DEPOSITIONS OF DOYLE L. GIBBS

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

THE STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION,	)	
Complainant,	)	Case No. EC-2002-1
vs.	)	
UNION ELECTRIC COMPANY, d/b/a AMERENUE,	)	
Respondent.	)	

DEPOSITION OF DOYLE L. GIBBS
TAKEN ON BEHALF OF THE RESPONDENT
APRIL 12, 2002

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vs.	)	
UNION ELECTRIC COMPANY, d/b/a AMERENUE,	)	
Respondent.	)	April 12, 2002 Jefferson City, MO

DEPOSITION OF DOYLE L. GIBBS,

a witness, sworn and examined on the 12th day of April, 2002, between the hours of 8:00 a.m. and 6:00 p.m. of that day at the Missouri Public Service Commission, Room 810, Governor State Office Building, in the City of Jefferson, County of Cole, State of Missouri, before

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Notary Public, within and for the State of Missouri, in the above-entitled cause, on the part of the Respondent, taken pursuant to agreement.

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Ted Robertson, OPC
Gary S. Weiss, Ameren
Richard J. Kovach, Ameren

EXHIBIT INSTRUCTIONS:

Copy and attach.

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EXHIBITS INDEX

DOYLE L. GIBBS, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. TODD:

Q. Good morning, Mr. Gibbs.

A. Good morning.

Q. My name is Gordon Todd. I'm an attorney with Cooper and Kirk, representing AmerenUE.

I'll have you introduce yourself for the record, please.

A. Yeah. My name is Doyle L. Gibbs. I work for the Missouri Public Service Commission.

Q. What's your position with the Commission?

A. I'm an auditor with the accounting Staff.

Q. So you have -- have you been deposed before?

A. Yes, I have.

Q. How many times?

A. Twice, actually.

Q. Seeing as I know I've deposed you twice --

A. Yes.

Q. -- I know that you're familiar with my ground rules. Let me shoot through them quickly.

It's important that we just speak one at a time so the court reporter can get down everything we say. Do you understand that?

A. Yes.

Q. And you understand that it's important that you give all of your responses verbally?
A. Yes.
Q. You understand that if we use technical terms, it's important for clarity of the record and for clarity of your answers that you should make sure that I'm using them correctly or define them, if necessary.
A. Okay.
Q. You understand it's important to give complete answers --
A. Yes.
Q. -- and to provide all information you have that would bear on an answer to a question.
A. Okay.
Q. If you don't understand the question, you can ask me for clarification. Okay?
A. Yes.
Q. Alternatively, you can have the court reporter read back a question if you want.
A. Okay.
Q. During the course of the deposition, your attorney may object to a question. You understand that unless you are specifically instructed to not answer a question, you must go ahead and answer it.

after the objection has been lodged?

A. Yes.

Q. And you understand that while we're here today in the offices of the Commission in a somewhat informal setting, you are testifying here under oath and subject to the laws of perjury. You understand that?

A. Yes.

Q. Mr. Gibbs, is there any reason why you would be less than truthful today?

A. No.

Q. If at any point during the deposition you or anyone else here needs to take a break, just let me know, and we'll get one in as soon as convenient. Okay?

A. Sounds fine.

Q. Mr. Gibbs, preparing for today's deposition, specifically, what have you reviewed?

A. I have reread my testimony from the current -- current filing as well as the prior filing. I have reread my deposition and reviewed some additional testimony with regards to other Staff members that might have an impact on what I did in this filing.

Q. I see you have a note pad in front of you there. Can you tell me what's on that note pad?

A. Yeah. This is just a couple notes. I just wanted to make sure that -- I was informed earlier of -- as a matter of fact, I've got a date here. On February 2nd I was notified by Gary Weiss of the Company of a couple of errors that they thought were in work papers, and so what I've done is I've just kind of summarized what Gary thought those errors were, what I've done to correct those errors. And those errors that have been corrected, I've already provided work papers in support of those changes to the Company.

Q. Did you prepare those notes specifically for this deposition?

A. Yes.

MR. TODD: Okay. Eric, I'm going to want copies of those.

MR. MOLTENI: Excuse me. Just a clarification point. Are we talking about errors in the Company's work papers or errors in the Staff's work papers?

THE WITNESS: These were errors that the Company had found in the Staff's work papers.

MR. ANDERSON: Just so I'm clear, Gordon, are you going to be requesting those formally, or are you requesting them informally first?

MR. TODD: Let's go off the record for a minute.

(A DISCUSSION WAS HELD OFF THE RECORD.)

MR. TODD: For the record, notes that Mr. Gibbs produced specifically for this deposition are going to be copied and produced here, and the Company will later formally request more detailed notes.

BY MR. TODD:

Q. In preparing for the deposition, did you review any documents or data requests?

A. Yes.

Q. Which ones?

A. In response to one of the data requests, I think, that was submitted to the Staff by Mr. Cook, I think I have responded to that, and I think you should have a copy of that data request response. Specifically, it was data request JJ-- JJC-16. I've enumerated the data requests that I've reviewed.

Q. And you reviewed those specifically to prepare for this deposition?

A. Not for this deposition. For the deposition -- these were the work papers I -- work papers -- the data requests that I specifically reviewed with regards to data that was provided in the development of the Staff's filing.

I went back and reviewed some of the -- some of the DRs related to a couple of the issues, incentive compensation and territorial agreements, for preparation of this deposition.

Q. In preparation for this deposition, who have you had conversations with?

A. Most of my conversations have taken place with individuals from our legal staff. There are a couple of the people from the accounting staff that also talked with me, but those conversations were really iterations that were already -- I had conversations with the attorneys, basically, where they were kind of review or a heads-up, so to speak, of, you know, You can probably expect this type of question during the deposition.

Q. I don't want to know what you discussed with your attorneys.

But putting your attorneys aside, who specifically have you had conversations with specifically to prepare for this deposition?

A. I've spoken with -- specifically, with Greg Meyer and general conversations with Paul Harrison and John Cassidy who previously have went through depositions.

Q. What did you discuss with Mr. Harrison?

A. There wasn't any specific questions that I can recall that we actually discussed. I mean, the -- it was -- with Paul, it was more of a -- an overall view that he thought this deposition was actually harder than the first one.

Q. You didn't discuss any specific topic areas?

A. No. I mean, my -- my areas are different from Paul's, so, I mean, there was -- there was no particular conversations that I recall that asked -- specific questions that was asked.

Q. You didn't discuss any questions that I asked him?

A. Not that I can recall.

Q. How about your conversations with Mr. Cassidy?

A. I seem to recall that there was some conversations where -- where he had mentioned, you know, certain questions that was asked of him, particularly with regards to, you know, what is a test year, how rates -- how rates, you know, would be developed, when they would be in effect, general questions of that nature.

Again, his -- his particular areas that he's covering is different from mine, so we didn't get into specific questions with regards to areas.

Q. You do agree that there are concepts that overlap different people's testimony?

A. Yeah. I'm sure that there needs to probably be -- there probably is an overlap of how things are treated, whether they are consistent or not with the overall Staff policy with regards to how something should be treated.

Q. For instance, you use the example of a test year. What a test year is is important to everyone's testimony, isn't it?

A. Yes, it is.

Q. And you discussed that with Mr. Cassidy?

A. Yes. I mean, basically, I think what -- what he indicated to me, that, you know, he was asked that question. And, actually, rather than -- rather than eliciting what his response was, I basically expounded what I thought my concept was, and he agreed with that. I have -- I don't really have an idea exactly what his exact response was with regards to that question.

Q. Do you remember any other areas or concepts you discussed with Mr. Cassidy?

A. No, I do not.

Q. How about your conversation with Greg Meyer?
A. Greg's conversation was almost specifically directed to the test year concept. And I think that with my years that I've had with the Commission, I think I have a pretty firm grip on what a test year is.
Q. When did you have these conversations?
A. The discussion I had with Greg actually occurred earlier this morning.
Q. I don't mean to suggest that you don't know what a test year is, but I want you to tell me exactly what Mr. Meyer told you regarding a test year.
A. What Greg indicated to me is that he wanted to be sure that I understood that the test year concept was basically a matching principle where essentially you have your revenues, expenses, and investment that are keyed to a certain point in time.
Q. That's the extent of it?
A. That's the extent of it.
Q. Okay. The testimony that you filed in this case, to make sure we're on the same page, I'm going to refer to as your current testimony, and your -- the testimony you filed -- you filed last year, I'm going to call your prior testimony. Okay?
A. Okay.

Q. In preparing your current testimony, does your current testimony reflect entirely your own work?
A. This one does, yes.
Q. Last time around you were adopting testimony in part that Mr. Griggs had proposed?
A. And also Jim Schweiterman.
Q. Right. Did you receive any input from any other Staff members into the testimony you've prepared currently?
A. In terms of the testimony itself?
Q. Yes.
A. Of course, for testimony, we have a fairly extensive review process. My testimony was provided to our legal staff. It was provided to Lena Mantle, I think Janice Pyatte, Greg Meyer, Steve Rackers.
I think that that's kind of -- that's kind of the gamut of who my testimony was provided to. That doesn't necessarily mean that I got any feedback, you know, from each of those individuals. And most feedback which I did have or did get back was basically in the form of maybe sentence context or maybe a rewording. Nothing of any substance.
Q. Do you preserve -- let me ask you this: How does the review process work?
A. Normally, what -- what I do is -- is I would

print out a copy of what I've done and then provide a hard copy to those individuals, and those individuals would make their marks or whatever they think, and provide me a copy -- that copy back with those remarks on it. I would change my original electronic version and discard the copies.

