hear any objection to

13 the receipt of Exhibit 41?

14 (No response.)

15 JUDGE THOMPSON: Hearing no objection, the

16 same is received and made a part of the record of this

17 proceeding.

18 (EXHIBIT NO. 41 WAS RECEIVED INTO

19 EVIDENCE.)

20 BY MR. MICHEEL:

21 Q. Could you turn to the fifth page of that

22 document that's been admitted into evidence as Exhibit 41

23 to a sheet entitled SO2 allowance?

24 A. I'm there.

25 Q. Who is Tony Artman?

1 A. Tony Artman is a principal planning
2 engineer that reports to me in the corporate analysis
3 department.

4 Q. And what are Mr. Artman's job functions?

5 A. Mr. Artman's job functions are primarily in
6 the market modeling and corporate analysis areas.

7 Q. And what does market modeling mean, sir?

8 A. Tony's instrumental in developing the
9 company's forward market price curve.

10 Q. And what is the company's forward market
11 price curve?

12 A. It is a projection of market prices for
13 what electric energy will be in the future.

14 Q. Now, is it finally here that this sheet
15 delineates UE's adjustment to SO2 allowance revenues?

16 A. This is the sheet.

17 Q. I want to try to understand the adjustment
18 that you made.

19 A. Sure.

20 Q. Is it correct that the work paper shows in
21 2001 Ameren received \$17,850,000 of revenue from the sale
22 of SO2 allowances?

23 A. That's correct.

24 Q. Is it correct for the year ending
25 December 31st, 2002, Ameren received \$10,202,380 of

1 revenue from SO sales?

2 A. That's correct.

3 Q. Is it correct despite your claim that you
4 use current 2002 year end rate base and revenue
5 requirements, you did not use the actual year end SO2
6 sales revenues in your analysis in this case; isn't that
7 correct?

8 MR. BYRNE: I'm going to object to the
9 question. It misstates his testimony. He said that he
10 made a normalization adjustment to SO2 allowances contrary
11 to Mr. Micheel's questions.

12 MR. MICHEEL: Your Honor, that's not what
13 he said in his direct testimony, and I think I've already
14 established that. At page 5 of his direct testimony, your
15 Honor, he said at the top he used year end 2002
16 adjustments, and in his direct testimony and on his direct
17 testimony Schedule 2, he said he made two, count them,
18 two, normalization adjustments. And that's what I'm
19 asking about.

20 JUDGE THOMPSON: I'm going to overrule the
21 objection. Please proceed.

22 Could you read that question back, Kellene?

23 THE REPORTER: "Question: Is it correct
24 despite your claim that you use current 2002 year end rate
25 base and revenue requirements, you did not use the actual

1 year end SO2 sales revenues in your analysis in this case;
2 isn't that correct?"

3 THE WITNESS: That is correct.

4 BY MR. MICHEEL:

5 Q. Is it correct for purposes of your
6 analysis, you took the 10,202 -- \$10,202,380 in sales
7 revenues from 2002 for the SO2 allowances and added
8 \$7,647,620; is that correct?

9 A. We based it on the 2001 tonnages, that's
10 correct.

11 Q. And you derived the 7,647,620 by
12 subtracting the \$10,202,380 in 2002 from the \$17,850,000
13 in 2001; is that correct?

14 A. That's the mechanics of the calculation,
15 but the note on page 5 clearly says that 2001 reflects a
16 more typical year than 2002. So we should make an
17 adjustment. But what that line refers to is the
18 tonnages --

19 MR. MICHEEL: Your Honor, I asked him if
20 that's how you got to it and I would ask the rest of this
21 be stricken and I would ask that you advise this witness
22 to answer my question, which was, is this how you did the
23 calculation. He said yes, and then all of this add on.

24 JUDGE THOMPSON: Mr. Byrne?

25 MR. BYRNE: Your Honor, he can explain his

1 answer. I know he has to give a yes or no answer, but he
2 can explain the yes or no. He's entitled to do that.

3 JUDGE THOMPSON: Actually, the explanation
4 should be elicited on redirect. In general on
5 cross-examination the questions are yes, no or maybe, I
6 don't know-type questions, and if the inquiring counsel
7 gives you an opportunity to explain an answer, then of
8 course, you may. Otherwise, stick to the yes, no, I don't
9 know. And then on redirect your attorney can elicit any
10 necessary explanation.

11 Thank you. Please proceed. Oh, and you
12 want that the stricken, the additional response?

13 MR. MICHEEL: Yes.

14 JUDGE THOMPSON: Kellene, can we strike the
15 additional response, after the word -- let's see "that's
16 the mechanics of the calculation," and then if you would
17 strike the remainder starting with "but" and ending with
18 "adjustment" or whatever it is, the last part of this all
19 the way to the last.

20 Okay. Are we ready to go?

21 BY MR. MICHEEL:

22 Q. Yes. And I'm just trying to understand the
23 mechanics of the calculation here, Mr. Voytas, because
24 this calculation isn't anywhere in your direct testimony;
25 isn't that correct?

1 A. That's correct.

2 Q. And it isn't anywhere in your schedules;
3 isn't that correct?

4 A. That's correct.

5 Q. The only place we can find it is the
6 supplemental work papers; isn't that correct?

7 A. That's correct.

8 Q. So after you've derived the \$7,647,620, you
9 take it down to the net line; is that correct?

10 You see the line entitled net there, sir?

11 A. Yes, I do.

12 Q. And then to arrive at the AmerenUE-Illinois
13 number of 724,230, you multiply that 7,647,620 by .0947;
14 isn't that correct?

15 A. That's correct.

16 Q. And then you take the 724,230 AmerenUE
17 Illinois portion and you multiply that by .228 to get the
18 16,512 for the AmerenUE wholesale portion; is that
19 correct?

20 A. That's correct.

21 Q. Then you take the 724,230 AmerenUE Illinois
22 portion and multiply by that .9772 to get the 707,717
23 AmerenUE MO portion of Illinois; is that correct?

24 A. That's correct.

25 Q. Would you agree with me that the \$707,717

1 is built into your analysis every year for the 25 years
2 for the SO2 revenue?

3 A. That's correct.

4 Q. And this is in addition to the 10,202,380
5 of SO2 revenue built in every year for the 25 years in
6 your analysis; is that correct?

7 A. That's correct. The total is 17,850,000.

8 Q. That's my next question. Would you agree
9 with me that built into your AmerenUE total company, you
10 have built into your analysis over \$17 million in revenues
11 from SO2 sales for a 25-year period?

12 A. Yes, I have.

13 Q. If you will, sir, turn to your fourth page
14 of your document, the sheet labeled AmerenUE Illinois
15 generation rate base and revenue requirement adjustment,
16 12 months, ending December 31st '02, without AmerenUE
17 Illinois transfer. It's the fourth page there. Do you
18 see that, sir?

19 A. Yes, I do.

20 Q. Would you agree with me, sir, that this
21 sheet is identical to the Schedule 2 to your direct
22 testimony except for the fact that the middle three
23 columns are not included in Schedule 2?

24 A. I'm going to have to check Schedule 2. I
25 don't remember.

1 Q. Take your time.

2 A. Okay.

3 Yes, I would agree.

4 Q. Would you agree with me that your SO2

5 adjustment is implicitly included in the line labeled

6 other production expenses?

7 A. I'd have to do further analysis. I don't

8 remember at this time.

9 Q. Well, let me help with you that, okay?

10 A. Sure.

11 Q. This is how I arrived at that. You can

12 determine that by subtracting -- and I'm on your --

13 Exhibit 41, your work papers to your work papers, sir.

14 A. Okay.

15 Q. You can determine that by subtracting the

16 AmerenUE Illinois allocated to AmerenUE MO amount of

17 \$27,132,961 in the fourth column there, sir, from the

18 \$26,425,243 in the AmerenUE Illinois allocated to AmerenUE

19 MO amount of \$26,425,243; is that correct?

20 A. That subtraction gives you that number,

21 that's correct.

22 Q. And does that refresh your recollection --

23 these are your work papers?

24 A. Yes, they are.

25 Q. Does that refresh your recollection as to

1 where it's found?

2 A. Yes, it does.

3 Q. And is it found in that line, the line

4 entitled other production expenses?

5 A. The additional revenue from the SO2 sales?

6 Q. Yes, sir.

7 A. Correct.

8 Q. And would you agree with me that there's no

9 way of knowing that -- knowing on its face that an

10 adjustment was made for SO2 on your Schedule 2; is that

11 correct?

12 A. It appears that way.

13 Q. Would you agree with me that had AmerenUE

14 used the unadjusted 2002 SO2 sales revenue numbers of

15 \$10,202,380, all other things remaining the same, your

16 analysis would change?

17 A. Yes.

18 Q. Would you agree all other things remaining

19 the same, that if you had not adjusted the actual SO2

20 revenues for 2002 by the \$707,718 on an annual basis,

21 would you agree with me that the \$114,812,510 total

22 revenue requirement on Schedule 2 would increase by the

23 amount of your adjustment?

24 A. I'm sorry. Can you go through that

25 question again?

1 Q. Sure. Would you agree with me, all other
2 things remaining the same, if you had not adjusted the
3 actual SO2 revenues for 2002 by the \$707,718 on an annual
4 basis, that the \$114,812,520 -- or 510 total revenue
5 requirement that we see there on your Schedule 2 in
6 Column 2 would increase by the amount of your adjustment?

