

1 BEFORE THE PUBLIC SERVICE COMMISSION
2 STATE OF MISSOURI
3 _____
4 TRANSCRIPT OF PROCEEDINGS
5 HEARING
6 April 7, 2004
7 Jefferson City, Missouri
8 Volume 15
9 _____
10
11 In the Matter of the Application of)
12 Union Electric Company, Doing Business)
13 as AmerenUE, for an Order Authorizing)
14 the Sale, Transfer and Assignment of) Case No.
15 Certain Assets, Real Estate, Leased) EO-2004-0108
16 Property, Easements and Contractual)
17 Agreements to Central Illinois Public)
18 Service Company, Doing Business as)
19 AmerenCIPS, and, in Connection)
20 Therewith, Certain Other Related)
21 Transactions.)
22 _____
23 BEFORE:
24 KEVIN A. THOMPSON, Presiding
25 DEPUTY CHIEF REGULATORY LAW JUDGE.
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27 _____
28
29 REPORTED BY:
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1 JUDGE THOMPSON: I think we're ready to start.
2 So Mr. Nelson, why don't you come on up to the stand.

3 MR. LOWERY: Your Honor, could we address just
4 a couple of preliminary matters on the record before we
5 begin allocation liabilities?

6 JUDGE THOMPSON: Absolutely.

7 MR. LOWERY: It's my understanding that on the
8 JDA and affiliate transaction that there are a couple of
9 witnesses that have not actually stood cross from the
10 Commissioners. And my assumption is that you intend just to
11 collapse that and whatever questions they might have left,
12 for example, Mr. Nelson on the JDA, they would just ask in
13 connection with other questions they might ask on these
14 other issues he's up on.

15 JUDGE THOMPSON: Absolutely.

16 MR. LOWERY: Another loose end we had never
17 completely finished, we had settled the asset transfer list,
18 the sufficiency list issue, and I thought perhaps we could
19 go ahead and mark that, get that in the record and check
20 that one off.

21 JUDGE THOMPSON: Do you want to do that now?

22 MR. LOWERY: Please. I believe that would be
23 Exhibit 67. Would that be correct?

24 JUDGE THOMPSON: Let me check my list.

25 MR. LOWERY: Or I could be behind.

1 JUDGE THOMPSON: Well, I don't have an
2 Exhibit 67. So, in other words, you want to mark it now?

3 MR. LOWERY: Right.

4 JUDGE THOMPSON: That will be Exhibit 67.
5 List of assets to be transferred?

6 MR. LOWERY: This is an Asset Transfer
7 Settlement Agreement -- Asset Transfer List Settlement
8 Agreement I think is probably the best way to say it.

9 JUDGE THOMPSON: Very well. We'll mark this
10 as Exhibit 67.

11 MR. LOWERY: And, your Honor, I would just for
12 the record just make a brief statement about this. This is
13 a reflection of an agreement that's been reached. Staff had
14 raised an issue about the sufficiency or specificity about
15 the list of assets that we were going to transfer. We have
16 agreed upon terms that satisfy that concern or that proposed
17 detriment that they might have identified and these terms in
18 Exhibit 67 reflect that agreement and resolve that issue. I
19 won't read the agreement into the record, I think it speaks
20 for itself, but this is a resolution of that issue.

21 JUDGE THOMPSON: Very good.

22 MR. LOWERY: And I would offer it and ask that
23 it be admitted.

24 JUDGE THOMPSON: Any objections?

25 MS. SHEMWELL: No.

1 JUDGE THOMPSON: Hearing none, Exhibit 67 is
2 received.

3 (Exhibit No. 67 was marked for identification
4 and received into evidence.)

5 MR. LOWERY: And then, your Honor, there's one
6 other issue that I'd like to take up briefly this morning as
7 well, if it pleases the Bench.

8 JUDGE THOMPSON: Sure.

9 MR. LOWERY: As you know, yesterday shortly
10 before noon the Staff filed their list -- and I would place
11 the "word" list in quotations for the record -- in response
12 to what I believe the Commission had asked them to do last
13 Thursday.

14 We had not made any objection to provide --
15 the provision of such a list at the time that request was
16 made. We thought it made imminent sense for the
17 Commissioners to have whatever information they felt like
18 they needed. We had really expected a one- or two- -- two-
19 or three-page list that would take the dispersed conditions
20 in the testimony, pull them together in a list.

21 Our view is that what was filed is not a list.
22 It's a five-day production of a 14- or 15-page trial brief
23 that has new theories of detriment, new conditions, contains
24 legal argument and, therefore, for the record, we have to
25 object to it, I think.

1 Now, if this is what the Commission had in
2 mind and what they wanted or if the Commission wants to work
3 with it and use it, we understand that what they wanted was
4 an ability to ask witnesses questions about these
5 conditions, then as long as we have a reasonable opportunity
6 to respond in writing to this so-called list -- and we would
7 hope to do that by the close of business tomorrow, we would
8 ask leave to have until Friday in this case because of the
9 pendency of the hearing if we're unable to do that -- but as
10 long as we're able to respond appropriately and have that
11 reasonable opportunity, we'll withdraw our objection.

12 We don't want to deprive the Commissioners of
13 what they need, but we don't believe that this is fairly
14 what we expected or fairly what was asked for. So we would
15 object but would withdraw that objection as long as we can
16 respond to it in a reasonable time.

17 JUDGE THOMPSON: Mr. Lowery, thank you.

18 Mr. Dottheim, would you like to respond?

19 MR. DOTTHEIM: Yes. Thank you. It's my
20 recollection that at one point last week after the
21 Commission had requested a list, that I specifically asked
22 whether the list was to be the list of conditions that
23 appear in the Staff's testimony or was it to be a list of
24 conditions that had occurred to the Staff in the course of
25 the proceedings that were not reflected in the Staff's

1 testimony.

2 And it was my recollection that the indication
3 was that the list need not be limited to the conditions that
4 were set out in the testimony. And in response, the Staff
5 submitted the list that it did.

6 So regarding Mr. Lowery's assertion that what
7 the Staff filed is not what was requested, I certainly
8 dispute that. The Staff has no objection to the company
9 submitting a responsive document as Mr. Lowery has indicated
10 that the company would like to do.

11 JUDGE THOMPSON: Okay. I'll give you a week,
12 okay, to file a responsive document. Because I know that
13 Staff had at least two business days without hearing going
14 on in order to produce this.

15 And you are right, I recall your question
16 about the scope of the list. And certainly I think the
17 reply that was given included, you know, whatever comes to
18 mind, we want to know what Staff wants in the way of
19 conditions, whether these are things they just now thought
20 of or things that have been in the briefs -- or excuse me,
21 in testimony. Of course, that makes it all the more
22 important that UE have an opportunity to respond.

23 And the entire point of the list was simply to
24 gather together -- as you indicated, Mr. Lowery, to gather
25 together all the suggested conditions in one place for ready

1 reference. And certainly the document does not lend itself
2 to ready reference, but hopefully it does gather all of
3 those proposed conditions together so that we can pick them
4 out and ask questions about them.

5 So, yes, I will give Union Electric a week
6 within which to prepare a response. And if that's not
7 adequate, just let me know and we'll give you longer. Okay?

8 MR. LOWERY: Thank you, your Honor. We'll
9 endeavor to be quicker than that, but we appreciate the
10 time.

11 JUDGE THOMPSON: I appreciate that. I don't
12 want to disadvantage you in any way.

13 Mr. Micheel?

14 MR. MICHEEL: Are we going to have an
15 opportunity to respond also if we see fit to respond?

16 JUDGE THOMPSON: You may. And I won't even
17 give you a limitation, just whenever you feel like it.

18 MR. DOTTHEIM: And one other thing, the list
19 was filed with the Commission. Is there any desire to mark
20 that as an exhibit or just leave it as filed and all
21 responses just filed with the Commission?

22 JUDGE THOMPSON: I had originally anticipated
23 marking the list as an exhibit. I think it's easier to keep
24 track of and easier to refer to if you've got a number. Of
25 course, the responses will be filed with the secretary like

1 pleadings and may very well come in after the close of the
2 hearing and so they would not have exhibit numbers. So at
3 this point, I don't really care which way we do it. It will
4 be talked about certainly, so --

5 MR. DOTTHEIM: Might you want to reserve
6 late-filed exhibit numbers --

7 JUDGE THOMPSON: We could reserve numbers for
8 the responses.

9 MR. DOTTHEIM: -- for the documents?

10 JUDGE THOMPSON: Why don't we do that. We'll
11 make Staff's list Exhibit 68. Okay? And then we'll reserve
12 69 for Ameren's response and then we'll reserve 70 for OPC's
13 response. And actually, Mr. Micheel, do you think a week
14 will be sufficient for you too?

15 MR. MICHEEL: I do, your Honor. And I'm not
16 certain that we're going to have a response.

17 JUDGE THOMPSON: I understand. But, of
18 course, you have an opportunity.

19 MR. MICHEEL: Yes.

20 JUDGE THOMPSON: Absolutely. So we'll just
21 say a week. But, again, if that's not sufficient for some
22 reason, just let me know. I know there's other cases going
23 on and other things happening. Okay?

24 MR. DOTTHEIM: Thank you.

25 MR. LOWERY: Thank you, your Honor. We will,

1 when we file it, just label it as late-filed Exhibit 69.

2 JUDGE THOMPSON: Very well. That would be
3 great.

4 Does anyone have anything else?

5 You know, I've been thinking about what you
6 said about the transmission line question of Commissioner
7 Gaw. As I indicated, the Commissioners I think are involved
8 in a round table this morning. I cannot tell you with any
9 certainty when they'll be down here or if they'll be down
10 here. So maybe we should just go ahead and take that up now
11 and get it into the record and that way it hasn't been
12 forgotten.

13 MR. LOWERY: That would be fine, your Honor.
14 And I've given copies to counsel for the other parties.
15 I'll give copies to you. There are actually three separate
16 documents.

17 JUDGE THOMPSON: Let's mark them all. So 71,
18 72 and 73.

19 MR. LOWERY: I would call that the
20 Transmission Revenue Analysis.

21 JUDGE THOMPSON: Very well. That would be 71.

22 MR. LOWERY: The next document is a Revised
23 Summary of Benefits, which I believe was Exhibit 34
24 originally. And the only change here is it now takes into
25 account how the numbers are affected by what you marked as

1 Exhibit 71.

2 JUDGE THOMPSON: Revised Summary of Benefits
3 will be 72.

4 MR. LOWERY: And then, finally, Mr. Voytas had
5 a schedule in his testimony that the inclusion of the
6 results of the transmission analysis changes one number
7 there and then flows through the schedule. And so that --
8 we're submitting that to reflect the transmission analysis
9 change as well.

10 JUDGE THOMPSON: Do you recall what the
11 designation of the schedule was?

12 MR. LOWERY: I have it written down, your
13 Honor, if you'll bear with me.

14 JUDGE THOMPSON: Sure.

15 MS. SHEMWELL: Which sheet of paper is 71?

16 JUDGE THOMPSON: The Transmission Revenue
17 Analysis.

18 MR. MICHEEL: The bundle of papers?

19 MR. LOWERY: No. That's Mr. Weiss's work
20 papers, which we're not entering into the record. We just
21 provided it to you.

22 MS. SHEMWELL: This is 71?

23 MR. LOWERY: Yes. Summary Benefits is 72, the
24 updated one-page analysis this was originally Schedule 4 to
25 Mr. Voytas's Direct Testimony, his Direct Testimony was

1 Exhibit 9.

2 JUDGE THOMPSON: You say it was Schedule 4?

3 MR. LOWERY: Yes. That would be 73.

4 JUDGE THOMPSON: 73.

5 MR. LOWERY: And we would go ahead and offer
6 all three of those exhibits into evidence in response to the
7 request the Commissioners made.

8 JUDGE THOMPSON: Very well.

9 (Exhibit Nos. 71, 72 and 72 were marked for
10 identification.)

11 MR. MICHEEL: Your Honor, we just received
12 these documents this morning when we walked in and we
13 haven't had a chance to look at them or review the work
14 papers and we've asked for electronic work papers. So at
15 this point I would ask that you would hold admission of
16 these until we've had a chance to look at them.

17 JUDGE THOMPSON: Okay. How long do you think
18 you will need?

19 MR. MICHEEL: It depend on when we get the
20 electronic work papers, your Honor. And Mr. Lowery, I asked
21 him first thing this morning to do that and he said he would
22 check into that as quickly as possible.

23 JUDGE THOMPSON: Okay.

24 MR. MICHEEL: I believe Mr. Weiss is here so
25 maybe he has it with him. I don't know.

1 JUDGE THOMPSON: We can defer receiving these
2 for a while pending resolution of your concern. Okay? Why
3 don't you keep me updated on that?

4 MR. LOWERY: We will check on that. I don't
5 know whether all of these work papers are available
6 electronically. I haven't had a chance -- they're not all
7 available electronically.

8 JUDGE THOMPSON: Well, if they're not
9 available electronically, then Public Counsel will simply
10 have to make do with paper. We used to have a paper-based
11 world. There are those who prefer it.

12 MR. LOWERY: I would also point out that
13 Mr. Weiss and Mr. Nelson and others are going to be here
14 today and tomorrow and can answer questions about those that
15 Public Counsel or any other party would like to ask as well
16 as the Commissioners obviously. And we did this in response
17 to a Commissioner request.

18 JUDGE THOMPSON: I understand. I understand.
19 If you do have it in electronic form, please provide it to
20 Public Counsel. I don't know if Staff wants it or not.

21 MR. DOTTHEIM: Yes. The Staff would also
22 request the --

23 JUDGE THOMPSON: If you don't, you don't.

24 MR. DOTTHEIM: -- would request the back-up,
25 the work papers in electronic format if those exist.

1 JUDGE THOMPSON: Right.

2 MR. DOTTHEIM: Also, too, I assume that the
3 Staff will be afforded an opportunity to respond to the
4 materials, the three documents that have been marked as
5 exhibits. I think that was --

6 JUDGE THOMPSON: Absolutely.

7 MR. DOTTHEIM: -- contemplated in the
8 discussions that occurred last week from the Bench.

9 JUDGE THOMPSON: We can hardly receive
10 anything into the record and not give you a chance to
11 respond.

12 MR. LOWERY: Absolutely.

13 JUDGE THOMPSON: Now, can you give me -- you
14 want to step up to the podium and give me a five-minute
15 summary of exactly what these represent, what the answer to
16 Commissioner Gaw's question is, maybe remind me what the
17 question was, what the answer is and what these documents
18 show? Thank you.

19 MR. LOWERY: You bet. I'll do my best. I
20 believe that Commissioner Gaw indicated that he wanted us to
21 perform an analysis of the effect on our revenue requirement
22 for transferring -- I forget the numbers, but the 40 or 50
23 million dollars of transmission assets located in Illinois.
24 And that's what we've done.

25 And these documents indicate -- you also may

1 recall -- and I believe Commissioner Gaw was here -- you
2 also may recall there was some discussion about whether
3 third-party transmission revenues will or will not go away
4 and whether they may be reduced and so on.

5 And so what these documents do is they reflect
6 the changes in rate base and other cost-of-service related
7 impacts related to transferring the transmission assets away
8 and they also take into account, based on actual 2003
9 third-party revenue numbers, what the effect on those
10 revenues would be.

11 And the bottom line is, which is summarized on
12 the first page of Exhibit 71, there is -- and I'm rounding,
13 but there's approximately .4 million 400,000 dollars benefit
14 from the transfer in terms of reducing our revenue
15 requirement as a result of transferring the transmission
16 assets. That's if you assume all of the transmission
17 revenues remain in perpetuity.

18 As the first page also indicates, it's the
19 company's belief that at least 25 percent of those revenues
20 are going to go away either very soon or in the next couple
21 of years in part related to participation in RTOs and FERC
22 policy. And if only 25 percent of those go away, the
23 benefit is actually 1.5 million annually per year from now
24 essentially into the future. So that's Exhibit 71.

25 Exhibit 7--

1 JUDGE THOMPSON: If I could just ask you a
2 quick question, and this is for the record and perhaps for
3 the public. When you talk about pancaking, what do you mean
4 exactly?

5 MR. LOWERY: Pancaking is a concept that when
6 someone uses the transmission systems of other providers,
7 they may go through AEP system, then through Ameren's
8 system, then KCPL's system. They pay a rate to each of
9 those transmission providers to go from point A to point B.
10 And Mr. Kind will correct me if I'm not explaining this
11 right, but I think that's generally the concept.

12 And basically FERC policy and RTO policy is
13 designed to eliminate those pancaking so that you get on the
14 interstate highway, you know don't pay a toll three times.
15 You just go from point to point. That's the idea.

16 JUDGE THOMPSON: Thank you for that
17 explanation.

18 MR. LOWERY: Exhibit 72, I believe, is simply
19 a revised summary of benefits that just adds in the -- and
20 we used the \$.4 million, not the \$1.5 million number just to
21 update the numbers on the overall financial benefits of the
22 transfer that we had indicated. That's what that does
23 because it now becomes inaccurate when you take into account
24 the transmission.

25 And Exhibit 73 is just one of Mr. Voytas's

1 schedules which had the bottom line \$2.4 million number
2 before -- and we apologize it's small, but it's as big as we
3 can make it and get it on one page. We had bottom line
4 \$2.4 million number of annual benefits that we assert exist
5 when they transfer to 4 -- if you take into account the .4,
6 that changes to 2.8, just to do the math. And then we
7 didn't use the 1.5 million number, which is the number we
8 think really is the number, but we were very conservative
9 and just updated that schedule.

10 JUDGE THOMPSON: Very well. Thank you very
11 much for your explanation.

12 Okay. Are we finally ready to begin
13 Mr. Nelson on liabilities?

14 MS. SHEMWELL: We haven't received Exhibit 67,
15 I don't believe, the asset transfer list settlement.

16 JUDGE THOMPSON: I show it as offered and
17 received.

18 MR. LOWERY: I thought you did.

19 MR. MICHEEL: I do too.

20 JUDGE THOMPSON: And, of course, we also took
21 care of 58 and 59, which was the 10K, first excerpt and then
22 the entire document.

23 Okay. So Mr. Nelson, I'll remind you you are
24 still under oath, sir.

25 THE WITNESS: Yes, sir.

1 JUDGE THOMPSON: I don't think there's any
2 need for any direct; is that correct? Your exhibits have
3 been received?

4 THE WITNESS: That's correct, your Honor.

5 JUDGE THOMPSON: So Ms. Shemwell.

6 CRAIG NELSON testified as follows:

7 CROSS-EXAMINATION BY MS. SHEMWELL:

8 Q. Good morning, Mr. Nelson. I'm Lera Shemwell,
9 representing the Staff in this place -- in this particular
10 case.

11 Mr. Nelson, who made the determination about
12 what liabilities would be retained by AmerenUE and what
13 would be transferred?

14 A. I'm hesitating because it was over two years
15 ago we started on this. It was a discussion among myself,
16 the senior team, company counsel, outside counsel. It was a
17 group of us.

18 Q. Members of the Board of Directors of the
19 various Ameren companies?

20 A. I don't believe so. We just took a -- the
21 recommendation and a proposed board resolution to -- to the
22 board.

23 Q. So a group of you made a recommendation --

24 A. Yes.

25 Q. -- a committee?

1 Did you personally develop the underlying
2 philosophy regarding the liabilities that were being
3 transferred or retained?

4 A. As I said earlier, I was involved in that,
5 yes.

6 Q. In terms of the assets or parts of your system
7 that are being transferred, does AmerenUE owe anything on
8 these assets that are being transferred? Is there debt?

9 A. Yes. There are -- there are first mortgage
10 bonds and other debt that UE has incurred. And that debt
11 stays with Union Electric.

12 Q. Are some liabilities reserved and some not?

13 A. It gets into the definition of a liability.
14 And so to be precise as I answer this and we discuss this,
15 in order to be a liability it has to be known and
16 measurable. So, yes, if something is known and measurable,
17 then it is reserved.

18 JUDGE THOMPSON: Is your microphone on, sir?
19 Okay. If I could get you to speak up a little bit.

20 MS. SHEMWELL: Or just move closer to it.

21 THE WITNESS: I'll move right in front of it.

22 JUDGE THOMPSON: I don't hear that well.

23 Thank you.

24 BY MS. SHEMWELL:

25 Q. So let's take, for example, there's a -- I'll

1 just take something. An AmerenUE truck runs into a school
2 bus. At that point is it known and measurable as opposed to
3 when a lawsuit is filed?

4 A. Typically for injuries and damages, it's the
5 lawsuit that instigates booking the reserve. And then
6 company counsel and accounting staff would make the
7 assessment of whether there is an actual liability or it's a
8 frivolous lawsuit. And they would try -- and determine
9 whether it was measurable or not.

10 Q. And would the reserve include legal expenses
11 and things like that, cost of litigation? Is that included
12 in the reserve?

13 A. I'm not sure.

14 Q. Who makes the reserve?

15 A. The controller's department, controller.

16 Q. Who is the controller?

17 A. It's a combination of the general counsel's
18 office and controller's office. Steve Sullivan is the
19 general counsel and Martin Lyons is our controller.

20 Q. L-y-o-n-s, right, Lyons?

21 A. Correct.

22 Q. How do you determine when an environmental
23 exposure becomes a liability?

24 A. Well, again, I'll have to say when it's known
25 and measurable. And I've just explained that it's the

1 general counsel and controller that make those
2 determinations. I'm only going to have a surface level
3 knowledge of those type of answers. But, again, I know the
4 general accounting rules. When a liability is known and
5 it's measurable, then a reserve is booked.

6 Q. Does the controller and the general counsel's
7 office, then they set all of the reserves, environmental,
8 personal injury, across the spectrum of potential
9 liabilities?

10 A. Those two offices do work together to set the
11 reserves for environmental and personal injury. I wouldn't
12 say the general counsel's office is involved in all
13 liabilities, no.

14 Q. For example, the accounting liabilities, I'm
15 sorry, would perhaps not be?

16 A. If somebody buys a bunch of poles or a bunch
17 of pencils, the general counsel's office is not involved in
18 that.

19 Q. Is there a list in your testimony of the
20 environmental liabilities that Ameren is facing at this
21 time?

22 A. Not in my testimony.

23 Q. Do you know if those are reserved? For
24 example, is asbestos reserved?

25 A. I do know from listening to our general

1 counsel that we do have reserves for asbestos.

2 Q. What about mercury clean-up?

3 A. I don't know.

4 Q. Are you familiar with the 10K?

5 A. Yes, I am.

6 Q. Do you need a copy or --

7 A. I've got one at my desk over there.

8 Q. I'm sure that will be fine or I have a copy
9 if --

10 MS. SHEMWELL: And I have a copy for you,
11 Judge.

12 BY MS. SHEMWELL:

13 Q. Which would you prefer? Would you prefer mine
14 or yours?

15 A. I'd prefer to go get my own. And you're
16 referring to the 2003 10K. Correct?

17 Q. I'm referring to the 10K that we marked
18 earlier. It's fiscal year ended December 31st, 2003. Do
19 you have that before you?

20 A. Yes, I do.

21 Q. If we could turn to page 149, some of these
22 just caught my attention. Nuclear worker liability, that's
23 in the middle of the page there. Is that an item that's
24 reserved?

25 A. I'm not sure we have the same page numbering.

1 I'm -- this is the official version -- bound version and
2 this is -- on page 149 it's a section dealing with benefits.

3 Q. It may be your 163. I'm looking at the one
4 from the SEC website.

5 MS. SHEMWELL: And, Judge, at the top of the
6 page it will say 149 of 184.

7 JUDGE THOMPSON: I see that.

8 BY MS. SHEMWELL:

9 Q. Mr. Nelson, I'm going to hand you a copy of
10 the exhibit that's been filed so we can perhaps be on the
11 same page.

12 A. So page 149. Right?

13 Q. Up at the top corner it says 149 of 184.

14 MR. LOWERY: Ms. Shemwell, do you have another
15 one of those, by chance?

16 MS. SHEMWELL: I do.

17 MR. LOWERY: Thank you.

18 BY MS. SHEMWELL:

19 Q. Do you see what I'm referring to, Mr. Nelson?

20 A. Nuclear plant insurance coverage.

21 Q. I'm looking at the nuclear worker liability
22 there. You're showing a certain level of coverage.

23 A. Oh, I see it now, yes.

24 Q. Is that something that's reserved? I guess my
25 question is, is it known and measurable?

1 A. I'm not sure what section of the annual -- or
2 the 10K this is. That's my confusion. I'm not familiar
3 with this printed out version, but bear with me a moment,
4 I'll try to --

5 Q. Certainly.

6 A. I can't tell from reviewing this page whether
7 it's been booked or not.

8 Q. If you would turn to the next page, 150 of
9 184, it says at the bottom Environmental Matters. Are you
10 there?

11 A. Yes, I am.

12 Q. And then on the next page is Clean Air Act and
13 below that is a table. And it's my understanding that these
14 estimates are estimates of future capital expenses for
15 complying with NOx regulation; is that correct?

16 A. I thought this was capital expenditures, but
17 let me review and see.

18 Q. The paragraph above says, As a result of these
19 requirements, we've installed a variety of NOx control
20 technologies on our power plant boilers over the past
21 several years. The following table presents our future
22 estimated capital expenditures to comply with the final NOx
23 regulations in Missouri and Illinois between 2004 and 2008.

24 A. Right. And you didn't ask me about capital
25 expenditures. You asked me about expenses, I think.

1 Q. I'm sorry. I intended to say is it an issue
2 of capital expenditure expenses?

3 A. That's my understanding, yes. Not expected,
4 but possible.

5 Q. Our future estimated. So you've estimated
6 these?

7 A. Yes.

8 Q. How that's vary with expected?

9 A. Again, these are capital expenditures, not
10 expenses. You do not book --

11 Q. No. I'm just asking if this is your estimate
12 of future capital expenditures?

13 A. It says it's future estimated capital
14 expenditures. The nature of this expenditure though is a
15 capital asset.

16 Q. And would you explain what a capital asset is?

17 A. It's something other than expense. It's
18 something that has future value that's amortized,
19 depreciated over a time period. Liabilities are not booked
20 in advance for capital expenditures.

21 Q. This is going to be things like additions to
22 boilers, right, scrubbers --

23 A. Scrubbers, yes, boilers.

24 Q. -- bat houses --

25 A. Correct.

1 Q. -- that sort of thing?

2 A. They're assets, not liabilities.

3 Q. I understand. What is not included here,
4 however, is potential liability, is that right, lawsuits,
5 legal expenses, remediation?