Q. You don't preserve the copies?

A. No, I do not.

Q. You destroy them?

A. We've got a recycle bin that that's where it goes.

Q. Is that Commission policy -- Staff policy, I should say?

A. We've got a general policy that -- of all of the -- all that can be recycled goes into the recycle bin.

Q. What I mean to ask is, is there a Staff policy to not preserve drafts of testimony?

A. I don't know if there is a written policy of such. I think that that policy can certainly be created once you've been requested a number of times for drafts of testimony that they really have no relationship to what the final product is. So it's just become more of an internal policy that once you've received a draft, you've made the changes, the old one gets tossed.

Q. Did you receive any nonwritten input into your testimony?

A. Nonwritten input?

Q. Uh-huh.

A. I'm sure that happens occasionally. I mean -- and it's not so -- because any time somebody has an area that they're creating an adjustment or working on a particular area, they will normally have conversations with people who may have input associated with that or maybe not direct input but maybe what you do has a direct bearing on what somebody else does. So there is those conversations, you know, coordination. So, yes, you know, verbal-type communications do take place.

Q. Can you think of any specific substantive input you received into your -- into your testimony, your current testimony?

A. In terms of creating my testimony, no.

Q. What do you think the point of the review process is?

A. In terms of the testimony, that basically what testimony gets filed is going to be a fair representation of what the Staff's position is.

Q. In preparing your testimony, have you had any conversations with -- regarding the case with persons outside the Staff?

A. Persons outside the Staff?

Q. Yes.

A. Could you explain who you mean by "outside the Staff"? I mean, I have probably had conversations with Company personnel with regards to explanation of data requests and things of that nature, but, I mean, that's part of the auditing process.

Q. Other than Company personnel, have you had any conversations with anyone outside the Staff?

A. No.

Q. So you haven't had any conversations with anyone from the Office of Public Counsel?

A. No.

Q. Any conversations with anyone from the Attorney General's Office?

A. No.

Q. Okay. Mr. Gibbs, you have a degree in accounting that you earned in 1976. Correct?

A. I believe that's correct, yes.

Q. And you became a CPA in 1988?

A. I believe that's -- that's right.

Q. What kind of things do you do to stay current in your field?

A. In the -- for the regulatory process, we attend conferences, FRI conferences. There may be various seminars or things that's put on by NARUC which is more involved with water, various in-house training. Much of that does not relate so much to the accounting field as it does to current events that's happening, you know, in the industry, where things may be going, what may be in the -- in the -- coming up in terms of the various industries.

Much of these things count toward -- count toward your CPE that is required to maintain your certification, although, admittedly, most of the -- most of the CPE that we do get is not accounting-specific. It's more regulatory event-specific.

Q. You -- you attend this in-house training and learn about current events and events in the industry.

Do you think it's important to keep up on what's going on in the industry?

A. Yes, and we do that not only through the conferences, but as -- as -- we try to keep informed through -- through in-house meetings as to what -- what has transpired, various issues that have gone before the Commission or what issues have come up in cases other than the case that you may be working on on itself so that there -- we develop some kind of a consistency basis across the state in between offices.

Q. What is the benefit to you and your work of being up-to-date on current events and having an understanding of what new developments in the industry might be?

A. Well, hopefully, it helps me perform my job to the best that I can.

Q. How would it do that?

A. I don't know how you explain an intangible. I mean, hopefully, what knowledge that you gain through any meetings or training, that you can apply that training within the context of your work, I mean, whether it be through an audit or review or whatever it might be.

Q. Well, for instance, would there be a benefit to you knowing that there was likely to be a significant change in the industry that would touch upon an area of analysis you were doing?

A. That depends on when that change is anticipated. Going back to what we referred to earlier, the test year concept, we don't try to reach out beyond a known time frame and try to pull something in. We're -- we're somewhat restricted in that regard that we try to maintain that investment/expense/revenue relationship given a defined time frame.

So unless something is very, very extraordinary that's going to be coming down -- coming down the pipe that is imminently known and measurable, it's probably something that -- that we would not take into consideration in an audit process.

Q. Okay. You have proposed a series of adjustments and a lot of them are -- I think all of them are areas that you've covered in prior testimony; is that correct?

A. Well, I've supported them in -- to some of them I've adopted testimony that's been provided. In the current proceeding, it is my testimony.

Q. Okay. What I'd like to do is go through them issue by issue, and in each issue -- in each area I'm going to ask you to tell me what you've done that's new. Just in the interest of getting us all out of here as soon as possible, if you identify for me what's new, then we can focus on that. And to the extent you didn't redo an analysis or you didn't look at it, you just adopted what you had done previously, then we can speed up the process. Is that okay?

A. Sounds wonderful.

Q. Okay. Let's start out with the growth adjustment you're sponsoring on page 14.

Now, you sponsored a similar adjustment in your prior testimony, did you not?

A. Yes, I did.

Q. Is your methodology the same?

A. The methodologies are identical. The only difference is the time frame is moot.

Q. Which means you're using different data?

A. More current data, yes.

Q. Different numbers of customers, for instance?

A. Yes.

Q. Okay. Tell me what you think is the purpose of doing this adjustment.

A. The purpose of this adjustment, the growth adjustment, is to restate revenue to what a -- what the customers as of the end of the update period would produce on an annual basis given normal -- normal usage at current approved rates.

Q. Whose idea is this adjustment?

A. Whose idea is this adjustment?

Q. Uh-huh.

A. I don't know. You might have to go all of the way back to the formulation of the Commission itself because this type of adjustment, an annualization adjustment for revenues, was -- has been with the Commission since I've been here, in excess of twenty-five years. So where the -- where this particular adjustment was developed, who developed it, I have no idea.

Q. And you're talking specifically about a customer growth adjustment?

A. Yes.

Q. So in a case like this, or in a rate case, who decides that a specific adjustment, in this case customer growth, will be made in that case?

A. I don't know of any case that I've been involved in in determining a revenue requirement that a growth adjustment is -- is not done, particularly within -- within the -- when you're trying to establish new tariffs.

Q. Who on the Commission Staff decides that you, Doyle Gibbs, are going to be in charge of doing the customer growth adjustment?

A. I think it's a collaborative effort. You take the -- the auditor Vs from the Commission, you take the accounting manager, you take whoever might be named -- somebody is named as the case coordinator. There's a number of -- of major individuals that are initially assigned to do an overall review of what the current status workload is, who is available, and from -- from there, they determine who is going to work the audit. And, typically, whoever is assigned as the case coordinator out of the -- or lead auditor out of the Accounting Department, along with these other individuals, would then decide from the people who are working the audit how to divide that workload up.

A lot of that workload is divided based upon a particular auditor's areas of need. They have defined, I think, within the Commission for establishment of certain positions that you need to have this level of experience or involvement within certain areas, and so we try to direct our work in the context of an audit to try to -- to train as well as to develop -- develop the case. So it varies from case to case.

(MS. O'NEILL LEFT THE DEPOSITION ROOM.)

BY MR. TODD:

Q. You mentioned earlier that you had discussed with Mr. Meyer the concept of a test year. I want to talk about that a little bit.

You were trying to develop a historical test year; is that correct?

A. The premise is based on a historical test year.

Q. You're not trying to develop a future test year --
A. That is correct.
Q. -- or a forecasted test year?
A. That is correct.
Q. Would you agree or disagree that the costs and revenues that are developed for the test year are hopefully to be representative of those same costs and revenues during the time the rates will be in effect?
A. No, I wouldn't necessarily agree with that. What you're trying to do in the concept of a test year is keep the relationship between the revenue, expense, and investment, and, hopefully, that relationship would exist beyond the end of the update period when the rate that's developed based on that relationship goes into effect.

There is no guarantee or certainty that once those rates go into effect that there may not be some change in that relationship. Certainly, revenues are going to change due to either growth or loss of customers. That doesn't mean expenses are going to stay the same, but, hopefully, the overall relationship may stay the same that would mitigate any-- anything that would -- that would cause an increase in expense or decrease in revenue or vice versa.

But it's always the option of the Company that when that relationship gets so out of whack that it's affecting earnings, that the Company has the prerogative to file for another rate case.

Q. So would it be a fair characterization to say that you are not concerned with developing a reasonably expected levels of -- reasonably expected levels of earnings and costs? You are just more worried about the relationship?

A. I don't -- I don't think that we're trying to build rates based on what's going to happen in the future. Historically, we're looking at the relationship. So to the extent that that relationship may change, I mean, the Company would have to file a rate case. But, no, we are not trying to create rates that's predictive of what's going to happen in the future.

Q. To answer my specific question, you're not worried about the reasonably expected levels of earnings?

A. I think that's -- that's a concern, but I think the premise is that -- that we anticipate that the relationship, the investment, expense, and revenue relationships will stay comparable, that the rates that are developed from that going into the future will still provide the Company a reasonable rate of return.