7 A. Yes.

8 Q. So would you agree, all other things
9 remaining the same, absent the SO2 adjustment, the total
10 revenue requirement on your Schedule 2 would be
11 \$115,520,227?

12 A. With only making the change that you
13 referenced?

14 Q. All other things remaining the same.

15 A. Correct.

16 Q. Could you turn to your Schedule 4 of your
17 direct testimony? Let me know when you're there.

18 A. I'm there.

19 Q. This is where you set out your 25-year
20 analysis of alternatives; is that correct?

21 A. That's correct.

22 Q. And the top column is the transfer
23 UE-Illinois service territory; is that correct?

24 A. That's correct.

25 Q. Would you agree with me that the starting

1 point for year one is the \$114.8 million total revenue
2 requirement found on Schedule 2?

3 A. Yes.

4 Q. Tiny numbers, huh?

5 A. Very.

6 Q. I want you to assume that the year one
7 total revenue requirement includes the unadjusted '02
8 figures for SO2 sales and the starting -- which would mean
9 a starting point of 115 -- \$115.5 million. Can you make
10 that assumption?

11 A. Sure.

12 Q. Would you agree with me using that
13 assumption each year would need to be increase by .7 or
14 \$700,000? For example, year 2 would be 114.1 million?

15 A. Not at this time. I'd have to go back
16 through the actual work sheet, put those numbers in and
17 take a look at it.

18 Q. All other things remaining the same, you
19 told me earlier that the revenue requirement would
20 increase to \$115.5 million; is that correct?

21 A. That's correct.

22 Q. And all other things remaining the same,
23 and that's keeping everything the same in this analysis,
24 your 25-year analysis should increase \$700,000, all things
25 remaining the same; isn't that correct?

1 MR. BYRNE: Your Honor, I'm going to
2 object. I guess I'm sort of renewing the same objection
3 that Mr. Lowery had earlier. Our understanding was this
4 witness was being put up on the witness stand this morning
5 to talk about his involvement, if any, in AmerenUE's SO2
6 allowance bank management program, and that the
7 discussions about his least cost analysis were going to be
8 deferred until Wednesday. Every one of these questions is
9 about -- I mean, it's how basically how the SO2 allowances
10 impact the least cost analysis. Our understanding was
11 that line of questioning was for Wednesday, not today.

12 MR. MICHEEL: Your Honor --

13 MR. LOWERY: Your Honor, if I can
14 supplements that, it was represented to me --

15 JUDGE THOMPSON: Just a moment, please,
16 Mr. Lowery. Just one lawyer on each side, if we could.
17 You can jump in, Steve, but he can't. This is your
18 testimony, correct?

19 THE WITNESS: That is correct.

20 JUDGE THOMPSON: I mean, are you not
21 prepared to testify on this matter today?

22 THE WITNESS: I am prepared to testify on
23 this matter. This particular calculation is a rather
24 detailed Excel spreadsheet magnitudinally, directionally,
25 if we make this change, will it increase revenue

1 requirements, yes.

2 JUDGE THOMPSON: I understand.

3 THE WITNESS: If I'm asked precisely, I
4 don't know.

5 JUDGE THOMPSON: I understand. And that's
6 a perfectly valid answer and that goes to something other
7 than the objection that Mr. Byrne was making. I'm going
8 to overrule your objection.

9 Please continue.

10 MR. MICHEEL: Thank you, your Honor.
11 I'm not really sure where we were.

12 JUDGE THOMPSON: You were asking him about
13 whether or not his analysis would change in a particular
14 way, and he was suggesting a certain reluctance to agree
15 with you, Doug. I think he answered the question.

16 BY MR. MICHEEL:

17 Q. Would you agree with me, all things
18 remaining the same, that your analysis on that page should
19 increase \$700,000?

20 A. I would agree that there will be an
21 increase in revenue requirements, but absent getting into
22 the number, putting the numbers in and looking at it, I'd
23 have to do that first.

24 Q. Would you agree with me that on your
25 analysis here on Schedule 4, that the first year present

1 value is about \$54.1 million?

2 A. That's what the schedule says, correct.

3 Q. And if you assume that the year one total

4 revenue requirement includes the unadjusted SO2 figures

5 for SO2 sales, would you agree with me that the starting

6 point on this schedule would be different; isn't that

7 correct?

8 A. That's correct.

9 Q. And it would be increased; isn't that

10 correct?

11 A. That's correct.

12 Q. Do you have any reason to doubt that the

13 magnitude of that increase would be \$700,000,

14 approximately?

15 A. It's been several months since this model

16 was built, and directionally, I agree with you. The

17 magnitude, I'd have to go back to the model and take a

18 look.

19 Q. Can you do that when you come back and

20 testify on Wednesday?

21 MR. MICHEEL: I mean, I don't want to

22 belabor this, your Honor, but I think I'm entitled to an

23 answer. These are his work papers.

24 JUDGE THOMPSON: Well, I think you're

25 entitled to an answer and I think the answer that you got

1 was that he's unwilling to agree with that unless he has a
2 chance to change the model and see what happens. I think
3 that's your answer.

4 BY MR. MICHEEL:

5 Q. Would you agree with me that your annual
6 annuity figure 43.1 million on Schedule 4?

7 JUDGE THOMPSON: Are you able to see
8 Schedule 4?

9 THE WITNESS: I'm trying to delay the
10 onslaught of age, but it looks like it's catching up with
11 me. I'm going to -- I can't see it.

12 BY MR. MICHEEL:

13 Q. And Schedule 4, just for the record, is
14 something that was attached to your testimony and put into
15 the record by Ameren; is that correct?

16 A. That's correct.

17 Q. And so Ameren provided these little dinky
18 numbers; is that correct?

19 A. What do you mean by little dinky numbers?

20 Q. The numbers that you cannot see while
21 you're sitting on the stand.

22 A. That's correct.

23 JUDGE THOMPSON: Do we have a larger or
24 easy reading version of Schedule 4?

25 MR. BYRNE: How about if I stipulate that

1 the -- I can see the number, your Honor, and the company
2 will stipulate it's \$43.1 million?

3 MR. MICHEEL: We have a larger number that
4 I printed out. It's in the record and it's in Exhibit 41.
5 It's the last page of Exhibit 41, your Honor.

6 JUDGE THOMPSON: Thank you, Mr. Micheel.

7 BY MR. MICHEEL:

8 Q. Let me ask you, Mr. Voytas, did you ever do
9 your Illinois generation rate base and revenue requirement
10 analysis using the actual 2002 SO2 sales revenues of
11 \$10,202,380?

12 A. That work was done under my direction, and
13 the question is, did I ever do that specific one using
14 those numbers, I don't remember the answer to that. We
15 looked at this, we looked at every line item and whether
16 we ran it with or without, I do not remember.

17 Q. Are you aware that Mr. Kind provided a
18 supplemental response to AmerenUE Data Request No. 25G
19 regarding analysis for least cost planning options?

20 A. Late last night I was given a copy of a
21 supplemental DR response.

22 Q. Have you reviewed that response pertaining
23 to SO2 adjustments?

24 A. I've taken a very quick look at it.

25 Q. And did you look specifically at the SO2

1 adjustment portion of it?

2 A. I saw what Mr. Kind did. I saw that he
3 used the 2001 numbers, the \$10 million number referenced.
4 Yes, I did see that.

5 Q. Did you note any infirmities in that
6 analysis?

7 A. What do you mean by infirmities?

8 Q. Things that you disagreed with?

9 A. Obviously I disagree with the 10 million.
10 I used 17 million.

11 Q. Other than that?

12 A. Again, you're asking a document that I
13 received at 7 o'clock last night that I did not -- I have
14 not run the numbers. I think there's electronic work
15 sheets with it. I have not got access to a computer to
16 look at that. I don't know.

17 MR. MICHEEL: If I can just have a minute,
18 your Honor.

19 JUDGE THOMPSON: Absolutely.

20 MR. MICHEEL: Thank you for your time.

21 JUDGE THOMPSON: Are you done, Mr. Micheel?

22 MR. MICHEEL: I am, your Honor. Sorry.

23 JUDGE THOMPSON: That's quite all right.
24 We are at the moment when we need to take a break for the
25 reporter, so we'll take 10 minutes.

1 Thank you.

2 (A BREAK WAS TAKEN.)

3 JUDGE THOMPSON: We're ready for questions

4 from the Bench for Mr. Voytas. Commissioner Murray?

5 QUESTIONS BY COMMISSIONER MURRAY:

6 Q. Good afternoon.

7 A. Good afternoon.

8 Q. I just have a few questions. In Mr. Kind's

9 prefiled testimony, in his rebuttal testimony -- I assume

10 you read that?

11 A. Yes, I have.

12 Q. He indicated there that he hoped that

13 AmerenUE could provide some assurance that it's currently

14 in compliance with the limits on the SO2 allowance

15 transactions that were set by the Commission in EO-98-401,

16 and did you do that?

17 A. Commissioner, that is an issue involving

18 the trading of SO2 allowances. My group is not involved

19 in that in any way, shape, or form. So I have no -- I

20 cannot comment on that issue.