6 A. Yeah. It says it's simply future estimated
7 capital expenditures, so I assume it does not include any of
8 those.

9 Q. If we can turn over to the next page, there is
10 a comment right below the chart that says, Mercury
11 regulations contain a number of options. I believe the EPA
12 has just issued a proposed rule. And I'm seeing here that,
13 again, These are capital costs to comply with the mercury
14 rules and it's estimated that they could be 100 million by
15 2010. UE is responsible for approximately two-thirds of
16 those costs.

17 Have I read that correctly?

18 A. Yes, you have. Again, we're dealing with
19 assets, not liabilities.

20 Q. Capital costs, I understand.

21 A. Yes.

22 Q. Under Global Climate, we're also dealing with
23 capital expenses, I'm assuming. It says, if I could read
24 one of the last sentences there, Coal-fired power plants are
25 significant sources of carbon dioxide emissions of principal

1 greenhouse gas; therefore, our compliance cost within the
2 mandated federal greenhouse gas reductions in the future
3 could have a material impact on our future financial
4 position, results of operation or liquidity; is that right?

5 A. That's correct, it says that.

6 Q. Is it correct that UE is on an EPA list for
7 clean-up at Sauget 2?

8 A. I don't know.

9 Q. The Sauget is discussed on page 153. About
10 the fifth or sixth paragraph down it says, In October 2002,
11 UE was included in a unilateral administrative board for
12 groundwater contamination for a part of the Sauget 2 site.

13 Would you consider the clean-up a liability?

14 A. I'm not really familiar with the Sauget site,
15 but do you -- you can ask me a general question, I'll
16 answer, but I'd have to read this before I could answer a
17 specific on Sauget.

18 Q. My understanding is that Sauget is on the
19 Superfund -- EPA Superfund List?

20 A. Right.

21 Q. And that as a result of that, there may be
22 some clean-up costs to UE; is that correct?

23 A. Again, I'm not --

24 MR. LOWERY: Your Honor, I'd object to the
25 extent that this calls for a legal conclusion as to what the

1 effect of being put on the Superfund List is or is not.
2 This witness has indicated he's not familiar with this
3 particular issue.

4 JUDGE THOMPSON: Well, he's perfectly capable
5 of indicating that he's unable to answer a question. And I
6 think that an executive of the company has obviously some
7 knowledge of what it means to be on a Superfund List, if
8 that's something that affects the management of that
9 corporation. So I'm going to deny the objection.
10 Please proceed.

11 BY MS. SHEMWELL:

12 Q. My question is, have you reserved anything for
13 Sauget?

14 A. I don't know.

15 Q. Who would know?

16 A. Mr. Weiss or Mr. Getz. They know this issue
17 better than I.

18 Q. Are you familiar with the asbestos litigation?

19 A. Somewhat. I know there is some and I know
20 we've reserved some, but beyond that, there's not much
21 familiarity.

22 Q. Okay. I'll just point out that on page 154 of
23 184 below the bottom half is listed asbestos-related
24 litigation. And this is a liability; is that correct?

25 A. What is a liability?

1 Q. The asbestos litigation.

2 A. As I explained earlier, as lawsuits are filed,
3 there's an assessment made by the controller and general
4 counsel whether there is a real liability and whether it's
5 known and measurable. And if they think it is, then there
6 is an expense that hits the books and a liability
7 established.

8 Q. Okay. Let's look at the bottom of that page,
9 what I guess has been put out there for shareholders. It
10 shows at the bottom of the page, The status of
11 asbestos-related lawsuits that have been filed against the
12 Ameren companies.

13 A. I'm not with you yet. Whereabouts?

14 Q. I'm at the very top.

15 A. Is it in the asbestos-related litigation
16 section?

17 Q. Yes. If you go down, there's a chart at the
18 very bottom. It's sort of cut off, but it shows a number of
19 claims that have been filed under --

20 A. I see it.

21 Q. -- total of 178; UE, 121?

22 A. I see it.

23 Q. And then at the top of the page it has claims
24 that have been settled. And under UE, which is the third
25 column over, 22 and that there are 49 pending. Correct?

1 I've read that correctly?

2 A. I'm going to have to remove the binder to --

3 Q. Yes.

4 A. Yes. I see the UE column, filed, 121;
5 settled, 22; dismissed 50; pending 49.

6 Q. And if we go back up to the beginning of the
7 paragraph, it describes the various companies that have been
8 named with other parties. Most have been filed in Madison
9 County, Illinois. The total number of defendants named in
10 each case is significant with as many as 110 parties named
11 in a case to as few as 6, with average number being 60 in
12 the cases that were pending as of December 31st.

13 Do you agree with my rendition of that, even
14 though it wasn't exact?

15 A. I wasn't following it.

16 Q. Okay.

17 A. I was listening.

18 Q. I'm showing then if we average for the
19 49 pending 60 claimants and it says that each lawsuit seeks
20 unspecified damages in excess of 50,000, that we have
21 something that's known and measurable; is that right? Would
22 you agree with that?

23 A. No. I wouldn't necessarily agree with it.

24 Q. You don't think it's known and measurable when
25 they've measured 50,000 of damages?

1 A. They seek unspecified damages in excess of
2 50,000.

3 Q. Yes. Each lawsuit?

4 A. Right. That doesn't mean that there will be a
5 judgment rendered against the company forcing the company to
6 pay that.

7 Q. But you haven't reserved anything in --

8 A. I told you I do know that we have reserved
9 some for asbestos. I don't know how much.

10 Q. Will any of these asbestos claims be
11 transferred to CIPS as of the transfer?

12 A. It's my understanding of reading Section 2.1F
13 of the asset transfer agreement that deals with
14 environmental liabilities, that all liabilities connected
15 with the business that -- after the closing date go to CIPS.

16 Q. I'm handing that particular page to the law
17 judge for his easy reference.

18 This is in your Direct Testimony; is that
19 right? That's what you're reading? It was attached as
20 Schedule 1, page 12 of 34 to your Direct Testimony?

21 A. That is correct.

22 Q. Let's look at the very last sentence in that
23 paragraph. It says, All liabilities relating to the
24 business will be transferred if and to the extent that such
25 liabilities and obligations are covered by transfers

1 existing ICC approved electric and gas environmental
2 adjustment clause writers in effect immediately prior to the
3 closing.

4 Do you see that sentence or half sentence?

5 A. Let's redo that half sentence again. It
6 starts where? How many lines from the bottom?

7 Q. I believe it's under Section II it starts.

8 A. Right. I see it.

9 Q. I'm interpreting that to mean that only if the
10 liabilities are covered by your current writers are they
11 going to be transferred.

12 A. Do you want my interpretation of this
13 paragraph?

14 Q. Yes, please.

15 A. There's really two parts to this environmental
16 section, 2.1F is what I'm referring to. And the general
17 rule is in the first half of the paragraph. And that deals
18 with environmental liabilities in general. And all
19 environmental liabilities after the closing date connected
20 with the business, meaning the T&D gas distribution transfer
21 to CIPS.

22 And then there's a proviso halfway through the
23 paragraph that deals with the Alton town gas site. And all
24 of that liability before or after the close transfers to
25 CIPS. And then the two little i, anything related to this

1 ICC writer, environmental writer, before or after the close
2 will transfer to CIPS.

3 Now, I do know that that -- the purpose of
4 that writer deals with manufactured gas plant sites. What
5 I'm not sure of -- let's -- I'll just end it there. I know
6 it deals with manufactured gas plant sites.

7 So just to recap, the Alton site and any other
8 manufactured gas plant sites, any liabilities prior to or
9 after the close will transfer to CIPS.

10 Q. And this section provides that any
11 environmental liabilities related to the business that occur
12 after -- we've discussed the two exceptions -- that occur
13 after closing, those are all that will go to CIPS?

14 A. That's correct.

15 Q. If we can turn to page 2.2, the next page of
16 your -- of the Asset Transfer Agreement. That contains the
17 section labeled Retained Liabilities. Correct?

18 A. That's correct.

19 Q. And among those in C is employee-related
20 liabilities?

21 A. Yes.

22 Q. And UE is taking on all -- or is retaining all
23 liabilities and obligations to any persons at any time
24 employed by the transferer or its affiliates?

25 MR. LOWERY: Your Honor, I'd like to lodge an

1 objection. This is reminiscent of a line of questioning we
2 went through when Mr. Nelson was on the stand the first day,
3 I believe, where we're asking -- reading provisions of the
4 agreement, we're asking questions about what the agreement
5 means that I think more properly could have been taken up in
6 a deposition.

7 The agreement speaks for itself. It says what
8 it says. And I think that this is of dubious relevance and
9 it's very repetitious and on that basis, I would object.

10 JUDGE THOMPSON: Ms. Shemwell?

11 MS. SHEMWELL: It's directly related to
12 liabilities, Judge.

13 JUDGE THOMPSON: I'm going to overrule the
14 objection, please proceed.

15 BY MS. SHEMWELL:

16 Q. What does the term "or its affiliates" -- what
17 does that include? Does that include Ameren and CILCO and
18 Ameren Services and --

19 A. Okay. Let's break down your question. I was
20 reading the section. What does affiliates mean?

21 Q. What does affiliates include?

22 A. That would include the sister companies, the
23 subsidiaries and the parent of AmerenUE.

24 Q. And then as we turn to the next page, you have
25 Product Environmental and Safety Liability; is that right?

1 A. Yes.

2 Q. And any event occurring prior to the closing
3 date related to product liabilities, hazardous materials,
4 employee safety and health remains with AmerenUE?

5 A. I think that's a fairly decent paraphrase of
6 that section, yes.

7 Q. Thank you.

8 I have one follow-up question to the capital
9 expenditures discussion that we went through. If those
10 capital expenditures are required as assumed or predicted,
11 whatever term you prefer, then those will be items that
12 would come into a rate case. Is that a fair statement?

13 A. If the capital expenditures are actually made,
14 this Commission will have an opportunity to review whether
15 they were prudent in a rate case, yes.

16 Q. I have a question about your Surrebuttal at
17 page 16, lines 9 and 10. There's a net benefit for meeting
18 AmerenUE's resource needs as proposed. What about -- is
19 that just electric or does that also apply to gas customers?

20 A. As I testified earlier, we did not do a
21 revenue requirements analysis for gas. We didn't think it
22 was necessary because it was Illinois jurisdictional
23 distribution property transferring to CIPS, which is also
24 Illinois jurisdictional. So this was focused on electric,
25 yes.

1 MS. SHEMWELL: That's all I have. Thank you.

2 JUDGE THOMPSON: Thank you.

3 Mr. Micheel?

4 MR. MICHEEL: No questions for Mr. Nelson on
5 this issue.

6 QUESTIONS BY JUDGE THOMPSON:

7 Q. Good morning, Mr. Nelson.

8 A. Good morning.

9 Q. Now, I know that you're probably testifying in
10 response to someone else's contention that there is some
11 sort of detriment to be found with respect to liabilities;
12 is that correct?

13 A. My Surrebuttal probably does that, yes.

14 Q. Okay. Can you tell me who has identified any
15 detriments in the proposed transfer with respect to
16 liabilities?

17 A. I'm not sure which Staff witnesses did, but
18 clearly Staff in their testimony talks about potential
19 liabilities as being detriments and Mr. Kind may as well.

20 Q. Very well.

21 JUDGE THOMPSON: I have no other questions.

22 Ms. Shemwell?

23 MS. SHEMWELL: No further questions. Thank
24 you.

25 JUDGE THOMPSON: Mr. Micheel?

1 MR. MICHEEL: No.

2 JUDGE THOMPSON: Mr. Lowery?

3 MR. LOWERY: Could I have just a moment,
4 Judge?

5 JUDGE THOMPSON: You may.

6 REDIRECT EXAMINATION BY MR. LOWERY:

7 Q. Mr. Nelson, Ms. Shemwell asked you a
8 question -- I believe I'm going to have to grab the other
9 testimony. Excuse me. Asked you a question about
10 Section 2.2E of the Asset Transfer Agreement. I'll give you
11 a moment to get there.

12 A. I'm there.

13 Q. And I believe her question was something along
14 the lines of whether or not she had fairly summarized that
15 section in that it provides that those kinds of liabilities
16 remain with AmerenUE. And I believe your answer was you
17 thought that was a fair summary?

18 A. Yes.

19 Q. What about if those liabilities arise after
20 the transfer? What would that provision provide in that
21 event?

22 A. Well, you'd go back into Section 2.1 to answer
23 that question. And as we've talked about, environmental
24 liabilities after the closing would be a CIPS liability and
25 so would a product liability and so would a safety

1 liability, so --

2 Q. Essentially if it arose after the closing,
3 that's going to go to CIPS, going to be CIPS's
4 responsibility?

5 A. That's correct.

6 Q. If you know, you were asked about asbestos
7 liabilities -- asbestos-related liabilities. Are those, in
8 general, related to generation versus transmission and
9 distribution?

10 A. Yes, they are.

11 Q. So those are claims that would be related to
12 the generation that's going to be freed up for Missouri?

13 A. For the most part, the vast majority.

14 MR. LOWERY: That's all I have, your Honor.

15 JUDGE THOMPSON: Very well. Thank you.

16 You may step down, Mr. Nelson.

17 Mr. Getz. Now, you're also a company witness;
18 is that right?

19 THE WITNESS: That's correct.

20 JUDGE THOMPSON: Very well. And this is the
21 your first trip up to the stand?

22 THE WITNESS: Yes, it is.

23 JUDGE THOMPSON: Okay.

24 (Witness sworn.)

25 JUDGE THOMPSON: Please take your seat, state

1 your name for the reporter and spell your last name, if you
2 would.

3 THE WITNESS: Michael J. Getz, G-e-t-z.

4 JUDGE THOMPSON: You may inquire.

5 MICHAEL J. GETZ testified as follows:

6 DIRECT EXAMINATION BY MR. LOWERY:

7 Q. Mr. Getz, by whom are you employed?

8 A. By Ameren Services.

9 Q. And what's your position or job title with
10 Ameren Services?

11 A. I'm the director of plant accounting.

12 Q. You've prepared written testimony in this
13 case; is that correct?

14 A. Yes, I have.

15 Q. And I don't know whether you know this or not,
16 but that testimony has been marked as Exhibit 19. Is that
17 your understanding? It's your Surrebuttal Testimony dated
18 March 1.

19 A. My Surrebuttal. I don't know the exhibit
20 number.

21 Q. And it consists of five pages plus a one-page
22 appendix; is that correct?

23 A. That's correct.

24 Q. Do you have any changes or corrections to
25 Exhibit 19?

1 A. No, I do not.

2 MR. LOWERY: Your Honor, pursuant our
3 stipulation, I would offer Exhibit 19 into the record and
4 tender the witness for cross-examination.

5 JUDGE THOMPSON: Any objections to the receipt
6 of Exhibit 19?

7 Hearing no objections, Exhibit 19 is received
8 and made a part of the record of this proceeding.

9 (Exhibit No. 19 was received into evidence.)

10 JUDGE THOMPSON: Ms. Shemwell?

11 CROSS-EXAMINATION BY MS. SHEMWELL:

12 Q. Good morning, Mr. Getz. I'm Lera Shemwell. I
13 represent the Staff.

14 A. Good morning.

15 Q. You said you worked for Ameren Services
16 Company, AMS?

17 A. That's correct.

18 Q. Would you describe a little more about the
19 nature of your work? You said you're account manager for --

20 A. The director of plant accounting, which is the
21 fixed assets and the work orders.

22 Q. Ameren Services is an unregulated affiliate;
23 is that right?

24 A. That's correct. Unregulated by the Commission
25 here.

1 Q. Yes. Can you say how much of your day is
2 spent doing work for Ameren or that would be billed to
3 AmerenUE?

4 A. It varies, you know, day-to-day depending upon
5 what I'm involved in. I would say a third to a half on any
6 given day.

7 Q. You didn't file Direct Testimony in this case?

8 A. That's correct.

9 Q. Surrebuttal. What is your understanding of
10 the allocation process regarding common liabilities between
11 AmerenUE, Illinois and AmerenUE Missouri?

12 MR. LOWERY: Your Honor, I would object just
13 to the extent that this -- and this question may not call
14 for this, but it calls for questions about allocation of
15 Ameren Services' costs, etc. I would object in that we have
16 reached a settlement of that issue, it's been entered into
17 the record. If it's not -- if it's limited to things other
18 than Ameren Services' costs, then I will withdraw my
19 objection.

20 MS. SHEMWELL: I specifically asked about
21 allocation of common AmerenUE liabilities.

22 JUDGE THOMPSON: What's objectionable about
23 that?

24 MR. LOWERY: Your Honor, there was an issue in
25 this case regarding allocation of Ameren Services' costs

1 that has been resolved. And I, just for clarification, want
2 to be clear that if we're talking about common liabilities,
3 those would not include Ameren Services' costs since that
4 issue has been resolved.

5 JUDGE THOMPSON: I will overrule the
6 objection.

7 Please proceed.

8 THE WITNESS: Could you repeat the question,
9 please?

10 BY MS. SHEMWELL:

11 Q. What's your understanding of the allocation
12 process regarding common AmerenUE liabilities -- not Ameren
13 Services, but AmerenUE liabilities between the Illinois and
14 the Missouri sections of UE?

15 A. My understanding is an attempt was made to
16 identify the Illinois liabilities and assign them as part of
17 the journal entries in this case.

18 Q. What's been the allocation process prior to
19 this case for common liabilities?

20 A. I'm not sure I can answer that.

21 Q. Then do you -- do you know or have you
22 estimated the portion of AmerenUE liabilities that would be
23 transferred to AmerenCIPS as of the date of closing?

24 A. In the proposed journal entries we've
25 identified the liabilities that would be transferred.

1 Q. Where are the journal entries?

2 A. They were originally submitted with the
3 application.

4 MS. SHEMWELL: I need an exhibit marked,
5 please.

6 JUDGE THOMPSON: Very well. This will be
7 Exhibit 74. And this is?

8 MS. SHEMWELL: Work papers of Michael Getz.

9 (Exhibit No. 74 was marked for
10 identification.)

11 MS. SHEMWELL: Judge, I'm sorry. These are
12 marked proprietary. I thought I had them in envelopes. I
13 apologize.

14 JUDGE THOMPSON: Very well.

15 MS. SHEMWELL: Do you want the ones in
16 envelopes? This isn't it. I'm sorry.

17 JUDGE THOMPSON: I don't need envelopes.

18 MS. SHEMWELL: I don't think there's anyone in
19 the room who cannot receive proprietary information. Right?

20 MR. LOWERY: There's not.

21 BY MS. SHEMWELL:

22 Q. Mr. Getz, did you prepare these work papers?
23 Did you prepare these, Mr. Getz?

24 A. Yes. These were submitted with my Surrebuttal
25 Testimony.

1 Q. Were they attached to your Surrebuttal? I
2 don't think they were filed; is that right?

3 MR. RAYBUCK: They were not filed.

4 MR. LOWERY: That's correct. They were
5 provided I believe three days after the Surrebuttal was
6 filed, for the record.

7 THE WITNESS: Okay.

8 BY MS. SHEMWELL:

9 Q. Let's look at the first page, for those of us
10 who can read.

11 MR. LOWERY: Your Honor, did we go into
12 in-camera? Because if we didn't, we should, I believe.

13 MS. SHEMWELL: We should. I'm sorry.

14 JUDGE THOMPSON: Very well. We will go
15 in-camera.

16 (REPORTER'S NOTE: At this time, an in-camera
17 session was held, which is contained in Volume No. 16, pages
18 1418 through 1426 of the transcript.)

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1 JUDGE THOMPSON: You must be Mr. Weiss. We'll
2 come out of in-camera here.

3 (Witness sworn.)

4 JUDGE THOMPSON: Please state your name for
5 the reporter and spell your last name, if you would, sir.

6 THE WITNESS: My name is Gary S. Weiss,
7 W-e-i-s-s.

8 JUDGE THOMPSON: Has Mr. Weiss's testimony
9 been entered?

10 MR. LOWERY: Yes, it has your Honor.

11 JUDGE THOMPSON: Very well.

12 Ms. Shemwell?

13 MS. SHEMWELL: Mr. Lowery and I have the
14 battle of the microphones. Mr. Lowery and me.

15 CROSS-EXAMINATION BY MS. SHEMWELL:

16 Q. Good morning, Mr. Weiss.

17 A. Good morning.

18 Q. You provided Surrebuttal Testimony in this
19 case and Supplemental Surrebuttal; is that right?

20 A. That is correct.

21 Q. And you described the treatment of
22 liabilities. Is that a fair statement?

23 A. General statement. I kind of explained what
24 the liabilities are on the AmerenUE books and point out
25 which ones have been designated to be allocated to CIPS in

1 the Asset Transfer Agreement.

2 Q. And you filed your Supplemental Surrebuttal to
3 clear up apparent misunderstandings. Your Supplemental
4 Surrebuttal, however, refers to Mr. Getz's work papers that
5 we marked as Exhibit 74; is that correct?

6 A. That is correct.

7 Q. And your Supplemental Surrebuttal -- let me
8 get to it -- lists those accounts that we discussed; is that
9 correct?

10 A. It lists those accounts that are part of
11 Mr. Getz's work papers. It gives a brief description of
12 what's in those accounts.

13 Q. And the account that we discussed with the
14 asbestos, or Account No. 228, is shown there where you say
15 lawsuits and public claims. Would public claims be personal
16 injury claims?

17 A. That is correct.

18 Q. Asbestos and Workers' Compensation. These
19 have already been charged operating expenses and will stay
20 with AmerenUE?

21 A. That is correct. There was a reserve set up
22 on the books for those type claims.

23 Q. Pensions and what we call OPEBs, O-P-E-B,
24 which is Other Post--

25 A. Post-retirement benefits.

1 Q. Is also in that account; is that correct?

2 A. Pensions are not, but the post-retirement
3 benefits are.

4 Q. So post-benefit retirements are things other
5 than pensions; is that right?

6 A. That is correct.

7 Q. Okay. Can you give me an example?

8 A. Well, a retiree would have medical insurance
9 after he retires and there's a cost to the company to
10 provide that insurance.

11 Q. I saw in the 10K that there was a lawsuit
12 filed about those medical benefits. Are you familiar with
13 that?

14 A. Not in detail. I do know there is a lawsuit
15 filed. I know it's involving some of the retirees and the
16 fact that the company, I think, has changed how much money
17 they're requiring retirees to pay toward their health
18 insurance.

19 Q. Would that cost of litigation be included in
20 this account?

21 A. It would be in Account 228, that's correct.

22 Q. Do you know if it's currently in Account 228?

23 A. I really don't. I'm not sure. It's a known
24 and measurable liability at this time.

25 Q. Would it be helpful if I handed you the work

1 papers of Mr. Getz?

2 A. No. I have those and it would not show that.
3 I can look through my own work papers and find an answer, if
4 you can give me one quick second here.

5 Q. That would be fine. Is what you're looking
6 through, has that been marked as an exhibit, Mr. Weiss?

7 A. No. These are my personal papers.

8 I really can't tell if that -- if that
9 lawsuit's been on the list of the reserved lawsuits or not.

10 Q. Can you tell from your work papers how much of
11 this account -- which I believe is something around
12 121 million; is that correct?

13 A. That's correct.

14 Q. How much of that is the post-retirement
15 benefits?

16 A. Looks like approximately 92 million.

17 Q. So the remainder of that would be for
18 injuries, asbestos claims, Workers' Compensation, around
19 28 --

20 A. There are also some minor amounts in here for
21 the DOE special assessment on Callaway plant of around
22 6 million. But the remainder would be the injuries and
23 damages lawsuits reserve, which is -- which is around
24 \$30 million, something like that.

25 Q. Lawsuits, public claims and asbestos claims is

1 the phrase you used in your testimony; is that right?

2 A. That is correct.

3 Q. What about Workers' Compensation?

4 A. That's included in that same group.

5 Q. I believe you had indicated that pensions and
6 OPEB, that will be transferred to CIPS on closing; is that
7 correct?

8 A. That is correct.

9 Q. And that's still the case?

10 A. Well, let me -- maybe I need you to clarify
11 that. The cost on the books at time of closing stays with
12 UE, but the cost -- after post-closing, all additional costs
13 will be charged to CIPS.

14 Q. On page 3 -- GSW-3, what we've been looking
15 at, right, attached to your Supplemental Surrebuttal,
16 Schedule GSW-3?

17 A. That's correct.

18 Q. Does this represent all liabilities currently
19 on AmerenUE's balance sheet?

20 A. This was prepared based on the balance sheet
21 at December 31st, 2003. That's everything on the balance
22 sheet at that point in time.

23 Q. And these would represent the accounts that
24 are included in the 2.9 billion that was page 1 of -- no,
25 that's proprietary.

1 MR. LOWERY: Are you going to need to ask
2 questions about that again?

3 MS. SHEMWELL: I am not. I don't think I'm
4 going to. I'm just asking to compare, but maybe we need to
5 go in-camera. And two people just walked in.

6 JUDGE THOMPSON: What are we going to go
7 in-camera for?

8 MS. SHEMWELL: The number I just said.

9 JUDGE THOMPSON: Well, you've already said it.

10 THE WITNESS: I think the number by itself --
11 I mean, that's on the balance sheet. It's a public
12 information. As long as we're not talking about any
13 specifics within the accounts, I think we're okay.

14 BY MS. SHEMWELL:

15 Q. I'm just asking you, is the list here -- does
16 it match up with this?

17 A. It should.

18 Q. Your description of the accounts is what these
19 accounts are?

20 A. Right. I worked from Mr. Getz's work papers
21 in developing my schedule.

22 Q. Okay. And your response to my question does
23 the list of liabilities include all that are on the balance
24 sheet was yes?

25 A. That was the balance sheet liabilities as of

1 December 31st, 2003.

2 Q. Do you have an opinion as to how this balance
3 sheet will change on date of closing?

4 A. All I can say is it will definitely change.
5 It will either be higher or be lower, but I would say it
6 probably will not change significantly between now and
7 closing.

8 Q. Do you agree with Mr. Getz's assessment that
9 about 30 million is what will be transferred to CIPS?

10 A. That's a ballpark number, yes. There again,
11 that will be -- also will be trued up at the time of closing
12 so that number could increase or decrease.

13 Q. Can you show us in your list where
14 environmental liabilities that have a reserve are listed?

15 A. They're on page 2 of 3 of Schedule GSW-3 under
16 Account 253, Other Deferred Credits.

17 Q. This is also where we find pension liability?

18 A. That is correct.

19 Q. And the bottom says, Environmental accrual
20 which has a reserve on the books stays with AmerenUE except
21 the Alton MGP site clean-up which is transferred.