Q. Why do you say it's a concern? What do you mean by "concern"?

A. Well, I don't think it's the Staff's intent to try and create rates that we know are not going to be representative -- or is not going to be able to provide the Company a reasonable return in the future. That's -- I mean, it's just a generalization on my part, and I'm saying that's what -- that's what the concern is that -- that -- I don't think that we would propose the development of rates based on a relationship that -- that would somehow jeopardize the Company's ability to earn a rate -- earn a reasonable rate of return based on the relationship that existed during the historical period.

Q. In calculating your customer growth adjustment you have a series of steps and I want you to walk me through them. So tell me what the first thing you did is.

A. If you want to know just -- just strictly about the growth calculation, I'll bypass some of the inputs that was provided to me to develop the normalized revenue per customer.

Q. Uh-huh. Those inputs were provided by Ms. Teel, is that -- or --

A. No. Ms. Janice Pyatte.

Q. Okay.

A. And the general concept is that it's done each month. Each month you take the beginning and ending customers to find out what the average number of customers were that month compared to the number of customers that existed at the end of the update period, which in this case was September 30th.

Q. Let me jump in immediately.

Why do you use the average number of customers for each month?

A. Because the average rev-- the average customer per month would be more in line with the average revenue per customer for that particular month. The way that the -- the average -- if you take the adjusted revenue, the normalized revenue, say, for a given month and divide it by the customers at the beginning of the month, you're not going to get a true picture because you've had customers either coming on or off the system.

So you've got -- you've got revenue associated with customer changes. If you -- and, likewise, if you take the customers at the end of the month, you get that same distortion. By taking the average number of customers and divided it into the revenue that existed for that particular month, adjusted for the weather and the 365 days, which has been explained, you're going to get an average revenue per customer.

So because that average revenue is produced by using those average customers, what we're doing by taking and comparing September to the average number, we're -- we're examining that growth from the average to what exists as of September.

Q. And the normal month -- the average monthly revenue, that's what you were talking about that Ms. Pyatte developed?

A. Yes. What she developed was the normalized revenue by month, by customer class.

Q. Uh-huh.

A. And so she did not give me the average revenue per customer. That is something where I have taken the average number of customers, divided it into her normalized revenue to get an average revenue per customer.

Q. In looking over customer growth, I assume you've looked at many years of data?

A. I probably have, but I don't -- it really doesn't fit into the -- the -- the calculation of the growth adjustment. The growth -- growth adjustment is based on what actually exists.

We'll look -- we'll look at growth over time to see if there is an alternative method of doing the calculation because of fluctuations of customer levels that given any point in time maybe that might not be the most reflective level of customers. But that wasn't the case here.

Q. Is Ameren a growing company in terms of number of customers?

A. Yes, they are.

Q. Is that growth pretty steady?

A. I haven't examined it to determine how -- how steady that growth is, no.

Q. Putting aside the steadiness of the growth rate, then, has growth been constant?

A. Well, I see that as the same question, and I haven't -- I haven't actually -- I actually haven't looked at that.

Q. Do you have an idea whether -- if you pick a -- any given month, is it more likely that year-end customers -- month-end customers will be higher than month-beginning customers?

A. Generally speaking. I mean, that doesn't preclude the fact that there may be instances where there may be a drop-off of customers.

Q. Certainly.

A. Generally, over an annual period of time, it's an increase in customers.

Q. So, again, generally speaking, it would be true that the average customers per month will be lower than month-end customers?

A. Typically, yes.

Q. And it is also true, then, that using average customers per month, again, in an adjustment such as this, will, generally speaking, add more customers per month than would be the case if you used month-end customers?

A. If you're just talking strictly in terms of numbers, yes. If you use month-end versus end of September, you're going to have fewer customer additions than you would if you looked at the average for the month compared to September. Of course, I would also think that your calculations would be totally skewed.

Q. All of the growth you've factored into the adjustment is based on -- is based on September, the end of the update period. Correct?

A. Yes, that's correct.

Q. Do you recall -- in preparing for this deposition, you told me you read the transcript of the last time I deposed you -- the last two times I deposed you.

A. Yeah. I read through it, yes.

Q. Do you recall, when I previously deposed you on this issue, we discussed a number of costs that new customers imposed on the Company?

A. I believe there was some discussion with that regards.

Q. For instance, your adjustment makes a fuel allowance for additional customers, doesn't it?

A. What my adjustment does in terms of -- in addition to calculating the additional revenue, it calculates a change in kWh. That kWh is provided to other Staff members that incorporate it into a fuel model that creates the fuel.

So to the extent that those -- those kWh are included in the fuel model, there is a fuel cost that's included associated with that growth, yes.

Q. And that is the only other adjustment that is made to the Staff's rate case related to growth adjustment; is that correct?

A. Yes, it is.

Q. Let's talk about your payroll adjustment.

What you've done here, to make sure that I understand it -- we might be able to short-circuit this -- is you have removed the O&M costs associated with the Callaway refueling, and then you calculated your O&M adjustment without Callaway in it, and then you've treated Callaway separately?

A. Yes. But I didn't take out the total Callaway O&M. It's the incremental overtime associated with the Callaway refueling.

Q. You're right.

And you then calculated the incremental Callaway overtime separately?

A. Yes.

Q. And you did that by taking an average of the last three refuelings?

A. Yes, that's correct.

Q. And I think you say in your testimony that you did that because the most recent Callaway refueling was 60 percent greater than the prior two refuelings? That's on page 20, lines 8 and 9.

A. Yes.

Q. Now, when you say 60 percent greater, do you mean the overtime costs of this refueling were greater than either of the last two or greater than the last two combined?

A. It would not be combined. I mean, it would be -- looking at that cost individually to the other -- other refuelings, that generally this particular refueling, for whatever reason, was considerably higher than the other refuelings.

Q. Did you look at any other refuelings other than the prior two?

A. I think there might have been three or four refuelings, I think, in the overall analysis, but --

Q. Do you recall whether incremental overtime was consistent across all of the other prior refuelings you looked at?

A. I don't recall specific-- recall specifically.

Q. Did you inquire of the Company why the most recent Callaway refueling was more expensive?

A. No, I did not.

Q. Do you have any personal knowledge regarding why it may have been more expensive?

A. No, I do not.

Q. So your analysis -- your adjustment here is based entirely on the fact that the most recent refueling was more expensive than the prior two?

A. Yes.

Q. Let's talk about incentive compensation.

Turn to page 22.

Now, this is an area that the last time around you were adopting from Mr. Griggs; is that correct?

A. Yes.

Q. And this time you've done the analysis yourself?

A. Yes.

Q. Give me a sense how much of the analysis you have done yourself entirely this time, or have you just copied over and adopted much of what Mr. Griggs had previously done?

A. Well, I think in the original filing, the July filing, that what Mark Griggs had done with regards to incentive compensation had followed recent policies of the Staff and what the Commission had -- has -- has since ordered with regards to incentive compensation, so I don't think what he did was so out of line with regards to incentive compensation. And so the methodology that was used in the original and what is in the -- the newer March filing follows the same methodology and approach.

Q. Have you ever designed an incentive compensation plan?

A. No, I have not.

Q. Have you ever received any training regarding incentive compensation?
A. No, I have not.
Q. Do you have any experience in a related field?
A. I can't say that I have.
Q. Other than adopting Mr. Griggs's testimony last time, have you performed an incentive compensation adjustment before?
A. Yes, I have.
Q. And would it be fair to say that the sum total of your experience with incentive compensation would be sponsoring incentive compensation adjustments in Staff rate cases?
A. Yes, it would.
Q. In your testimony you have analyzed the incentive plan that was in effect for the calendar -- for calendar year 2000 that paid out at the beginning of calendar year 2001; is that correct?
A. Yes, because the -- the payments associated with the year 2000 is the actual expense dollars that affect the test year period.
Q. Have you reviewed at all the Company's plan that is in effect for the year 2001 that would have -- would have or has paid out at the beginning of

calendar year 2002?

A. I have generally reviewed -- reviewed the program. I did not give it much consideration with regards to the adjustment in the current filing.

Q. And you made that decision because the 2000 plan paid out during the test year?

A. Yes. That is the plan that's actually affecting test level expenses.

Q. And do you consider it relevant at all that the 2000 plan is no longer in effect?

A. I would say that I found that it was relevant because I've adjusted it. The -- again, it was the 2000 plan that affected the test year, and that's why that particular plan was addressed.

Q. Maybe I phrased my question inartfully.

Obviously, the 2000 plan is relevant for your analysis for the reason you stated.

Is it relevant that the plan is no longer in effect?

A. Is it relevant that it is no longer in effect?

Q. Let me flesh it out a little more.

Is it relevant for the purposes of this rate setting procedure that the Company has replaced the 2000 plan with the 2001 plan?

A. I don't -- I don't think it's relevant that the plan has now been replaced by a 2001 plan, because the 2001 plan, its results were not known until subsequent to the update period, and to take that into account, I think, would be in, I want to say -- violation may not be the proper word, but it would not be in synchronization with the test year concept that's been -- that this case has been filed under.

Q. But it was known prior to the update period that the 2001 plan had been -- or the 2000 plan had been replaced with the 2001 plan?

A. Yes.

Q. Tell me what efforts, if any, you have made to understand how the Company goes about creating its incentive compensation plans.

A. In terms of the creation of the incentive plan, I have not -- I have not tendered any data requests or inquired of the Company as to how the plan is developed and administered.

