

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

On-the-Record Session

January 19, 2005  
Jefferson City, Missouri  
Volume 19

In the Matter of the Application of Union )  
Electric Company, Doing Business as )  
AmerenUE, for an Order Authorizing the ) Case No.  
Sale, Transfer and Assignment of Certain ) EO-2004-0108  
Assets, Real Estate, Leased Property, )  
Easements and Contractual Agreements to )  
Central Illinois Public Service Company, )  
Doing Business as AmerenCIPS, and, in )  
Connection Therewith, Certain Other )  
Related Transactions )

LEWIS MILLS, Presiding,  
Deputy Chief Regulatory Law Judge  
JEFF DAVIS, Chairman,  
STEVE GAW,  
ROBERT M. CLAYTON, III,  
LINWARD "LIN" APPLING,  
COMMISSIONERS

REPORTED BY:  
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Commission

25

1 PROCEEDINGS

2 JUDGE MILLS: Let's go on the record. We're  
3 on the record this morning for a question and answer session  
4 in Case No. EO-2 -- EA-2000 -- I'm sorry, EO-2004-0108. I'll  
5 begin by taking entries of appearance. I'll just start in  
6 the front row and sort of work my way towards the back, so if  
7 I can begin with the Staff, please.

8 MR. DOTTHEIM: Steven Dottheim, Lera Shemwell,  
9 Dennis L. Frey, Post Office Box 360, Jefferson City,  
10 Missouri, 65102, appearing on behalf of the Staff and the  
11 Missouri Public Service Commission.

12 MR. COFFMAN: Appearing on behalf of the  
13 Office of the Public Counsel, just me, John B. Coffman, Box  
14 2230, Jefferson City, Missouri, 65102.

15 MR. LOWERY: Good morning, your Honor,  
16 appearing on behalf of AmerenUE, James B. Lowery, Smith  
17 Lewis, LLP, 111 South Ninth Street, Columbia, 65201.

18 And also appearing on behalf of AmerenUE,  
19 Joseph H. Raybuck, an attorney with Ameren Services Company,  
20 1901 Chouteau Avenue, St. Louis, Missouri, 63166.

21 JUDGE MILLS: Thank you. Ms. Langeneckert.

22 MS. LANGENECKERT: Lisa C. Langeneckert,  
23 appearing on behalf of the Missouri Energy Group, with the  
24 firm of the Stolen Partnership, LLC, 911 Washington Avenue,  
25 St. Louis, Missouri, 63101.

1 JUDGE MILLS: And I received a phone call this  
2 morning from Diana Vuylsteke, who said she was running late,  
3 but she is on her way here.

4 Mr. Conrad, are you entering an appearance?

5 MR. CONRAD: No, sir. Thank you.

6 JUDGE MILLS: Okay. Is there anyone else?  
7 Okay.

8 I think the primary purpose of this  
9 on-the-record conference this morning is to take Commissioner  
10 questions on rehearing, but I think just to get things  
11 rolling, we'll begin by taking brief statements from all the  
12 parties.

13 And I think it would make sense, we'll go with  
14 Ameren, first, as the moving party, then I'll go to the  
15 Staff, Public Counsel, and intervenors. So ...

16 MR. LOWERY: Your Honor, if it pleases the  
17 Commission, I have a presentation I'd like to hand out to the  
18 Commissioners, and also, of course, share with the other  
19 parties relating to the remarks that I had intended to make  
20 this morning. Okay?

21 JUDGE MILLS: Okay.

22 MR. LOWERY: May it please the Commission.  
23 Good morning, my name is Jim Lowery, and I represent AmerenUE  
24 in this case.

25 I'm very pleased to have the opportunity to

1 address the Commission this morning because it is my sincere  
2 hope that I can take what I think has at least become  
3 perceived to be a complex record in this case and boil it  
4 down, at least with respect to the current issues, in a way  
5 that ultimately helps the Commission come to a fair, just,  
6 and beneficial decision for everyone; for the ratepayers, for  
7 the company, and indeed for the state of Missouri, both in  
8 this case, and ultimately, we hope, in the Noranda case,  
9 which is also pending before you.

10 I believe that the Commission has indicated  
11 that it would like to receive straight talk on these issues  
12 and I'm going to do my level best to give that to you this  
13 morning. Seemingly lost in these recent weeks, I think, is  
14 the fact that the Commission once did approve this transfer,  
15 but with conditions, and I don't believe you would have done  
16 so unless you believe that it was in the public interest to  
17 do so.

18 The company has agreed to accept all the  
19 conditions that were imposed in the prior Order, save two.  
20 And with respect to those, the company has agreed to provide  
21 ratepayer protections on both of those issues. Indeed, we  
22 think, in effect, an insurance policy for the ratepayers that  
23 addresses both of those conditions. But given that you've  
24 now set that Order aside, where do we stand in this case?