21 Q. Okay. I'm sorry. I was thinking that was

22 a part of your issue. That is not one of the issues that

23 you --

24 A. No. AmerenUE will have a witness James C.

25 Moore, who will be addressing that issue.

1 COMMISSIONER MURRAY: That's not what I
2 show.
3 JUDGE THOMPSON: What did you say, sir?
4 I'm sorry.
5 THE WITNESS: Commissioner Murray asked me
6 about being in compliance with a particular stip on
7 selling SO2 allowances, and my response was that I am not
8 responsible for the SO2 allowance management or
9 strategies. AmerenUE Witness James C. Moore will provide
10 that in his testimony.
11 JUDGE THOMPSON: Mr. Moore. Okay. Now,
12 you are here as an SO2 allowance witness, but of course
13 Mr. Moore is as well.
14 THE WITNESS: Yes.
15 JUDGE THOMPSON: Very well.
16 COMMISSIONER MURRAY: I see. He's listed
17 down there under the allowances.
18 JUDGE THOMPSON: He was unable, I believe,
19 to be here today, isn't that --
20 THE WITNESS: I don't know.
21 MR. LOWERY: Your Honor, that's correct.
22 He was unable to be here today.
23 BY COMMISSIONER MURRAY:
24 Q. The documents that Mr. Micheel was
25 questioning you about earlier, the work papers, I must

1 admit I'm fairly confused on this issue, so forgive me if
2 I'm asking questions that don't make a lot of sense,
3 but -- well, in fact, you may not be able to answer that
4 because my question, I guess, relates to more to the
5 allowances that have been sold than the rate at which
6 they've been sold. And that's not your issue, is that
7 what you're saying?

8 A. No, Commissioner, that is not.

9 COMMISSIONER MURRAY: Okay. All right.
10 Then I'll skip asking you questions. Thank you.

11 JUDGE THOMPSON: Commissioner Clayton?

12 COMMISSIONER CLAYTON: Thank you, Judge.

13 QUESTIONS BY COMMISSIONER CLAYTON:

14 Q. Mr. Voytas, my schedule as well says that
15 you're up for today to speak on SO2 allowances. What is
16 your role on this issue?

17 A. The role on this issue, I believe, is best
18 stated on my surrebuttal testimony on the last page. May
19 I refer to that?

20 Q. Please, because I don't have it with me.

21 A. Okay. The question is, did you allow for
22 increased environmental compliance costs in your least
23 cost analysis of the Metro East transfer? My answer is,
24 no, I defer to Ameren Witness James C. Moore's testimony,
25 who addresses the issue of SO2 emission allowances. There

1 is no way to determine what future regulations will be in
2 place and what requirements for technology installations
3 will be required at AmerenUE power plants over the next
4 20 years.

5 Consequently, my role in the S20 allowance
6 issues is how do they factor into the least cost analysis.

7 Q. Which is not up until Thursday, April 1st,
8 right?

9 A. That's my understanding.

10 COMMISSIONER CLAYTON: So why on earth do
11 we have this witness up? We've had this for an hour and a
12 half now, and could somebody explain that to me?

13 MR. BYRNE: Well, the other parties had
14 questions for him that they said were related to SO2
15 allowances. I objected when they related to least cost
16 analysis, but my objection was overruled.

17 COMMISSIONER CLAYTON: Which is up -- but
18 that issue's up for April 1st. So it's just a very
19 limited role. Hour and a half on the issue and it's not
20 even your issue. Thank you.

21 JUDGE THOMPSON: Chairman Gaw, do you have
22 any questions for this witness?

23 CHAIRMAN GAW: I'll wait for next week.
24 Thanks, Judge.

25 JUDGE THOMPSON: Recross based on questions

1 from the Bench? It should be brief. Mr. Dottheim?

2 MR. DOTTHEIM: No questions.

3 JUDGE THOMPSON: Thank you. Mr. Micheel?

4 MR. MICHEEL: No.

5 JUDGE THOMPSON: Redirect, Mr. Byrne?

6 MR. BYRNE: Yes, your Honor.

7 REDIRECT EXAMINATION BY MR. BYRNE:

8 Q. I just a couple of questions, Mr. Voytas.

9 Mr. Micheel asked you some questions on Exhibit No. 41,

10 and -- on Exhibit 41, which is some supplemental work

11 papers you provided. On page 5 of that exhibit, there's a

12 calculation of the SO2 allowance that goes into your least

13 cost analysis. Do you see that page?

14 A. Yes, I'm there.

15 Q. And do you recall Mr. Micheel's questions

16 about your calculation of SO2 allowances that went into

17 your least cost analysis?

18 A. Yes, I do.

19 Q. And do you recall how he asked you about

20 the mechanics of adjusting the year end 2002 revenues?

21 A. Yes, I do.

22 Q. And could you provide an explanation of why

23 you made that adjustment?

24 A. Yes, I can. What we're looking at here is

25 profits from the sale of SO2 emission allowances. Those

1 profits or margins, if you will, offset fuel and purchased
2 power. So it's important to get a good idea of the
3 magnitude of those, and to get the magnitude of the
4 margins associated with that is the function of two items.
5 One is the tonnage sold; second is the price at which that
6 tonnage is sold.

7 In this particular analysis, there's a
8 question in our minds about the tonnages sold, which were
9 an outlier. The second issue, the tonnages in this
10 calculation were based on a price at the time when these
11 were done of \$170 per ton. Today the price per ton for
12 SO2 allowances is \$275, and the current forward curve for
13 SO2 allowances stays at the \$260 to \$275 range through
14 2008. Consequently, for those two reasons, we felt that
15 it was necessary to make an adjustment for the margins
16 associated with SO2 allowances sales.

17 Q. Let me ask you this, Mr. Voytas, if you had
18 not made any adjustments and simply used the year end 2002
19 SO2 allowance revenues, do you believe that would have
20 changed the economics of this transaction in your
21 analysis?

22 A. Counsel, I will go back and I'll do that
23 analysis, but looking at the magnitude of the dollars
24 here, it will take some of the benefit away, but will it
25 impact directionally? No. I don't believe. I need to do

1 the analysis, but my intuition is that it will not.

2 MR. BYRNE: Thank you. I have no further

3 questions.

4 JUDGE THOMPSON: Thank you. You may step

5 down, Mr. Voytas. We'll see you later, I believe, on

6 Joint Dispatch Agreement.

7 Mr. Campbell. Raise your right hand, sir.

8 (Witness sworn.)

9 JUDGE THOMPSON: Would you please state

10 your name for the reporter and spell your last name?

11 THE WITNESS: Richard J. Campbell,

12 C-a-m-p-b-e-l-l.

13 JUDGE THOMPSON: Mr. Dottheim, you may

14 inquire.

15 MR. DOTTHEIM: Yes, thank you.

16 RICHARD J. CAMPBELL testified as follows:

17 DIRECT EXAMINATION BY MR. DOTTHEIM:

18 Q. Mr. Campbell, you have a -- well, would you

19 first state the nature of your employment at Public

20 Service Commission?

21 A. I'm employed as a Utility Regulatory

22 Engineer 1 with the energy department.

23 Q. Okay. And do you have a copy of what has

24 been marked as Exhibit No. 11, your cross surrebuttal

25 testimony on the issue of SO2 allowances?

1 A. Yes, I do.

2 Q. And Exhibit No. 11, there's both an NP, a
3 nonproprietary, and an HC version, highly confidential
4 version of your cross surrebuttal testimony?

5 A. Yes, there is.

6 Q. Mr. Campbell, do you have any corrections
7 to make in your cross surrebuttal testimony or changes
8 today?

9 A. No, I don't.

10 Q. If I were to ask you the same questions
11 that are contained in your cross surrebuttal testimony,
12 would your answers be the same?

13 A. Yes, they would.

14 Q. Is the information contained in there true
15 and correct to the best of your knowledge and belief?

16 A. Yes, it is.

17 MR. DOTTHEIM: At this time I would offer
18 Exhibit No. 11NP and HC and tender Mr. Campbell for
19 cross-examination.

20 JUDGE THOMPSON: Thank you, Mr. Dottheim.
21 Do I hear any objections to the receipt of Exhibit 11?

22 MR. BYRNE: No, your Honor.

23 JUDGE THOMPSON: Hearing no objections the
24 same is received and made a part of the record of in this
25 proceeding.

1 (EXHIBIT NO. 11NP AND HC WAS RECEIVED INTO
2 EVIDENCE.)

3 JUDGE THOMPSON: Cross-examination, Public
4 Counsel?

5 MR. COFFMAN: No questions.

6 JUDGE THOMPSON: Ameren, who's doing this
7 one?

8 MR. BYRNE: Yes, your Honor. Me.

9 JUDGE THOMPSON: Mr. Byrne?

10 CROSS-EXAMINATION BY MR. BYRNE:

11 Q. Good afternoon, Mr. Campbell.

12 A. Good afternoon.

13 Q. My name is Tom Byrne. I'm an attorney for
14 AmerenUE, and I'm in charge of cross-examining on this
15 issue.

16 I'd like to start out this afternoon by
17 asking you just a little bit about your background. I
18 understand from your testimony that you -- from July 1995
19 through November of 2001, you worked as an environmental
20 engineer for the Missouri Department of Natural Resources
21 Air Pollution Control Program; is that correct?