Q. Do you have any idea what types of factors the Company considers in creating an incentive compensation plan?

A. No.

Q. Tell me what you understand to be the role of earnings per share in the plan you did analyze, the

2000 plan.

A. In which plan?

Q. The one you analyzed, the 2000 plan.

A. The 2000 plan?

Q. Uh-huh.

A. The earnings per share is, in essence, the driver or determinant of what level of payout is possible under the incentive plan, and why --

Q. Let me jump in here.

When you say "is possible," what do you mean?

A. Well, what I mean by "is possible" is that in addition to meeting certain earnings per share requirements, they have key performance indicators that are developed by business line and by individuals, and in addition to meeting the earnings per share, these key performance indicators need to be attained as well.

So there is a possibility, even under the incentive plan, given the earnings per share requirement being attained, that doesn't necessarily mean that the full possible payout under the incentive plan will be paid out.

Q. In analyzing the 2000 plan, did you review the various key performance indicators?

A. I did look at -- I did look at them. I can't say that I fully understand all of them.

Q. Is personal performance a criteria at all in the 2000 plan?

A. There is a personal performance -- part of the incentive compensation package, a portion of it, particularly under the mid-management -- the AMIP is how it's been referred to in my testimony -- is geared toward business line and individual performance.

I have not received any information with regards to individual performance, and, to be quite honest with you, with this many employees that are covered, it would be probably difficult to examine the individual performance criteria that's provided to every individual in the Company.

Q. Let me hop in and just for the record state that there are three plans, really, included in the 2000 plan --

A. Right.

Q. -- the Ameren incentive plan, the Ameren management incentive plan, and the executive incentive plan. That's correct?

A. That's correct.

Q. And when we talk about the 2000 plan, we're talking about all three, unless we specify one in particular. Is that okay?

A. Okay. That's fair enough, because -- because under the year 2000 plan, if I'm not mistaken, under the Ameren incentive plan, the AIP, which is payable to full-time, I think, contract employees, the payout was solely based on the earnings per share criteria. I don't think that there was any key performance indicators or individual performance indicators that went into the consideration of the payout of the incentive.

Under the AMIP, which includes most of your management and noncontract people, there the incentive plan is set up where the -- you have 50 percent of the possible payout is attributable to meeting business line performance and 50 percent is on individual performance.

My understanding on the EIP, which includes the executives and Ameren team members -- I forget the exact -- exact wording -- Ameren leadership team members, I'm sorry, that -- it's my understanding that based on a response I had from the Company that the payout there is initially pretty much based on individual performance.

Q. You said earlier that it would be too burdensome to review the individual performance of every employee whose incentive compensation is somewhat based or based in part on individual performance; is that accurate?

A. Yes. And I think it would be somewhat subjective as well, because, I mean, the -- the person that would -- the particular manager of that individual would be the one doing the review, and I think any review by an individual is going to be somewhat subjective.

Q. What effort have you made, if any, to understand the types of criteria that are looked at to evaluate individual performance?

A. I have not looked at that.

Q. In your analysis, you cite a number of cases or Commission decisions, I should say, on pages 24 and 25.

Have you read these?

A. Have I read these orders?

Q. Yes.

A. Yes, I have. I can't -- I haven't committed them to memory, but I have read the orders.

Q. That makes two of us.

Did you read them specifically to prepare this testimony?

A. Yes.

Q. Have you read any other Commission Reports and Orders related to incentive compensation?

A. Not that I can recall.

Q. One Report and Order that you cite in here on page 25 regards a rate case involving the Southwestern Bell Telephone Company. Do you see that?

A. Yes.

Q. Have you made any analysis of -- in preparing this testimony of Ameren as compared with Southwestern Bell?

A. No, I have not.

Q. In the first block quote on page 25, it refers to a long-term incentive reward. Do you have any idea what -- what that was?

A. What it was?

Q. Yeah.

A. Probably not this one in particular. I am familiar with what's referred to as long-term incentive plans where typically the -- an award is provided, but then the actual payout of that reward is deferred where the person has to commit to an additional number of years with the company in order to receive that award. And it's basically geared for the maintaining of key employees.

Q. You would agree, would you not, that the

Ameren incentive plan for the year 2000 was not a long-term incentive plan of the type you just described?

A. No, it was not.

Q. In performing your analysis, did you at all look at the relevant labor markets in which Ameren competes?

A. No, I did not do an analysis of the labor markets.

Q. Do you have any personal understanding of the labor markets in which Ameren competes?

A. No.

Q. Did you consider the affect on Ameren that having good, quality management versus less good, quality management might have?

A. No.

Q. I don't want to call them bad management.

Did you consider the effects on Ameren that having motivated employees may have?

A. No.

Q. Did you consider the effect on the ratepayers that Ameren's having good management or motivated employees may have?

A. No, I have not.

Q. Have you performed any studies attempting to analyze the link between employee performance or management performance and earnings per share?

A. No, I have not.

May I say, just when looking at the incentive -- and you can have a copy of this if you would like -- but on page 24 of my testimony, because of the correction that was made in the incentive compensation that I had alluded to -- well, I don't know that I've actually explained it, but you'll get an explanation when you receive these notes here, that because of the correction that was made to incentive compensation, that my testimony on page 24, line 11, the 61 percent actually needs to be changed to 40 percent. It's just a mathematical change due to a correction that was made.

Q. Thank you.

On page 26 of your testimony, starting on line 19, you state, "The Staff believes that it is difficult, if not impossible, to ascertain what the impact of any individual's performance was in relation to the level of EPS for any given year."

What is your basis for that statement?

A. I personally don't know how you would measure it. I mean, it's -- I mean, that's as simple as I can get.

Q. Have you attempted?

A. If I had any idea how to do it, I probably would, but I have no idea how to do that.

Q. And would I be correct in assuming that your statement here on page 26 goes for any employee of the Company?

A. Yes, it would.

Q. From top to bottom?

A. From top to bottom.

Q. The next sentence on page 26 reads, "EPS is also affected by the efforts of employees not involved in Missouri electric operations."

What is your basis for that statement?

A. Union Electric is a multijurisdictional company. It's also -- just the configuration of Ameren, you have Ameren's CIPS, which is an electric company over in Illinois that is -- that UE acquired. You have AmerenUE, which was the -- what I refer to as the old UE that used to serve just -- just the Missouri/Illinois. I think they used to have a little Iowa, a little Arkansas. I mean, those things have either been merged, sold, you know, what have you.

So you've got a corporation that is operating in different venues, so to speak, and it's not just strictly the purpose of supplying power to

Missouri. So you have employees that are operating, you know, in other venues in other states.

Q. Have you made any statement at an analysis to identify the effect that nonMissouri employees have on AmerenUE on earnings per share?

A. No, I have not.

Q. The next sentence reads, "Any benefit from achieving a given level of earnings per share are simply too remote to Missouri ratepayers."

What analysis, if any, have you performed to back up that statement?

A. None.

Q. The next sentence reads, "Indeed, increased earnings per share upon which all increases in the funding level of incentive plans are based may actually decrease the quality of service to Missouri ratepayers through the incentive to cut costs to achieve higher earnings."

What analysis, if any, have you made to back up that statement?

A. There's been no specific analysis that's been performed behind that -- that sentence. I think it's just a general statement and it's not an accusation that it took place. It's merely a fact that -- you know, that -- that costs could be cut that could be detrimental just to achieve a certain earnings per share. Again, I'm saying -- I'm not accusing or saying or implying that it was done. I'm just saying the possibility exists that it could happen.

Q. And you're comfortable recommending an adjustment to the Company's books based on the possibility that that might occur?

A. Based on prior decisions of the Company (sic) with regards to incentive compensation, yes, I am.

Q. What prior decisions are you referring to?

A. The ones that have been referenced in my testimony.

Q. Could you point me to those?

A. Generally, it's these that have been quoted on page 25 of my testimony.

Q. I'm sorry. I thought you said prior decisions of the Company. You meant prior decisions of the Commission?

A. Yes. If I said "company" that was my mistake. I apologize.

Q. Maybe I misheard it. I was worried there I didn't know something.

A. You didn't know that they disallowed those in the past.

Q. Let me just polish off the paragraph. The last sentence reads, "The Staff believes there is insufficient evidence to connect incentive compensation expense for a particular group of employees to a direct benefit to Missouri ratepayers for the overall EPS performance."

Would I be correct in assuming that, again, you performed no analysis to support that statement?

A. You are correct, yes.

MR. TODD: Okay. Let's move on.

Why don't we take a ten-minute break at this point?

THE WITNESS: Sure.

(A RECESS WAS TAKEN.)

BY MR. TODD:

Q. Okay. Let's talk about injuries and damages on page 27 of your testimony.

A. Yes.

Q. This is another area that in the prior round you adopted from Mr. Griggs?

A. Yes.

Q. And this time you've done the analysis yourself?

A. Yes, I have.

Q. Did you redo the entire analysis yourself?
A. The database that he had put together, I just extended that database. The methodologies and the approach, I think, that we took to do this adjustment, I don't think there was any change.
Q. So the questions I asked you when I last deposed you about your methodology or what considerations went into it would be the same?
A. I reread my deposition. I'd hate to say, you know, that exactly what you asked I would answer exactly the same this time, but I think that generally that would be the case.
Q. You read it. And did anything strike you as being wrong or you would --
A. No.
Q. -- change?
A. No.
Q. Should I -- could I conclude, then, that you did not perform any analysis preparing this testimony of the Company's basis for its own accrual?
A. I think my understanding of the Company's accrual is the -- the Company's legal staff's understanding or estimation of the cost that's going to be incurred associated with various cases and then they would set up their accrual on that basis.