22 MGP stands for what?

23 A. Manufactured gas plant.

24 Q. And we've discussed that earlier. That
25 stays -- that goes with CIPS; is that right?

1 A. That is correct.

2 Q. That single manufactured gas plant that's at
3 Alton?

4 A. Yeah. The only one that we have in our
5 current Illinois territory.

6 MS. SHEMWELL: Okay. I need just a moment,
7 please.

8 JUDGE THOMPSON: Very well.

9 BY MS. SHEMWELL:

10 Q. You indicated that the reserve amounts would
11 change. What would cause them to change?

12 A. I didn't guarantee they would change. I said
13 they could change.

14 Q. Okay.

15 A. They could change. But if new estimates were
16 received for the estimated cost of a clean-up site or
17 estimated cost of a pending lawsuit, if we have received
18 better information or more fuller information, those numbers
19 can be trued up and increased or decreased depending on
20 which way the information comes in.

21 Q. As we discussed with Mr. Getz, do you agree
22 with him that after the transfer -- if the Commission
23 approves the transfer, after the transfer, there would not
24 be a true-up of these amounts?

25 A. That is correct. A true-up will occur at the

1 time of closing.

2 Q. Do you agree that no reserve is set up --
3 Mr. Micheel -- you heard Mr. Micheel's hypothetical that at
4 the time of the event, and in this case it was a spill, no
5 reserve is established then until the lawsuit is filed; is
6 that correct?

7 A. That is correct.

8 Q. Mr. Weiss, are you the one that would make the
9 change to the accounts who would be notified of any need to
10 change the amount in the accounts?

11 A. No. That's done by the controller, as was
12 discussed earlier by Mr. Nelson.

13 Q. Who's your controller?

14 A. Martin Lyons.

15 Q. Is he your boss?

16 A. Yes.

17 Q. Okay. So you'd find out about them?

18 A. Oh, most definitely I would be well aware of
19 any changes that would take place.

20 Q. Who would you notify then of the changes?

21 A. I guess I'm not following your question. Who
22 do I notify about what?

23 Q. Let's say there was a big change for an
24 asbestos claim or whatever. You hear from Mr. Lyons there's
25 been a change. And then how does that change get recorded

1 on the books?

2 A. Oh, Mr. Lyons would then inform the director
3 of the general ledger to make an entry to record the
4 additional liability on the books.

5 Q. Is this something that would be known then
6 generally in the company as well by, let's say, Mr. Nelson
7 and other members of the board?

8 A. I'm not sure, but generally when we do make a
9 significant increase in a reserve, that's an item that
10 usually is discussed by Mr. Lyons when he meets with members
11 of senior management.

12 Q. Okay.

13 MS. SHEMWELL: Judge, at this time I'd like to
14 move for admission of Exhibit 74. And that's all the
15 questions I have for Mr. Weiss this morning.

16 JUDGE THOMPSON: Any objections to Exhibit 74?

17 MR. LOWERY: No objection. That should be
18 designated as a highly confidential exhibit, however.

19 JUDGE THOMPSON: Do you mean proprietary?

20 MR. LOWERY: Proprietary, I'm sorry.

21 JUDGE THOMPSON: Hearing no objections,
22 Exhibit 74 is received as a proprietary exhibit in the
23 record of this proceeding.

24 (Exhibit No. 74 was received into evidence.)

25 JUDGE THOMPSON: Mr. Micheel?

1 MR. MICHEEL: I have no questions for
2 Mr. Weiss on this particular issue.

3 JUDGE THOMPSON: Thank you.

4 QUESTIONS BY JUDGE THOMPSON:

5 Q. Mr. Weiss, could you tell us me what the
6 purpose of your testimony is?

7 A. The purpose of my Supplemental Surrebuttal
8 Testimony was to try to clear up the misunderstanding as to
9 what actual liabilities were on the AmerenUE books at this
10 time. There seemed to be some confusion, so I thought it
11 would be helpful to give a list of the actual 22 accounts
12 and a brief description of what was in each of those
13 accounts and explain why a majority of those accounts have
14 no bearing on this asset transfer.

15 Q. Thank you. Are you here to talk about any
16 detriments?

17 A. I see no detriments, but I can talk about
18 them.

19 Q. Are you here to tell us that some detriments
20 identified by anyone else are not detriments?

21 A. I would say that the testimony of Staff
22 Witnesses Greg Meyer and Janis Fischer imply some future
23 unknown, possible detriments due to some possible, future,
24 unknown lawsuits. And I'm here to say that we don't think
25 it has any detriment to this transfer.

1 JUDGE THOMPSON: Okay. Very well. I have no
2 other questions.

3 Ms. Shemwell?

4 RECROSS-EXAMINATION BY MS. SHEMWELL:

5 Q. In terms of detriments that Ms. Fischer and
6 Mr. Meyer identified, they were describing concerns with
7 environmental liabilities; is that correct?

8 A. It was kind of hard to tell from their
9 testimony it talked in such general terms, but I assumed a
10 big part of their concern was the environmental.

11 Q. Do you agree Ameren has exposure to
12 environmental liabilities?

13 A. I would agree. And most of those were in the
14 generation area and generation is staying with AmerenUE.

15 MS. SHEMWELL: Thank you.

16 JUDGE THOMPSON: Is that it?

17 Mr. Micheel?

18 MR. MICHEEL: No, your Honor.

19 JUDGE THOMPSON: Redirect, Mr. Lowery?

20 MR. LOWERY: No redirect, your Honor.

21 JUDGE THOMPSON: Thank you. You nay step
22 down, Mr. Weiss.

23 THE WITNESS: Thank you.

24 JUDGE THOMPSON: Ms. Fischer. Go ahead and
25 take your seat, Ms. Fischer. I'll remind you you're still

1 under oath.

2 Now, were you fully examined the last time you
3 were up or not, do you recall?

4 THE WITNESS: Related to affiliated
5 transactions, I believe I was except I'm not sure if I
6 received all the questions from the Bench or -- I don't
7 believe there was --

8 MS. SHEMWELL: I don't believe there were any.

9 THE WITNESS: Okay.

10 MS. SHEMWELL: And was her testimony,
11 Exhibit 20, received?

12 JUDGE THOMPSON: Well, that's a good question.
13 Yes. Exhibit 20 has been offered and received.

14 MS. SHEMWELL: I have not done redirect,
15 Judge, for either affiliate or questions from the Bench --

16 JUDGE THOMPSON: That's what I was trying to
17 figure out here.

18 MS. SHEMWELL: -- from the last time she was
19 on the stand.

20 JUDGE THOMPSON: Right. Okay. Well, we will
21 also cover then that topic. Okay?

22 MS. SHEMWELL: Thank you.

23 JUDGE THOMPSON: Since this is scheduled to be
24 your last trip up here. Right?

25 THE WITNESS: Yes.

1 JUDGE THOMPSON: Okay. Very well. I guess it
2 was you, Mr. Micheel.

3 MR. MICHEEL: No questions.

4 JUDGE THOMPSON: Mr. Lowery?

5 MR. LOWERY: Thank you, your Honor.

6 JANIS FISCHER testified as follows:

7 CROSS-EXAMINATION BY MR. LOWERY:

8 Q. Good morning, Ms. Fischer.

9 A. Good morning.

10 Q. I'd like to just go directly back to the
11 discussion I believe you had with Judge Thompson last week.
12 We were talking about affiliate transactions, but I think
13 there were a number of questions about liability that sort
14 of spilled over into that issue.

15 And if I recall correctly, you and Judge
16 Thompson discussed two major areas of concern. The first
17 being that you talked about what I believe you characterized
18 as current liabilities reflected on Mr. Getz's work papers
19 that we've been talking about. Correct? Do you recall
20 that?

21 A. I don't know if I referred to them as current
22 liabilities.

23 MS. SHEMWELL: Judge, I think this is recross
24 based on questions from the Bench.

25 JUDGE THOMPSON: Right now you should be doing

1 your cross-examination of Ms. Fischer on liabilities. And
2 then after I question her on that, then we can do recross on
3 this topic and also the previous topic, if that's okay.

4 MR. LOWERY: Sure.

5 JUDGE THOMPSON: That will help us keep it
6 analytically -- help me remember where we are.

7 MR. LOWERY: I understand.

8 BY MR. LOWERY:

9 Q. Well, let's just talk about liabilities
10 generally. One category of liabilities that we've been
11 talking about this morning are those reflected on the
12 balance sheet. And as we have talked about, I believe it's
13 Exhibit 74, Mr. Getz's work papers essentially reflect UE's
14 balance sheet. Correct?

15 A. I believe his -- the exhibit reflects just the
16 liabilities, not the assets.

17 Q. Correct. Just the liabilities on the balance
18 sheet?

19 A. Right.

20 Q. And another category of liabilities that is
21 discussed in your testimony are things that are more
22 long-term in nature, for example, environmental liabilities?

23 A. Yes.

24 Q. And if we look at Staff's list that was filed
25 yesterday, I believe there's a discussion of the balance

1 sheet liabilities on pages 5 to 6 of that list. Do you
2 recall that?

3 A. I don't have it in front of me.

4 MS. SHEMWELL: Judge I'm going to object.
5 This is not questions from her testimony in this case.

6 JUDGE THOMPSON: He can ask her anything she
7 wants. She can say --

8 MS. SHEMWELL: Including the list of issues
9 submitted for the Commission?

10 JUDGE THOMPSON: He may ask. We have
11 wide-open cross in Missouri. He may inquire about any topic
12 and she may say she doesn't know if, in fact, that's the
13 right answer. So I'll overrule the objection.

14 Please proceed.

15 BY MR. LOWERY:

16 Q. I'm just trying to get our bearings in terms
17 of the kind of liabilities we're talking about. One
18 category would be the balance sheet liabilities we've been
19 talking about this morning. Correct?

20 A. Right.

21 Q. And another category might be injuries,
22 damages, environmental that may or may not be reflected in
23 reserves on the balance sheet. Correct?

24 A. Right.

25 Q. And those would tend to be more long term in

1 nature?

2 A. I -- what do you mean by "long term"? More
3 than one year into the future?

4 Q. Sure. Let's use that definition.

5 A. I believe in my review of the 10K, there are
6 instances where they cite going out to the year 2010, so
7 yeah, there are some long-term liabilities.

8 Q. All right. And the issue with regard to your
9 concerns about what I'll call the balance sheet liabilities
10 are whether or not some of those are being, quote,
11 transferred to AmerenCIPS. Correct?

12 A. Yes.

13 Q. And the issue with regard to these
14 environmental liabilities, injuries and damages and those
15 types of things is whether or not AmerenCIPS ought to retain
16 or have responsibility for approximately 6 percent of those
17 liabilities that arose pre-close or not; is that fair?

18 A. I believe the 6 percent would be related to
19 generation-related reserve or potential liabilities. And
20 I'm not sure if I would quantify any future natural gas
21 liabilities as 6 percent, but there would be -- whatever the
22 allocation based on revenue or customers would determine
23 what percentage would remain with CIPS in our view.

24 Q. So at least if we're talking about an
25 environmental liability or an injury or damage such as in a

1 personal injury claim for asbestos, your issue is what
2 happens to the 6 percent?

3 A. It more -- I believe as you define it into the
4 two categories, I believe that's true. But then I believe
5 in the area of environmental liabilities, there's the
6 6 percent of what we believe -- of the current reserves
7 already on the books.

8 And then we would also contend that any future
9 liabilities -- and this kind of goes to the true-up -- if
10 it's over-or under-estimated or even if there's a potential
11 liability related to something already currently out there
12 that hasn't been reflected, that we would expect that the
13 Illinois customers would be responsible for that in the
14 future also.

15 Q. But regardless of whether or not there's a
16 reserve for a particular claim, an amount reserved, or
17 whether or not there's not a reserve and it may exist in the
18 future, to the extent that it's related to electric
19 generation, your concern is what happens to that 6 percent?

20 A. Yes. I think that --

21 Q. And the reason for that is because Missouri
22 today, in effect, has exposure -- subject to whether or not
23 the Commission allows rate recovery and other factors, has
24 exposure to 92 percent of those costs today, correct -- or
25 those liabilities, I should say?

1 A. Well, I think it goes back to who actually
2 benefited from the generation.

3 Q. Well, that's not my question. With regard to
4 the liabilities we've been talking about, the injuries and
5 damages, the environmental, those kinds of claims that might
6 arise from electric generation, whether they've been
7 reserved or not, today Missouri has exposure to 92 percent
8 of those costs?

9 A. Are you talking in a cost of service in a rate
10 case?

11 Q. Sure.

12 A. Well, actually Staff, when they review
13 injuries and damages, takes the approach that we're more
14 looking at what is actually expensed rather than what's in
15 the reserve.

16 So I can't really say that that would -- that
17 the 92 percent would actually be where we would -- I mean,
18 we would have access to that information, but that wouldn't
19 be our position. We probably would be 90 percent --
20 92 percent of what was actually expensed.

21 Q. In other words, Staff might take an amount
22 that's reserved on the balance sheet and seek to disallow a
23 portion of it not relying on the reserves but saying, What
24 have you actually spent versus what have you reserved?
25 You'd make an adjustment?

1 A. The reserve -- depending on when the reserve
2 is set up and then how they allocate that reserve, we would
3 make an adjustment to the allocation of the reserve to
4 Missouri ratepayers.

5 Q. But 92 percent of the reserve would have been
6 allocated to Missouri under current circumstances since
7 Missouri -- essentially Missouri retail essentially is
8 getting 92 percent of the generation. Correct?

9 MS. SHEMWELL: I'm going to --
10 BY MR. LOWERY:

11 Q. I'm not asking you to agree that Staff would
12 agree that 92 percent of that reserve number should be
13 recovered. But at least the way UE would keep their books,
14 UE would allocate 92 percent of that to Missouri. Correct?

15 A. If you're speaking of a reserve that is
16 entirely related to generation --

17 Q. I am.

18 A. -- then my belief is that that is the way
19 AmerenUE has allocated those reserve costs, yes. I believe
20 that would be --

21 Q. And your point a moment ago is that Staff
22 might propose adjustments to that?

23 A. Yes.

24 Q. Okay. Let's talk about -- let's shift out of
25 the generation-related liabilities, the environmental,

1 injuries and damages. And I realize there are reserves for
2 some of those in some of the liability accounts that are
3 discussed in Mr. Getz's work papers. For example, I think
4 we talked about Accounts 228 and 253. Do you remember that?

5 A. Yes.

6 Q. Let's ignore those for a moment and let's just
7 talk about the other liabilities. Let's assume that the
8 company incurs a liability in one of those other accounts,
9 excluding the two things that I just mentioned. Okay?

10 A. Okay.

11 Q. You with me so far?

12 A. Uh-huh.

13 Q. Now, in order to record that in a liability
14 account, what the company -- if it's an expense, the company
15 would debit operating expense. Correct?

16 A. Yes.

17 Q. And then the appropriate liability account --
18 a credit is entered on the appropriate liability account.
19 Correct?

20 A. Yes, it would be.

21 Q. So let's just take an example, a concrete
22 example. Let's say the company has a contract for
23 maintenance and repair of its computers and its fax machines
24 and all those kinds of office equipment. That would be an
25 expense. Right?

1 A. Right.

2 Q. And the office equipment company sends UE a
3 bill and we would debit operating expense. Right?

4 A. Yes.

5 Q. And we'd credit accounts payable. Does that
6 make sense?

7 A. Yes.

8 Q. So until that bill gets paid, there is a
9 liability reflected on the balance sheet. Right?

10 A. Yes.

11 Q. And those kinds of liabilities would be
12 embedded within the liabilities that are described on
13 Mr. Getz's work papers. Right?

14 A. Yes. They would be embedded in those
15 liabilities, yes.

16 Q. Now, the expenses reflected on the balance
17 sheet liability counts that are credited, those expenses
18 have already been incurred. Right? If they're on the
19 balance sheet, they've already been expensed. Correct?

20 A. Are you saying that all of the liabilities on
21 the balance sheet have been expensed?

22 Q. I'm not asking you that. Let's take my
23 example and take an operating expense. We have an operating
24 expense such as used in my example. If that has shown up on
25 the balance sheet in the form of a credit to the appropriate

1 liability account, that item has already been expensed.

2 Correct?

3 A. In the transaction that you identify, a debit
4 would have gone to an operating expense account and that
5 would be the other side of the entry that would be the
6 credit to the liability.

7 Q. And any operating expense that's already hit
8 one of those liability accounts has been expensed already.
9 Correct?

10 A. Yes. I -- I guess --

11 Q. Is that correct? If we have an operating
12 expense, an expense has been debited and the liability
13 account has been credited, then that liability and that
14 balance sheet liability account has already been expensed;
15 is that correct?

16 A. My problem with that is that the operating
17 expenses can hit either Illinois CIPS -- or I mean
18 Illinois -- AmerenUE Illinois as an expense or AmerenUE
19 Missouri as an expense.

20 And when I get over to the liability side, I
21 can't make a determination of where the other side of the
22 entry went, if it was a cost of service to Illinois or
23 Missouri. But, yes, it goes on each side of the
24 transaction, a credit to the liability and a debit to the
25 operating expense.

1 Q. If it's already been expensed, it won't be
2 expensed again in the future when the bill's paid. Correct?
3 When the check is cut?

4 A. When the check is cut, cash would be deducted
5 from AmerenUE's books.

6 Q. And a deduction of cash is not going to have a
7 future rate-making impact. Correct?

8 A. Cash is not an account that we review during
9 an analysis of cost of service.

10 Q. Cash is not an asset that's in the rate base
11 at all, is it?

12 A. No. I guess if you go back to how you get the
13 cash, that would be something that would be included in cost
14 of service, revenue or an accounts receivable set up to
15 offset a revenue.

16 Q. Well, if we're talking about one of these
17 operating expenses that's already been expensed and then a
18 corresponding liability credit on the liability account has
19 been made -- all right, you with me so far?

20 A. Yes.

21 Q. And if AmerenUE ends up writing a check later
22 for that, that's not going to have a rate-making impact in
23 the future. Correct?

24 A. Well, I guess my concern is that in the
25 situation in an accounts payable example you gave me, that

1 would be true, but within those liability --

2 Q. Well --

3 A. -- accounts, I can't say that all of those
4 represent operating expenses that have already been included
5 in the cost of service.

6 Q. And my question assumed that we were talking
7 about operating expenses that have been expensed and a
8 corresponding credit on the liability account has been made.
9 Correct?

10 A. In that specific situation, yes, that would
11 not be included -- that would not be included in a future
12 rate case.

13 Q. So at least when we're talking about operating
14 expenses that have already been expensed and then the
15 corresponding credit on the liability account, it doesn't
16 make any difference for rate-making purposes whether some
17 amount -- some of those amounts are transferred to
18 AmerenCIPS or not. Correct?

19 A. I guess the converse of that would be then why
20 is it --

21 Q. Just --

22 A. -- important to leave them on the books?

23 Q. Just answer my question. Does it make any
24 difference in that situation, that hypothetical situation,
25 whether or not -- for rate-making purposes whether or not

1 it's, quote, transferred or not?

2 A. I guess the only thing I want to qualify --

3 Q. But I'd like for you to answer my question.

4 MS. SHEMWELL: Judge, Mr. Lowery needs to let
5 Ms. Fischer answer.

6 JUDGE THOMPSON: Ms. Fischer needs to respond
7 yes, no or I don't know and provide a narrative explanation
8 only when one is called for.

9 THE WITNESS: I guess what's coming to mind to
10 me is that --

11 BY MR. LOWERY:

12 Q. You're still not answering my question. If we
13 have an operating expense, a group of operating expenses,
14 just talking about operating expenses, they've been
15 expensed, the corresponding liability account has been
16 credited. When a check is cut later and cash is used to pay
17 that check, that does not have a future rate-making impact.
18 Yes or no?

19 A. I believe that's true.

20 Q. What you're really concerned about in these
21 kinds of issues are a future operating expense, and more
22 specifically, a future operating expense that would fall in
23 a test year for a rate case. Correct?

24 A. Are you referring to the cat--

25 Q. I'm talking about the operating expenses that

1 we just talked about. If you have a future operating
2 expense that falls in a test year, for example, then that is
3 an expense that, subject to disallowance or normalization or
4 other items, might affect rates. Correct?

5 A. Yes.

6 Q. Has the company indicated in any way in its
7 testimony or to you that they intend to charge AmerenUE --
8 that AmerenUE intends to pay for and be charged for
9 operating expenses that arise from the Illinois assets after
10 the closing of this transfer?

11 A. Could you repeat that?

12 Q. Is it your understanding that AmerenUE would
13 have to pay operating expenses arising from operation of the
14 assets being transferred if those expenses arise after the
15 closing of the transfer?

16 A. Yes.

17 Q. Operating expenses?

18 A. If --

19 Q. Well, let me just give you an example. If
20 AmerenCIPS goes out and buys a bunch of office supplies
21 after the transfer and there's an operating expense for
22 that, it's your understanding that AmerenUE's going to have
23 to pay that bill?

24 A. I was thinking more of the situation related
25 to the environmental liabilities.

1 Q. You were talking about the capital
2 expenditures that Ms. Shemwell talked about this morning?

3 A. Well, or remediation and so on that would --
4 because the capital expenditures would work their way --

5 Q. But those would have arisen from CIPS's
6 operation of the assets after the closing, which is what my
7 question assumed. Correct?

8 A. I'm not sure.

9 Q. Okay. Let's talk about environmental
10 liabilities, injuries and damages. And let's take a look at
11 a few possibilities. There are some environmentally related
12 claims or injuries or damages for which amounts are
13 reflected on AmerenUE's books today. Correct?

14 A. In the reserve Accounts 228 and 253, yes, I
15 believe there are some.

16 Q. For example, if EPA had filed a lawsuit
17 regarding clean-up at a generation plant, AmerenUE might
18 book a reserve for that. Correct?

19 A. My understanding is if a lawsuit is filed,
20 that they would make a determination whether to set aside a
21 reserve for that, yes.

22 Q. Now, let's assume that the transfer occurs and
23 that later a settlement or judgment is paid on a claim for
24 which a reserve was already booked.

25 A. Yes.

1 Q. Okay? You got that an assumption in mind?

2 As long as the reserve, the liability that's
3 on the books, is greater than or equal to the ultimate
4 settlement or judgment, that's not going to have a future
5 rate-making impact either, is it?

6 A. I guess it depends on what you do with the
7 excess.

8 Q. In my hypothetical I said as long as the
9 settlement or judgment or the expenses associated with that
10 claim are less than or equal to the amount reserved, that
11 will not have a future rate-making impact. Correct? There
12 is no excess.

13 A. Well, to me, if -- if, say, for example -- and
14 maybe I'm not understanding your question.

15 Q. Do you know the answer to my question?

16 A. I don't understand your question.

17 Q. Okay. EPA has filed a lawsuit today.
18 AmerenUE booked \$5 million in its reserve in probably
19 Account 253 for that lawsuit. Are you with me so far?

20 A. Yes.

21 Q. And then after the transfer, UE pays a
22 judgment of -- let's just -- we'll throw it all in, the
23 litigation expenses and the settlement or judgment that UE
24 pays total \$4 million.

25 A. Yes.

1 Q. No future rate-making impact. Correct?

2 A. I'm not sure what you would do with the extra
3 million if it -- I believe you have to off -- reconcile that
4 in the reserve account and then I would guess that would
5 flow through as miscellaneous revenue type item. I'm not
6 really sure.

7 Q. Might actually benefit ratepayers. Correct?
8 Staff would probably want to treat that as revenues, that
9 million dollars in my example that AmerenUE received?

10 A. If they -- if the Staff felt that that
11 obligation was UE Missouri, they would feel that they should
12 include that million dollars And it would have an impact on
13 cost of service, but not a negative impact, a positive
14 impact.

15 Q. Right. It might have a positive impact. It
16 wouldn't have a negative impact at all though. Correct?

17 A. Not in that situation.

18 Q. Well, let's just put some numbers on an
19 example. Let's assume -- and I think Mr. Weiss testified to
20 this. Let's assume that today AmerenUE has about
21 \$30 million already expensed on its books, reserved on its
22 books for injuries, damages and environmental claims. Okay?

23 A. Yes.

24 Q. And let's assume that AmerenUE -- their
25 reserves miss that had number by 100 percent. So later they

1 end up spending \$60 million on those.

2 A. Yes.

3 Q. Okay. Now, if we assume -- and I'll assume
4 for purposes of my question that all of those related to
5 generation.

6 A. Yes.

7 Q. If we assume that -- and subject to
8 adjustments that Staff might make. If we assume that, then
9 today 92 percent of that amount would at least be eligible
10 or considered for recovery in Missouri rates. Correct?

11 A. I guess I've kind of lost track of the
12 question. Are we still talking about the 6 -- okay, we've
13 resolved that the lawsuit -- or the \$60 million is actually
14 hitting the books, that the -- that the reserve was
15 inadequate?

16 Q. 30 million reserves, 60 million later paid.
17 So the reserve was inadequate by 100 percent, \$30 million
18 was not reserved that we had to pay. It was generation
19 related, all of it.

20 A. Yes. That would flow through I would -- under
21 the assumption that 92 percent is the correct allocation to
22 Missouri, that would -- we would expect that that would flow
23 through the expenses.

24 How would we -- how we would address that in a
25 rate case I can't really say because there probably would be

1 some normalization of that amount. I doubt we would include
2 30 -- well, 92 percent of \$30 million as a going-forward
3 test year amount.

4 Q. But now the \$30 million that wasn't reserved,
5 that would be a future operating expense. Correct? That
6 wasn't expensed when we reserved it, but that's going to
7 be -- when it's actually paid, that is going to be a future
8 operating expense. Correct?

9 A. The transaction will be posted in the future,
10 yes.

11 Q. Now, you don't have any reason -- you do
12 understand that -- and I believe this is in evidence and
13 even in response to some of the questions to Staff's
14 witnesses. You don't question that today approximately
15 92 percent of the generation related costs are allocated to
16 Missouri retail ratepayers. Correct?

17 A. I --

18 Q. You don't have other information, do you?

19 A. I haven't done an analysis. I heard that
20 percentage discussed and I am just assuming that that's
21 accurate. It might be a little more or less. I'm not
22 actually sure.

23 Q. Assuming the 92 percent is correct and
24 assuming there's this \$30 million future expense, would you
25 agree that \$28.6 million of that would have, in effect, been

1 allocated to AmerenUE regardless of the transfer? And I can
2 give you a calculator if you want to check my math.