22 A. That's correct.

23 Q. And in that capacity, did you have any
24 occasion to deal with SO2 or sulfur dioxide emissions
25 allowances?

1 A. Not with sulfur directly. In my capacity
2 there, I was a rule air pollution regulation author. I
3 wrote air pollution rules for the state of Missouri. I
4 was the co-author of 10 CSR 106.350, which is banking and
5 trading regulation relating to nitrate -- oxides of
6 nitrogen for the utility industry.

7 Q. And is that comparable to the emissions
8 program applicable to SO2 allowances?

9 A. It was -- the program is based on the acid
10 rain program, yes.

11 Q. And were you -- during the period when you
12 were employed at the Department of Natural Resources, were
13 you aware of the sulfur dioxide regulations and emissions
14 trading program?

15 A. Definitely, yes.

16 Q. Could you just briefly explain your
17 understanding of what these emission allowances are that
18 we're talking about?

19 A. Okay. An SO2 allowance is basically good
20 for one ton of emissions per allowance. The acid rain
21 program was developed to meet the goals of the Clean Air
22 Act amendments of 1990. EPA developed a market-based
23 trading program to allow utility industry some latitude in
24 the control techniques they used. It's kind of a
25 deviation from the way they typically had done things in

1 the Clean Air Act.

2 Q. And it's my understanding that the EPA
3 assigns these emissions allowances to utilities; is that
4 correct?

5 A. That's correct.

6 Q. And it's also my understanding that they've
7 each got a vintage year assigned to them; is that correct?

8 A. That is correct.

9 Q. And further my understanding is the program
10 started in the late '90s. Do you know when it started?

11 A. The first allowances were allocated for a
12 1995 vintage.

13 Q. Okay. And my further understanding is
14 they've allocated allowances with vintages from 1995
15 through 2030; is that correct?

16 A. That's my understanding, yes.

17 Q. Okay. On page 3 of your testimony, you
18 refer to an emissions bank. Could you explain what an
19 emissions bank is or what your understanding of an
20 emissions bank is?

21 A. Okay. There are going to be several types
22 of accounts that can you have. A compliance account would
23 be an account where EPA is going to look for -- because
24 allowances are an allocated to an individual emission
25 unit, each emission unit will have a compliance account.

1 Q. Is an emission unit a generating unit in
2 this context?

3 A. It is a generating unit.

4 Q. Okay.

5 A. So each emission unit will have a bank, and
6 then there is an authorized account representative
7 assigned to each emission unit. That person can have
8 their own compliance account so that they're able to
9 freely move throughout the market. So there could be
10 several banks associated with one entity.

11 Q. And does AmerenUE have an emissions bank?

12 A. Yes.

13 Q. And would it consist of all the emissions
14 allowances of all the vintages that it possesses at any
15 given time?

16 A. The overall bank, yes.

17 Q. And my understanding is that there is a
18 market for SO2 allowances; is that correct?

19 A. There is.

20 Q. So does that mean that allowances can be
21 bought and sold among the entities that possess them in
22 that market?

23 A. Yes.

24 Q. And can you also trade emissions allowances
25 of different vintages?

1 A. Yes, you can.

2 Q. So, for example, you can trade a 2004
3 emissions allowance for two 2010 emission allowances?

4 A. Yes.

5 Q. Okay. And as I further understand it,
6 there's a market price for the allowances of different
7 vintages; is that true?

8 A. That's true.

9 Q. And it can change over time; is that right?

10 A. That's true.

11 Q. Okay. And in your mind, Mr. Campbell, what
12 determines the market price for vin-- for allowances of
13 various vintages?

14 A. There are a lot of things that affect the
15 market. Proposed regulations, current regulations, the
16 number of allowances that are on the market, options and
17 calls that have been issued by different entities, control
18 costs. Probably could go down as far as the cost of the
19 markets that coal is using, the markets that -- the price
20 that coal is trading at on the market.

21 Q. Okay. Let me talk to you about one factor
22 that you mentioned which is proposed regulations, and I
23 assume when you say proposed regulations, those would be
24 regulations that could affect emissions requirements for
25 utilities. Is that the kind of regulations you're talking

1 about?

2 A. Yes.

3 Q. And is that a pretty significant factor

4 that influences the market value of those allowances?

5 A. Yeah. I would imagine it would be one of

6 the significant factors.

7 Q. And, I guess, is it possible that changes

8 in environmental laws in the future can make these

9 allowances more valuable?

10 A. It's possible.

11 Q. And is that a consideration in -- that

12 people take into account in making bids that determine the

13 market price?

14 A. I'm sure if -- yeah. I'm sure you could

15 take into consideration. It would depend on what your

16 company's standpoint is.

17 Q. But in your experience, do traders and

18 buyers and sellers of emissions allowances take that into

19 consideration, the fact that if environmental laws change,

20 these emissions allowances could become more valuable in

21 the future?

22 A. To be honest, that would not be my area of

23 expertise, as far as what actually the traders are

24 thinking. I've never acted in the capacity of a trader.

25 Q. Okay. Well, let me ask you this: Is it

1 possible, looking at that time from the other way, is it
2 possible that future changes in environmental laws could
3 make these emission allowances completely worthless?

4 A. I'm sure there are scenarios where they
5 could reduce in value to nearly zero or zero.

6 Q. For example, if the EPA went with an
7 environmental compliance program that didn't include
8 emission allowances, if they discontinued the program,
9 then all the allowances would be worthless, wouldn't they?

10 A. Yes.

11 Q. And it's possible that could happen, isn't
12 it?

13 A. If the EPA discontinued market-based
14 emissions reductions, yes.

15 Q. And doesn't -- and doesn't AmerenUE have to
16 take into account all those factors as it manages its bank
17 of allowances?

18 A. Yes.

19 Q. Okay. And specifically on page 3 of your
20 testimony -- do you have your testimony up there with you?

21 A. Yes, I do.

22 Q. You are -- page 3, line 13, you're
23 talking -- you specifically mention that Ameren has the
24 ability to manage those allowances. And in the following
25 sentence you say, therefore, my testimony and, as I

1 understand it, Mr. Kind's testimony are related to
2 Ameren's policies on sales and trades of SO2 allowances.
3 And I guess my question is, is that -- are sales and
4 trades two ways that AmerenUE can manage its bank of
5 allowances?
6 A. Yes.
7 Q. And could -- by trades, you mean trading
8 different vintages of allowances?
9 A. Yes.
10 Q. Can it also manage its bank of allowances
11 by buying allowances?
12 A. It can.
13 Q. Okay. And I guess could also manage its
14 bank by holding allowances and doing nothing if it chose
15 to; is that correct?
16 A. That -- actually, that was the philosophy
17 before 1999.
18 Q. So those are the -- there's four ways they
19 can manage their allowances; they can hold them, buy them,
20 sell them or trade them. Is that true?
21 A. True.
22 Q. Okay. Do you know if -- do you know what
23 the market value of allowances of different vintages is
24 right now?
25 A. I haven't looked at the spot market

1 recently. I've been looking at DR responses and have
2 looked at a few of the responses the spot market prices
3 that we've gotten in response to DRs.

4 Q. Let me ask you a more general question
5 then. It's my understanding that the vintages that are in
6 sooner years, vintages of allowances in closer years, are
7 generally of higher market value than those in years that
8 are further into the future. Do you know if that's true?

9 A. I would say that's an accurate statement.

10 Q. So in other words, vintages -- allowances
11 with a vintage of 2004 this year or earlier, you could use
12 right now to sort of pay for a ton of SO2 emissions; is
13 that correct?

14 A. Right, a current year vintage you could use
15 for compliance.

16 Q. Whereas a 2005 vintage allowance you would
17 have to wait until 2005 to potentially use it; is that
18 true?

19 A. That's not entirely -- you could vintage
20 swap and bring that back.

21 Q. Okay. But if you didn't vintage swap, say
22 you just held it, you can't use a 2005 vintage allowance
23 for 2004 emissions; is that correct?

24 A. That's correct.

25 Q. Okay. So do you think it would be fair to

1 say that the allowances in the out years, the market value
2 of those are discounted because of the uncertainty about
3 what's going to happen with environmental laws?

4 A. That would be one reason.

5 Q. Do you have an opinion, Mr. Campbell, as to
6 what the right mix of allowances of various vintages
7 AmerenUE should hold right now?

8 A. I don't have an opinion as to how they
9 should structure their bank, no.

10 Q. And so I assume, given that answer, that
11 you are not here to testify or prepared to testify today
12 that AmerenUE is holding the wrong mix of allowances right
13 now?

14 A. I don't think I would be prepared to
15 completely discuss that issue. I'm still reviewing
16 documents that I just received this week through DRs.

17 Q. But just to get an answer to my question,
18 right now?

19 A. No.

20 Q. You're not prepared to testify that
21 AmerenUE's holding the wrong mix of allowances?

22 A. No.

23 Q. Okay. I guess part of the concern about
24 allowances relates to potential detriment to AmerenUE's
25 customers; is that fair to say?