The difficulty with that, of course, it being an estimate, and you could see from year to year, because of the various cases that may be filed against the Company, that one year you would have an accrual that's up here and the next year the accrual would be down here.

It's not only just the amount of payments that are made each year associated with various cases, the accrual itself fluctuates. So I think the use of an average of actual payments is a very reasonable approach to address the injuries and damage issue.

(MR. COOK ENTERED THE DEPOSITION ROOM.)

BY MR. TODD:

Q. Did you at all look at and analyze the Company's estimates of its own legal exposure in any particular case?

A. I have received information from the Company on an individual case basis, what their estimate was, what their actual payout was, at what time did the event occur that was associated with the accrual, when they made the estimate of the accrual, when it hit the accrual. So I did do an analysis as to what the estimate was on an individual case basis, what the payout was, when it was originally set up, if there was adjustments to the accrual, looking at the time frame between when it was initially set up, when it was eventually paid, but I did not actually go into the formulation of -- of how they determined the amount of the -- their estimate.

Q. So when you say you did an analysis of this, what you mean is you looked at the Company's own accrual, but you didn't actually judge for yourself whether it was correct, whether it was reasonable, and so on?

A. That's correct.

Q. Do you know what accounting principles the Company follows when it accounts its accrual?

A. The Company for financial statement purposes which includes the establishment of the accrual for the injuries and damages, as well as other types of expenditures, is based on the accrual method of accounting, which is standard under generally accepted accounting practices.

Q. GAAP?

A. Yes.

Q. Do you have any reason to disagree with the principles espoused by GAAP?

A. Not in terms of financial presentation.

Q. But in your rate-making analyses, you do not follow GAAP?

A. It's quite common under the -- under the regulatory -- the regulatory venue to move to some other method of accounting for purposes of establishing rates. One of those is -- is moving to an actual paid basis.

Q. Do you have any rule or guideline that you yourself follow regarding when to use -- when to move to a cash basis?

A. I, myself?

Q. Yes.

A. It would base -- it would have to be based on an analysis taking a look at what the accrual is versus what has actually -- what has actually happened. In -- I've seen in cases that I have worked, not necessarily with Union Electric, per se, but other companies where I have looked at items that would be on a -- an accrual versus cash basis where I've literally made an adjustment that increased an expense because of an underaccrual.

So I think the guiding -- guiding factor behind most of what we do in regards to items of accrual is to take a look at the actuality of the situation, the actual payments, and see if the -- and typically would make the adjustment based on that unless by chance in a given test year that the accrual happened to match the payments. You know, that would be the only reason that we would stay with the accrual.

Q. What I hear you telling me -- tell me if this is not correct -- is that you will always go with cash unless the accrual is exactly correct or unless, I should say, the accrual matches cash?

A. I would say you could say that generally, but, I mean, like everything else, it's not universal. There could be situations that -- that there may be a difference between the actual payment and the accrual, but looking at the accrual versus cash, that there is not a significant difference, and so it wouldn't matter which -- which method you took.

Q. What do you think of a rule -- or I suppose it would be called a principle that said that you should go to cash when the accrual exceeds cash by 10 percent?

A. What do I think of it?

Q. Uh-huh.

A. Not very much.

Q. What do you mean by "not very much"?

A. I think that, you know, when you evaluate something like that to try to put it in such a concrete formula that it has to exceed 10 percent takes the analytical value away from the auditor as to what -- you know, what he really needs to do.

I mean, you can -- you can use 10 percent as a generality, but 10 percent to me doesn't really mean that much, because if you're talking 10 percent of a $100, you're talking $10, you know, and that's not very material. If you're talking about 10 percent of a million, then maybe you're -- so it's all relative to what you're looking at, and you have to take that in perspective when you do your analysis.

Q. When you're analyzing an area such as injuries and damages, do you take into consideration trends over time in injuries and damages payments?

A. I mean, if you can establish a trend. I mean, when you look at any accrual versus cash, for example, if you see that -- that -- that -- even if the accrual is over-- I'm going to say overstated compared to actual payments, but you're seeing actual payments on an upward trend, then I, myself, would probably advocate, because that trend using the most current data as -- as the appropriate amount rather than using an average, which would depress that -- you know, it would be -- it would be going against that current trend that you're actually seeing. Likewise, I mean, if it was going down, I would do the same thing.

So, I mean, it's -- you have to look at the data and let the data dictate what you have to do.

Q. If in a given test year the Company paid out a significant amount of money for -- to settle a damages payment in a particular case, how would -- how would the Staff treat that expense?

Let me give a little more context. By "significant," I mean a lot larger than other payments made that year or typically made.

A. Well, you're talking about something that is affected by something outside the Company here. I mean, when you're talking about legal lawsuits, you never know what a jury or a judge or what's going to -- what's going to come out of it.

I think the -- you know, without getting into specific cases, I know the Company had a particular case that, you know, that -- I mean, it was a walk in the park. I mean, no problem, and they wound up having to pay dollars associated with the case that I personally think the Company shouldn't have had to pay either. I mean, I was totally in agreement with what the Company's position would have been.

But you can't -- you can't try to quantify, you know, the value of an injuries and damages issue on a particular case because you never know what's going to come out of it. I mean, that's why I'm not trying to analyze the Union Electric's legal staff as to what their value of these are. I'm looking at what has actually transpired, what the payments are.

You could have -- and it's certainly occurred during the time frame that I'm looking at here, over five, six years, you've had payments as high as $17 million in one year and the very next year you only pay out 4 million. The next year it's way back up here and the next year it's back down here. It's like a yo-yo.

So if I'm looking at a particular case in a given year, am I going to say, Okay. This is normal? No, because I'm looking at historically what has happened that, even though you make a large payment here, that doesn't guarantee that you're going to get a large payment the next year.

Q. Have you or has Staff, to your knowledge, ever excluded a settlement or payments in a particular case entirely, for instance calling it a one-time, nonrecurring expense?

A. I can't say that that has not happened, and it would certainly depend on the circumstances.

Q. Uh-huh.

A. Certainly, within injuries and damages where you're talking about, you know, some construction worker hitting a -- hitting a transmission line and getting a settlement because of that, I mean, these things are inherent in the electric business.

You've got things out there that can pose hazards. I mean, people get careless. It may not be any fault of the Company, but the Company is going to wind up having to pay for it. But, I mean, these are things that are there. They are always going to be there.

Now, in the instance -- I mean, so you have to look at the particular event, whether it's something that is truly something of a one-time nature, because -- because of the event it would never -- never really happen again. So I -- again, just to reiterate, I mean, you have to look at the circumstances around that particular event.

Q. Could I paraphrase by saying it's possible that a particular settlement or payment might be excluded in that manner based on its own circumstances?

A. If you're talking about accrual versus cash basis and -- and not necessarily directed to particularly injuries and damages, I would say yes.

Q. I mean, specifically with relation to injuries and damages, and I suppose this would be under cash basis accounting, is it possible that the Staff would exclude a particular settlement or damages payment on the basis that it was one-time and nonrecurring because it was somehow extraordinary?

A. I don't put it out of the realm of possibility. I have not done that in this case.

Q. Are you familiar with the concept of intergenerational equity?

A. I've heard the word thrown around, yes.

Q. Would you agree with the notion that current ratepayers ought to pay for things that benefit them?

A. I think that's -- that's a generally accepted concept.

Q. And the flip side of that, would you agree that it's unfair to make future ratepayers pay for things that did not benefit them?

A. Yeah, but, I mean, you have to look at the time frame that you're talking about when you're talking about intergenerational. You know, if you're talking about we're going to build a power plant 20 years from now so we need to get the money up-front from you guys, well, that's one thing. Or if something is happening here that we're going to say, Okay. We're not going to let you recover this, but we're going to let you recover it 20 years from now, I mean, that's an extreme case of -- of -- of what you're talking about in inter-- what --

Q. Intergenerational equity.

A. -- intergenerational equity. So I don't think that intergenerational equity is -- is something that's -- something that's absent, but you try to minimi-- I think you try to minimize that.

Q. Would it be fair for me to assume in performing your analysis you don't consider intergenerational equity?

A. I didn't look at that specifically, no.

Q. Let's move on to the territorial agreements.

Now, I'm a little confused as to exactly -- actually, let me ask you the first question I've been asking.

What, if anything, did you change in your analysis of the territorial agreements this time around?

A. Overall, the methodologies are pretty much the same, although they are addressed somewhat differently. Because of the way depreciation was calculated in the original filing, there was a separate adjustment in the original filing specific for territorial agreements.

In the current -- in the current filing, the March filing, we used a different EMS tool, so to speak. The original was filed under what I call a DOS version that doesn't -- didn't give you much flexibility, so there was things that were done outside the EMS run in an input where I used an EMS run that was -- is driven off of Excel that gives you the flexibility of putting in formulas and allowing you to be a little bit more flexible in what you -- what you do so that when you do make an input somewhere that it -- if it has effect anywhere else within the EMS run, it is generated and goes through all of the applicable applications that are affected.