3 A. I believe that's -- theoretically that sounds
4 correct.

5 Q. So in that hypothetical we're talking about
6 \$1.4 million that's affected by the transfer. Correct?

7 A. If that's 8 percent, yes.

8 Q. Well, that's 6 percent. The other 2 percent
9 would be wholesale. Correct?

10 A. Okay. Yes.

11 Q. And it's not a certainty that that other
12 \$1.4 million will actually affect AmerenUE's rates.
13 Correct?

14 A. Well, I would say that Ameren would argue that
15 it should be included because of what's included in the
16 application.

17 Q. A moment ago I believe you indicated that you
18 didn't think Staff would agree with that type of analysis.
19 Correct? Staff would probably seek to normalize it?

20 A. Well, when we look at injuries and damages in
21 a rate case, we look at what has actually been expensed
22 during the test year. The company usually takes the reserve
23 and allocates it between the different entities. We make
24 our adjustment to what the company has booked, the
25 92 percent allocation of the reserve account.

1 And we also consider normalizing or
2 annualizing those expenses if there -- we typically look at
3 five years worth of information to try to come up with a
4 normal level of expense.

5 Q. So if AmerenUE gets nailed for this extra
6 \$30 million in the future in one test year, you're probably
7 going to at least advocate to the Commission that you look
8 at payments over a five-year period and include an operating
9 expense only of that five-year average, not that one
10 \$30 million payment. Correct?

11 A. Well, we wouldn't assume that the 30 million
12 was the responsibility of Missouri, but the 92 percent -- we
13 would take 92 percent of the 30 million and we probably
14 would use that and whatever else expenses were included in
15 the 925 Account, injuries and damages for the test year,
16 plus four other years of information to come up with some
17 type of a normalized level, yes.

18 Q. And you propose normalization adjustments.
19 Correct?

20 A. Yes, we do.

21 Q. You propose disallowances?

22 A. Yes, we do.

23 Q. And the Commission sometimes accepts those
24 proposals, do they not?

25 A. Yes. Sometimes they do.

1 MR. LOWERY: Your Honor, I'd like to mark an
2 exhibit.

3 JUDGE THOMPSON: Very well. This will be
4 Exhibit 75.

5 (Exhibit No. 75 was marked for
6 identification.)

7 MR. LOWERY: Exhibit 75, your Honor?

8 JUDGE THOMPSON: Yes.

9 BY MR. LOWERY:

10 Q. Ms. Fischer, have you ever seen that document
11 before, Exhibit 75?

12 A. Well, I believe there were several accounting
13 schedules entered into the complaint case. I -- I probably
14 have. I should have.

15 Q. You recognize that as being an accounting
16 schedule prepared and submitted by Staff and filed in the
17 EC-2002-1, as I believe Staff calls it, excess earnings
18 complaint case against the company. Correct?

19 A. Yes.

20 Q. Could you turn to -- and these are numbered in
21 a little bit of a strange fashion, but Schedule 10, I
22 believe it's Accounting Schedule 10-6, which I believe
23 references page 6 of Accounting Schedule 10? It's one,
24 two --

25 A. Yes, I have it.

1 Q. Do you see Item 14?

2 A. Yes.

3 Q. That, in fact, is a \$5.2 million downward
4 adjustment of the company's cost of service to normalize
5 payments -- or expenses for injuries and damages, is it not?

6 A. Yes.

7 Q. That's a perfect example of the adjustments
8 that Staff seeks to make and sometimes can make in rate
9 cases. Correct?

10 A. Yes

11 MR. LOWERY: Your Honor, I'd offer Exhibit 74
12 into evidence.

13 JUDGE THOMPSON: Any objections?

14 MR. LOWERY: 75, excuse me.

15 JUDGE THOMPSON: Hearing no objections,
16 Exhibit 75 is received.

17 (Exhibit No. 75 was received into evidence.)

18 BY MR. LOWERY:

19 Q. Now, last week I believe admitted into
20 evidence was Exhibit 58, which was a portion of the
21 company's Schedule 10K.

22 JUDGE THOMPSON: That's true.

23 BY MR. LOWERY:

24 Q. Do you remember that?

25 A. Yes.

1 Q. Do you have a copy?

2 A. I'm not sure if it's the one entered as an
3 exhibit, but I pulled it off of the SEC page so -- web page,
4 so I believe I have the same information.

5 Q. You have the entire 10K there in front of you?

6 A. No, I don't.

7 Q. You have the small one. We'll see if it
8 matches up with Exhibit 58.

9 Let's take a look at what in the upper
10 right-hand corner is labeled as page 151 of 184. Do you see
11 that?

12 A. Yes.

13 Q. Is there a table in the middle of that page on
14 your version?

15 A. Yes, there is.

16 Q. And that table talks about capital equipment
17 relating to nitrous oxide, estimated capital expenditures
18 related to nitrous oxide for UE. Correct?

19 A. Yes. For UE and all the other affiliates of
20 Ameren, I believe.

21 Q. Okay. And then on the next page, page 152 of
22 184, there's some estimates of capital costs in different
23 years 2010, 2015 and it's for several Ameren companies but
24 UE is broken out there. Correct?

25 A. Yes.

1 Q. Now, these are capital expenditures. Right?

2 A. Estimated capital costs, yes.

3 Q. And these are capital expenditures that would
4 happen -- in the case of the first table, some of them might
5 happen in 2004, but these are estimated in the case of the
6 first table in 2004, '5, '6, '7, '8, over a five-year
7 period. Correct?

8 A. Are you talking about back on 151?

9 Q. 151.

10 A. Okay. Between 2004 and 2008, yes, I see that.

11 Q. So most of those years are yet to come.
12 Correct?

13 A. Yes.

14 Q. And on the next page on 152, these are
15 estimates for expenditures in 2010 and 2015?

16 A. Yes. That's what the table shows.

17 Q. I want you to assume a couple of things.
18 Assume that the Commission approves the transfer and assume
19 further that 6 percent of the generation that used to serve
20 Illinois loads are now serving Missouri loads. Okay?

21 A. Okay.

22 Q. Is it your contention that if AmerenUE makes a
23 capital expenditure in the future at one of those power
24 plants that at the time of the expenditure is devoted
25 98 percent to serving Missouri loads, that UE should only

1 pay 92 percent of that cost?

2 A. I'm not sure if that would -- I believe that
3 the Illinois customers who benefited from that generation --

4 Q. That wasn't my question though. If that
5 capital expenditure is paid later, at a time when 98 percent
6 of the generation is serving Missouri only, just simple
7 question, is it your contention that AmerenUE should only
8 pay 92 percent and that AmerenCIPS, for example, should pay
9 6 percent of that future capital expenditure?

10 A. I don't want to stick to the 92 percent, but I
11 believe that, yes, AmerenUE customers should only have to
12 pick up what's -- I don't want to say 92 percent.

13 Q. Well, assume for purposes of my question that
14 92 percent is the right number.

15 A. Okay.

16 Q. If 92 percent's the right number, is it your
17 contention that AmerenUE Missouri should only pay 92 percent
18 of future capital expenditures that are made when 98 percent
19 of the generation is serving Missouri?

20 A. Yes.

21 Q. If a capital expenditure is made in 2010 at an
22 AmerenUE plant that is -- that 98 percent of which -- of the
23 output of which is serving Missouri, that capital
24 expenditure -- for example, let's say it's for NOx, nitrous
25 oxide. That capital expenditure will be designed to control

1 NOx emissions in 2010, '11, '12, ad infinitum Correct?

2 A. Yes.

3 Q. It won't be expended to control NOx from 2002.
4 Correct?

5 A. You said 2002?

6 Q. We put in NOx control equipment in 2010, we
7 spend \$50 million to do that. That equipment will control
8 NOx in 2010 and beyond. Correct?

9 A. Yes.

10 Q. It won't control NOx emitted in 2002?

11 A. That's true because the capital expenditure
12 wasn't made in 2002.

13 Q. And it won't control any NOx that was being
14 emitted at those plants at a time when they were serving
15 AmerenCIPS. Correct? It couldn't, could it? It's not in
16 until 2010 and in 2004 AmerenCIPS no long received any
17 generation from those plants, assuming the transfer's
18 approved. Correct?

19 A. That's true.

20 Q. So it's your testimony that regardless of any
21 benefits that Missouri gets from having the additional
22 6 percent of the generation available to it, AmerenCIPS, or
23 if AmerenCIPS doesn't pay it, Ameren Corporation ought to
24 eat 6 percent of that 2010 capital expenditure. Isn't that
25 the effect of your testimony?

1 A. No. I mean --

2 Q. How could it --

3 A. I don't think --

4 Q. -- not be?

5 A. -- that explains, in my view, the fact that
6 customers in Illinois and Missouri both or as a total group
7 benefited from the generation and that Ameren chose not to
8 put in whatever capital expenditures in the past.

9 And that by -- by postponing that into the
10 year 2010, that some of that -- what appears to me to be
11 something that is a known future obligation, that some of
12 that should rest with Illinois because they benefited in the
13 past.

14 Q. I think you just changed the hypothetical in
15 about three or four different ways.

16 My question is, for example, if the benefits
17 from the generation to Missouri outweigh these capital
18 expenditures, your testimony still is that Illinois or
19 Ameren Corporation ought to have to bear 6 percent of those
20 future capital expenditures?

21 MS. SHEMWELL: Objection, he's asked it.
22 She's answered it.

23 MR. LOWERY: I don't believe she has answered
24 it.

25 MS. SHEMWELL: You may not have gotten --

1 JUDGE THOMPSON: The objection's overruled.
2 The witness will answer the question.

3 THE WITNESS: To me, if we're talking about
4 the benefits, this is one of those things that would go in
5 the equation to determine whether there is a benefit versus
6 the cost of the 6 percent. I mean, I guess I don't
7 really -- I don't really know.

8 BY MR. LOWERY:

9 Q. But you did indicate that you believe that
10 6 percent of that 2010 capital expenditure ought to be paid
11 by CIPS?

12 A. In the case of the NOx and the SO2, yes.

13 Q. Let me clarify one other point. Your
14 testimony doesn't address how well AmerenUE provides
15 electric and gas service to its customers, how well it keeps
16 the lights on or keeps the heat flowing. Correct?

17 A. That's right.

18 Q. You haven't offered any testimony that would
19 support some detriment relating to whether or not the
20 transfer might somehow detrimentally affect AmerenUE's
21 ability to provide that service?

22 A. That wasn't included in my testimony, that's
23 correct.

24 Q. You're focused on potential cost. Correct?

25 A. Potential detriments, yes.

1 Q. Potential detriments in the areas of cost and
2 liabilities. Correct? Putting aside your affiliate
3 transaction testimony.

4 A. Yes.

5 Q. And you focus on costs and liabilities because
6 those could have rate impacts that you might view as
7 negative rate impacts. Correct?

8 A. Setting aside the affiliated transaction and
9 whether it's just and reasonable, prudent transaction --

10 Q. Right.

11 A. -- valuation.

12 Q. Let's just talk about cost and liabilities.
13 The reason costs and liabilities are important to you is
14 because of the potential for a rate impact in the future.
15 Correct?

16 A. Yes.

17 Q. And a rate case regarding the company wouldn't
18 start until at least January 1, 2006. Right?

19 A. Well, when you say the rate case start, what
20 do you mean by that?

21 Q. Neither a complaint case by Staff or OPC or a
22 rate increase case by the company, neither of those can be
23 filed until January 1, 2006 or later. Correct?

24 A. That's when the case would be filed, yes.

25 Q. And the rates wouldn't change, at the

1 earliest, until June 30, 2006. Correct? If you know. If
2 you don't know the terms of the stipulation, that's fine.
3 You're familiar with the EC-2002-1 stipulation and order
4 approving it. Correct?

5 A. Yes. I guess my problem with that is that the
6 test year that impacts those rates --

7 Q. That's not my question. The rates would not
8 change until July 1 or beyond of 2006. Correct?

9 A. Yes.

10 MR. LOWERY: That's all I have, your Honor.

11 JUDGE THOMPSON: Thank you, Mr. Lowery.

12 Redirect, Ms. Shemwell?

13 MS. SHEMWELL: No questions from the Bench?

14 JUDGE THOMPSON: No questions from the Bench.

15 REDIRECT EXAMINATION BY MS. SHEMWELL:

16 Q. Actually, Judge Thompson asked you a number of
17 questions concerning liabilities last week; isn't that
18 right?

19 A. Yes.

20 Q. He asked you to assume that 6 percent of
21 generation was a benefit. Do you remember that?

22 A. Yes.

23 Q. Are there any off-setting detriments?

24 A. Well, I believe I last week tried to discuss
25 those, although I didn't really have any quantification in

1 front of me. There is information in the 10K, which is a
2 public document, that refers to capital costs and I believe
3 we talked about several of these pages.

4 I believe in the exhibit that was filed,
5 starting on page 151 or I guess at the bottom of page 150,
6 as I go through those pages, just on the capital costs
7 alone, I total up more than a billion dollars. And they're
8 basically related to generation assets, future capital
9 costs. And if 6 percent were allocated to Illinois
10 customers, that would be I believe in the neighborhood of
11 \$65 million.

12 Q. I think the point has been made that these are
13 just capital expenses. Can you fully quantify environmental
14 exposures with these capital expenses?

15 A. No. In reviewing the 10K, going beyond that,
16 there's a section beginning on page 152 where they talk
17 about remediation which would be costs that could be -- for
18 an example, what I saw in the last UE gas case in the area
19 of the manufactured gas plants, they had actually gone out
20 and done some clean-up and those expenses would be part of
21 the remediation.

22 And in this case, we asked for additional
23 information to quantify clean-up costs that were currently
24 known and estimated. And we received in response to DR 33 a
25 memo that the company issues towards the beginning of each

1 year that more or less goes through all of the clean-up
2 sites of UE and explains the progress in cleaning up that
3 site and discusses future remediation costs. And, for
4 example, we -- we discussed Sauget earlier, which Sauget is
5 located in Illinois.

6 Q. What is Sauget?

7 A. From my understanding, it is -- well, in a
8 discussion with the company in late January and we were
9 talking about Sauget, my understanding is that it's a dump
10 site where contaminated waste from generation facilities of
11 UE were dumped.

12 And the -- the Environmental Protection Agency
13 has determined that that's a Super -- Superfund site
14 requiring Ameren and other -- I would guess other companies
15 that have waste also on the site would be required to pay
16 for the clean-up into the future, whatever that ends up
17 being.

18 Q. Are you talking about Sauget 2?

19 A. I don't know if I really -- the DR response
20 that I'm looking at, DR 33, is proprietary and I don't know
21 how much of this I can discuss without being in-camera. I
22 don't know.

23 Q. I think you can answer that question.

24 A. Okay. From what I read in the response to the
25 DR, there is Sauget area 1 and 2 sites. And I believe

1 site -- well, let me -- I have -- let me look at this for a
2 second.

3 I believe Sauget area 2 site is the one that
4 we're currently concerned about.

5 MS. SHEMWELL: I'm going to ask about
6 reserves. Is that something that we should go in-camera
7 for?

8 MR. LOWERY: What? An amount of a reserve?

9 MS. SHEMWELL: Yes.

10 MR. LOWERY: The roughly \$30 million figure is
11 in evidence and I don't think it's secret, if that's what
12 you're going to be talking about.

13 BY MS. SHEMWELL:

14 Q. Do you know how much is specifically reserved
15 for Sauget?

16 MR. LOWERY: Your Honor, that is confidential.
17 I was talking about the 30 million for injuries and damages
18 that had previously been talked about. So if that number's
19 going to be put in, we need to go in-camera.

20 JUDGE THOMPSON: Do you need that number in
21 the record?

22 MS. SHEMWELL: I think it gives an example
23 that I'm going to want to go forward with.

24 JUDGE THOMPSON: Very well. We will go
25 in-camera.

1 (REPORTER'S NOTE: At this time, an in-camera
2 session was held, which is contained in Volume No. 16, pages
3 1475 through 1477 of the transcript.)

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1 JANIS FISCHER testified as follows:

2 THE WITNESS: Whatever --

3 JUDGE THOMPSON: We're back in public session
4 now.

5 THE WITNESS: Whatever portion that Solutia
6 was going to pay for the clean-up of Sauget will now -- if
7 they've filed bankruptcy, may end up being the
8 responsibility of the other parties.

9 REDIRECT EXAMINATION BY MS. SHEMWELL:

10 Q. We discussed -- in the 10K it's just capital
11 expenses. And Mr. Lowery was asking a line of questions
12 about wouldn't those be spent in the future. When did the
13 environmental damage occur, do you know?

14 A. Depends on which --

15 Q. Let's look at mercury. I'll refer you to a
16 page here if I can find it.

17 MR. LOWERY: I'm going to object to the extent
18 she's asking a question about the questions I asked about
19 NOx and SO2 estimates. I didn't ask any questions about
20 mercury or any estimates relating to mercury clean-up.

21 MS. SHEMWELL: No, but I believe that
22 Ms. Fischer indicated that the damage had occurred prior and
23 I'd like to point out a couple of instances to support her
24 answers to him. He was asking about capital expenses in
25 general.

1 JUDGE THOMPSON: This seems to me to exceed
2 the scope of cross.

3 MR. LOWERY: That's my objection, your Honor.

4 JUDGE THOMPSON: I'm going to sustain the
5 objection.

6 MS. SHEMWELL: Okay.

7 JUDGE THOMPSON: I don't recall hearing
8 anything about mercury previously.

9 BY MS. SHEMWELL:

10 Q. Mr. Lowery was talking about capital expenses
11 and asked you if you believed that CIPS should pay for
12 those.

13 A. Yes.

14 Q. Part of your response was, I believe, that
15 CIPS should include -- should be included if they benefited
16 from the generation; is that correct?

17 A. Yes.

18 Q. Would you explain that a little more?

19 A. Well, in the example he gave with the NOx and
20 the SO2 -- and I have a very limited knowledge of the power
21 plants, but I believe when they set up the generation units,
22 the amount of emissions is the result of what type of
23 generation they put into place and what type of apparatuses
24 they put into place with the generation to determine the
25 amount of SO2 levels and NOx levels that are emitted into

1 the atmosphere.

2 And at the time they put that generation in
3 place, they make a determination as to what costs they're
4 willing to incur to emit whatever amount of SO2 and NOx into
5 the atmosphere.

6 And so the fact that they made the
7 determination of how to set up those generation units and
8 the customers in Illinois and Missouri benefited --
9 benefited from the generation at those sites up and to the
10 date of the transfer, that whatever method of allocation of
11 the ultimate cost to get those emissions up to the standard
12 that the EPA or whoever determines is the acceptable level,
13 that that be -- should be the responsibility of all the
14 customers that benefited from that generation from the point
15 it was put into place until the date of the transfer.

16 And after the transfer -- I mean, if you pick
17 an allocation based on generation and you can allocate some
18 before and some after, there may be a way to calculate that
19 other than the 92 percent, but I believe it should be split
20 out between all of the people or all the customers that
21 benefited.

22 Q. If we look on page 151, and it says at the
23 top, Under the Clean Air Act, which is referring to SO2 and
24 NOx, we can look in the paragraph that starts, The EPA.

25 MR. RAYBUCK: Excuse me. What page is this?

1 MS. SHEMWELL: 151 of 184.

2 THE WITNESS: Where it mentions October 1998?

3 BY MS. SHEMWELL:

4 Q. Is that the date of the rule?

5 A. It says the EPA issued a rule in October 1998.

6 Q. Requiring reduction to reduce the emission of
7 NOx. Right?

8 A. Yes.

9 Q. This includes only capital expenses as
10 Mr. Lowery was pointing out. Are these capital expenses the
11 only environmental costs?

12 A. I guess I would classify it as capital costs,
13 capital costs as opposed to expenses. Capital costs end up
14 in rate base for which companies receive a return. If they
15 borrow money, interest is an expense that customers pay for.

16 When you're asking about capital expenses or
17 capital costs, if you go further into the 10K, it lists
18 additional remediation which I would classify more as the
19 expenses, the clean-up, the litigation and the things that
20 will not become part of rate base but will become part of
21 operating expenses.

22 Q. He was asking you about your concern with
23 environmental liabilities. Are these capital costs the only
24 concerns you have in terms of environmental liabilities?

25 A. No. Also in the further sections where we

1 talk about remediation and -- we talk about remediation, we
2 talk about litigation costs, any other costs that would
3 evolve from the environmental liabilities that currently are
4 reflected in the 10K.

5 Q. Judge Thompson asked you why Staff is
6 concerned in this case when all the assets being transferred
7 have been paid for by Illinois. Do you agree that all of
8 the assets being transferred have been paid for by Illinois
9 customers?

10 A. Well, I think the distinction needs to be made
11 that when I look at the transaction occurring in -- for the
12 transfer, there are assets that are fixed assets and I
13 believe those are referred to as the T&D.

14 And in that case, transmission assets which
15 were currently allocated between Missouri and Illinois, I
16 believe \$40 million of transmission assets that were
17 currently -- or prior to the transfer allocated to Missouri
18 would have been paid for by Missouri ratepayers.

19 Beyond that, there are other assets in the
20 transfer that may or may not have been paid by Missouri or
21 if it's like the situation of some of the liabilities, I
22 can't make a determination from what has been provided, what
23 has been paid by Missouri and what has been paid by Illinois
24 unless there's some specific indicator and an account
25 description to tell me that.

1 Q. Mr. Lowery asked you if Staff could argue
2 adjustments in a rate case and you started to say something
3 about the application. Would you finish your answer?

4 A. I believe that while the Staff would argue
5 that there should be disallowances, for example, of the
6 6 percent, my concern is that in the application, it asks as
7 one of the conditions that the Commission approve that the
8 consideration in the transfer is reasonable and prudent.

9 I'm not sure if that's exactly the
10 terminology, but to me that indicates that you're saying UE
11 received enough that they should be willing to assume the
12 future consequences of those liabilities or those reserves.

13 And if that's the case, then I think we would
14 have a hard time saying that we would not be responsible --
15 or Missouri wouldn't be responsible for picking up the
16 6 percent of those liabilities.

17 Q. We were talking earlier about what's been
18 reserved. Mr. Lowery was asking you about reserves having
19 been made and how that would affect rate case costs. Is it
20 your understanding that all of these environmental exposures
21 that we've discussed have been reserved?

22 A. No. From my understanding, the only time they
23 actually set up a reserve is if a lawsuit has been filed.
24 And -- so that think may know of potential liabilities
25 that -- say, for example, the asbestos. I believe in the 10K

1 they quantify a number of lawsuits that have been filed, but
2 that doesn't preclude there being additional ones.

3 And from my understanding, the reserve would
4 only include estimates for those lawsuits currently filed.
5 Future lawsuits related to asbestos would not have been
6 considered in the reserve.

7 Q. Mr. Lowery asked you a series of questions
8 about detriments and would it affect safe and reliable
9 service. Do you believe that whether -- do you believe that
10 that's the only standard for determining a detriment is
11 whether or not safe and reliable service will be affected?

12 MR. LOWERY: Objection, calls for a legal
13 conclusion.

14 JUDGE THOMPSON: I don't believe that it does.
15 I'm going to overrule the objection.

16 You may answer, if you're able.

17 THE WITNESS: Well, in my view, the detriment
18 also goes to reasonable cost. And that is where I find
19 problems with the transactions is that I don't believe -- I
20 believe that the -- that detriments arising from things
21 beyond just safe, reliable service -- I mean, to me cost is
22 a consideration in a transfer case.

23 MS. SHEMWELL: That's all I have, Judge.
24 Thank you.

25 JUDGE THOMPSON: Thank you.

1 Now, it occurs to me that I neglected to allow
2 recross based on her previous trip to the witness stand. I
3 don't know if either of you have any.

4 MR. LOWERY: I do not.

5 MR. MICHEEL: Nor do I, your Honor.

6 JUDGE THOMPSON: Okay. Well, in that case, no
7 harm, no foul.

8 MR. LOWERY: Didn't forget anything important.

9 JUDGE THOMPSON: You may step down. Thank you
10 very much for your testimony.

11 We're going to come back at 1:30. Have a nice
12 lunch.

13 (A recess was taken.)

14 JUDGE THOMPSON: I believe Mr. Meyer is the
15 next witness; is that right? You've already been up there,
16 once; is that right?

17 THE WITNESS: Yes.

18 JUDGE THOMPSON: I'll remind you you're still
19 under oath. And I believe your testimony has already been
20 received. Right?

21 Mr. Micheel?

22 MR. MICHEEL: No questions.

23 JUDGE THOMPSON: Mr. Lowery?

24 MR. LOWERY: Thank you, your Honor.

25 Mr. Meyer's lawyer's not here, so perhaps we ought to wait a

1 moment.

2 JUDGE THOMPSON: We had so many in the room I
3 thought somebody would pinch hit.

4 (Off the record.)

5 JUDGE THOMPSON: Mr. Lowery, fire away.

6 GREG MEYER testified as follows:

7 CROSS-EXAMINATION BY MR. LOWERY:

8 Q. Good afternoon, Mr. Meyer.

9 A. Good afternoon.

10 Q. Union Electric hasn't built a coal-fired power
11 plant since, what, the '60s or '70s? Does that sound about
12 right?

13 A. It's been prior to my tenure here and I
14 started in '79.

15 Q. So it's got to be back in the '70s at least?

16 A. That would be my understanding.

17 Q. I want you to consider the following
18 hypothetical. Assume that in the '60s or we'll even say in
19 the '70s whenever UE last built a coal-fired plant, that UE
20 spent \$100 million on capital expenditures directly related
21 to installing SO2 or NOx pollution control equipment. Okay?
22 Follow me so far?

23 A. Okay.

24 Q. And assume further that in order to comply
25 with the then existing SO2 and NOx regulations, whatever

1 they might have been, that all UE would have had to spend at
2 that time was \$10 million of capital expenditures on that
3 kind of equipment. Okay?

4 A. Yes.

5 Q. Is it Staff's position that Staff would have
6 sat idly by at that time and allowed UE to spend an extra
7 \$90 million and allow that in recovery in rates for
8 pollution control equipment that the law did not require
9 when that plant was put in service?

10 A. I can't give you a yes or no because I think
11 your example is very broad. What I would -- what I would
12 answer to is that what we would do is look at all the
13 circumstances surrounding the decision to spend 100 million,
14 look at the ramifications of the 10 million. And when we
15 considered all the facts, then we would look at our
16 position. So I don't know that I can give you a yes or no.

17 Q. It might be though that it's not prudent to
18 spend an extra 90 million when the law doesn't require it to
19 be spent. Correct?