1 A. That's fair to say.

2 Q. And I guess the potential detriment --

3 correct me if I'm wrong -- but my understanding of the

4 potential detriment is AmerenUE could squander its

5 allowance bank or deplete its allowance bank, and then

6 after the allowance bank is depleted, have to put on

7 expensive emissions control equipment on its plants. Is

8 that the scenario?

9 A. That is one of the scenarios. They could

10 be required to put on control or be forced to move to the

11 spot market and purchase allowances off the spot market.

12 Q. And those could be, I guess, more expensive

13 than the amount of money they got when they sold their

14 allowances?

15 A. That's true.

16 Q. So those are the -- sort of the two

17 scenarios. And then the way that would translate into a

18 detriment to ratepayers, my understanding is, is that

19 AmerenUE would file for rate increase and include those

20 costs in its calculation of its rates; is that correct?

21 A. That's my understanding.

22 Q. Okay. So -- okay. So just to recap a

23 little bit, the first thing that would have to happen is

24 we'd have to run out of allowances?

25 A. Yes.

1 Q. Is that correct?

2 And then we could maybe make up for that by

3 either swapping vintages or buying allowances on the

4 market, right?

5 A. Correct.

6 Q. But if we couldn't do that, then -- or we

7 didn't want to do that, then we would install emissions

8 equipment on our generating units; is that correct?

9 A. That's correct.

10 Q. And then we'd file for a rate case, is that

11 correct, including those costs?

12 A. Yes.

13 Q. And then the Commission would approve the

14 rates; is that correct?

15 A. Yes.

16 Q. And then there would be detriment to the

17 ratepayers; is that right?

18 A. That's correct.

19 Q. Okay. And wouldn't -- in that scenario,

20 wouldn't the Commission have the power to disallow costs

21 of installing the pollution control equipment if the

22 Commission found that the company had been imprudent in

23 squandering or getting rid of its SO2 emissions bank?

24 Wouldn't the Commission have that power?

25 A. It's my understanding the Commission has

1 the option to review prudence.

2 Q. Okay. And do you know -- do you know if
3 AmerenUE's in a rate moratorium right now?

4 A. it's my understanding that they are.

5 Q. Isn't it true that AmerenUE cannot file for
6 rate increase to recover costs like this or really costs
7 of any other kind until, I believe, it's January 1st,
8 2006?

9 A. I'm not -- I wasn't involved in the
10 complaint case, so I'm not --

11 Q. Okay. Fair enough. Mr. Campbell, do you
12 know what the difference between a Phase 1 and a Phase 2
13 allowance?

14 A. Yes. Phase 1 allowances were issued 1999
15 and before; anything after 1999 is a Phase 2.

16 Q. Okay. Is there any other difference
17 between Phase 1 and Phase 2 allowances?

18 A. They're each worth one ton of SO₂.

19 Q. Do you know if the market for allowances
20 recognizes any difference between Phase 1 and Phase 2
21 allowances, and I guess by that I mean if there's a
22 Phase 2 allowance that's already in effect, like say 2004,
23 that you can already use, say 2004 to 1999, does that have
24 the same value as a Phase 1 allowance?

25 A. As far as I understand, yes.

1 Q. The market doesn't make a distinction. As
2 long as it's an effective allowance you can use right now,
3 the market doesn't make a distinction; is that correct?

4 A. That's my understanding.

5 Q. On page 3 of your testimony, you discuss
6 the limits of the Commission's authorization for the
7 company to sell allowances that it granted in Case
8 No. EO-98-401. Let me see if I can find you a line for
9 that. I'm sorry. It's on page 5. My mistake. Toward
10 the bottom.

11 You're talking about the Commission's
12 authorization for the company to sell allowances. Do you
13 see that?

14 A. Yes.

15 Q. And did you review Case No. EO-98-401 in
16 preparation for your testimony?

17 A. I reviewed this Stipulation and Order.

18 MR. BYRNE: Okay. Your Honor, I'd like to
19 mark an exhibit, if I could.

20 JUDGE THOMPSON: Sure.

21 (EXHIBIT NO. 42 WAS MARKED FOR
22 IDENTIFICATION BY THE REPORTER.)

23 BY MR. BYRNE:

24 Q. Mr. Campbell, I've handed you what the
25 court reporter has marked Exhibit 42, which is the Staff's

1 Suggestions in Support of the Stipulation & Agreement
2 filed in Case No. EO-98-401. And I'd ask you to look at
3 page 3 of that recommendation, and there's a section
4 called Section C Allowance Sales Limits. Do you see that
5 section?

6 A. Yes, sir.

7 Q. And could you read me the first sentence in
8 that section?

9 A. The second provision of the Stipulation &
10 Agreement permits the company to sell half of all current
11 and future allowances without seeking specific Commission
12 approval.

13 Q. Okay. And would it be fair to say that
14 your testimony in this case is in conflict with that Staff
15 recommendation in EO-98-401, or at least it's inconsistent
16 with it, might be a better way to put it?

17 A. I wouldn't say that.

18 Q. Okay. So -- I'm sorry. Maybe I'm
19 misreading your testimony. Are you saying that the
20 company has the authority to sell half of all present and
21 future allowances, half of all current and future
22 allowances? I'm sorry.

23 A. I guess it is -- you're right.

24 Q. Okay. So your testimony in this case is
25 inconsistent with the Staff's pleading filed in EO-98-401?

1 A. Yes.

2 Q. Okay.

3 JUDGE THOMPSON: Mr. Byrne, let me break in

4 here and ask you, does this have some sort of relevance to

5 this proposed transaction that's in front of the

6 Commission in this case? It's not an authorization to

7 trade in SO2 allowances that you're seeking, is it?

8 MR. BYRNE: No. I guess to my -- no, it is

9 not.

10 JUDGE THOMPSON: Okay. Then why are we

11 learning at such detail about SO2 allowances?

12 MR. BYRNE: I guess the Staff and the

13 Public Counsel filed testimony on the issue. The company

14 did not. So I would refer you to them to ask why they

15 filed testimony.

16 JUDGE THOMPSON: Very well.

17 MR. BYRNE: I'm almost done, your Honor. I

18 guess I would offer Exhibit 42 into evidence at this time.

19 JUDGE THOMPSON: Do I hear any objections

20 to the receipt of Exhibit No. 42?

21 (No response.)

22 JUDGE THOMPSON: Exhibit No. 42 is received

23 and made a part of the record of this proceeding.

24 (EXHIBIT NO. 42 WAS RECEIVED INTO

25 EVIDENCE.)

1 BY MR. BYRNE:

2 Q. Let me ask you a couple other questions.

3 I'm almost finished, Mr. Campbell, on your cross

4 surrebuttal testimony.

5 On page 4, there's -- line 16, there's a

6 sentence that says Staff believes that Ameren's aggressive

7 SO2 marketing plan has begun to deplete AmerenUE's

8 emissions bank. That's the beginning of the sentence, and

9 I guess my question is this. Wouldn't it be true that any

10 sale of emissions allowances would begin to deplete our

11 bank?

12 A. Any sale would remove allowances from your

13 bank, yes.

14 Q. And it would begin to deplete it?

15 A. It could, I guess, depending on your term

16 deplete, yes.

17 Q. Okay. On page 6 of your testimony, at the

18 very first line, you have a sentence that says, AmerenUE's

19 annual reports to Staff that were required by the

20 aforementioned order clearly show sales and trades of SO2

21 allowances -- or I'm sorry -- SO2 emissions that the are

22 Phase 2 allowances. And I guess my question to you is, if

23 you believe that such sales were inappropriate, how come

24 the Staff never objected when these reports were filed?

25 A. I'm not sure why there was never an

1 objection.

2 Q. Okay. Finally, last set of questions, on
3 line 10 on that page, you have a recommendation where you
4 recommend that the Commission require either that AmerenUE
5 be compensated for the potential liability of this,
6 Ameren's SO2 trading activity or that the transfer include
7 an agreement that AmerenCIPS contribute in a share equal
8 to the Illinois customers' current 12 CP allocation factor
9 any future cost of SO2 compliance that results from
10 Ameren's current SO2 sales and trading activity.

11 Let me ask you, what would be the amount
12 that you would recommend that AmerenUE be compensated for
13 this if alternative 1 is selected?

14 A. I haven't calculated a specific amount.

15 Q. Okay. Why don't we -- looking at
16 alternative 2, if CIPS was going to contribute SO2
17 compliance costs, do you know what the amount of that
18 contribution would be?

19 A. My understanding is somewhere around
20 6 percent.

21 Q. Okay. But it's not -- you can't calculate
22 a dollar amount now; is that fair to say?

23 A. That's fair to say.

24 MR. BYRNE: Okay. Thank you, Mr. Campbell.
25 I have no other questions.

1 JUDGE THOMPSON: Thank you, Mr. Byrne.
2 Questions from the Bench, Commissioner Clayton?
3 QUESTIONS BY COMMISSIONER CLAYTON:
4 Q. Mr. Campbell, just to make sure that I
5 understand the issue, regardless of whether Ameren is in
6 compliance with the Order or not, the issue is whether
7 there would be a significant additional burden placed on
8 Missouri ratepayers if this transfer goes through; is that
9 correct?
10 A. That is correct.
11 Q. Okay. And in just the recent questioning
12 by the company here, you stated that that impact would be
13 about 6 percent of the overall potential future cost?
14 A. That's my understanding, is that's their
15 portion, yes.
16 Q. Did Staff run a detailed analysis in
17 estimating what the potential impact on Missouri
18 ratepayers could be or would be in the future?
19 A. We're currently still in discovery mode on
20 the issue of where UE's emissions bank is. We have yet to
21 come to a complete bank.
22 Q. Were you going to make that decision after
23 the hearing or after we make a decision, or when can we
24 expect that analysis or discovery to be concluded?
25 A. That I couldn't --

1 Q. You can tell me -- it's okay.

2 A. I don't have an answer for that.

3 Q. Shouldn't it have been completed prior to
4 this hearing, or is that a different proceeding? Is that
5 what you're saying?