So that is the primary change in the territorial agreements where the EMS run was used as the calculator of the depreciation expense rather than doing it external to the EMS run and inputting the number, likewise, and the fuel expense, rather than making a specific adjustment for fuel expense, the kWh was provided to our Energy Department who then used that data to incorporate in their overall fuel run for fuel expense.

So the -- the calculation was the same, just that the depreciation and the fuel component was kind of brought into a different spectrum and calculated as part of a total fuel cost, total depreciation cost.

MR. TODD: Let me go ahead and get these notes that you provided me put in as Exhibit 1.

(EXHIBIT NO. 1 WAS MARKED FOR IDENTIFICATION BY THE COURT REPORTER.)

BY MR. TODD:

Q. We've marked as Exhibit 1, Mr. Gibbs, the notes that you prepared specifically for today's deposition; is that correct?

A. Yes.

Q. Now, I want you to explain to me exactly what it is that this adjustment does.

A. The territorial agreements?

Q. Yes.

A. What the territorial agreements adjustment attempts to do is to reinstate the investment revenue and expense levels associated with those areas that was -- was given up or that the net change between what was given up and what was received in regards to the territorial agreements.

Q. Now, I think what you just said is two different things, and that's, I think, the source of my confusion.

On page 31 of your testimony, line 17, you characterize the adjustment as making the revenue expenses look as if the territorial agreements did not exist. And what you just told me was that you're trying to -- you reverse the net difference.

A. And I think it says the same thing. What you -- what I'm saying is when you reverse it, you put back the customers that UE had, you give back the customers that the territorial agreement -- the co-op or the city had, you take the investment you give away, bring it back, give that investment back. I mean, the whole thing is a netting process as if the territorial agreement did not exist.

Q. Am I correct, though, that all you are doing is you are changing back the customers, facilities, et cetera, that were actually exchanged on the day the agreement was signed?

A. With a -- with a minor exception. I think that we have attempted to -- at least in part, to adjust the revenues to reduce the effect of the territorial agreement as a result of customer additions in the areas that the -- the customers picked up in those -- those areas where they had acquired from the -- through the territorial agreements.

Q. So you have looked at information on those areas since the time the agreement was signed?

A. Yes.

Q. So is what you are handing back to each company now the current ratepayers, facilities, et cetera, in each -- in the traded service areas?

A. Yeah. I think -- if I could go through just an illustration, I guess.

Q. That would be helpful.

A. In one -- say, in one territorial agreement, say, you gave up $1,000 of revenue and you gained 500, so you had a net loss of revenue of 500. We come now and you've added a couple of customers, so that $500 of lost revenue that you have is now reduced because you have additional revenue associated with these customer additions.

That is what has been addressed since the time of the initial territorial agreement. Other than that, it's remained pretty much the same. It's basically a swap from day one.

Q. I want to work with the numbers you just gave to make sure I understand this.

Let's say Union Electric is giving up the 1,000 and Black River Cooperative is giving up the 500.

A. Right.

Q. And which area is it that has now developed additional revenue?

A. The additional revenue is associated with the customer additions that the company has acquired in the area that they acquired.

Q. So Union Electric gets an area from Black River that initially generated $500, and let's say it now generates $600. Whereas the net change initially was $500, the net change is now $400?

A. That's correct.

Q. That's what you're telling me.

How long do you think an adjustment like this should continue to be made?

A. Theoretically, until such time as it can be proven or shown to the Staff that the net impact of the territorial agreement does not create an additional revenue requirement to the current ratepayers.

Q. Suppose for me that two different companies provided services to St. Louis and Jefferson City, and they decided that they would exchange those service areas. Union Electric was just sick of providing service to St. Louis, just wanted Jefferson City now, and the Commission blessed this in an agreement as it did the agreements you are adjusting.

Would it be appropriate in that case to attribute back to Union Electric Company all of the ratepayers in St. Louis?

A. You talk in a very extreme -- extreme situation here that I can't fathom that it would happen. But assuming that would -- assuming that could transpire, under the current theory that our territorial agreement adjustment has been made, yes, that would be an appropriate adjustment to do.

That's also under the assumption that, you know, that particular swap actually caused an additional revenue requirement to the existing customers of the company.

Q. When you say an additional revenue requirement to existing customers, what is it about the fact that there is an additional revenue requirement that requires the adjustment to be made?

A. In a rate setting when you're trying to establish rates, if a territorial agreement caused an increase in the calculation of revenue requirement, in other words, revenue requirement is higher because of -- of these particular territorial agreements, then that's -- from the Staff's perspective, it's been detrimental to the current ratepayers. And all we're trying to do in -- with respect to the territorial agreements is to reverse the impact of those territorial agreements on the revenue requirement.

Q. Now, you would agree with me, would you not, that when the Company signs a contract for fuel that is at a higher price than the previous contract for fuel, talking in general terms, that the increase in the price of fuel is likely to increase cost of service and, therefore, a new rate-making could increase rates?

A. But you're talking about a cost that's generated for the provision of service to the current ratepayers, and, as such, the current ratepayers should be paying to the Company for that service.

The territorial agreements are a different animal because you're creating a revenue requirement associated with -- with a loss of customers, and so the current customers are having to pick up, if you will, that loss of revenue requirement associated with the territorial agreement.

Q. Have you performed any analysis regarding the benefits to UE off of these territorial agreements?

A. Now, when you say analysis of benefits, the dollars -- the amounts that we -- that the Staff has incorporated into the adjustments are figures that have been generated by the Company. If you're talking about analysis other than that associated with the benefits due to duplicative services, maybe maintenance of -- avoidance of additional construction, that type of thing, no, we have not done any kind of an analysis as to the nontangible benefits associated with these territorial adjustments.

Q. Have you analyzed whether these territorial agreements were a good idea?

A. I, myself, was not involved in the actual review of the territorial agreements that was approved by the Commission.

Q. Do you have any opinion as to whether they were a good idea?

A. No.

Q. Has the Staff made any other adjustments in any other areas of its rate case related to the territorial agreements?

A. I think the territorial adjustments encompass the change in revenue, maintenance, net investment, and fuel expense.

Q. And other than those, you've made no adjustments at all related to your reversal of the territorial agreements?

A. I don't believe we have.

Q. You told me earlier that you have attempted to update the exchange of revenue somewhat to reflect the more recent developments?

A. Yes.

Q. That was our 1,000/500 example we were talking about?

A. Yes.

Q. How many of the adjustments have you adjusted in that manner?

A. Offhand, I can't say. I know at least one or two. It wasn't universally applied to all of them. Some of the territorial agreements were -- were not subject to that.

I think -- I'm trying to recall which one it was. There was one that was purely a sale where the Company didn't receive any customers. It was just a, you know, selling of -- selling off of a piece of territory. So there was -- some of the territorial agreements were not subject to the same review of customer additions that others were.

Q. Did you analyze all of them for customer additions, obviously, with the exception of the sale?

A. The information was requested.

Q. Did you analyze the information?

A. Actually, the latest information that I requested I returned to the Company as nonresponsive and I'm still awaiting a response.

Q. As regards the sale, did you factor into your calculation whatever conversation the Company received for the sale?

A. I'm sorry. Could you repeat that?

Q. For the sale, the contract that was just a sale, did you take into account I assume it was money the Company received for that sale?

A. Not with respect to the adjustment, no.

Q. How is the energy cost allowed to the Company to serve the new customers -- or the return customers, rather, calculated?

A. The dollars associated with those customer changes, associated with those customer changes there was additional kWh associated with those dollars. Those additional kWh associated with those changes was provided to our Energy Department. So those kWh was incorporated into the overall fuel calculation.

Q. That would be the production cost model?

A. Yes.

Q. You provided those to Mr. Cassidy? Mr. Bender?

A. Actually, the information was provided to

Lena Mantle who I think then, you know, provided it to Leon Bender, I think, for purposes of the fuel production model.

Q. Let's talk about uncollectible expense.

Would I be correct in assuming your methodology here was just the same as last time?

A. The methodology was the same, although, as you may note if you've read through the copy of the notes that was provided to you that I brought in, in addition to the errors that the Company had brought to my attention, I, myself, had found an error in the Staff's calculation of uncollectibles which was, I think, fairly substantial.

There was a minor difference in some of the data that had to be adjusted, but the primary error was that in moving to the September update, I inadvertently had also picked up the September per-book accrual as a basis for the adjustment. And when that -- when you go back and make that adjustment based on the June level of expense, the Staff's adjustment went from 1.5 million, which was in our filing, to 5.3 million.

Q. And you've gone over that with Mr. Weiss. Correct?

A. Yes.

Q. Let me just ask you a series of general questions, and then we're going to be done --

A. Okay.

Q. -- which is going to be a world record for us, I think.

In performing your analysis, have you ever considered the effect of your adjustments on the quality of Ameren's management?

A. No, I have not.

Q. Do you have an opinion as to whether Ameren is a well managed company?

A. No.

Q. Have you ever considered the quality -- the effect of any of your adjustments on Ameren's safety record?

A. No.

Q. Do you have any idea whether Ameren has a good or bad safety record relative to other utilities?

A. I haven't made that analysis.

Q. Do you have any opinion?

A. No.

Q. Do you have any idea whether Ameren has a good environmental record relative to other utilities?

A. I don't know.

Q. Have you ever considered Ameren's

environmental record in performing any of your analyses?