20 A. That -- that would -- that would be a
21 consideration that we would have to look at, that's correct.

22 Q. So there's no guarantee that if UE back 30, 40
23 years ago, I think in Ms. Fischer's words, sat up their
24 plants to already include this SO₂ and NO_x pollution control
25 equipment, there's no guarantee UE would have recovered any

1 of that in rates, that extra expenditure. Correct?

2 A. I wouldn't agree with that, no. I can cite
3 you an example.

4 Q. You would guarantee that UE, if they'd spent
5 90 million more than the law would have required them to
6 spend, would have recovered that 90 million? You're going
7 to guarantee me that?

8 A. I won't guarantee you anything, Mr. Lowery.
9 What I was trying to explain is that I can provide you an
10 example where an Missouri utility has installed an electric
11 generating plant has installed scrubbers and those scrubbers
12 are in rate base, if that's your question.

13 MR. LOWERY: Thank you Mr. Meyer. That's all
14 I have.

15 QUESTIONS BY JUDGE THOMPSON:

16 Q. I've been waiting all day and here we are
17 after lunch and I would like to hear about some detriments.
18 Do you see any detriments, if this transfer is approved, in
19 the area of liabilities? Is that what you're here to
20 testify about?

21 A. Yes. Yes.

22 Q. And what exactly are the detriments that you
23 see?

24 A. Well, let's start with the ones that were
25 discussed this morning. I think Ms. Fischer proposed or

1 testified that she has been able to identify approximately
2 \$1 billion of capital expenditures to come into compliance
3 with environmental concerns that the company has identified
4 in their 10K for UE generating plants.

5 There is no condition currently in the asset
6 transfer for AmerenCIPS -- or I'm sorry, the Ameren -- the
7 transfer to AmerenUE Illinois property to assume any of the
8 6 percent when those assets have to be placed on those
9 generating facilities. That is -- go ahead. I'm sorry.

10 Q. I just want -- I was writing, making notes
11 here.

12 What was the second one? No provision in the
13 agreement --

14 A. There is no provision in the asset agreement
15 that I'm aware of that addresses that. Now -- but what's
16 even more paramount in my mind is that the company's
17 identified -- and I'll accept Ms. Fischer's \$1 billion to
18 comply with the environmental -- of capital expenditures.

19 And those capital expenditures, to my
20 knowledge, have not been included in the least cost analysis
21 that the study -- that the company put together to look at
22 this -- this -- this proposal. If you -- if you look at or
23 if you --

24 Q. So the concern of the 1 billion in capital
25 expenditures is that we don't know what it is or where it

1 was spent?

2 A. It's not that they don't know where it is.
3 They've identified -- the company has identified the
4 ramifications of where they would spend -- why they would
5 have to spend the billion dollars.

6 Q. Okay.

7 A. But they did not include that liability to --
8 from my knowledge, in their least cost analysis.

9 Q. Okay.

10 A. If you provided that -- if you put that in --
11 and I was present when Mister -- when Dr. Proctor testified
12 that the margin was thin on the benefits of this program,
13 this -- that billion dollars may actually suggest that you
14 shouldn't -- we shouldn't do the transfer.

15 Q. Now, is it your opinion that the testimony was
16 that that billion has to be spent?

17 A. Well, it's --

18 Q. I guess what I'm saying is in the world of
19 liabilities, is this a contingent liability or is this a
20 liability that has become fixed?

21 A. I would say it's contingent. But it's
22 obviously of a degree of -- I don't want to say certainty,
23 but it's of -- to a degree that they believe -- that the
24 company believes that they had to disclose it in their 10K.

25 Q. Okay.

1 A. That would be the capital portion of the
2 liability.

3 Q. Okay. What else?

4 A. The other detriment would rely -- and I'll
5 specifically address one, the asbestos-related liabilities.
6 There is -- from what we've gathered, there are dollars that
7 have been charged to a reserve for asbestos-related lawsuits
8 currently. But as you can see from this morning, there
9 is -- there's difficulty in identifying the magnitude of
10 those dollars.

11 I think we -- the Staff attempted to generate
12 answers from both Mr. Getz and Mr. Weiss about the exact
13 nature of those dollars. And, to be quite honest, I didn't
14 hear that they could.

15 And the reason that's important to -- excuse
16 me, in my opinion, is that Ameren is filing in Illinois a
17 docket that seeks approval for the IP -- what I call the
18 Illinois Power, IP acquisition. In that application they
19 address the asbestos-related issue because they ask for a
20 writer in that case.

21 And one of the ramifications, one of the
22 reasons for the writer -- and I can -- I'll quote you from
23 the application, Ameren does seek approval now for one
24 change in electric rate design to be effective in the
25 future. Illinois Power is subject to potential liability

1 with respect to several environmental matters, including
2 significant asbestos claims arising from Illinois Power's
3 past operation.

4 The timing of the imposition and the amounts
5 of the asbestos liabilities are difficult to predict. And
6 it is also difficult to predict at this point what portion
7 of any asbestos liabilities might be covered by insurance.
8 The cost of these asbestos claims have a potential to be
9 both large and volatile.

10 Ameren does not believe that standard
11 rate-making mechanisms are adequate to address recovery of
12 these costs due to their volatile nature and potentially
13 significant size.

14 Q. Now, is that referring to operations in the
15 Illinois service area of AmerenUE?

16 A. Yes. But the reason I bring that up, Judge,
17 is it's comparison and it's -- it shows the significance of
18 a liability out there that up until the closing -- and
19 it's -- the Ameren -- the Ameren Missouri customers are only
20 protected as much as they -- as is reserved.

21 But post-closing, all of those claims in the
22 future, if the transfer is approved without any conditions
23 that -- if it's approved as it is today, all the future
24 claims for asbestos would rest on the -- entirely on the
25 shoulders of Ameren Missouri, and we don't believe that

1 that's fair. And that should have been addressed within --

2 Q. Let me examine this --

3 A. Okay.

4 Q. -- if I could. So one class of liability that
5 Staff is concerned about consists of potential environmental
6 claims; is that correct?

7 A. That's correct.

8 Q. Okay. Some of these arising from asbestos use
9 in the past. Right?

10 A. Correct.

11 Q. And others arising from other environmental
12 situations?

13 A. Manufactured gas plants.

14 Q. Okay. And let's say the transfer does not go
15 through.

16 A. Okay.

17 Q. Then Missouri ratepayers would shoulder
18 whatever costs might arise in the future from these together
19 with the ratepayers in the Illinois Metro East area. Is
20 that it?

21 A. It would be the -- to put it in the terms of
22 percentage, it would be the 92 and the 6 percent with
23 2 percent going to wholesale.

24 Q. So, in other words, the detriment is not that
25 these liabilities exist. The detriment is that the Illinois

1 ratepayers will escape paying a share of them if they do
2 come to pass?

3 A. Correct. There is no provision for --

4 Q. Okay. Now, wouldn't it be possible to amend
5 the agreement in order to provide that the Illinois
6 ratepayers would remain liable for a pro rata share of
7 environmental damage that may have occurred while they were
8 benefiting from the operations -- AmerenUE's operations in
9 that area?

10 A. Well, I'll give you my opinion. And the
11 reason I'm hesitant is that we've been -- the Staff's been
12 informed that the asset transfer can't be amended because
13 it's been approved by the Illinois Commerce Commission.

14 Q. Okay. But we're not concerned with them, are
15 we?

16 A. I'm just --

17 Q. We're a different Commission in a different
18 state.

19 A. I'm giving you the hurdles that were told to
20 us.

21 Q. As far as you know, do we care what they do in
22 the Illinois Commerce Commission?

23 A. I wouldn't go so far as to say we don't care.

24 Q. You're not a lawyer. Right?

25 A. Okay. No.

1 Q. So setting Illinois, that sovereign and proud
2 state aside for a moment, as far as you know, is there any
3 reason why you couldn't sew them into the agreement?

4 A. No. And --

5 Q. Thank you.

6 A. Sorry.

7 Q. So these are environmental claims. And am I
8 correct that some of them are certain and some of them are
9 less certain?

10 A. Well, some of them have been reserved for.

11 Q. Meaning?

12 A. Those have -- from what I understand this
13 morning, those have had lawsuits filed which have become --
14 the company has decided that they need to reserve them at
15 this time.

16 Q. And by that you mean the company has set aside
17 funds against the possibility of future lawsuits; is that
18 correct?

19 A. They would -- and that's been expensed on the
20 proper jurisdictions.

21 Q. Now, are those funds going to be given away in
22 this transfer?

23 A. No. Those funds that have been accrued for
24 and set into a reserve, it's my understanding that those
25 will not be transferred pending the outcomes of those

1 lawsuits.

2 Q. Okay.

3 A. Those will be the mechanism to pay off those
4 lawsuits if -- if they're adequate.

5 Q. And do you know whether liability for these --
6 this environmental damage, do you know whether that is
7 apportioned between ratepayers and shareholders?

8 A. In my experience, there is no provision for
9 shareholders.

10 Q. Okay. Now, are there any other classes of
11 liabilities other than the environmental? For example, I
12 think Ms. Fischer spoke of general corporate liabilities.

13 A. Yes. There's -- when you review the work
14 papers of Mr. Getz and in conjunction with Mr. Weiss and
15 Ms. Fischer was the primary person that put together this
16 analysis, but I am familiar with it.

17 There are -- when you break down the accounts
18 that Mr. Weiss provides in his Supplemental Surrebuttal,
19 when you break those accounts down and get the liabilities
20 that comprise those dollars, there are mentions -- or
21 descriptions of AmerenUE corporate. And that's -- that's
22 the extent of the detail provided for those liabilities.

23 At this point we would -- we don't have a
24 comfortable feeling that those -- or we don't have a
25 position at this point because we're not exactly positive of

1 all the components that make up the corporate.

2 Q. So am I correct in understanding that it's
3 Staff's position that Staff does not know whether those
4 general corporate liabilities have been appropriately
5 apportioned. Is that it?

6 A. That would be correct.

7 Q. Okay. Now, what about the environmental?
8 Does Staff take the position it does not know or is Staff of
9 the opinion that it is certain that they have been
10 improperly apportioned?

11 A. To the extent that there isn't a provision for
12 the environmental liabilities to go forward into the future
13 for events that were known prior to the closing, the Staff
14 feels that this transfer agreement under-compensates Ameren
15 Missouri for that particular part of the transfer and causes
16 a detriment.

17 Q. Very well. So Staff is certain in that
18 respect?

19 A. Especially given our -- our previous
20 discussion on asbestos, absolutely.

21 Q. Okay. What is the magnitude, what is the
22 dollar amount of that detriment, if you are able to assign a
23 dollar figure to it?

24 A. I don't have a dollar impact. I can tell you
25 that the company disclosed in their 10K that it could -- I

1 misread that. So I don't have a dollar. I know it exists,
2 I know it's a concern of the company in other proceedings
3 that it's dealt with either in other jurisdictions or in
4 other transactions that have involved its affiliates -- its
5 other affiliates.

6 Q. Who do you think could tell me the dollar
7 impact of that class of liability? Do you think Mr. Moore
8 could?

9 A. My suggestion would be that the -- the person
10 that would best have that knowledge would be Mr. Sullivan
11 and Ms. Knowles of Ameren.

12 Q. Okay. And is either one of them going to
13 testify in this proceeding?

14 A. Not to my knowledge --

15 Q. Okay. Now --

16 A. -- but --

17 Q. -- with respect to the general corporate
18 liabilities, you indicated that Staff's position is that
19 Staff lacks sufficient knowledge to know whether those have
20 been appropriately allocated. Am I correct consequently
21 that you do not have a dollar impact for that class of
22 liabilities?

23 A. I believe the -- the work papers that were
24 developed would have -- we could get you the total
25 corporate. I don't have that with me.

1 Q. Okay. In other words, you could say those
2 liabilities amount to X, but because you don't know if
3 they've been appropriately handled or not with respect to
4 the transfer, you can't say what the dollar impact of the
5 detriment, if any, would be. Right?

6 A. Correct.

7 Q. Okay. Now, those are two classes of
8 liabilities. Are there any more?

9 A. Well, the -- I -- I would offer that what we
10 talked about in the capital costs would be also the
11 generation, which could relate to the asbestos.

12 Q. Is that a separate class of liability or is
13 that part and parcel of these environmental liabilities
14 we've been talking about?

15 A. I think they're part and parcel. I -- the
16 reason I -- the reason --

17 Q. I'm trying to get a survey of all the types of
18 liabilities we need to be concerned about.

19 A. The reason I -- I hesitate to not is that in
20 the company's arguments there's a distinction between
21 generation and T&D. And I just wanted to make sure that
22 when we talk about generation liabilities, that everyone
23 understands that there could be an overlap in
24 environmental --

25 Q. Okay.

1 A. -- because of asbestos and generation --

2 Q. Fair enough.

3 A. -- because of asbestos.

4 Q. You said generation and what? D&D?

5 A. T&D, transmission and distribution.

6 Q. Very well. The generation is staying with UE,
7 isn't it?

8 A. Right. And the company's argument is that
9 because it stays with UE, it should -- all the liabilities
10 should be picked up by UE.

11 Q. Whereas, Staff's view is that the ratepayers
12 in Metro East should be on the hook for 6 percent of that?

13 A. They should be -- they should be responsible
14 for 6 percent of any liability that was known or that was --
15 that was alleged to be the result of the -- the lawsuit
16 claims, yes.

17 JUDGE THOMPSON: Thank you very much. That's
18 all the questions that I have for you.

19 Recross based on questions from the Bench,
20 Mr. Micheel?

21 MR. MICHEEL: I think I have just one, maybe a
22 few more.

23 RECROSS-EXAMINATION BY MR. MICHEEL:

24 Q. Mr. Meyer, Judge Thompson just asked you a
25 question about the Illinois -- AmerenUE Illinois ratepayers

1 being responsible for liabilities. Do you recall that
2 question?

3 A. Yes.

4 Q. Help me understand your position. Is it the
5 Staff's view that any liabilities that arise prior to the
6 transfer should be apportioned to the Illinois customers,
7 assuming -- is that Staff's position?

8 A. If those liabilities were apportioned to
9 AmerenUE Illinois customers in the past, that the consistent
10 approach should be applied all the way up until the closing.
11 There shouldn't be a -- just like I can -- if I could, there
12 shouldn't be the discretion of the company to choose when
13 that liability is recognized on their books.

14 Q. Well, let me give you a hypothetical example.
15 Let's say that there's some hazardous spill at the AmerenUE
16 Illinois property that occurs today. Can you make that
17 assumption?

18 A. Yes.

19 Q. And let's assume that the transfer goes
20 through next month. Can you make that assumption?

21 A. Okay.

22 Q. And now let's say that a year from now a
23 lawsuit is filed based on the spill that has occurred prior
24 to the transfer. Can you make that assumption?

25 A. Okay.

1 Q. Could you tell me in that situation -- let's
2 say then a liability arises of \$1 million. In that
3 situation, what is Staff's view of the resolution of that?

4 A. Okay. And before we go -- before I give you
5 my answer, I just want to make sure I understand -- I got
6 all the conditions. There was a hazardous spill on AmerenUE
7 Illinois property today?

8 Q. Yes.

9 A. And next month the transfer is approved?

10 Q. Yes.

11 A. And in a year from now a lawsuit is filed?

12 Q. Yes. And it results in \$1 million liability.

13 A. And it results in \$1 million liability.

14 Q. And I want to know under the Staff's position,
15 how would that million dollars be apportioned?

16 A. The million -- first of all, you'd have to
17 look at the circumstances surrounding the spill because
18 some -- as -- as we're aware, some liabilities would carry
19 100 percent assignment to just AmerenUE Illinois.

20 If this incident did not qualify for
21 100 percent assignment, it would be the Staff's position
22 that this liability -- and under normal operating conditions
23 for similar incidents prior, if that liability was booked
24 92, 6 and 2 -- 92 percent AmerenUE Missouri, 6 percent
25 AmerenUE Illinois and 2 percent wholesale -- the Staff would

1 contend that should be the proper allocation for that.

2 Q. And what is your understanding, based on that
3 hypothetical, that would happen if the transfer's approved
4 pursuant to what AmerenUE has requested?

5 A. It would be 98 AmerenUE Missouri, 2 percent
6 wholesale.

7 MR. MICHEEL: Thank you very much.

8 JUDGE THOMPSON: Mr. Lowery?

9 RECROSS-EXAMINATION BY MR. LOWERY:

10 Q. You mentioned the 1 billion of capital
11 expenditures that Ms. Fischer talked about. You recall
12 that?

13 A. Yes, I do.

14 Q. That 1 billion that she's talking about would
15 all be expended -- would all be expended in the future to
16 control emissions that would take place from the time the
17 capital expenditure, the capital equipment is installed
18 going forward. Correct?

19 A. Those are for capital expenditures post this
20 transfer, that's correct.

21 Q. So the equipment would be designed to control
22 emissions that would be taking place -- assuming the
23 transfer is approved, that would be taking place at a time
24 that Missouri is getting 98 percent of that generation.
25 Correct?

1 A. That would be correct.

2 Q. Now, you also had a discussion I believe with
3 the Judge about asbestos?

4 A. Asbestos, correct.

5 Q. Do you have a copy of Exhibit 7-- excuse me,
6 Exhibit 58 or 59, the 10K?

7 A. Yes, I do.

8 Q. Can I direct your attention to what's
9 marked -- or what's paginated as page 154 in the upper
10 right-hand corner?

11 A. Okay.

12 Q. The second paragraph under Asbestos-related
13 Litigation, would you agree that that paragraph deals with
14 potential asbestos claims arising from the generating
15 plants? If you look at the first sentence in the second
16 paragraph.

17 A. The asbestos claims are related to generating
18 plants, if that's your question.

19 Q. That's correct. You agree with that?

20 A. Yes.

21 Q. Look at the table on the next page. And you
22 can't -- the row headings or the column headings are on page
23 154, you have to carry over the columns on 155. But if
24 you're over on 155, the first column, that's the total
25 number of claims filed. Correct? That's under Total. Are

1 you following me? It's a little difficult to follow.

2 MR. LOWERY: Can I approach the witness, your
3 Honor?

4 JUDGE THOMPSON: You may.

5 THE WITNESS: My problem is that the table --
6 my table breaks.

7 BY MR. LOWERY:

8 Q. Mine does too.

9 On page 154, the first column, it says Total.
10 Correct?

11 A. Correct.

12 Q. Then if we flip that over, we have a row that
13 says Settled, Dismissed and Pending?

14 A. That's correct.

15 Q. And if you add those three numbers up, the 80,
16 67 and 31, we're going to get our 178 total. Correct?

17 A. Correct.

18 Q. And then the second column is Ameren. Right?

19 A. Correct.

20 Q. And the next column is UE?

21 A. Correct.

22 Q. So the third column over here on the next
23 page, on page 155, is going to be UE. Correct?

24 A. Right.

25 Q. Okay. So you're with me?

1 A. Yes.

2 Q. So 50 of the claims against UE have been
3 dismissed. Correct?

4 A. That's what this report says, yes.

5 Q. You don't know what the total liability may be
6 in the future for asbestos-related claims arising from
7 generation, do you?

8 A. No.

9 Q. If there was \$100 million, let's say -- and
10 we're talking about generation because that's what this
11 deals with. Correct?

12 A. These -- these claims are, from what I've
13 read, alleged exposure from generating plants.

14 Q. So if we have \$100 million later paid on
15 asbestos claims arising from generation, your contention is
16 that \$6 million of that ought to stay with Illinois?

17 A. There should have been a provision in the
18 asset transfer for that.

19 Q. It would be \$6 million though. Right?

20 A. If it came out to be 100 million, it would be
21 6 million.

22 Q. It's not 100 million?

23 A. No. I never have said that.

24 Q. And not transferring, if I can use that word,
25 6 mill-- that \$6 million to AmerenCIPS would only be a

1 detriment if the overall benefits that Missouri gets from
2 having 98 percent of the generation don't exceed that
3 number. Correct?

4 A. Well, I think as you've heard from other
5 witnesses, that that benefit is narrow, at best.

6 Q. But if the benefit exceeds that number -- just
7 answer my question.

8 A. I'm sorry.

9 Q. If the benefits of the generation exceed these
10 unknown amounts that may or may not be paid, then even in
11 your view, there would only be a detriment if the benefit
12 failed to exceed those amounts. Correct?

13 A. I -- I guess where I -- what I would have to
14 answer is that given this liability, I'm not sure inputting
15 that circumstance into the -- into the least cost -- or into
16 the analysis the company performed, that it would be still
17 an overall benefit.

18 Q. But if the benefit exceeds the 6 percent of
19 these huge reliabilities you're worried about -- that's the
20 assumption you need to make. If the benefit exceeds it,
21 this isn't a detriment. Right?

22 A. But it hasn't been identified today.

23 Q. Answer my question. If the benefit exceeds
24 it, then it wouldn't be a detriment. Correct?

25 A. If the company could show that the benefit --

1 Q. That's not my question, what the company can
2 show.

3 A. Well, I'm not finished with my answer, so --
4 go ahead and answer your question -- ask your question
5 again.

6 Q. In hindsight, when we get out 20 years from
7 now, if it turns out that the benefit exceeded the total of
8 the 6 percent of these unquantifiable liabilities you're
9 worried about, if the benefit exceeds those, then there's
10 not a detriment. Correct?

11 A. I'm not willing to go out 20 years to find out
12 that benefit.

13 Q. You don't know what --

14 JUDGE THOMPSON: Mr. Meyer --

15 THE WITNESS: So the answer is no.

16 JUDGE THOMPSON: Thank you. You must answer
17 yes, no or I don't know unless the question clearly calls
18 for a narrative.

19 BY MR. LOWERY:

20 Q. Do you recall us talking about Exhibit 75 this
21 morning?

22 A. Yes, I do.

23 Q. Do you have a copy of that? That's Staff's
24 Accounting Schedules from the EC-2002-1 case.

25 A. No, I do not.

1 MR. LOWERY: May I approach, your Honor?

2 JUDGE THOMPSON: You may.

3 BY MR. LOWERY:

4 Q. Now, let's go back to my example, the
5 \$100 million. And we've got 6 percent that, in your view,
6 ought to stay with CIPS regardless. Correct?

7 A. The -- if it's -- if you're relat-- if this
8 100 million now is related to your hypothetical on asbestos,
9 yes.

10 Q. Okay. It's not certain that that's going to
11 be recovered in rates by UE in the future anyway, is it?

12 A. I haven't made any rate-making determinations
13 in that area.

14 Q. In fact, Staff does propose adjustments in
15 rate cases, do they not?

16 A. Yes.

17 Q. And the \$5.2 million on Exhibit 75 on page --
18 Accounting Schedule 10-6 that's part of Exhibit 75, that's a
19 \$5.2 million reduction proposed by Staff in the last rate
20 case. Correct?

21 A. Adjustment S1714 reduces operating expenses by
22 5.2 million.

23 Q. So the Staff is not powerless to propose
24 disallowances if there's a liability or a cost that's
25 incurred in the future that the Staff doesn't believe

1 appropriately should be recovered for Missouri ratepayers.

2 Correct?

3 A. Well, I would agree that we have the ability
4 to make disallowances of expenses, but I don't believe --

5 Q. You'd agree that you do have that ability?

6 A. Yes, I do.

7 Q. And the Commission ultimately has to determine
8 what a just and reasonable rate is. Correct?

9 A. That's one of their goals -- one of their
10 missions, I'm sorry.

11 Q. And one of the elements that the Commission
12 has to look at is what the appropriate cost of service
13 should be. Correct?

14 A. I would assume that that's what they look at.

15 Q. And if the Commission agrees with Staff that
16 an amount should be normalized or disallowed, then those
17 amounts are not going to be in the cost of service. Right?

18 A. If the Commission adopts a Staff position,
19 then the -- the result of that would be reflected in a
20 Commission order.

21 Q. And a future expense is something that would
22 have to be considered in the course of all the other
23 revenues and expenses as to what the appropriate cost of
24 service should be. Correct?

25 A. The beginning basis for the Staff's cost of

1 service calculation was a 12-month test year.

2 Q. In the future?

3 A. Historical.

4 Q. From today, a future rate case is going to be
5 based on some future test year. Correct?

6 A. Do you want me to -- do you want me to respond
7 in relation to this company or what?

8 Q. We're --

9 A. I'm not going to --

10 Q. This company is not in a test year right now.
11 Correct?

12 A. You're 90 days away.

13 Q. But we're not in a test year right now?

14 A. You could be. I mean, it depends on when you
15 choose, Mr. Lowery, for your test year. You've got a
16 Commission order out there currently that says your test
17 year starts in 90 days. If you want to abide by that
18 order -- but you can adopt another test year.

19 Q. But the expenses that we're talking about here
20 would be things that would be paid in the future. Correct?

21 A. The asbestos-related charges that the Staff
22 contends should have been included or the provision that
23 should have been included in the asset transfer are either
24 expenses that the company has chose not to book currently or
25 will be lawsuits that will -- that could be being filed

1 today, tomorrow or some time in the future, correct.

2 Q. Judgments or settlements to be paid in the
3 future?

4 A. Well, the -- the Staff's position is that as a
5 condition of the transfer --

6 Q. Would the judgments or the settlements be paid
7 in the future? I understand what your position is. I'm
8 asking whether or not these payments --

9 A. Well, obviously --

10 Q. -- are going to be made in the future?

11 A. For which lawsuits?

12 Q. If we have it -- if we have a judgment or a
13 settlement that must be paid after the transfer is
14 completed, that's something that's going to be paid in the
15 future. Right?

16 A. Well, I -- I'm not trying to be difficult with
17 you, Mr. Lowery, but I need to know if you've reserved it
18 already or if it's a new one.

19 Q. Let's assume it exceeds the amount already
20 reserved for asbestos litigation.

21 A. Okay. Then it will be paid, under the
22 company's proposal, out of the -- the earnings or will be
23 booked to AmerenUE Missouri.

24 Q. And if it is within the amounts of the
25 reserve, it wouldn't have a future expense impact. Correct?

1 A. If it totally equaled that -- the amount that
2 was reserved, there -- it would just come out of the
3 reserve, there would be no other expense ramifications.

4 MR. LOWERY: That's the only questions I have.

5 JUDGE THOMPSON: Thank you, Mr. Lowery.

6 Redirect?

7 MS. SHEMWELL: May I have a few minutes,
8 Judge? Two minutes?

9 JUDGE THOMPSON: You may have a few minutes.
10 Why don't we go ahead and take a 10-minute recess at this
11 time.

12 (A recess was taken.)