6 A. It ideally would have been completed prior
7 to this hearing.

8 Q. Is it fair to state that Staff's position
9 is, for the most part, very speculative in terms of
10 whether there would be an increased impact on Missouri
11 ratepayers?

12 A. There is some speculation.

13 Q. Some, a significant amount, a little?

14 A. Based on what -- the documents that we have
15 seen, the documents that OPC has received through Data
16 Requests, which is pretty much all that I have right now
17 to work from, it appears that Ameren has embarked in a
18 significant amount of trading and movement of allowances
19 in recent years.

20 Q. Which has been authorized by this
21 Commission, correct?

22 A. I think there's some legal question to
23 that, which I'm --

24 Q. Whether they -- whether they traded greater
25 than 50 percent or not?

1 A. Whether they -- the Commission Order
2 allowed Phase 2 transactions.

3 Q. Okay. By the time this case is submitted
4 on the record, will Staff be in a position to submit or
5 quantify a dollar amount of potential impact if this
6 transfer goes through?

7 A. It would be difficult to come up with a
8 definitive dollar amount of impact because of all of the
9 different market scenarios that could happen.

10 Q. Do you think it's possible to come up with
11 a quantifying amount that is actually at issue in regard
12 to this case? Is it possible?

13 A. I don't know that it's entirely possible.

14 Q. Is it possible for the company to come up
15 with a figure that would quantify potential impact?

16 A. I don't know that that's possible. You can
17 come up with a range, you know.

18 Q. Does Staff anticipate coming up with a
19 range between now and when briefing is done, whenever that
20 would be?

21 A. We haven't discussed that, but that would
22 be possible.

23 Q. Do you believe it's possible for the
24 company to come up with such a speculative range in terms
25 of quantifying what this figure could be?

1 A. Based on different scenarios, yes.

2 Q. And that's part of Staff's -- for lack of a
3 better term, that's what Staff's gripe is, is that there
4 wasn't sufficient analysis?

5 A. Yes.

6 Q. Where is the percent figure derived from
7 that you used earlier?

8 A. The 6 percent figure I'm using is my
9 understanding is that the Illinois -- the Illinois portion
10 of AmerenUE's load is 6 percent.

11 Q. If we were to approve this transfer, are
12 there any conditions that we could place on the transfer
13 that would satisfy Staff in protecting ratepayers from an
14 inappropriate or unfair increase due to sulfur dioxide
15 credit sales?

16 A. I think something along -- obviously I had
17 two recommendations in my testimony. I would stand by
18 some sort of an agreement for costs to be allocated to
19 Missouri and Illinois.

20 Q. And obviously, that would have do be done
21 at a future date, it could not be quantified right now,
22 according to your testimony?

23 A. Yes.

24 Q. Is there any information that the company
25 could give you that Staff could come up with a

1 quantification or a number of what that would be in the
2 near future, rather than waiting for several years down
3 the road? Has the company provided all the information
4 that Staff has requested? Let me ask the question that
5 way.

6 A. The company has provided all the
7 information that OPC has requested. The Staff has not
8 requested any SO2 data from Ameren.

9 Q. Why is that?

10 A. That issue hadn't -- the SO2 issue was
11 advised very late in the case for us.

12 Q. Was it even raised by staff or was it
13 raised by Public Counsel?

14 A. It was originally raised by Public Counsel.

15 Q. So previously Staff didn't think of it as
16 an issue, correct?

17 A. I was not involved in the case before it
18 was raised as an issue. So I'm not --

19 COMMISSIONER CLAYTON: I don't think I have
20 any other questions. Thank you, Mr. Campbell.

21 JUDGE THOMPSON: Chairman Gaw?

22 QUESTIONS BY CHAIRMAN GAW:

23 Q. Mr. Campbell, is it your view that it is
24 likely that the SO2 credits that Ameren has accumulated
25 and that will accrue in the future will not be sufficient

1 to cover the potential liability that it has for SO2
2 emissions?

3 A. It's -- it would be likely if they -- it
4 would be very likely if the current sales practices
5 continue.

6 Q. And those sales practices at this point
7 indicate what to you?

8 A. It indicates that they're aggressively
9 marketing current vintage SO2 allowances or they have
10 proposed -- budgeted to market those allowances.

11 Q. When you say budgeted, are you talking
12 about -- are you talking about what's going to happen or
13 what has happened?

14 A. I'm talking about what has been budgeted by
15 Ameren to happen. So --

16 Q. For '04, '05 and '06?

17 A. Yes.

18 MR. DOTTHEIM: Chair Gaw?

19 CHAIRMAN GAW: Yes?

20 MR. DOTTHEIM: Excuse me. We may be
21 getting close --

22 CHAIRMAN GAW: I'm conscious that I'm close
23 to the line on this thing.

24 MR. DOTTHEIM: -- on highly confidential
25 information.

1 CHAIRMAN GAW: Somebody needs to jump in
2 before the answer's given if I ask something that's goes
3 over the line. And don't be afraid to do that because of
4 anything having to do with me.

5 BY CHAIRMAN GAW:

6 Q. Past practice up to year '04; is that a
7 concern of Staff?

8 MR. DOTTHEIM: We may be crossing that
9 line.

10 CHAIRMAN GAW: Go ahead and put us in,
11 then, Judge.

12 JUDGE THOMPSON: Very well. We will go
13 ahead and go into closed session at this time. Is the
14 door shut back there?

15 (REPORTER'S NOTE: At this point, an
16 in-camera session was held, which is contained in
17 Volume 8, pages 613 through 621 of the transcript.)
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1 CHAIRMAN GAW: And maybe, Judge, whatever
2 that was not highly classified, you might be able to
3 declassify later.

4 JUDGE THOMPSON: Yes, sir.

5 CHAIRMAN GAW: Thank you.

6 BY COMMISSIONER GAW:

7 Q. Do you know whether or not Ameren has
8 submitted any testimony that indicates whether or not they
9 believe that if they oversell their SO2 credits early and
10 there are subsequent financial consequences for that, they
11 would be trying to seek recovery of that in a rate case?

12 A. I'm not aware.

13 CHAIRMAN GAW: Sounds a little bit like an
14 acquisition premium question. I'm done. Thank you,
15 Judge.

16 JUDGE THOMPSON: Thank you, Chairman Gaw.
17 Commissioner Murray?

18 COMMISSIONER MURRAY: Thank you. I just
19 have a few questions, Mr. Campbell.

20 QUESTIONS BY COMMISSIONER MURRAY:

21 Q. Have the ratepayers benefited from the sale
22 of the SO2 credits?

23 A. I'm not sure I can answer that question. I
24 haven't -- I haven't been involved in the previous UE
25 cases.

1 Q. So you don't know where they fit in the
2 ratemaking process, the revenue from the sales?

3 A. Yeah. I don't know how much has been
4 applied to put into rates or, you know, how it has
5 affected their current rates.

6 Q. And I think I heard you say you can't
7 quantify the amount of any potential liability; is that
8 right?

9 A. It would be very, very difficult to
10 quantify anything. It would be speculative.

11 Q. On the -- on page 6 of your surrebuttal
12 testimony, you recommend that the Commission require
13 either that AmerenUE be compensated for the potential
14 liability of this trading activity or that the transfer
15 include an agreement that AmerenCIPS contribute a share
16 equal to the Illinois customers' current allocation
17 factor, is your recommendation?

18 A. Yes, it was.

19 Q. But if you can't quantify it, how could
20 AmerenUE be compensated?

21 A. I guess what I was looking for there was an
22 agreement between the parties as to what -- what they
23 believed a fair value would be to remove that liability.

24 Q. To remove the liability, but if there -- if
25 there is indeed an increased cost for environmental

1 compliance because of the treatment to date of SO2
2 allowances, that would not be decided as to how that would
3 be -- who would incur that cost until in a rate case; is
4 that right?

5 A. That's my understanding. You could
6 conceivably come up with an estimate from the cost of
7 putting scrubbers on plants or you could make assumptions
8 like this based on different scenarios and come up with
9 what additional controls would cost. Those things you
10 could come up with. There would be a lot of scenarios
11 that you could run through.

12 Q. It sounds like it would require quite a bit
13 of speculation.

14 A. There would be a lot of speculation.

15 COMMISSIONER MURRAY: Thank you.

16 JUDGE THOMPSON: Thank you, Commissioner.

17 QUESTIONS BY JUDGE THOMPSON:

18 Q. Mr. Campbell, do I understand correctly
19 that the detriment that has been identified here is that
20 in the future Union Electric might need SO2 allowances
21 that it does not have, and that if the transfer has gone
22 through, that the Missouri ratepayers will thus bear an
23 additional 6 percent of whatever the negative effect of
24 that situation is?