A. No, I haven't.

Q. Do you have any idea how Ameren's rates compare to other utilities in Missouri or nationwide?

A. Specifically, no, I don't.

Q. Do you have any idea how Missouri rates compare to rates nationwide?

A. I haven't seen -- I'm sure the analysis is put together someplace, but I have not seen it.

Q. Do you have any opinion as to whether Ameren is an efficiently operated utility?

A. No.

Q. Have you ever considered the effect of your adjustments on Ameren's efficiency?

A. No.

Q. In performing your analyses, do you ever consider the concept of rate stability?

A. No.

Q. In performing your analyses, do you ever consider the concept of regulatory instability?

A. No.

Q. Do you know what I mean by "regulatory instability"?

A. Evidently, not. That's why I -- evidently, I must not consider it, so --

Q. Do you ever consider the effect on a company's operations that may be had by changing regulatory standards and methods?

A. No, I haven't.

Q. Have you ever considered the impact that the Staff's rate case may have on AmerenUE?

A. No.

MR. TODD: We're done.

MR. MOLTENI: I have a few questions for the witness.

CROSS-EXAMINATION BY MR. MOLTENI:

Q. Mr. Gibbs, you remember that Mr. Todd asked you questions about accrual-based accounting versus cash-based accounting?

A. Yes.

Q. And you remember earlier today you talked about materiality, in specific with an example using 10 percent of 100 percent versus 10 percent of a million. Right?

A. Yes.

Q. And then later on today Mr. Todd asked you some questions about the territorial adjustments?

A. Yes.

Q. And he gave you a hypothetical of a Jeff

City versus St. Louis swap?

A. Yes.

Q. Would it be fair for me to assume that materiality would come into play in whether the Staff would apply those territorial adjustments in such a swap?

A. I'm sure it would, and it would be in the aggregate, not necessarily in the individual.

MR. MOLTENI: Okay. Thanks.

That's all of the questions I have.

MR. TODD: OPC?

MR. ROBERTSON: I'm not an attorney. They don't allow me to ask questions.

(PRESENTMENT WAIVED; SIGNATURE REQUESTED.)

____
DOYLE L. GIBBS

Subscribed and sworn to before me this day of , 2002.

____
Notary Public in and
for County,
State of Missouri

<u>C E R T I F I C A T E</u>

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

I, KRISTAL R. MURPHY, CSR, RPR, CCR, with the firm of Associated Court Reporters, do hereby certify that pursuant to agreement, there came before me,

DOYLE L. GIBBS,

at the Missouri Public Service Commission, Room 810, Governor State Office Building, in the City of Jefferson, County of Cole, State of Missouri, on the 12th day of April, 2002, who was first duly sworn to testify to the whole truth of his knowledge concerning the matter in controversy aforesaid; that he was examined and his examination was then and there written in machine shorthand by me and afterwards typed under my supervision, and is fully and correctly set forth in the foregoing 73 pages; and the witness and counsel waived presentment of this deposition to the witness, by me, and that the signature may be acknowledged by another notary public, and the deposition is now herewith returned.

I further certify that I am neither attorney or counsel for, nor related to, nor employed by, any of the parties to this action in which this deposition is taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially interested in this action.

Given at my office in the City of Jefferson, State of Missouri, this 12th day of April, 2002.

____
KRISTAL R. MURPHY, CSR, RPR, CCR

COSTS: (Computation of court costs based on payment within 30 days.)

Company notified errors (4/3/02)

TY p/r net of Callaway off approx 200,000

Conclusion

Input error 9/01 - corrected + recalculated p/r adjustment and FICA + PET amts (Recalc also affected by incen comp change noted below)

Increased p/r 419082 FICA 63000 + PET 400 before alloc

Incentive Comp - used wrong amt for UEC actual payout for AMIP

Conclusion -

corrected amount - related to AMIP

In add to Co found error EIP was updated based on Co. revised DR response (neg) on TC basis

Net effect was to reduce Staff's adjustment by approx 1.5 mil. This change also affected the payroll adjustment. It also affected my testimony at pg 24 line 11.

Employee benefits -

UE Elec % of O&M. Staff revised from 94.19 to 95.97%. Co. indicated that s/b 96.4. last data relied on calculated to the 95.97% Change resulted in increase to expense of 18,000

addl error detected by the Staff

EXHIBIT

1

KRM 4/12/02

Minor input errors in net write-offs ~~of~~ totaling approx 4,000

Most significant change was in TY accrual. When updating to Sept inadvert. used Sept accrual rather than June Overall impact was to change adj from 1.5 mill to 5.3 mill

Changed approach/method from July 2 filing to March filing:

Allocations

P/R

Territorial agreements.

dep. calc within EMS

fuel cost incorp in prod. model

Depr. ~~calc~~ calc within EMS rather than independ calc and input into EMS. ∴ depr. not calc for plant adj into

EMS program - July filing done on "DOS" based program

Mar filing done on excel version

ERRATA SHEET

Deposition of: Doyle Gibbs

Case Caption: EC-2002-1

Date Taken: November 27, 2001

Page	Line	Correction	Reason
10	2	The word files should read; filings	Typo
10	18	The word file should read; filed	Typo
17	3	The word gross should read; growth	Typo
25	6	The word step should read; department	Typo
26	15	The word or should read; for	Typo
27	1	The word determiners should read; determinants	Typo
36	8	The word develop should read; developed	Typo
38	5	The word occurring should read; occur evenly	Typo
40	1	The word formal should read; informal	Typo
58	2	The word MIM should read; MIN	Typo
70	17	The word err should read; error	Typo
90	17	The words for and should read; foreign	Typo
97	1	The word err should read; error	Typo
107	21	The word mind should read; line	Typo
111	11	The word analyzation should read; annualization	Typo

Doyle Gibbs

Signature

(This is the signature page to the deposition of Doyle Gibbs taken on November 27, 2001.)

STATE OF MISSOURI)
) **ss.**
COUNTY OF COLE)

I, Doyle Gibbs, do hereby certify:

That I have read the foregoing deposition;

That I have made such changes in form and/or substance on the attached errata sheet(s), as might be necessary to render the same true and correct;

That having made such changes thereon, I hereby subscribe my name to the deposition.

Executed this ______________ day of ______________________________, 2002,

at ____

Doyle L. Gibbs
(Name)

My Commission Expires: ____

Notary Public: ____

BEFORE THE
MISSOURI PUBLIC SERVICE COMMISSION

STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION, Complainant,	)	
vs.	)	Case No. EC-2002-1
UNION ELECTRIC COMPANY, d/b/a AMERENUE, Respondent.	)	

CONFIDENTIAL

DEPOSITION OF DOYLE GIBBS
TAKEN ON BEHALF OF THE RESPONDENT.

November 29, 2001

ORIGINAL

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BEFORE THE
MISSOURI PUBLIC SERVICE COMMISSION

THE STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION,	)	
Complainant,	)	
vs.	)	Case No. EC-2002-1
UNION ELECTRIC COMPANY, d/b/a AMERENUE,	)	
Respondent.	)	November 29, 2001
	)	Jefferson City, MO

DEPOSITION OF DOYLE GIBBS,

a witness, sworn and examined on the 29th day of November, 2001, between the hours of 8:00 a.m. and 6:00 p.m. of that day at the offices of Governor Office Building, Room 210, in the City of Jefferson, County of Cole, State of Missouri, before

MELINDA ADOLPHSON, CSR
ASSOCIATED COURT REPORTERS, INC.
714 West High Street
Jefferson City, Missouri 65102
(573) 636-7551

within and for the State of Missouri, in the above-entitled cause, on the part of the Respondent.

A P P E A R A N C E S

FOR THE COMPLAINANT:

ERIC ANDERSON
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GORDON D. TODD
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COOPER & KIRK
1500 K Street, N.W., Suite 200
Washington, D.C. 20005
202-220-9683

ALSO PRESENT:

John Cassidy
Lena Mantle
Gary S. Weiss

SIGNATURE INSTRUCTIONS:

Presentment waived; signature requested.

EXHIBIT INSTRUCTIONS:

Copy and attach.

I N D E X

RESPONDENT'S EXHIBITS

EXHIBIT NO. 1	Direct Testimony of Mark D. Griggs	14
EXHIBIT NO. 2	Staff's Response to UE's First Set of Interrogatories	14
EXHIBIT NO. 3	Accounting Schedules	14
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EXHIBIT NO. 5	AmerenUE Earnings Review	36
EXHIBIT NO. 6	Staff's Data Request No. 300R	47
EXHIBIT NO. 7	Data Requst No. 35R	48
EXHIBIT NO. 8	Incentive Plans	60

DOYLE GIBBS, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. TODD:

Q. My name is Gordon Todd. I'm with the Cooper and Kirk Law Firm, representing AmerenUE. To my right is Gary Weiss, who is also with AmerenUE.

Why don't I just have everyone around the table introduce themselves starting with deponent.

MR. GIBBS: Doyle Gibbs with the Missouri Commission.