13 JUDGE THOMPSON: Let's go back on the record.

14 Ms. Shemwell, redirect.

15 REDIRECT EXAMINATION BY MS. SHEMWELL:

16 Q. Judge Thompson was asking you about classes of
17 detriments. Are there any other classes of environmental
18 liabilities that would result in -- any other areas of
19 environmental liabilities that you believe would result in a
20 detriment?

21 A. Well, I guess what was failed to be mentioned
22 is that as we talked about the capital expenditures and the
23 environmental that -- the lawsuits, the remediation costs
24 associated with those, I didn't include those in my previous
25 detriment answers.

1 Q. Mr. Lowery asked you about detriments in terms
2 of rate case items. Do you agree that that's the only area
3 where this might be detrimental to the public?

4 A. No. I think that by -- and when -- I've heard
5 it in several times during this hearing. By attempting to
6 continue to push the detriment and the allocations back to
7 the rate cases would be inappropriate for the Staff.

8 It's our intention to try to get the books and
9 records of AmerenUE as correct and as accurate as possible.
10 And the reason I say that is that what we're -- what the
11 Staff tries to avoid is the perceptions that if we -- if we
12 waited to do this until a rate case, you know, it can be
13 done through an adjustment or something like that.

14 Historically what I've seen in responses to
15 alleged over-earnings or lack of requests for increases in
16 rate cases is the fact that the books and records of the
17 company prior to the Staff's or any party's initiation of
18 investigations showed that it didn't deserve the -- that
19 they weren't earning as well.

20 And if these things can be corrected
21 currently -- and they should have been components, again as
22 I spoke before, of the asset transfers -- that will get
23 these books and records -- the AmerenUE books and records
24 accurate to reflect the results as they should be.

25 Q. Besides the rate case consequences that you've

1 been discussing of not doing the adjustments now, are there
2 other detriments that you see?

3 A. Well, to me, it shifts the burden. The Staff
4 now or Public Counsel or any party would have to come
5 forward and justify the reallocation back to 92 percent of a
6 liability that would create a detriment and the transfer
7 within the confines of a rate case.

8 And it's the Staff's view that -- that that's
9 an inappropriate mechanism to -- to correct what I would
10 consider to be a condition that should have been in the
11 asset transfer if the asset transfer was truly done at an
12 arm's length transaction.

13 Q. Do you believe the benefit will exceed the
14 detriment?

15 A. At this point I -- I cannot say that I would
16 support that the benefits as presented up to this point in
17 the hearings -- when you consider the additional \$1 billion
18 that Ms. Fischer identified for capital expenditures and the
19 potential detriment that exists in the large liability area.
20 And I would just address that one in this context with the
21 asbestos, that none of -- it is a detriment.

22 Q. I'm going to ask you to turn to page 154 of
23 the 10K.

24 MS. SHEMWELL: If I may approach, Judge.

25 JUDGE THOMPSON: You may.

1 BY MS. SHEMWELL:

2 Q. This is referring to the asbestos-related
3 litigation and Mr. Lowery had some questions about this
4 litigation and I guess to whom it was assigned.

5 Mr. Meyer, would you look at the claims filed
6 against AmerenUE? Didn't Mr. Lowery direct you to that
7 paragraph?

8 A. Yes, he did.

9 Q. And the second part of that paragraph says, As
10 a part of the transfer of the generating plant -- the
11 generating plants, the transferer, or CIPS or CILCO, has
12 agreed to indemnify the transferee for reliabilities
13 associated with asbestos-related claims; is that correct?

14 A. That's what it read. And -- go ahead.

15 Q. I'm just going to ask, how do you interpret
16 that?

17 A. I think this is the second part of the
18 discussion that I thought Mr. Thompson and I might get to is
19 this is another example of the asbestos liability and the
20 exposure that -- or that -- the magnitude that we believe
21 exists out there.

22 And that when AmerenCIPS was -- or agreed and
23 was ordered by the ICC, the Illinois Commerce Commission, to
24 dissolve of its generating units, as a condition of that,
25 AmerenCIPS agreed to take on or to assume the responsibility

1 for the asbestos-related liabilities.

2 So that when you have -- and in this situation
3 that was a transaction -- or that was a transaction between
4 an unregulated subsidiary of Ameren and a regulated
5 subsidiary. And the costs were -- were absorbed by the
6 regulated.

7 In this instance, all we're asking for is that
8 the transfer to the regulated operations of AmerenCIPS
9 assume that 6 percent as -- as Ameren has asked for in
10 other -- consistent with the arguments that Ameren has
11 presented in other aspects of its operations.

12 Q. Judge Thompson discussed with you quantifying
13 detriments and I think was asking about some of the things
14 that were related to environmental. Are you aware of any
15 current estimates for clean-up costs?

16 A. The best estimate that the Staff has at its
17 disposal now, and I think it was discussed somewhat in depth
18 with Ms. Fischer, is the response to DR, Data Request, 33.

19 Q. Do you have that in front of you?

20 A. Yes, I do.

21 MS. SHEMWELL: Judge, I'd like to get this
22 marked, if I may.

23 JUDGE THOMPSON: Okay.

24 MS. SHEMWELL: It's proprietary.

25 JUDGE THOMPSON: And you say this is

1 proprietary?

2 MS. SHEMWELL: Yes, Ameren Response to DR 33.

3 JUDGE THOMPSON: This would be Exhibit 76 is
4 whose response?

5 MS. SHEMWELL: Susan Knowles of Ameren,
6 K-n-o-w-l-e-s.

7 (Exhibit No. 76 was marked for
8 identification.)

9 BY MS. SHEMWELL:

10 Q. Would you describe the quantification a little
11 more specifically?

12 MS. SHEMWELL: Let me note, Judge, for the
13 record that this is Ameren's response to Staff Data Request
14 No. 33. You'll note it was prepared by Susan Knowles.

15 JUDGE THOMPSON: Okay.

16 MS. SHEMWELL: And we marked it as 74?

17 JUDGE THOMPSON: 76.

18 MR. LOWERY: Your Honor, I'd ask that we go
19 in-camera if questions are going to be asked about this data
20 request response.

21 JUDGE THOMPSON: Very well. Are you going to
22 ask questions about this data request response?

23 MS. SHEMWELL: I am going to ask -- I just
24 asked a question that --

25 THE WITNESS: And I'm going to need you to

1 repeat it too.

2 MS. SHEMWELL: I don't think I'll ask anything
3 about numbers unless he wants to point them out.

4 THE WITNESS: If --

5 JUDGE THOMPSON: Let's stay in public session
6 as long as we can.

7 THE WITNESS: I won't go into a proprietary.

8 BY MS. SHEMWELL:

9 Q. Does this response quantify clean-up costs or
10 environmental costs?

11 A. The DR 33 provides estimates of -- at
12 different sites for AmerenUE's liability to clean those
13 sites up.

14 Q. And that includes on page 3 Sauget, which we
15 had discussed earlier, I believe?

16 A. One and two.

17 Q. There was considerable discussion about
18 Staff's ability to make adjustments in rate cases. Do you
19 agree that Staff would be able to make -- could recommend an
20 adjustment in the next rate case?

21 A. Yes. I wouldn't disagree with that premise.
22 But as I stated earlier, I don't -- I don't believe it's
23 appropriate for the Staff to have to take on the burden of
24 reducing what potentially could be liability costs or
25 liability expenses in these areas when this should have been

1 addressed in the asset transfer.

2 MS. SHEMWELL: Judge, I'd like to move for the
3 admission of Exhibit 76, please.

4 JUDGE THOMPSON: Any objections?

5 MR. LOWERY: It's designated as proprietary
6 for the record, your Honor?

7 JUDGE THOMPSON: Yes, sir.

8 MR. LOWERY: No objection.

9 JUDGE THOMPSON: Exhibit 76, which is a
10 proprietary exhibit, is received and made a part of the
11 record of this proceeding.

12 (Exhibit No. 76 was received into evidence.)

13 MS. SHEMWELL: One moment.

14 BY MS. SHEMWELL:

15 Q. Mr. Meyer, would you agree that all rate
16 case -- or all the detriments in this case that you have
17 seen can be resolved in the next rate case or complaint
18 case?

19 A. No. And I think that goes to the very nature
20 of why we're here today, and that is this Commission today
21 is being asked to make a decision about a transfer. There's
22 been evidence provided that deals with two options.

23 The detriments that we had talked about before
24 in the rate cases, those are expense areas, liability areas
25 that can be done and we can argue about who would have to

1 carry the burden. However, the premise of this case is
2 whether this transfer should be done as proposed by the
3 company.

4 I think when you look at the magnitude of the
5 liability -- the liabilities in the areas of capital
6 expenses, that that falls back to the least cost and that is
7 the -- that is the central issue of this case is what
8 options did you look at to propose a transfer.

9 And I -- I can't -- let me rephrase. I don't
10 believe the Staff or any party could go into a future rate
11 case and try to reverse the decisions or ramifications of
12 the decisions that would come out of this case.

13 MS. SHEMWELL: That's all I have. Thank you.

14 JUDGE THOMPSON: Thank you. You may step
15 down, Mr. Meyer.

16 Mr. Nelson, I believe you're next.

17 MR. LOWERY: Your Honor, while he makes his
18 way to the witness stand, I don't know, and I know you don't
19 either, when the Commissioners may or may not be available.
20 Do you know if they have will have questions for Mr. Getz?

21 JUDGE THOMPSON: I have no idea. We're going
22 to proceed on the theory that they don't unless they tell us
23 otherwise.

24 MR. LOWERY: If we don't know the answer to
25 that at the end of the day, will we have to have him here

1 tomorrow?

2 JUDGE THOMPSON: Then Mr. Getz is excused.

3 And if there's a specific request to bring him back, maybe
4 you'll have to.

5 MR. LOWERY: Thank you.

6 JUDGE THOMPSON: We're starting the least cost
7 topic now and that's the last topic we have?

8 MR. DOTTHEIM: Yes.

9 JUDGE THOMPSON: Very well.

10 MR. LOWERY: It has now arrived.

11 JUDGE THOMPSON: Just want to see where we're
12 at, if we can get it done today.

13 Good afternoon, Mr. Nelson.

14 THE WITNESS: Good afternoon.

15 JUDGE THOMPSON: I'll remind you that you are
16 still under oath. Your exhibits I believe have all been
17 received.

18 So, Mr. Dottheim, you're up.

19 MR. DOTTHEIM: Yes. If I might have a moment,
20 please.

21 JUDGE THOMPSON: You may.

22 CRAIG NELSON testified as follows:

23 CROSS-EXAMINATION BY MR. DOTTHEIM:

24 Q. Good afternoon, Mr. Nelson.

25 A. Good afternoon.

1 Q. Mr. Nelson, is it your testimony that AmerenUE
2 is proposing the Metro East transfer because it is the least
3 cost option to satisfy AmerenUE's long-term capacity and
4 energy needs?

5 A. Yes.

6 Q. That is not the only reason why AmerenUE is
7 proposing the Metro East transfer, is it?

8 A. Correct.

9 Q. Is the company's contention that the Metro
10 East transfer is the least cost option to satisfy AmerenUE's
11 long-term capacity and energy needs the principal reason why
12 AmerenUE is proposing the Metro East transfer?

13 A. Yes, it is. That's what I said in my
14 testimony. Followed closely, as I previously testified, by
15 the secondary objective.

16 Q. Would AmerenUE proceed with the Metro East
17 transfer if it were not the least cost option to satisfy
18 AmerenUE's long-term capacity and energy needs?

19 A. I don't know. You'll have to give me some
20 qualifiers to that one.

21 Q. Mr. Nelson, what would you consider to be a
22 qualifier?

23 A. Well, if we just go with the statutory
24 requirements, the no-detriment standard is not a
25 quantitative one, it's a reliability one.

1 I guess your second question is helping me
2 form a better answer. AmerenUE does have a capacity and
3 resource need and it's a need that is there this summer and
4 it needs generation -- power and generation to supply that
5 need. So for reliability reasons, yes, it is possible that
6 we would want to proceed with this transaction even if it
7 were not least cost. But then we'd have to examine other
8 options, I agree.

9 Q. Is one of the principal reasons that AmerenUE
10 has proposed the transaction is such that AmerenUE would
11 become a Missouri-only utility as opposed to a Missouri and
12 Illinois utility?

13 A. That is correct.

14 Q. If the Metro East transfer were not the least
15 cost option, would the reason that AmerenUE wants to become
16 a Missouri-only utility be sufficient for AmerenUE to
17 proceed forward with the transaction?

18 A. No. I think there would have to be a need for
19 additional generation in addition to that secondary reason
20 that we talk about. And there is a need for additional
21 generation.

22 Q. Is Mr. Voytas's least cost analysis the basis
23 for AmerenUE's belief that the Metro East transfer is the
24 least cost option to satisfy AmerenUE's long-term capacity
25 and energy needs?

1 A. Yes, it is.

2 Q. And, again, if you could identify when
3 Mr. Voytas completed his analysis that showed the Metro East
4 transfer with the least cost option for AmerenUE to meet its
5 long-term capacity and energy needs.

6 A. I believe we filed this case in August and our
7 testimony was filed in September. I think that's when we
8 submitted the least cost testimony. So his analysis would
9 have been done some time shortly before that.

10 Q. And when you say "his analysis would have been
11 done," his analysis showing that the Metro East transfer is
12 the least cost option would have been completed some time
13 shortly before the filing of the case in August?

14 A. I don't remember whether it was done -- I
15 don't think it was complete in August. I think that we
16 worked on it and that was part of the reason for the delay
17 in filing testimony this September. So it wasn't absolutely
18 complete in August, as I remember.

19 Q. The decision, nonetheless, was to go forward
20 with the filing of the case in August of 2003 with
21 Mr. Voytas's least cost analysis not having been completed
22 at that point; is that correct?

23 A. As I said, I don't remember exactly when it
24 was complete. I know it wasn't absolutely complete until
25 his testimony was ready and filed.

1 Q. And who made the decision to file the case at
2 that point?

3 A. Probably Steve Sullivan, our general counsel.

4 Q. And were there any authorizations that were
5 necessary before the company could file the case in August
6 for the Metro East transfer?

7 A. Yes, sir. We discussed those the other day
8 when you showed me the Board resolution from a few years
9 ago. That was one condition that was necessary.

10 Q. Were there other conditions?

11 A. I don't think so. I think it was simply the
12 Board's approval to proceed with the transaction that was
13 the only thing we needed before we could file.

14 MR. DOTTHEIM: At this time I'd like to have
15 marked for purposes of identification an exhibit. I don't
16 know if it's Exhibit No. 77?

17 JUDGE THOMPSON: This would be 77.

18 MR. DOTTHEIM: And the document is AmerenUE's
19 Response to Staff Data Request No. 35, which requests,
20 Please provide a copy of the Ameren, AmerenUE and CIPS Board
21 of Directors approval of the transaction proposed in this
22 case.

23 JUDGE THOMPSON: Okay.

24 MR. DOTTHEIM: Please include the names of the
25 board members that approved this transaction. And the

1 response is, See the attached documents.

2 JUDGE THOMPSON: And this is proprietary?

3 MR. DOTTHEIM: Yes, it is.

4 (Exhibit No. 77 was marked for
5 identification.)

6 BY MR. DOTTHEIM:

7 Q. Mr. Nelson, you appear to have a copy of that
8 document. Do you have what has been marked as Exhibit 77,
9 which is the response to Staff's Data Request No. 35?

10 A. Yes, sir.

11 Q. And I've asked you some questions previously
12 respecting that data request response. My recollection it
13 was in that instance dealing with the Joint Dispatch
14 Agreement. Am I correct?

15 A. Yes, you did.

16 Q. And I think we previously had discussed that
17 you appeared at an October 13, 2000 Board of Directors
18 meeting where you discussed the proposed Metro East
19 transfer; is that correct?

20 A. Correct.

21 Q. And I'd like to direct you to that portion of
22 the minutes of that Board of Directors meeting.

23 MR. DOTTHEIM: And, Judge, I don't know --
24 since the document is proprietary, I don't know if we need
25 to go in-camera at this point.

1 JUDGE THOMPSON: Okay. What is it that's
2 proprietary about this? I mean, it's no secret that the
3 Board of Directors approved the transaction, is it?

4 MR. FITZHENRY: It's the company's policy,
5 your Honor, that the Board of Directors minutes are
6 considered confidential for business reasons, among others.

7 JUDGE THOMPSON: Okay. So, in other words,
8 there's nothing in here specifically that needs to be
9 confidential, it's simply a blanket policy?

10 MR. FITZHENRY: That would be true. That
11 would be correct.

12 JUDGE THOMPSON: Very well. Does that fit
13 within any of the provisions of our protective order?

14 MR. DOTTHEIM: Judge, I would direct you --
15 the copy you have should have after the page with the
16 Staff's data request a page that the company I believe has a
17 policy of completing internally and submitting to the Staff
18 when AmerenUE asserts that a document that it is providing
19 is highly confidential or proprietary.

20 And I think -- and probably they could much
21 better address this than I could, but I think they maybe
22 tried to key off of the Commission's protective order and
23 check a box, so to speak, or number that indicates where
24 from the Commission's protective order they are asserting
25 the basis why they are asserting the document is covered by

1 the protective order as highly confidential or proprietary.

2 JUDGE THOMPSON: Very well. Do we need to go
3 into in-camera now?

4 MR. FITZHENRY: Yes. That would be company's
5 preference, your Honor. Thank you.

6 JUDGE THOMPSON: Okay. Counsel needs to make
7 sure there's nobody present that isn't permitted to be in
8 here during a closed session.

9 (REPORTER'S NOTE: At this time, an in-camera
10 session was held, which is contained in Volume No. 16, pages
11 1530 through 1537 of the transcript.)

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1 THE WITNESS: Mr. Dottheim, what kind of
2 forecast? I -- maybe if you'd tell me what kind, I'd
3 remember. I don't just from the word "forecast."

4 JUDGE THOMPSON: We're now in public session.

5 CRAIG NELSON testified as follows:

6 CROSS-EXAMINATION BY MR. DOTTHEIM:

7 Q. You don't recall what type of forecast --

8 A. No, I don't.

9 Q. -- those words -- those were?

10 Do you recall that the company asked for the
11 procedural schedule to be placed in abeyance while the
12 company prepared supplemental testimony?

13 MR. FITZHENRY: Your Honor, I'm going to
14 object to this line of questioning. And bear with me as I
15 explain this objection.

16 JUDGE THOMPSON: Very well.

17 MR. FITZHENRY: We have been over this ground
18 before and I understand we're in a different topic and
19 perhaps there's some overlap, but really my objection goes
20 to materiality.

21 I wonder how questions about the company's
22 prior efforts to consider the transfer of the Metro East
23 load really have any bearing on this Commission's decision
24 based on the evidence in this docket to decide whether or
25 not the transfer should, in fact, take place and the

1 questions of detriment and so forth. You know, --

2 JUDGE THOMPSON: I think he has a point,
3 Mr. Dottheim. Where are we going?

4 MR. DOTTHEIM: The purpose of the issue is the
5 least cost analysis that's been performed by the company,
6 which the Staff contends is inadequate. And the purpose of
7 my questions is to go to the least cost analysis that was
8 performed in the prior case and the --

9 JUDGE THOMPSON: But, in other words, I mean,
10 this case has to be determined on the basis of the record
11 made in this case. And so the fact that -- let's say that
12 the least cost analysis was inadequate in a previous
13 attempt. What does that have to do with us here today?

14 MR. DOTTHEIM: If it was inadequate and could
15 not be supplemented or otherwise addressed and the present
16 analysis is of a similar nature, it would also be inadequate
17 in the same manner that it was in a prior case.

18 JUDGE THOMPSON: Well, I think the objection
19 is well taken and I'm going to ask you to move along.

20 MR. DOTTHEIM: Okay.

21 JUDGE THOMPSON: Thank you.

22 MR. DOTTHEIM: If I may have a moment.

23 JUDGE THOMPSON: You may.

24 BY MR. DOTTHEIM:

25 Q. Mr. Nelson, if you recall, the least cost

1 analysis that Mr. Voytas has submitted in the pending case,
2 has that been filed in any case before the Illinois
3 Corporation Commission?

4 A. No. This analysis that he just did has not
5 been filed with the Illinois Commerce Commission.

6 Q. Excuse me. Illinois Commerce Commission.

7 A. They approved the transaction on the -- what
8 you call the inadequate least cost evidence that I submitted
9 in the round two proceeding, the Illinois Commerce
10 Commission approved it based on that.

11 Q. There is also presently pending or there was
12 pending before the Illinois Commerce Commission a filing of
13 AmerenUE to transfer the natural gas facilities of AmerenUE
14 in Illinois to AmerenCIPS?

15 A. That's correct. There's an agreed order by
16 all the parties and that -- that final agreed order is
17 pending before the Commission on the gas side.

18 Q. And if you could clarify for me in -- was
19 Mr. Voytas's test -- excuse me, least cost analysis that is
20 filed in the pending Missouri case, was that filed before
21 the Illinois Commerce Commission in the case to which you
22 are referring on addressing AmerenUE's Illinois natural gas
23 facilities?

24 A. Now, let me clarify. The -- in the 2000 case
25 before this Commission and the Illinois Commerce Commission,

1 I offered least cost testimony similar in nature to
2 Mr. Voytas's but not as comprehensive. It was based on that
3 type of testimony and other things that the Illinois
4 Commerce Commission approved the electric portion of the
5 transfer in that proceeding.

6 And then more recently we filed the gas side
7 of the transfer and that's the order that's pending before
8 the Commission. And there is no Mr. Voytas least cost
9 analysis in the gas proceeding that's before the Illinois
10 Commission right now.

11 Q. Thank you.

12 MR. DOTTHEIM: May I approach the witness?

13 JUDGE THOMPSON: You may.

14 BY MR. DOTTHEIM:

15 Q. Mr. Nelson, I'm going to give you a copy of
16 the Direct Testimony of Mr. Voytas and I'm going to direct
17 you to Schedule 2 of that document.

18 A. This case? I have that document in front of
19 me.

20 Q. And, Mr. Nelson, that's your own copy that you
21 have?

22 A. Yes.

23 Q. And if I could direct you to Schedule 2.

24 A. I'm there.

25 Q. Are you aware of any line item in that

1 schedule that includes transmission plant?

2 A. I don't believe so. If you look at the
3 heading for this schedule you'll see that it's Illinois
4 Generation Rate Base and Revenue Requirement. Even the
5 heading of the total column it's Generation Rate Base and
6 Expenses. So I don't believe it includes anything
7 transmission related.

8 Q. And that would be transmission plant or
9 transmission expenses or transmission revenues?

10 A. Correct.

11 Q. And this page relates to the least cost
12 analysis performed by Mr. Voytas?

13 A. Yes, it does.

14 Q. Do you know whether transmission plant,
15 transmission expenses, transmission revenues were considered
16 in Mr. Voytas's least cost analysis?

17 A. They were not, but they were considered by
18 Mr. Weiss in Exhibit 71.

19 Q. And the exhibit you referred to is one of the
20 exhibits that was marked this morning?

21 A. That's correct. And then the results of
22 Exhibit 71 were rolled into an additional schedule that
23 Mr. Voytas did, which is now labeled Exhibit 73. So he has
24 incorporated both the generation and transmission components
25 of the transfer as requested by Chairman Gaw.

1 Q. And I believe the various documents were
2 marked as Exhibits 71, 72, and 73 and the parties were
3 provided Mr. Weiss's work papers also, were they not?

4 A. Yes, sir.

5 Q. Mr. Nelson, can you identify why transmission
6 expenses, revenues and plant were not originally considered
7 in Mr. Voytas's last cost analysis?

8 A. Well, there were two reasons. I think I've
9 already explained them, but I'll be happy to explain them
10 again. One was that we thought it was a no-brainer.
11 Illinois jurisdiction property of AmerenUE transferring to
12 another Illinois jurisdiction utility. So it was the
13 jurisdictional aspect of it, plus the fact that we thought
14 it was a no-brainer.

15 MR. DOTTHEIM: If I may have a moment, please.

16 JUDGE THOMPSON: You may.

17 MR. DOTTHEIM: Thank you again, Mr. Nelson,
18 for your patience.

19 I don't believe I have any questions further
20 for Mr. Nelson at this point. And I'd like to at this time
21 offer into evidence Exhibit 77.

22 JUDGE THOMPSON: Any objections to the receipt
23 of proprietary Exhibit 77?

24 Hearing no objections, the same is received.

25 (Exhibit No. 77 was received into evidence.)

1 JUDGE THOMPSON: Mr. Micheel?

2 MR. MICHEEL: Yes, your Honor.

3 CROSS-EXAMINATION BY MR. MICHEEL:

4 Q. Mr. Nelson, you testified earlier today that
5 cost is not part of the statutory requirements for this
6 transfer; is that correct?

7 A. That's correct.

8 Q. If cost is not a standard with which this
9 Commission should determine this case, why did AmerenUE in
10 its Direct Testimony provide least cost testimony and
11 indicate that least cost was the main reason for doing this
12 transfer?

13 A. For further support.

14 Q. You talked with Mr. Dottheim about AmerenUE
15 and withdrawal of the round two. And you said that
16 AmerenUE -- it was AmerenUE's decision to withdraw the round
17 two transfer because the Commission hadn't made a timely
18 decision; is that correct?

19 A. No. I don't believe I said that. I said
20 Ameren, but it was actually AmerenCIPS that withdrew its
21 offer. As you know, there's two parties to a transaction
22 and AmerenCIPS was unwilling to wait around due to inaction
23 by the Commissions on its side of the fence -- its side of
24 the transaction.

25 Q. So it's your understanding that it was

1 AmerenCIPS?

2 A. I believe it is, yes.

3 MR. MICHEEL: May I approach the witness, your
4 Honor?

5 JUDGE THOMPSON: You may.

6 BY MR. MICHEEL:

7 Q. Mr. Nelson, I'm handing you a copy of the
8 Cross Surrebuttal Testimony of Richard A. Voytas filed on
9 behalf of Ameren -- or on behalf of Union Electric Company
10 d/b/a AmerenUE in Case No. EC-2002-1. And I'd like you to
11 read into the record lines 8 through 18.

12 A. Eight through eighteen?

13 Q. Yes, sir.

14 A. Beginning on -- this is the question.

15 Beginning on page 8, line 22, Mr. Drazen attempts to explain
16 AmerenUE's summer 2001 cost of purchased power. Please
17 comment.