25 A. That's basically the crux of the argument,

1 yes.

2 Q. And you've been unable to give us any kind
3 of monetary evaluation of what that might be worth?

4 A. Like I said, there's just a lot of
5 assumptions to make. You could base it off of controlling
6 the plants. That would be one.

7 JUDGE THOMPSON: Okay. Thank you.

8 Redirect -- excuse me. Recross based on
9 questions from the Bench. Mr. Coffman?

10 MR. COFFMAN: No recross.

11 JUDGE THOMPSON: Mr. Byrne?

12 MR. BYRNE: Yes, your Honor, just a few.

13 RE CROSS-EXAMINATION BY MR. BYRNE:

14 Q. Hello again, Mr. Campbell. I just have a
15 few questions for you based on questions from the Bench.
16 Commissioner Clayton asked you some questions about cost
17 quantification. I guess other people have asked you
18 questions about cost quantification and the difficulties
19 with coming up with the cost quantification. Do you
20 remember those questions?

21 A. Yes, I do.

22 Q. And I guess I'd like to explore a little
23 bit the reasons that you can't quantify the costs now.
24 Would one reason be because the costs that will be
25 incurred will depend on future environmental laws that are

1 unknown at this time? Is that one reason that costs can't
2 be quantified?

3 A. That would be one. That wasn't the one I
4 was thinking of. If the regulations -- I was speaking in
5 a stagnant environmental regulation mindset.

6 Q. But, of course, the environment isn't
7 stagnant, is it?

8 A. Well, based on current regulation is what I
9 was basing my statement on.

10 Q. Okay. But would you agree with me that
11 changes in environmental regulations is one thing that has
12 to be taken into account if you're going to try to
13 estimate or speculate about what the future costs would
14 be?

15 A. Yes.

16 Q. And don't you also have to take into
17 account or make assumptions about how the company manages
18 its allowance bank; in other words, to what extent it
19 swaps different vintages and to what extent it buys or
20 sells allowances? Don't you have to take that into
21 account too?

22 A. That would be one thing you would have to
23 look at.

24 Q. And you'd have to make assumptions about
25 that in order to calculate some kind of a cost?

1 A. Yes.

2 Q. And then wouldn't yet another thing that

3 you have to make assumptions be sort of the mechanisms by

4 which the company would limit its SO2 emissions if it did,

5 in fact, run out of SO2 allowances?

6 A. Yes.

7 Q. And couldn't -- you know, isn't there --

8 aren't there a lot of technological developments that are

9 occurring in the area of emission controls?

10 A. There are new technologies.

11 Q. Okay. So you'd have to make assumptions

12 about what new technologies there might be in the future

13 and what those technologies might cost; is that true?

14 A. Yes.

15 Q. Okay. Commissioner Gaw asked you some

16 questions, and part of one of your responses to

17 Commissioner Gaw's question was you explained that the

18 company had a large emissions bank, and then in 1999 it

19 changed its policy and started reducing its emission bank.

20 Do you remember that question and answer?

21 A. Yes, I remember that question.

22 Q. What's the problem, if any, in holding a

23 very large emissions bank? Do you see any problem with

24 that at all?

25 A. The -- from a regulator's standpoint, no, I

1 don't see a problem. From a company standpoint, you would
2 be playing the market as far as what the value of the
3 allowances is.

4 Q. Well, let me ask you this. Let's say you
5 had a bank of allowances far in excess of what you needed.
6 Isn't it possible that regulations could change and those
7 allowances could become worthless?

8 A. Like I said, from the company's standpoint,
9 you'd be playing the market as far as what allowances were
10 going to be worth in the future.

11 Q. Well, and to the extent that revenues from
12 SO2 allowances are flowed through to ratepayers, wouldn't
13 it be in ratepayers' interests not to have an excessive
14 bank of allowances?

15 A. If that were flowed to the ratepayers.

16 Q. And my understanding, again, is that your
17 testimony is in 1999 the company changed its policy; is
18 that correct?

19 A. That was the testimony of Jim Moore.

20 Q. Okay. And do you have any reason to
21 believe that revenues from sales of SO2 allowances were
22 not considered in developing the revenue requirement in
23 the company's most recent electric rate case, EC-2002-1?

24 A. I was not involved in that case. I have no
25 idea.

1 Q. Okay. Putting it another way, as far as
2 you know, those revenues would have been considered in
3 that case; is that true?

4 A. I have no idea.

5 MR. BYRNE: Okay. I have no other
6 questions. Thank you, Mr. Campbell.

7 JUDGE THOMPSON: Thank you, Mr. Byrne.
8 Mr. Dottheim?

9 MR. DOTTHEIM: No redirect.

10 JUDGE THOMPSON: You may step down
11 Mr. Campbell.

12 Mr. Kind, raise your right hand, please.
13 (Witness sworn.)

14 JUDGE THOMPSON: Go ahead and state your
15 name for the record and spell your last name, if you
16 would.

17 THE WITNESS: My name is Ryan Kind, and the
18 last name is spelled K-i-n-d.

19 MR. DOTTHEIM: Might we go off the record a
20 moment?

21 JUDGE THOMPSON: We may.

22 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

23 JUDGE THOMPSON: Please proceed
24 RYAN KIND testified as follows:
25 DIRECT EXAMINATION BY MR. COFFMAN:

1 Q. Mr. Kind, would you state your title and
2 position.

3 A. I'm the chief energy economist at the
4 Office of the Public Counsel.

5 Q. Are you the same Ryan Kind that has caused
6 to be filed in this case rebuttal testimony that was
7 prepared in both nonproprietary and highly confidential
8 formats and has been marked as Exhibit 12?

9 A. Yes, I am.

10 Q. Do you have any corrections to that
11 testimony?

12 A. No, I do not.

13 Q. If I asked you the same questions contained
14 therein today, would your answers be the same?

15 A. Yes, they would.

16 MR. COFFMAN: Thank you. I tender Mr. Kind
17 for cross-examination.

18 JUDGE THOMPSON: Did you want to offer that
19 exhibit?

20 MR. COFFMAN: Sure. That would be
21 convenient as well. I would offer Exhibit 12, although
22 the -- although it covers other topics, I would offer
23 Exhibit 12 into the record.

24 JUDGE THOMPSON: I think it's useful to do
25 it at the first opportunity so we don't forget it.

1 Do I hear any objections to receipt of
2 Exhibit No. 12?
3 (No response.)
4 JUDGE THOMPSON: Hearing no objection, the
5 same is received and made a part of the record of this
6 proceeding.
7 (EXHIBIT NO. 12 WAS RECEIVED INTO
8 EVIDENCE.)
9 JUDGE THOMPSON: Mr. Dottheim,
10 cross-examination?
11 MR. DOTTHEIM: No questions.
12 JUDGE THOMPSON: Mr. Byrne?
13 MR. BYRNE: Company has no questions for
14 this witness.
15 JUDGE THOMPSON: Okay. Chairman Gaw?
16 CHAIRMAN GAW: That's nice.
17 JUDGE THOMPSON: Chairman Gaw asks if this
18 is the SO2 emissions issue, and I should say that I
19 thought that was the issue all afternoon, but I'm not so
20 sure.
21 QUESTIONS BY CHAIRMAN GAW:
22 Q. Mr. Kind, how are you?
23 A. I'm fine. Thank you.
24 Q. Good. I -- just curious, if you would, you
25 heard some of my questions earlier probably?

1 A. Yes, I did.

2 Q. I was inquiring of a Staff witness. Do you
3 want to give me an idea about your understanding about how
4 SO2 emissions are issued and how that works in general?

5 A. Sure. I'd be glad to. I think it's been
6 mentioned the whole protocol for SO2 allowances began with
7 a certain part of the Clean Air Act, and the allowances
8 began being issued in 1995, as was mentioned earlier
9 today. There were two phases for the SO2 part of the
10 Clean Air Act. There's a Phase 1 and Phase 2. And during
11 Phase 1, most utilities generally got either nearly enough
12 SO2 emission allowances to meet their compliance needs or
13 slightly less or, in the case of Ameren -- I think I can
14 say this without going into confidential material -- they
15 got substantially more than they needed to meet their
16 compliance needs. When Phase 2 began in 2000 --

17 Q. Let me stop you for a moment. Let me focus
18 on Phase 1 for a moment.

19 A. Okay.

20 Q. When you refer to Phase 1 allowances, was
21 there a termination date on those allowances, a date after
22 which they were worthless?

23 A. No.

24 Q. Non-usable?

25 A. No. They're good so long as the current

1 law, you know, remains in effect. In other words, they're
2 good in Phase 2 as well.

3 Q. That's what I was getting to.

4 A. Okay.

5 Q. So are they of the same value as a Phase 2
6 allowance, a different value? Give me some background to
7 help me to understand that.

8 A. Well, there's different ways of looking at
9 value. The market price of allowances has gone up over
10 time. The value of the allowances varies according to
11 their vintage more than whether they're Phase 1 or
12 Phase 2.

13 Q. What do you mean by vintage?

14 A. Vintage is the year of their issue. So if
15 they were issued by the EPA, if it was part of the EPA
16 allocation to a specific utility in 1995, that would be
17 that utility's 1995 vintage allowances, and the allowances
18 with the 1995 vintage can be used to comply in any year
19 from 1995 thereafter.