MR. ANDERSON: I'm Eric Anderson, with the General Counsel's Office, representing Staff.

MR. CASSIDY: John Cassidy, with the Missouri Commission.

MS. MANTLE: Lena Mantle, with the Missouri Public Service Commission.

BY MR. TODD:

Q. Mr. Gibbs, you understand you're being deposed today in Case EC-2002-1?

A. Yes.

Q. And you are being examined under oath?

A. Yes.

Q. Mr. Gibbs, have you been deposed before?

A. Yes, I have.

Q. How many times have you been deposed?

A. This would be my second time.

Q. Have all of your -- was your prior deposition in a Public Service Commission-related case?

A. Yes, it was.

Q. Was it an electric utility case?

A. Yes. Matter of fact, it was this very same case.

Q. As you have been deposed before, you are familiar with the rules, the ground rules, but I'm going to run through them quickly for purposes of the record.

You understand that your answers should all be oral?

A. Yes.

Q. You understand that you and I should try to avoid interrupting each other?

A. Yes.

Q. You understand that as we go through the deposition, we'll be using various technical terms and terms of art, and you will be more familiar with them than I will. So you understand that you're free to define those or to correct my misuse so the record is clear. Do you understand that?

A. Yes, I do.
Q. You understand that if you don't understand a question, you're free to ask me to repeat it or to clarify it?
A. Yes.
Q. You can also have the court reporter read a question back if you have forgotten it.
A. Okay.
Q. If you think that a term that I use in a question or a term that you want to use in an answer requires some definition, you can define that term within the parameters of your answer; is that understood?
A. Yes.
Q. As we go through the deposition today, your counsel may occasionally object. If your counsel objects, you have to go ahead and answer the question, do you understand that?
A. Yes.
Q. You are allowed to not answer a question if your counsel objections on the grounds of privilege and instructs you to not answer, do you understand that?
A. Yes.
Q. As we go along, if you want to take a

break or anyone wants to take a break, please just speak up, and we'll accommodate that at the nearest immediate point, if not, right then. Okay?

A. Okay.

Q. Now, Mr. Gibbs, today's deposition is not actually on your own testimony, but rather that proffered by Mark D. Griggs; is that correct?

A. That is correct.

Q. Mr. Gibbs, what have you done to prepare for your deposition today on Mr. Griggs' testimony?

A. I have reviewed his testimony, and reviewed his work papers associated with his testimony.

Q. Have you reviewed anything that was not produced to AmerenUE?

A. Not that I'm aware of.

Q. Did you perform any -- re-perform, rather, any of Mr. Griggs' calculations?

A. I did not go through and actually do a mathematical check, just a cursory check of the adjustments.

Q. Did you speak to anyone in preparation for today's deposition?

A. Yes.

Q. Who have you spoken to?

A. I spoke with my attorney, Eric Anderson, who is sitting here on my left, as well as Steve Rackers and Greg Meyer from the accounting staff.

Q. What was the nature of your conversation with Steve Rackers?

A. Essentially Steve Rackers just -- I'm trying to think. He didn't formulate any potential questions, basically he just wanted to know if I understood or had at least an understanding of what Mark Griggs had done.

Q. Did you review any of Mark Griggs' testimony or work papers with Steve Rackers?

A. No, I did not.

Q. And the other person you said you talked to was Greg Meyer?

A. Greg Meyer, yes.

Q. And what was the nature of your conversation with Mr. Meyer?

A. The conversation with Greg was basically how to conduct yourself in a deposition, just general, you know, get a good night's sleep, nothing in terms of a technical nature.

Q. Would I be correct in assuming you didn't review Mr. Griggs' testimony or work papers with Mr. Meyer?

A. No.

Q. No, you did not?

A. No, I did not.

Q. Now, in reviewing Mr. Griggs' work papers, did you find any mistakes?

A. I don't know if -- I guess there was a few things and it's not so much in -- it has to do more with information that has come out of earlier depositions with regards to, say, the allocations. In an earlier deposition, there was some question as to the fixed allocation, and that fixed allocation was not properly used in calculating the impact that it has on other allocation factors. So to the extent there were certain changes unrelated to his actual work that would filter into his work, things would have to be changed, yes.

Q. Other than the fixed allocation factors, were there any mistakes that you found in the work papers?

A. I had some difficulties following some of his allocation percentages, but assuming that those were right, I have no problems with it.

Q. By allocation percentages, do you mean the allocation factors?

A. Yes.

Q. Is there anything that you would add to Mr. Griggs' work papers?
A. Not at this time.
Q. Anything you would like to qualify in Mr. Griggs' work papers?
A. I don't have anything specific, no.
Q. Subject to your comments on the allocation factors, do you feel comfortable completely adopting Mr. Griggs' work papers for purposes of your testimony?
A. Yes.
Q. Did Mr. Griggs have any notes or other papers other than his work papers that are pertinent to this case?
A. I did not see any.
Q. And you also reviewed Mr. Griggs' testimony?
A. Yes, I have.
Q. Did you find any mistakes in Mr. Griggs' testimony?
A. I don't believe I found any mistakes in his testimony.
Q. Anything you would like to add to Mr. Griggs' testimony?
A. Not at this time.

Q. Anything you would like to delete from it?
A. Not at this time.
Q. Anything you would like to qualify in it?
A. Not that I'm aware of.
Q. Do the problems with the allocation factors you mentioned a minute ago, in any way change Mr. Griggs' testimony?
A. I don't believe it changes any of his testimony in terms of the concepts.
Q. In any other terms?
A. Not that I'm aware of.
Q. Mr. Gibbs, do you completely adopt and support Mr. Griggs' testimony?
A. Yes, I do.
Q. Mr. Gibbs, were you involved at all in the preparation of Mr. Griggs' testimony?
A. I was part of the initial review of his testimony before it was filed.
Q. Were you at all involved in the process of his preparing it before that review took place?
A. No.
Q. Do you know whether Mr. Griggs' testimony entirely reflects his own work?
A. No, I do not.
Q. Do you know whether he had assistance from

others in preparing any portion of his testimony?

A. No, I do not.

Q. Do you know what documents Mr. Griggs reviewed in preparing his testimony?

A. Not in their entirety, no.

Q. What do you mean by not in their entirety?

A. His testimony specifically addresses certain DRs and references to prior Commission cases, so that in itself would indicate that he had reviewed those particular items. Anything specifically not addressed in his testimony, I wouldn't have any knowledge of what he had reviewed.

Q. Is it possible that Mr. Griggs reviewed or relied upon papers that are not included in his work papers?

A. That may be a possibility. I do not know.

Q. You don't have any knowledge of such papers?

A. That is correct.

Q. In preparing testimony in a case such as this, does a Staff member rely on their own experience?

A. Could you clarify, please?

Q. Certainly. When you're working on

performing your analysis on a case such as this, do you rely on your own experiences, for instance, prior cases, from your education, from your familiarity with your own field, things like that?

A. I'm sure that that's the case. You rely on your own experience, as well as review of any work papers that may exist in that particular area, in that with regard to that company in a prior case or possibly the work papers from an unrelated case that may have some similarities.

Q. Would I be correct in assuming that a Staff witness would also have a general familiarity with the leading texts and treatises in their particular field?

A. Yes.

Q. And would have a familiarity with leading authors in their field?

A. I don't know.

Q. Do you know what personal experiences -- or pardon me -- what prior experiences Mr. Griggs might have relied on in preparing for his testimony in this case?

A. If I'm not mistaken, I don't know if it's an attachment to his testimony or within his testimony itself, there may be a -- yes, there's a

Schedule 1 attached to his testimony that indicates prior cases that he has filed testimony in.

Q. Do you know whether Mr. Griggs relied on anything from any of these cases?

A. No, I do not.

Q. Do you know whether or not Mr. Griggs is familiar with leading treatises and texts in his field?

A. No, I do not.

Q. Do you know of anything beyond his produced work papers that Mr. Griggs may have relied on in preparing his testimony in this case?

A. No, I do not.

Q. Mr. Gibbs, do you have prior experience in the areas that you're adopting from Mr. Griggs?

A. Yes, I do.

Q. Which areas do you have prior experience in?

A. Over 25 years of experience with the Commission, I have at one time or another probably been involved in each of these areas.

(EXHIBIT NOS. 1, 2 AND 3 WERE MARKED FOR IDENTIFICATION BY THE REPORTER.)

BY MR. TODD:

Q. Let me hand you copies of what has been marked as Exhibit 1, Exhibit 2, and Exhibit 3. Mr. Gibbs, at some point I'm going to call you Mr. Griggs, so I apologize in advance for doing that.

Mr. Gibbs, do you recognize what's been marked as Exhibit 1?

A. Yes, I do.

Q. What is this document?

A. This is the direct testimony of Mark D. Griggs, which was filed in this proceeding.

Q. And this is the document you have stated you have reviewed or are familiar with and are completely adopting?

A. Yes.

Q. Do you recognize Exhibit 3?

A. Exhibit 3, yes. These are the Staff accounting schedules, which calculate the revenue requirement that was originally sponsored by Jim Schweiterman that I'm currently sponsoring.

Q. And the schedules in Exhibit 3 are referenced in Staff's various pieces of written testimony in this case, correct?

A. Yes, it is.

Q. Let's turn to Exhibit 2, which is a document entitled, Staff's responses to Union