18 Mr. Drazen testifies that in early 2001 Ameren
19 canceled the proposed transfer, referring to the proposed
20 transfer of AmerenUE Metro East service area to AmerenCIPS.
21 This wording is misleading. Ameren Energy Marketing
22 withdrew its offer to supply power to AmerenCIPS to serve
23 the AmerenUE Metro East service area due to the MPSC Staff's
24 refusal to grant expedited treatment to the proposed
25 transfer.

1 AEM's decision is not a joint Ameren decision,
2 rather the decision was strictly an AEM decision based on
3 the perspective of other market opportunities to supply
4 power versus waiting for a decision on the proposed transfer
5 based on and an elongated schedule proposed by Staff to an--
6 analyze the proposed transfer.

7 Sorry.

8 Q. Does Mr. Voytas in that testimony indicate
9 that it was Ameren Energy Marketing and not CIPS that sunk
10 that transfer?

11 A. He does. But it was both, sir. It was
12 actually a letter from Mr. Gary Rainwater on CIPS's
13 letterhead addressed to UE that actually terminated the
14 transaction, and that's what I referred to. And my guess is
15 that Mr. Rainwater did that after consulting with Ameren
16 Energy Marketing, which was the sole supplier of power to
17 CIPS.

18 Q. Would you agree with me, Mr. Nelson, at the
19 present time AmerenUE relies on 405 megawatts of capacity
20 from the Electric Energy Inc, and that's EEI, Joppa,
21 J-o-p-p-a, plant to serve AmerenUE's load?

22 A. Yes, it does.

23 Q. In reviewing your written testimony and
24 listening to your oral testimony, is it correct that you
25 believe that AmerenUE's reliance on the 405 megawatts from

1 EEI, Joppa plant after December 31st, 2005 is not an option?

2 A. It's a theoretical option, but it's not a
3 realistic option since EEInc does not seem to want to do
4 business with AmerenUE.

5 Q. In fact, your testimony -- it's your testimony
6 that the EEI contract should not even be an issue in this
7 case; isn't that correct?

8 A. Yes, that is correct.

9 Q. Is it correct that it's your belief that
10 Ameren does not control EEI?

11 MR. FITZHENRY: Excuse me, Mr. Micheel. Could
12 you be more specific? AmerenUE, Ameren Corporation?

13 BY MR. MICHEEL:

14 Q. When I say Ameren, I mean Ameren Corporation.
15 When I say AmerenUE, I mean AmerenUE. When I say
16 AmerenCIPS, I mean AmerenCIPS. When I say Ameren Energy
17 Marketing, I mean Ameren Energy Marketing. Do you
18 understand that, Mr. Nelson?

19 A. Yes, I do.

20 Q. Did you hear my last question?

21 A. Why don't you repeat it?

22 Q. Sure. Is it correct it's your belief that
23 Ameren does not control EEI?

24 A. That is my belief, Ameren does not control
25 EEI. EEI is a separate corporate entity, has a Board of

1 Directors, has a minority shareholder and Ameren does not
2 have complete control over that separate corporate entity.

3 Q. Is it correct that it's your belief that
4 AmerenUE does not have an entitlement to a portion of the
5 output from EEI's Joppa plant; is that correct?

6 A. It has an entitlement through the contract
7 period, of course. Are you talking about after the contract
8 period?

9 Q. I'm talking about does AmerenUE have an
10 entitlement both before and after the contract period?

11 A. All right. It clearly has -- AmerenUE clearly
12 has an entitlement to power under the power supply agreement
13 currently in effect through 12/31/2005. And, no, AmerenUE
14 does not have an entitlement to power from a separate
15 corporate entity that the other corporate entity does not
16 want to enter into an agreement.

17 Q. Is it correct that EEI's Joppa plant is a
18 coal-fired plant?

19 A. That is correct. Six coal-fired plants.

20 Q. Six coal-fired generators?

21 A. Yeah.

22 Q. Not six plants. One plant, six generators?

23 A. Yeah.

24 Q. Okay.

25 MR. MICHEEL: I need to get an exhibit marked,

1 your Honor.

2 JUDGE THOMPSON: Very well.

3 MR. MICHEEL: I believe it's going to be
4 Exhibit No. 78.

5 JUDGE THOMPSON: It is indeed going to be
6 Exhibit 78. And what is it?

7 MR. MICHEEL: I would say it's Ameren Services
8 joint amendment to request for authorization to transfer
9 functional control over transmission facilities before the
10 FERC in Case No. EC03-14-002.

11 (Exhibit No. 78 was marked for
12 identification.)

13 BY MR. MICHEEL:

14 Q. Mr. Nelson, I've handed you a document which
15 has been marked for purposes of identification as
16 Exhibit 78. Do you have a copy of that document, sir?

17 A. Yes, sir.

18 Q. And is that Ameren Service Company, Inc.'s
19 request before the Federal Energy Regulatory Commission to
20 join Grid America?

21 A. It appears to be, yes.

22 Q. And if you could, sir, turn to the last page
23 of that document, sir.

24 A. The letter or the filing?

25 Q. The last page of the entire document, sir.

1 A. All right.

2 Q. Are you there?

3 A. I am there.

4 Q. Do you see a verification there?

5 A. Yes, I do.

6 Q. Do you see a signature of a gentleman by the
7 name after David A. Whiteley, W-h-i-t-e-l-e-y?

8 A. Yes, I do.

9 Q. Do you know who Mr. Whiteley is?

10 A. Yes.

11 Q. And who is he?

12 A. Senior vice president of Ameren Services.

13 Q. Is he one of your bosses, sir?

14 A. I don't report to Mr. Whiteley, but yes, he is
15 on the senior team so indirectly I do.

16 Q. Okay. And does Mr. Whiteley indicate that
17 that application is true and correct to the best of his
18 knowledge and belief?

19 A. Yes, he does.

20 MR. MICHEEL: With that, your Honor, I would
21 move the admission of Exhibit 78.

22 MR. FITZHENRY: Well, your Honor, I object
23 unless there's going to be further questions to establish
24 the relevance of this document to this proceeding.

25 JUDGE THOMPSON: I agree. What is the

1 relevance of this document?

2 MR. MICHEEL: If you'd like me to lay some
3 more foundation, your Honor, I will

4 JUDGE THOMPSON: Have at it.

5 BY MR. MICHEEL:

6 Q. If you could, sir, turn to page 6. And let me
7 know when you're there.

8 A. I'm there.

9 Q. And I'm looking at the paragraph -- the second
10 paragraph under the two AmerenUEs. Do you see that there,
11 sir?

12 A. Yes, I do.

13 Q. Does that second paragraph indicate that
14 AmerenUE is entitled to 40 percent of the output of the
15 generators owned by Electric Energy Inc?

16 A. Yes, it does.

17 Q. And you would agree with me that the issue
18 about whether or not AmerenUE should continue to receive
19 power from the Joppa plant at Electric Energy Inc is an
20 issue in this proceeding, is it not?

21 A. It's an issue.

22 MR. MICHEEL: With that, your Honor, I would
23 move admission of Exhibit 78.

24 MR. FITZHENRY: Your Honor, I still object. I
25 don't know what it's probative of. It doesn't tell us

1 anything about the context in which AmerenUE's entitled to
2 40 percent of the output from these generators. We've heard
3 prior testimony from Mr. Nelson that contractually today
4 AmerenUE is indeed entitled to the output, but that after
5 2005, the contract no longer being in effect, AmerenUE is
6 not entitled.

7 So when we look at the whole of the issue, I
8 don't know what benefit this document brings to the record
9 or certainly to the Commission's understanding of these
10 issues at hand.

11 MR. MICHEEL: Your Honor, first of all, it's
12 an admission against interest. This document indicates that
13 AmerenUE is entitled to 40 percent of the output. It does
14 not suggest that it's 40 percent of the output after
15 December 31st, 2005 as Mr. Nelson has testified.

16 And I am entitled to impeach a witness. And I
17 think that this document impeaches the witness and it is
18 Ameren's own admission against interest. And, therefore, I
19 think it is completely relevant.

20 One of the issues in this case, your Honor, is
21 whether or not -- the EEI Joppa plant, whether or not
22 AmerenUE is entitled to that output or not. AmerenUE has
23 taken the position that there's just a contractual right.

24 What I am going to develop and what this
25 document's laying the foundation to develop is that AmerenUE

1 does not just have a contractual right through December of
2 '05, but has an entitlement, a legal right to 40 percent of
3 that output with or without the contract. And this is
4 Ameren's own words, true and correct stating that.

5 JUDGE THOMPSON: Objection's overruled. The
6 exhibit is received.

7 (Exhibit No. 78 was received into evidence.)

8 BY MR. MICHEEL:

9 Q. Is it correct, Mr. Nelson, that Ameren Corp on
10 March 25th, 2004 filed a request with the Federal Energy
11 Regulatory Commission for review and approval of its
12 acquisition of Dynegy of -- or its acquisition from Dynegy
13 of the stock of Decatur, Illinois based Illinois Power and
14 Dynegy's 20 percent interest in Electric Energy Inc's owner
15 of the Joppa coal-fired power plant?

16 A. I don't remember the date, but yes, it was
17 about that time.

18 MR. MICHEEL: Well, may I approach the
19 witness, your Honor?

20 JUDGE THOMPSON: You may.

21 BY MR. MICHEEL:

22 Q. I'm handing you a copy of Ameren's news
23 release there, sir, announcing that. Is that dated
24 March 25th, 2004?

25 A. Yes, it is.

1 Q. And do you recognize that news release?

2 A. Yes, I do.

3 Q. And does that indicate that Ameren on that
4 date filed with the Federal Energy Regulatory Commission
5 review and approval of the acquisition from Dynegy, Inc. of
6 the stock of the Decatur, Illinois based, Illinois Power
7 Company and Dynegy's 20 percent interest in Electric Energy
8 Inc --

9 A. It sure does.

10 Q. -- owner of Joppa, Illinois coal-fired power
11 plant?

12 A. I'm sorry. It sure does.

13 Q. I'm trying to go slow for the reporter. I get
14 a little worked up.

15 MR. MICHEEL: I need to mark another exhibit,
16 your Honor.

17 JUDGE THOMPSON: Very well. This will be 79.

18 (Exhibit No. 79 was marked for
19 identification.)

20 MR. MICHEEL: I would entitle, your Honor,
21 Exhibit 79 Joint Application for Approval of Disposition of
22 Jurisdictional Facilities under Section 203 of the Federal
23 Power Act, Docket No. EC04-81-000 before the Federal Energy
24 Regulatory Commission.

25 JUDGE THOMPSON: Okay.

1 BY MR. MICHEEL:

2 Q. Did you have a spill there, Mr. Nelson? Do we
3 need to take a break so you can clean it up?

4 A. I believe I have partially solved a problem.
5 Let's not take a break.

6 Q. Mr. Nelson, you've been handed what's been
7 marked for purposes of identification as Exhibit 59; is that
8 correct?

9 A. 59?

10 Q. Or 79.

11 A. Yes, it's -- I have it.

12 Q. And is that a copy of the Joint Application
13 for Approval of the Disposition of Jurisdictional Facilities
14 under Section 203 of the Federal Power Act?

15 A. Yes, it is.

16 Q. And if you could, sir, look on the third page
17 there.

18 A. I'm there.

19 Q. Does that indicate that you filed Direct
20 Testimony in that case, Appendix 6? You're the Mr. Craig D.
21 Nelson who did that?

22 A. I did file testimony, but I still haven't
23 found your reference.

24 Q. It's the third page of the document, sir.

25 A. Well, one, two -- the third page of the

1 document says, Contains requests for privileged treatment at
2 the top. Is that the third page you're talking about?

3 Q. Right. And then there's a conclusion 7.

4 A. All right.

5 Q. And then it says Appendix 6, prepared Direct
6 Testimony --

7 A. Thank you.

8 Q. -- of Mr. Craig D. Nelson?

9 A. I see it.

10 Q. Is that you?

11 A. That's me. And I did file testimony.

12 Q. And that's on page 3?

13 A. Yes.

14 Q. If you could, sir, could you look at the very
15 last page of the document?

16 A. All right.

17 Q. And that's an affidavit there. Do you see
18 that?

19 A. Yes, I do.

20 Q. Does that indicate that Mr. Steven R.
21 Sullivan, senior vice president of governmental regulatory
22 policy, general counsel and secretary of Ameren Corporation,
23 attested to the truth of this filing?

24 A. Yes, he did.

25 Q. And are you familiar with that filing?

1 A. Yes, I am.

2 Q. Could you turn to page 12 of that filing?

3 That's 12 on the bottom.

4 A. Thank you. I'm there.

5 Q. And that discusses -- that portion of the
6 application discusses Electric Energy Inc; is that correct?

7 A. Yes, it does.

8 Q. And is it correct that it indicates that EEI
9 Inc is jointly owned by four parties?

10 A. Yes, it does.

11 Q. And those four parties are AER, 20 percent; is
12 that correct?

13 A. Right.

14 Q. AmerenUE 40 percent; is that correct?

15 A. Correct.

16 Q. Illinova, I-l-l-i-n-o-v-a, Generating,
17 20 percent; is that correct?

18 A. Correct.

19 Q. And LG&E Energy Corporation Kentucky
20 Utilities, 20 percent; is that correct?

21 A. That is correct.

22 Q. Sir, if you could, do you see at the end there
23 there's a footnote 37?

24 A. Yes, I see it.

25 Q. Could you read footnote 37, sir, into the

1 record?

2 A. Footnote 37, the EEInc bylaws delineate
3 certain rights and obligations of the EEInc owners,
4 including the respective entitlements to receive and
5 obligations to purchase from EEInc a portion of the capacity
6 of EEInc generating facilities not used for furnishing the
7 power requirement of the DOE.

8 The EEInc owners subsequently entered into a
9 power supply agreement which more clearly defined the
10 commercial terms, rights and responsibilities of the parties
11 to the agreement and relationship to this capacity and
12 energy provided from the EEInc generating units. Under this
13 power supply agreement, the right to purchase capacity may
14 be independent from the ownership of EEInc.

15 Q. And is it correct that that footnote indicates
16 that the owners have entitlements to receive power; is that
17 correct?

18 A. That's correct. And it also says the right to
19 purchase capacity may be independent from the ownership.
20 And I did not finish the complete footnote. Did you want me
21 to?

22 Q. I only needed the first paragraph. If you
23 want to read the whole thing, have at it.

24 A. I just want to do what you want me to.

25 Q. I like that.

1 MR. MICHEEL: Your Honor, with that I would
2 move the admission of Exhibit 79.

3 JUDGE THOMPSON: Objections?

4 MR. FITZHENRY: I will be brief and just
5 restate the same objection I made previous, your Honor.

6 JUDGE THOMPSON: Overruled. The exhibit's
7 received.

8 (Exhibit No. 79 was received into evidence.)
9 BY MR. MICHEEL:

10 Q. Now, we've already established, sir, that you
11 filed Direct Testimony in the case that we're talking about,
12 the purchase of the assets from Dynegy, Inc. or the stock,
13 excuse me, of Illinois Power; is that correct?

14 A. That is correct.

15 MR. MICHEEL: I need to get another exhibit
16 marked, your Honor.

17 JUDGE THOMPSON: Very well.

18 MR. MICHEEL: And I think this is Exhibit 80.

19 JUDGE THOMPSON: Exhibit 80.

20 (Exhibit No. 80 was marked for
21 identification.)

22 BY MR. MICHEEL:

23 Q. Mr. Nelson, I've handed you what's been marked
24 for purposes of identification as Exhibit 80, your Prepared
25 Direct -- I'm sorry, the Prepared Direct Testimony of Craig

1 D. Nelson on behalf of Ameren Corporation in Docket EC04-81;
2 is that correct?

3 A. That's correct.

4 Q. Is that your testimony that you pre-filed in
5 that proceeding, sir?

6 A. Yes, it is.

7 Q. And, again, if you could, turn to the back of
8 the very last page of the document there, sir. Do you have
9 an affidavit there where you state that the statements
10 contained therein are true and correct?

11 A. Yes, I do.

12 Q. And that's your signature?

13 A. Yes, it is.

14 Q. And would you agree with me, sir, that the
15 purpose of your testimony is to describe mitigation measures
16 Ameren commits to undertake in the event its acquisition of
17 Illinois Power Company, including the acquisition of the
18 20 percent interest in EEI Inc is approved?

19 A. Yes, I do.

20 Q. Could you turn to page 4, sir, of your
21 testimony?

22 A. I'm there.

23 Q. Could you read, sir, into the record the
24 question beginning on page 17 and going through line 21?

25 A. Beginning on line 17, did you say?

1 Q. Yes, sir.

2 A. And going through 21?

3 Q. Yes, sir.

4 A. I thought you said page 17 was why I was
5 confused.

6 Line 17 of page 4 of 11, question is, Please
7 describe the first mitigation action.

8 The answer, If the IP sale is consummated,
9 Ameren commits to cause its marketing subsidiary, Ameren
10 Energy Marketing, Inc., AEM, to sell 125 megawatts of
11 capacity from the 1,014 megawatt coal-fired Joppa plant
12 owned by EEInc, in parens, the Joppa station, end paren.
13 Then in parens, EEInc also owns, through a subsidiary, the
14 6B project combustion turbines with a combined capacity of
15 72 megawatts, end parens. Continue?

16 Q. No. That's through line 21, sir.

17 A. Right. Got it.

18 Q. If you could, sir, turn to page 7 of the
19 testimony. And if you would, sir, read in lines 6 through
20 13 into the record.

21 A. The question is, What rights to the output of
22 the Joppa station will Ameren have beginning January 1st,
23 2006 absent an agreement to sell some of these rights?

24 If the IP sale closes, Ameren subsidiaries
25 will be entitled beginning January 1st, '06 to 80 percent of

1 the capacity and associated energy output of the Joppa
2 station.

3 If the station is running at full capacity,
4 its energy output is approximately 1,014 megawatts.
5 Ameren's share of this is approximately 811 megawatts. If
6 the station is running below full capacity, Ameren's share
7 of the energy output would be reduced proportionately.
8 Ameren's rights to capacity from the Joppa station would be
9 treated in a similar manner.

10 Q. Now if you would, sir, turn to page 10 of your
11 testimony. And I'm focusing on the question and answer
12 beginning there on line 9 and going through the end of the
13 page. If you'd read that to yourself for a moment.

14 A. All right.

15 Q. And let me know when you're finished, sir.

16 A. I'm there. I've read through the bottom of
17 the page.

18 Q. Is it correct there that it indicates that
19 Ameren subsidiary will hold a 60 percent interest in EEI Inc
20 which entitles them, among other things, to vote
21 60 percent of the outstanding shares and shareholder votes
22 and, for all intents and purposes, to elect a majority of
23 the members EEI Board of Directors?

24 A. That's a true statement.

25 Q. Therefore, AmerenUE controls EEI; isn't that

1 correct?

2 A. No. I would not agree to that.

3 Q. Is it correct that the EEI bylaws currently
4 provide for the allocation of capacity and energy from the
5 generating facilities owned by EEI in proportion to the
6 owners' ownership shares?

7 A. Only in part.

8 Q. That's not what you say in your testimony, is
9 it, Mr. Nelson?

10 A. No. What I said in my testimony was that the
11 portion that does not go to DOE goes to the sponsors. So
12 that's why it's true in part. And it is what I said in my
13 testimony.

14 Q. So let's set aside the portion that goes to
15 DOE from the Joppa plant. Can you do that?

16 A. I'll be happy to.

17 Q. 100 percent of what's left over. Okay?

18 A. All right.

19 Q. Is it correct that AmerenUE is entitled to
20 40 percent of the remaining power?

21 A. Through the contractual time period, yes.

22 Q. Now, when you say that the owners are entitled
23 to 40 percent share, the owners you're referring there are
24 AmerenUE; isn't that correct?

25 A. AmerenUE is a 40 percent owner of stock of

1 EEInc, yes.

2 Q. And so they own 40 percent of EEI Inc; isn't
3 that correct?

4 A. They own 40 percent of the stock, yes.

5 Q. And Ameren Corporation doesn't own any stock
6 directly in EEI Inc; isn't that correct?

7 A. That's correct.

8 Q. And so AmerenUE is a 40 percent owner of EEI
9 Inc; isn't that correct?

10 A. That is correct. Well, I'm sorry. Let me --
11 what was your question?

12 MR. MICHEEL: There's not a question pending,
13 your Honor.

14 THE WITNESS: Well, I don't know if I
15 correctly answered the question, but --

16 JUDGE THOMPSON: Your lawyer will have to
17 bring out your correction on redirect.

18 THE WITNESS: All right.

19 BY MR. MICHEEL:

20 Q. Could you read into the record for me, sir,
21 beginning from line 20 on page 10 through line 8 on page 11?

22 A. Sure. Line 20 of page 10. So as to prevent
23 any ability of Ameren following closing of the IP sales to
24 freeze out KU from receiving the 20 percent of the EEInc
25 capacity and output to which it is presently entitled,

1 Ameren commits to, one little i, direct its representative
2 members of the EEInc Board of Directors to take no action
3 which would result in decisions to restrict KU's ability to
4 receive up to 20 percent of the capacity and output of the
5 generating facilities owned by EEInc, paren, if KU desires
6 to receive such capacity and output, end paren; and two,
7 allow direct AER and AmerenUE, the Ameren subsidiaries that
8 are EEInc shareholders, to undertake no action at
9 shareholder votes that would restrict KU's ability to
10 receive up to 20 percent of the capacity and output of the
11 generating facilities owned by EEInc, if KU desires to
12 receive such capacity and output.

13 With these commitments in place, Ameren
14 believes that KU is fully protected from any adverse impact
15 that may result from Ameren's collective ownership in EEInc
16 increasing from 60 to 80 percent.

17 Q. Wouldn't you agree with me that this testimony
18 clearly demonstrates that Ameren Corporation can direct its
19 subsidiaries that are shareholders to E-- shareholders of
20 EEI Inc to do or not do certain things?

21 A. It clarifies that Ameren can direct in this
22 instance, in order to protect KU's rights, to take no action
23 that would detract from KU's right.

24 Q. And Ameren Corporation could direct its
25 subsidiaries to take no action that would harm the rights of

1 AmerenUE customers to receive the output from the EEI Joppa
2 plant if it so chose, isn't that correct, Mr. Nelson?

3 A. I don't think it's correct at all.

4 Q. So you don't think that AmerenUE, even though
5 it can direct its subsidiaries in one sense to do something
6 when it wants something at the Federal Energy Regulatory
7 Commission, it cannot direct the same type of protection for
8 Missouri customers. Is that your testimony?

9 A. You're ignoring an important distinction. The
10 distinction is the ratepayers of UE are not owners of stock.
11 KU is an owner of stock. Ameren is directing its members of
12 the board of EEInc to take no action that would preclude KU,
13 as owner of the stock of EEInc, from its minority interest
14 rights. That's wholly different from protecting UE
15 ratepayers.

16 Q. That wasn't my question, Mr. Nelson. My
17 question was, is it correct that Ameren, Inc. can direct its
18 subsidiaries to take no action that would prevent AmerenUE
19 from receiving its 40 percent entitlement from the Joppa
20 plant?

21 A. You've changed the question. I think the
22 second question you asked -- can direct AmerenUE -- would
23 you repeat the second question again, please?

24 MR. MICHEEL: Tracy, could you just read that
25 back?

1 THE COURT REPORTER: "Question: That wasn't
2 my question, Mr. Nelson. My question was, is it correct
3 that Ameren, Inc. can direct its subsidiaries to take no
4 action that would prevent AmerenUE from receiving its
5 40 percent entitlement from the Joppa plant?"

6 THE WITNESS: Yes, that's theoretically
7 possible.

8 JUDGE THOMPSON: We're at the point where we
9 need to take a break for the reporter. We'll take
10 10 minutes and come back. Mr. Micheel can finish his cross
11 at that time.

12 MR. MICHEEL: Thank you, your Honor.

13 (A recess was taken.)

14 JUDGE THOMPSON: Mr. Micheel?

15 BY MR. MICHEEL:

16 Q. Mr. Nelson, you said that the only entitlement
17 is the purchased power contract that AmerenUE has that runs
18 through 2005 with respect to the EE plant -- EEI Joppa
19 plant; is that correct?

20 A. Correct.

21 Q. Would you look, sir, at page 10, line 15 of
22 your Direct Testimony before the FERC?

23 A. Yes.

24 Q. And let me ask you, is it correct there it
25 states, The EEInc bylaws currently provide for the

1 allocation of capacity and energy from the generation
2 facilities owned by EEInc in proportion to the owners'
3 ownership shares?

4 A. That's correct.

5 Q. So that indicates to me that because AmerenUE
6 is a 40 percent owner, it is entitled, pursuant to the EEInc
7 bylaws, 40 percent of the output of Joppa; is that correct?

8 A. Only if EEInc chooses not to do something
9 else. And it has that right under its bylaws to choose to
10 sell the power to some other entity if 75 percent of its
11 board agree.

12 Q. And let's assume that the IP purchase goes
13 through. Okay?

14 A. All right.

15 Q. Is it correct then that Ameren will control
16 80 percent of the board of EEInc?

17 A. UE will own 40 percent of the stock and AER,
18 Ameren Energy Resources, will own 40 percent of the stock.

19 Q. Who owns 100 percent of the AmerenUE stock?

20 A. Ameren Corporation.

21 Q. Who owns 100 percent of AER stock?

22 A. I believe Ameren Corporation.

23 Q. Would you agree with me, Mr. Nelson, that
24 Mr. Kind has made a recommendation that Ameren Corps be
25 required to direct its subs to continue to provide energy

1 from the Joppa plant?

2 A. I don't think that's -- I believe that's the
3 intent of what he said, but I don't think that's what he
4 said exactly.

5 Q. But that's your belief of his intention; is
6 that correct?

7 A. It's confusing because AmerenUE can't direct
8 another corporation to do something, so I don't really
9 understand what Mr. Kind is wanting.

10 Q. Ameren can direct AmerenUE to do something;
11 isn't that correct?

12 A. Only in part. There's a separate Board of
13 Directors of AmerenUE and you cannot ignore a legal
14 corporate entity --

15 Q. Okay.

16 A. -- nor a Board of Directors nor corporate
17 governance nor state law and on and on.

18 MR. MICHEEL: I would move the admission of
19 Exhibit No. 80, your Honor.

20 JUDGE THOMPSON: Objections?

21 MR. FITZHENRY: No objection.

22 JUDGE THOMPSON: Exhibit 80 is received.

23 (Exhibit No. 80 was received into evidence.)

24 BY MR. MICHEEL:

25 Q. Is it your testimony that when Ameren directs

1 its subsidiaries after the sale -- following the closing of
2 the IP sale, not to freeze out KU from receiving its
3 20 percent of the EEI capacity, that that direction would be
4 a violation of laws or corporate governance structures or
5 anything like that?