20 Q. Okay.

21 A. As opposed to, say, an allowance that a
22 utility knew it would be receiving in a future year, 2010
23 vintage, there's sort of a commitment from the EPA to be
24 issuing those, allocating those allowances, but you can't
25 use them until 2010.

1 Q. But can you sell the right to?

2 A. Yes. You can, yes.

3 Q. So if I've got an allowance that's a

4 vintage prior to the current year, for instance, that's

5 something that you know that it's there, it's been issued,

6 it's -- you've got the document or whatever it is that you

7 get when you get the allowance. I don't know what's done

8 as far as the paperwork is concerned. It's not

9 speculative at all. You know exactly what it is, and if

10 you sell it, it's something you already have to sell?

11 A. Right. Right. And when these allowances

12 are issued, they're recorded on a utility's books at a

13 value of zero, because the EPA does not charge them for

14 their allocation. They're given a certain allocation

15 essentially for free. If it's not enough for you to

16 comply with all your needs, you may have to buy more. But

17 since they come with a value of zero, they have what's

18 called a zero basis value. So if you, say, get one, if

19 you sell an allowance that you received as opposed to

20 buying from somebody else and it has a zero basis, if you,

21 say, sold it for \$200, then you've got \$200 in revenues,

22 as well as net income associated with that allowance.

23 Q. Okay. The Phase 2 allowances, how did --

24 how were they different from the Phase 1 allowances?

25 A. The only difference really is -- I mean, an

1 allowance is an allowance, but during Phase 2 of the
2 program, utility's allowance was reduced, and I think it
3 was reduced roughly by one-half, so that you don't get as
4 many allowances in Phase 2.

5 And then the idea of the program was then
6 that utilities could trade allowances amongst themselves
7 and utilities would analyze their cost to comply with
8 emission regulations in terms of, is it cheaper for me to
9 retrofit my plant with scrubbers or something or buy
10 allowances on the market?

11 If you see different utilities having
12 different costs of retrofitting their plants, then the
13 idea was minimize the total cost of reducing SO2 emissions
14 to a given level.

15 Q. Is there another phase out in the future
16 that's already planned or is this --

17 A. No, I think it was just -- I think the idea
18 was in Phase 1, we're going to give utilities a chance to
19 get used to the program, maybe make some slight
20 adjustments, some minor adjustments and minor reductions
21 and give them several years to prepare for making some
22 major reductions.

23 Q. The thought is -- the thought is that as
24 you -- that in reducing them in Phase 2, that -- that the
25 companies would be looking for ways to reduce their

1 emissions?

2 A. Correct.

3 Q. Right?

4 A. Yes.

5 Q. Okay. So the allocation of Phase 1

6 emissions was based upon what, when EPA said to Ameren or

7 any other company, this is what we give -- what we're

8 giving you on Phase 1 emissions? What did they base that

9 on in general?

10 A. It was based on the basically kilowatt

11 hours generated at their plants during a specific time

12 period, and I don't know that off the top of my head. It

13 might have been 1992, is what comes to mind.

14 Q. Okay. And so would it be anticipated that

15 the Phase 1 allocations would have been sufficient, more

16 than sufficient or not sufficient to cover the emissions

17 of the company?

18 A. They were roughly sufficient. Like I said,

19 for some utilities, they would not have been fully

20 sufficient. And, of course, there's always the factor of

21 the load growth. As your load grows, you're going to be

22 general kilowatt at those plants.

23 So it would have been sufficient for the

24 level of output of the plants at that time generally,

25 although there was another little wrinkle that there was

1 sort of an early compliance incentive that did allow
2 utilities to gain additional analysis sort of by signing
3 up with the program maybe a year early. And that's
4 something that Ameren took advantage of and received quite
5 a few allowances from that opportunity.

6 Q. Are there other ways to get allowances,
7 Phase 1 or Phase 2 allowances, besides just the standard
8 ones that were done measuring the output? You mentioned
9 one. Are there other ways?

10 A. Other than buying them on the market, no.

11 Q. Okay.

12 A. No. I don't think so. There were two
13 markets. EPA has a small market themselves, I think, that
14 they run every year, which is sort of an annual market.
15 I'm not sure that they're still doing it.

16 The idea was initially that that was going
17 to sort of jumpstart the market in case people weren't
18 really trading and get an idea out there as to what the
19 value of these allowances were.

20 Q. Okay. Mr. Kind, do you have concerns --
21 similar concerns to the last witness in regard to the
22 pattern --

23 CHAIRMAN GAW: I guess, Judge, why don't we
24 just go into HC? I know I'm going to tap into this.

25 JUDGE THOMPSON: Very well. We will go

1 into closed session at this time.

2 (REPORTER'S NOTE: At this point, an
3 in-camera session was held, which is contained in
4 Volume 8, pages 639 through 646 of the transcript.)

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1 JUDGE THOMPSON: Thank you, Commissioner.
2 And we had earlier stated that we would stop at five.
3 COMMISSIONER MURRAY: Okay. I don't think
4 I will go that long.
5 QUESTIONS BY COMMISSIONER MURRAY:
6 Q. Mr. Kind, in order to meet the not
7 detrimental standard, is it necessary that this resource
8 option be the least cost option?
9 A. It's my belief, yes, that it must be the
10 least cost resource option, because otherwise consumers
11 will be facing higher rates in the future than the rates
12 would be if that -- if that lesser cost option were
13 chosen. I would want to clarify, probably not just a
14 matter of what's the least cost, but what's the most
15 reasonable option? There's other considerations in
16 choosing a resource other than cost.
17 Q. So are you saying that it does not
18 necessarily have to be the least cost option, but it's one
19 consideration?
20 A. It's -- I think it's the most important
21 consideration, but there have been issues in this case
22 brought up like, you know, there have been assertions that
23 certain power plants in Missouri, like the energy plant in
24 Audrain County doesn't have sufficient transmission
25 capacity right now, although the transmission line that

1 the Commission recently approved should take care of most
2 of that, but you have to take those kind of things into
3 account as well.

4 Q. This is not the only consideration --

5 A. Right.

6 Q. -- for sure?

7 A. Right.

8 Q. If the SO2 scenario plays -- played out as
9 your worst-case scenario, would that make this option not
10 the least cost option?

11 A. I already have a belief that this option is
12 not the least cost option.

13 Q. Well, let's just not go into your belief.
14 Anything other right now than your scenario concerning the
15 SO2?

16 A. Uh-huh. So maybe, for instance, if I were
17 to accept that Mr. Voytas' analysis of the combustion
18 turbine option versus the transfer option is valid and
19 that it's -- and that it's adequate for no other options
20 to be included --

21 Q. But that the --

22 A. -- then I -- then how would I look at the
23 SO2 part of that?

24 Q. As you are saying that you fear that it is.

25 A. Okay. Well, I'm sorry. I guess I'm not

1 really clear on exactly what you're asking.

2 Q. Maybe I'm not asking the right question.

3 A. It's probably just me getting late in the
4 day.

5 Q. It may be me. It's late for both of us.

6 You indicated that Office of Public Counsel
7 might end up filing a complaint and that the SO2
8 transactions that have occurred to date might become void?

9 A. Correct.

10 Q. And I would assume that that would be the
11 worst-case scenario in terms of the SO2 issue?

12 A. That's -- I guess that probably would be,
13 but I'm not sure that I rank that as necessarily being
14 worst case than just --

15 Q. Okay. That's not important.

16 A. -- than other aspects of this issue. It's
17 certainly one of the -- you know, one of the largest
18 concerns.

19 Q. And if that -- if that occurred, that you
20 filed a complaint, the Commission agreed with you and we
21 said that those SO2 sales to date are void, now, does that
22 fact alone mean that Missouri consumers would have higher
23 rates?

24 A. I guess --

25 Q. Wouldn't the Commission have to --

1 A. Yeah. I mean, the Commission would have to
2 accept any liabilities that Ameren incurred as a result of
3 you causing those sales to be void. You'd have to pass
4 those on to consumers in rates.

5 Q. Would you recommend that we do that?

6 A. Well, I think you know the answer, but I --
7 no, I would not.

8 Q. Can you imagine a scenario in which we
9 would find that the company had violated a Commission
10 order and, therefore, the transactions were void but we
11 were going to charge those costs to the ratepayers?

12 A. Not with this Commission.

13 COMMISSIONER MURRAY: Thank you. I think
14 that's all I have.

15 JUDGE THOMPSON: Thank you, Commissioner
16 Murray. Commissioner Clayton told me that he has some
17 questions for you, Mr. Kind, so I think we will just stop
18 right there.

19 We will return at nine o'clock on
20 Wednesday, March 31st. Mr. Kind, you will be on the
21 stand, I would anticipate, and we'll let Commissioner
22 Clayton ask his questions at that time. Then, of course,
23 we'll do recross and redirect.

24 Anyone have anything for me at this point?

25 (No response.)

1 JUDGE THOMPSON: Have a nice weekend. Have
2 a safe trip to wherever you're going.
3 We are adjourned.
4 WHEREUPON, the hearing was continued to
5 Wednesday, March 31, 2004 at 9:00 a.m.
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