6 A. I think that specific direction is legal and
7 appropriate.

8 Q. You're not a lawyer, are you?

9 A. No, I'm not.

10 MR. MICHEEL: One moment, your Honor.

11 BY MR. MICHEEL:

12 Q. We talked about the EEI bylaws and how it
13 takes 75 percent to change those bylaws; is that correct?

14 A. That's correct.

15 Q. Is it true that that would require AmerenUE to
16 vote its 40 percent of its shares the way Ameren directs it
17 to?

18 A. That's correct. I'm sorry. It would -- it
19 would -- I should -- I answered the question in two parts
20 and -- it's correct it would take the 40 percent that
21 AmerenUE holds to reach the 75 percent. I'm not admitting
22 whether Ameren can direct something specific unless we talk
23 about what that specific thing is.

24 Q. I'll just put a cap on this. So it's your
25 testimony that the party who owns 100 percent of the shares

1 in AmerenUE cannot tell AmerenUE what to do?

2 A. Ameren Corporation clearly can tell UE things.
3 What I'm saying is that UE has responsibility under the law
4 and has a separate Board of Directors and statutory rights
5 and statutory obligations that it has to live up to.

6 Q. But at the end of the day, AmerenUE controls
7 100 percent of the shares of -- or Ameren Corp controls
8 100 percent of the shares of AmerenUE; is that correct?

9 A. Ameren Corporation owns 100 percent of the
10 shares of AmerenUE. Common shares, I'm sorry. They don't
11 own the preferred shares.

12 Q. And for purposes of the record, when I was
13 talking about 100 percent of the shares, I was talking about
14 100 percent of the common stock.

15 A. And for purposes of the record, preferred
16 shares are important too because they're publicly
17 outstanding securities owned by the public and it's a good
18 example of statutory obligations that AmerenUE has separate
19 from Ameren Corporation.

20 Q. Is it correct, sir, that Ameren's Board of
21 Directors directed AmerenUE's subsidiaries to enter into the
22 agreement to proceed with the proposed Illinois transfer?

23 A. Yes. We've already established that today.

24 MR. MICHEEL: That's all I have, your Honor.

25 JUDGE THOMPSON: Thank you, Mr. Micheel.

1 QUESTIONS BY JUDGE THOMPSON:

2 Q. Let me pick up with Mr. Micheel's last
3 question. Is the fact that Ameren, the holding company,
4 directed its wholly-owned subsidiaries, Union Electric and
5 CIPS, to engage in this transfer, is that some kind of shady
6 or suspicious activity?

7 A. No. It's not at all, sir. In fact, it's just
8 good corporate governance that our management would go to
9 both boards, the Ameren board and the UE board, to get
10 approval for this transaction.

11 Q. So it's just the way that businesses which
12 operate in the holding company and subsidiary pattern, in
13 that form, that's the way they do business; is that correct?

14 A. Correct. And if you'll note in the exhibit
15 that -- Exhibit 77, the Union Electric board actually
16 approved the transaction -- going ahead with the transaction
17 as well as the CIPS board.

18 Q. Okay. And if you know, and I don't need any
19 names, are those two boards identical?

20 A. I mentioned three boards.

21 Q. I'm talking about CIPS and Union Electric.
22 Thank you for clarifying that. Are those two boards
23 identical?

24 A. I don't -- don't know.

25 Q. Okay. Is it possible there's some overlap?

1 A. Yes, there is overlap. I know that. I just
2 don't know if it's completely identical.

3 Q. Okay. And what about those two boards and the
4 board of Ameren, the holding company? Is there some
5 overlap?

6 A. Very little overlap. Our chairman is on the
7 Board of Directors of Ameren, whereas, the rest of the board
8 members are not employees of the -- of any company --

9 Q. Okay.

10 A. -- within Ameren. And that's another good
11 reason to go to the Ameren board because there is the
12 outside corporate director guidance on this transaction.

13 Q. Now, Ameren, the holding company, that's a
14 publicly traded corporation; is that correct?

15 A. That's correct.

16 Q. And so the common and preferred shares of
17 Ameren, the holding company, are owned by numerous
18 investors?

19 A. That's correct.

20 Q. Who have --

21 A. I don't believe there's any preferred of
22 Ameren Corp, but the common stock is owned by many, many
23 investors.

24 Q. Okay. Some of who may be employees or board
25 members of Ameren and others have no connection other than

1 the fact of that stock ownership?

2 A. Yes, sir.

3 Q. Okay. Now, who owns the preferred shares of
4 Union Electric?

5 A. Those are owned by -- those are public shares
6 owned by individual investors and a variety of shareholders.

7 Q. So those are publicly traded shares and owned
8 by persons for investment purposes?

9 A. That's correct.

10 Q. And do those shares typically pay dividends?

11 A. Yes, they do.

12 Q. So it's an income stock?

13 A. Yes, it is.

14 Q. Okay. Now, let's talk about the Joppa plant.

15 There's been an awful lot to-do about the Joppa plant.

16 Today who owns what share of EEI, if you know?

17 A. Yes, I know. Union Electric owns
18 20 percent -- 40 percent of the shares.

19 Q. Okay.

20 A. Kentucky Utilities owns 20 percent of the
21 shares.

22 Q. Okay.

23 A. Ameren Energy Resources owns 20 percent of the
24 shares.

25 Q. Okay.

1 A. And then the remaining shares are held by a
2 subsidiary of either Illinova or Dynegy. I don't remember.
3 It's in this filing, but it's Dynegy or Illinova. And those
4 20 percent are being purchased -- proposing to purchase by
5 Ameren Energy Resources.

6 Q. Very well. Thank you.

7 So subsidiaries of Ameren, the holding
8 company, presently own 60 percent?

9 A. Yes, sir.

10 Q. And are looking to increase that 60 percent to
11 80 percent?

12 A. Yes.

13 Q. Now, during his cross-examination Mr. Micheel
14 made a heroic effort to show that owners of EEI have a right
15 to output of EEI proportionate to their ownership share. Do
16 you agree that that's true or do you deny that that's true?

17 A. It's true in some circumstances.

18 Q. Okay. And what circumstances is it true?

19 A. It's true right now because there's a power
20 contract in place that sells it in proportion to the
21 ownership.

22 Q. I see. That's the one that's about to expire?

23 A. At the end of '05. It's also --

24 Q. And -- I'm sorry. Go ahead.

25 A. It's also true in the bylaws -- that statement

1 that we read into the record that absent some other action
2 by the Board of Directors of EEInc, they -- the owners have
3 an entitlement to the power.

4 Q. Okay.

5 A. It does not preclude EEInc from taking some
6 other action. It could sell, beginning January 1st, 2006
7 all of the power output from EEInc to anyone like TBA, for
8 instance. They're connected to TBA, they could sell to TBA.

9 Q. Now, as of right now, Union Electric is
10 receiving power from EEI; is that correct?

11 A. Correct.

12 Q. And do you know what percentage that makes up
13 of the power available to Ameren?

14 A. It's 405 megawatts. Ameren's load is about
15 8,000 megawatts.

16 Q. Okay. So it is --

17 A. 5 percent.

18 Q. -- a fraction?

19 Very well. And let's say that when this
20 contract expires, that EEI refuses -- that it makes some
21 other arrangement with this power. Okay?

22 A. All right.

23 Q. And that this power, this 405 megawatts, is no
24 longer available to Union Electric. Where is Union Electric
25 going to get replacement power?

1 A. Our resource plans call for a variety of
2 actions, including this transaction. This transaction would
3 free up about 600 megawatts that's formerly dedicated to the
4 Illinois side to the Missouri side.

5 Q. Okay. So this transaction will more than
6 cover the 405?

7 A. Yes.

8 Q. Okay. Now, megawatt per megawatt, what is
9 cheaper, the power produced by EEI or the power produced --
10 that this transaction, if approved, will free up?

11 A. I would think dollar for dollar that EEInc is
12 cheaper than the blend of the Ameren fleet.

13 Q. Okay. And is that the heart of Public
14 Counsel's least cost objection?

15 A. I think that's a good part of it. They want
16 the continuation of that cheap -- comparatively cheap power.

17 Q. And is it your position, as an executive
18 representative of Ameren, that Ameren essentially is
19 powerless with respect to whatever decision the board of EEI
20 is going to make?

21 A. I wouldn't say it's powerless, sir, but it's
22 not appropriate -- and I know I'm not an attorney, but I
23 would question whether it's legal for Ameren Corporation to
24 take -- to direct EEInc to take some action that would harm
25 shareholders of EEInc. And then indirectly, because UE has

1 preferred shareholders and those stocks are held in the
2 public, if it directs -- it could be a harm to UE's
3 preferred shareholders. If the profit of EEInc is not
4 maximized, it harms UE as a shareholder, it harms preferred
5 stock shareholders, it harms KU as a shareholder, etc.

6 Q. Okay. So, in other words, if the choice is to
7 sell this 405 megawatts at cost to Union Electric or sell it
8 to, say, TBA for whatever the market will bear, which let's
9 say is quite a bit more than cost, than is it your testimony
10 that the board of EEI has an obligation to its shareholders
11 to select the option that would maximize the profit on that
12 power?

13 A. Yes.

14 Q. Okay.

15 A. For its shareholders.

16 Q. For its shareholders. I understand.

17 And in that case, if this power is sold
18 somewhere other than to Union Electric, Union Electric would
19 receive 40 percent of the net profit; is that correct?

20 A. Yes.

21 Q. And would that 40 percent of the net profit be
22 used to offset the cost -- the higher cost of the
23 replacement power?

24 A. No.

25 Q. What would be done with it?

1 A. The 20 percent of the stock of EEInc that UE
2 owns are shares of stock. They're not -- UE does not own
3 assets of EEInc.

4 Q. I understand.

5 A. It owns share of stock. And like any shares
6 of stock that UE owns, that asset -- and it is an asset,
7 it's what's referred to as a below the line asset, it's not
8 in rate base --

9 Q. In other words, it would belong to the
10 shareholders?

11 A. It belongs to the shareholders.

12 Q. It's an investment made by the shareholders
13 and the profit of it would belong to the shareholders?

14 A. Yes.

15 Q. Okay. But would you agree with me that the
16 money used to purchase the 40 percent share in EEI was
17 shareholder money?

18 A. Absolutely.

19 Q. Okay. Let's say that the EEI power is no
20 longer available and the proposed transfer goes through.
21 Are you able to give me an estimate of what the rate impact
22 would be in terms of the higher cost of power?

23 A. No, I'm not. There are too many variables.
24 This transaction alone will not satisfy all of UE's resource
25 needs over the next three or four years. And so there's

1 layer upon layer of generation that's being added.

2 Q. What are the other options that UE is
3 pursuing, if that's --

4 A. Yes, there are.

5 Q. -- if we can talk about that in open hearing?

6 A. Yes. There are three other options that are
7 in our resource plan that we've discussed multiple times
8 with Staff and OPC.

9 This transaction would add 600 megawatts. As
10 Staff and the Commission knows, there's a transaction before
11 the FERC where about 550 megawatts of gas-fired peaking
12 power would be sold, transferred from Ameren's GENCO to UE.
13 So that's 600 for this deal, 550 for that deal.

14 And then as we've discussed in this hearing,
15 AmerenUE retired plant at its Venice station -- and it's
16 issued a notification letter to the Commission and Staff --
17 this Commission and Staff that it intends to add 330
18 megawatts of peaking capacity at the Venice site.

19 So those three options are what are in our
20 resource plan right now and will meet our resource needs
21 through -- Mr. Voytas may have to correct me -- 2006, I
22 believe, assuming that we do all three.

23 Q. Okay. So if I'm adding correctly, which is
24 always questionable, these three options taken together
25 would produce an addition of about 1,480 megawatts?

1 A. Yes, sir.

2 Q. To your existing approximately 8,000
3 megawatts; is that correct?

4 A. There's about 8,000 megawatts of load, yes.

5 Q. Is there also 8,000 megawatts of capacity?

6 A. There's slightly more than that. And there's
7 an exhibit in this case that lays that out.

8 Q. Ballpark will work for me.

9 A. There's -- one of the problems that we're
10 faced with is that UE does not have a 15 percent reserve
11 margin. So, yes, it has about 8,000 megawatts of capacity,
12 does not have an adequate reserve margin. This transaction
13 will get us to the adequate reserve margin.

14 Q. And then that takes care of unforeseen plants
15 going off line and the like --

16 A. Yes.

17 Q. -- forced outages is that the term, I think?

18 A. Hot weather, etc.

19 Q. Very well. Okay.

20 JUDGE THOMPSON: I think that's all the
21 questions that I have for you, Mr. Nelson.

22 Recross, Mr. Dottheim?

23 MR. DOTTHEIM: No questions.

24 JUDGE THOMPSON: Mr. Micheel?

25 MR. MICHEEL: Thank you.

1 RE CROSS-EXAMINATION BY MR. MICHEEL:

2 Q. Judge Thompson asked you a series of questions
3 about the sale of power from EEI Inc. Do you recall those
4 questions?

5 A. Yes, I do.

6 Q. And you indicated that it wouldn't be an
7 appropriate thing for shareholders to sell the EEI power at
8 cost to AmerenUE; is that correct?

9 A. Shareholders would not sell it at cost, so I
10 guess I don't understand your question.

11 Q. Is there anything preventing EEI Inc from
12 selling its power to AmerenUE at something above cost, what
13 the market would bear?

14 A. Yes. The affiliate transaction rule before
15 this Commission. As I understand that rule, it's meant to
16 prevent subsidies between a regulated utility and an
17 unregulated affiliate. Some might think it applies in this
18 situation.

19 EEInc is concerned that it might be required
20 to sell at the lower of cost or market if it were to extend
21 the power contract -- or enter into a power contract between
22 EEInc and UE.

23 Q. Is it correct that the Commission's affiliate
24 transaction rule found at 4 CSR 240-20.015 in Section 10
25 allows for variances to that general rule?

1 A. I understand it does allow variances.

2 Q. And it allows two types of variances. Is that
3 your understanding?

4 A. I don't remember that.

5 Q. The Judge asked you some questions if Union
6 Electric had some responsibilities to its shareholders. Do
7 you recall those questions?

8 A. Yes, I do.

9 Q. Would you agree with me that Union Electric
10 also has a responsibility to its customers to get least cost
11 capacity?

12 A. Yes, I do. Within certain parameters. It
13 obviously has to buy capacity that meets its reliability
14 needs. So least cost would be one consideration, among
15 others.

16 MR. MICHEEL: Thank you for your time,
17 Mr. Nelson.

18 JUDGE THOMPSON: Mr. Lowery or Mr. Fitzhenry?

19 MR. FITZHENRY: Thank you, your Honor.

20 JUDGE THOMPSON: And I warn you we're not
21 going past 5:00, so -- I don't know what you had in mind.

22 MR. FITZHENRY: About five minutes.

23 JUDGE THOMPSON: Have at it.

24 REDIRECT EXAMINATION BY MR. FITZHENRY:

25 Q. Mr. Nelson, with regard to the EEI Inc

1 contract and the Joppa plant that there's been numerous
2 questions asked of you, what is the basis for your
3 understanding that that contract ends at the end of 2005?

4 A. From my reading of the contract that has a
5 clear expiration period of 12/31/05.

6 Q. Thank you. Do you know if that contract was
7 approved by a regulatory agency?

8 A. Not with absolute certainty, but I'm
9 99 percent confident it was approved by the Federal Energy
10 Regulatory Commission. It's a wholesale contract.

11 Q. And the predecessor to the Federal Energy
12 Regulatory Commission was the Federal Power Commission?

13 A. Yes.

14 Q. Now, I want to pose a hypothetical to you,
15 again based on questions that were asked of you by both the
16 Judge and Mr. Micheel.

17 Let's assume that it's post-2005 and there is
18 indeed a contract entered into between AmerenUE and EEI for
19 some portion of power from that plant. That agreement, if
20 you know, would be approved by what regulatory agency?

21 A. It would be FERC.

22 Q. All right. Now, it's correct, is it not, that
23 EEI Inc and AmerenUE are affiliates?

24 A. That's correct.

25 Q. Are you familiar with the Kinmundy and N

1 Pinckneyville transfer that has been pending at FERC?

2 A. Yes. Very familiar.

3 Q. Were you a witness in that proceeding?

4 A. Yes.

5 Q. And in that matter is it correct that there
6 were issues due in part to the fact that that was an
7 affiliate transaction?

8 A. There were many, many issues and intense
9 cross-examination by the Intervenors.

10 Q. Okay. And do you believe that the
11 hypothetical transaction involving AmerenUE and EEI Inc
12 post-2005, if FERC hadn't approved that contract, would also
13 take into consideration affiliate issues?

14 A. Yes. And I would also conjecture that there
15 would be intervention by third parties that wanted to sell
16 power to UE and would actually fight the continuation of
17 that power arrangement between affiliates.

18 Q. So even if there was a contract of the kind
19 that I've described to you entered into between these two
20 parties, is there any guarantee that that contract would be
21 approved by the FERC?

22 A. No.

23 Q. I'd like you to refer to Exhibit 79, which is
24 the FERC filing involving the acquisition of Illinois Power
25 Company.

1 A. I have it.

2 Q. And you were asked to read a portion of the
3 footnote on page 12, footnote 37. Do you recall that?

4 A. Yes, I do.

5 Q. Would you complete the reading of that
6 footnote for the record?

7 A. Yes. The second paragraph of footnote 37
8 says, While Illinois Power transferred its 20 percent share
9 in EEInc to Illinova Generating, it specifically retained
10 its rights and obligation under the afore-mentioned power
11 supply agreement.

12 Thus, during the term of this power supply
13 agreement, i.e., through December 31st, 2005, Illinova
14 Generating has no rights to power from the EEInc units as it
15 did not succeed to Illinois Power's rights under the power
16 supply agreement. The allocation of rights to the EEInc
17 units and their capacities is discussed further in the Frame
18 testimony.

19 Q. Okay. And the Frame testimony is not included
20 in the Exhibit 79, is it?

21 A. That's correct.

22 Q. Now, I'd like you to refer to Exhibit 80,
23 which is your prepared Direct Testimony again in this FERC
24 matter and direct your attention to page 4, please. Now,
25 again, you were asked to read a portion of your testimony

1 into the record. I recall that which appeared on lines 17
2 through 21.

3 Well, you can read that again if you'd like,
4 but it basically allows for Ameren Corporation to commit its
5 marketing subsidiary, AEM, to sell 125 megawatts of capacity
6 from the Joppa plant. Is that a correct paraphrase?

7 A. That's correct.

8 Q. Do you know whether AEM can sell that
9 125 megawatts from the Joppa plant to any of the Ameren
10 subsidiaries?

11 A. Yes. The mitigation measures that were
12 proposed would preclude the Ameren subsidiaries from buying
13 that power other than IP. And that's because when Mr. Frame
14 did his mitigation analysis, there were not screen
15 violations in the IP control area.

16 But the point of this distinction is that,
17 again, it shows there's ownership of stock -- in this case
18 if this transaction -- I'm talking about the IP
19 transaction -- goes through, AER will own the stock and yet
20 the power is sold to someone else.

21 And then in footnote 37 that we just talked
22 about, again, stock ownership was not the same as the use of
23 the power. It was sold to someone else. So, yes, in
24 general, the bylaws do say that there is that entitlement,
25 but EEInc can take an action that sells power to someone

1 other than the owners and has.

2 Q. And that would include AmerenUE?

3 A. Yes, it would.

4 Q. Let me direct your attention to page 10 of
5 that exhibit.

6 A. Exhibit 80?

7 Q. Exhibit 80, again your testimony filed at the
8 FERC. And, again, you were asked to read a portion of that
9 testimony into the record. And I want to direct your
10 attention to that which begins on line 20. And in there
11 it -- or there you address the issue of freezing out KU from
12 receiving 20 percent of the EEI Inc capacity; is that
13 correct?

14 A. Yes. That's correct.

15 Q. And can you explain further what is meant or
16 intended by the testimony that appears on line 22 to the
17 bottom of that page and is completed at the top of the next
18 page?

19 A. Yeah. This gets into the discussion that I
20 had earlier about Ameren directing members of the board of
21 the EEInc to take certain actions. And this action that
22 Ameren has directed those board members to take is designed
23 for a specific purpose that we think is legal and
24 appropriate, and that's to protect KU, which is a minority
25 shareholder of EEInc. So we're protecting a minority

1 shareholder interest rights.

2 Q. Okay. Thank you.

3 Now, there were a number of questions, again
4 from Mr. Micheel, about whether or not Ameren Corporation
5 could direct, in particular, AmerenUE to do things. And I
6 recall in some of your answers anyway that you said in
7 part -- and you would sometimes refer to bylaws and state
8 laws and things of that nature. Do you recall generally
9 those questions?

10 A. Yes, I do.

11 Q. Again, let me sort of pose a hypothetical to
12 you following up on that line of questioning. Let's suppose
13 hypothetically Ameren Corporation told AmerenUE to take an
14 action that would be otherwise illegal. In your judgment,
15 is that something that AmerenUE would do simply because it
16 was told to do so by Ameren Corporation?

17 A. I'm certain that AmerenUE would not do it.

18 Q. And similarly, if Ameren Corporation told
19 AmerenUE to do something that was in violation of AmerenUE's
20 bylaws, do you have an opinion as to whether or not
21 AmerenUE, would, in fact, heed to Ameren Corporation's
22 directive?

23 A. I'm certain that AmerenUE would not take an
24 action that contradicted its bylaws.

25 Q. Now, you mentioned a couple times too in

1 referencing corporate governance in answering different
2 questions. Can you tell us what your understanding is of
3 that term or phrase?

4 A. Yes. It's a body of law and regulations on
5 the federal level and state level that deals with what a
6 corporate entity is, what rights and responsibility a
7 corporation has, what duty and responsibilities the Board of
8 Directors has representing shareholders of that corporation.
9 It would involve securities laws, Sarbanes-Oxley law, for
10 instance, and so on.

11 Q. Okay. There was, some time ago, questions
12 asked of you by Mr. Dottheim regarding the chronology or the
13 history involving this particular transfer, even going back
14 a couple weeks ago, questions of when the CIPS/UE merger
15 took place and then later in 2001 I believe and now
16 currently. During those times, do you recall you meeting
17 with representatives of the Missouri Public Service
18 Commission Staff regarding this proposed transfer?

19 A. Yes. One meeting in particular that we talked
20 about repeatedly at FERC.

21 Q. And when was this meeting or about when was
22 this meeting?

23 A. This was January 2002. And we met with
24 Missouri Staff in St. Louis. I remember the meeting well.

25 Q. Do you remember who was there on behalf of the

1 Staff?

2 A. I remember that Dr. Proctor was there and Lena
3 Mantle I think. I'm not positive, I think Greg Meyer was
4 there. But basically it was the important section heads in
5 Missouri Staff.

6 Q. And what took place during that meeting?

7 A. We discussed resource planning options for
8 AmerenUE. And two of the options we discussed included,
9 number one, the Metro East transfer; and, number two, the
10 purchase by UE of peaking plants from its affiliate GENCO.

11 Q. Do you recall whether the Staff had expressed
12 any favor or interest in one option over the other?

13 A. Yes. Staff expressed a clear preference for
14 the Metro East transfer.

15 Q. Did Staff give you any reason or explanation
16 for that preference?

17 A. Yes. They thought it was in the best
18 long-term interest of UE's customers to proceed with the
19 Metro East transfer.

20 MR. FITZHENRY: Thank you. Your Honor, may I
21 have one moment, please?

22 JUDGE THOMPSON: You may.

23 MR. FITZHENRY: Thank you, Mr. Nelson.

24 Thank you, your Honor.

25 JUDGE THOMPSON: Thank you.

1 MR. FITZHENRY: Ten minutes, I guess it was.

2 JUDGE THOMPSON: You may step down,
3 Mr. Nelson.

4 THE WITNESS: Thank you.

5 JUDGE THOMPSON: We're going to conclude for
6 the day at this point and we will resume tomorrow at
7 nine o'clock.

8 I have one question before we leave.
9 Dr. Proctor, the Chairman has directed me to inquire whether
10 or not you've received the information from AmerenUE that
11 you needed?

12 DR. PROCTOR: I have received that, your
13 Honor.

14 JUDGE THOMPSON: You have. Very well.

15 DR. PROCTOR: Wait a minute.

16 JUDGE THOMPSON: Your counsel says you
17 haven't?

18 DR. PROCTOR: I don't know what he says.

19 Counsel's pointed out I've received the
20 information. I have had time to go through a portion of the
21 work papers. I'm not sure whether all the work papers are
22 there or not, but on the surface it looks like it's the
23 information I requested, but it will still take some time
24 for me to determine whether all the work papers are there to
25 support that.

1 JUDGE THOMPSON: Very well.

2 MR. LOWERY: Judge, for the record, if I could
3 just report we'd indicated earlier we'd see if we could get
4 electronic versions of the work papers to folks. And those
5 were e-mailed to Mr. Micheel, Mr. Kind, Mr. Proctor,
6 Mr. Dottheim about three hours ago. Same work papers they
7 already have in paper form, but the electronic copies they
8 wanted.

9 JUDGE THOMPSON: Is this related to the
10 information that Dr. Proctor had asked for?

11 MR. LOWERY: Yes, it is.

12 JUDGE THOMPSON: Very well.

13 And before you leave, Mr. Nelson, I know
14 you're not scheduled to be up on the witness stand again.
15 Are you planning to be here tomorrow?

16 MR. NELSON: I'd be happy to be here tomorrow
17 as long as you let me go by 5:00.

18 JUDGE THOMPSON: I can guarantee you we'll be
19 gone by 5:00. At some point I want to ask somebody some
20 questions about these conditions in here. These are the
21 ones -- and you're the guy. I figured you were the guy.
22 Okay. If you'll join us again tomorrow.

23 MR. FITZHENRY: Your Honor, will we begin with
24 Mr. Voytas or do you intend to proceed with Mr. Nelson?

25 JUDGE THOMPSON: I plan to finish the list of

1 scheduled witnesses and then I'd like an opportunity to
2 inquire of Mr. Nelson or whoever the company representative
3 or representatives should be about these conditions produced
4 by Staff. Okay?

5 MR. FITZHENRY: Thank you, your Honor.

6 JUDGE THOMPSON: Thank you. Anything else?
7 We are adjourned.

8 WHEREUPON, the hearing was adjourned until
9 April 8th, 2004 at 9:00 a.m.

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