25 It appears, first of all, that in effect, we

1 may be back to square one, that there's no current approval,  
2 and indeed there are no conditions. But the existing record  
3 in the case still stands, and you are able and entitled to  
4 rely upon that on rehearing.

5                   The analysis that we did that's part of that  
6 existing record, an analysis that you agreed in your prior  
7 Order was the appropriate approach, it's a test-year  
8 approach. It takes into account the fact that over the next  
9 20 or 25 years, there are many uncertainties that can't be  
10 accounted for, necessarily, in the analysis. That analysis  
11 shows that, indeed, ratepayers do benefit from the transfer.

12                   Indeed we think that the transfer brings other  
13 benefits that I'll talk about in a moment, on top of those  
14 financial benefits, and on top of that, we're willing and we  
15 remain willing to make the so-called first JDA Amendment,  
16 which we believe adds, and you found, adds a likely  
17 additional benefit for ratepayers of \$24 million per year.

18                   Second, completing this transfer not only  
19 brings those benefits, but it facilitates some other  
20 initiatives that are important, we think, to the company and  
21 to the state of the Missouri. Namely, it makes UE of  
22 Missouri an only utility. It facilitates our ability to  
23 transfer the Pinckneyville and Kinmundy combustion turbines,  
24 and ultimately, it allows us to serve Noranda.

25                   Third, we're willing and we remain willing, if

1   you think they are necessary, to accept all the other  
2   conditions that had been posed, save the two I'll talk about  
3   in a moment. And as I mentioned a moment ago, even as to  
4   those two, we recognize your concerns in our application for  
5   rehearing and agree to incorporate ratepayer protections.

6                   We believe we have to pursue the two  
7   alternative conditions that we had indicated we would accept  
8   in our application for rehearing because of two very  
9   fundamental, and with all due respect, what we believe are  
10  grossly unfair problems with the conditions as previously  
11  ordered.

12                  First of all, both of those conditions, if  
13  they were not altered, in effect for shareholders to become  
14  unconditional insurers, even if ratepayers do not suffer any  
15  detriment from the transfer, and indeed even if ratepayers  
16  benefit from the transfer.

17                  Additionally, with regard to the so-called  
18  second JDA Amendment, that amendment, we believe, allows the  
19  bargain that was reached in the company's last rate  
20  proceeding to be broken. This is so because the so-called  
21  detriment that that amendment is directed toward was  
22  addressed by Staff and other parties in that case, yet all  
23  parties settled that case. They settled all issues, it  
24  resolved all issues in the case. And the company, among  
25  other ratepayer benefits, agreed to \$110 million annual rate

1 reduction for ratepayers. We simply believe it's unfair for  
2 that bargain to be broken.

3 I think some examples would be helpful in  
4 understanding the workings of the condition as it was  
5 imposed, those two conditions, and why we think that  
6 modification of that is appropriate and necessary in order to  
7 allow us to proceed with the transfer.

8 Today, as I believe you know, Missouri  
9 customers, in effect, have 92 percent of the -- of all of the  
10 AmerenUE total generation-related liabilities. So if you  
11 take an example, in 1970, an employee was exposed to  
12 asbestos, and in 2010, a judgment is had against UE relating  
13 to that for \$100,000, \$92,000 of that is already a Missouri  
14 responsibility. We're really talking about an incremental 6  
15 percent or \$6,000 in that example.

16 The condition you imposed says that -- and  
17 we're really talking about generation-related liabilities,  
18 ones that arose from some event that occurred in the past but  
19 that we don't know about, a lawsuit that wasn't filed, it  
20 wasn't quantified, it may or may not ever be filed. But  
21 under the condition that you imposed, the company  
22 shareholders have to eat that \$6,000, that 6 percent  
23 regardless of the benefits from the transfer.

24 If you carry that example a step further,  
25 let's say over the next 20 years, and we think this is a wild



1   hypothetical that's not going to happen, but let's say over  
2   the next 20 years, all of these various liabilities total  
3   \$100 million. We're really talking about \$6 million, an  
4   incremental \$6 million. And that hypothetical \$6 million is  
5   going to be absorbed by shareholders, regardless of how good  
6   the transfer turns out to be for Missouri, whether it's not  
7   detrimental or whether indeed there are benefits, we think  
8   there will be.

9                   The company agreed to accept that condition  
10   with one modification. That is, if in the ensuing rate  
11   cases, if that hypothetical \$6 million was an issue, the  
12   company, no one else, the company alone, has to come before  
13   all of you, and we have to convince you that there are  
14   benefits from the transfer that exceed and outweigh that \$6  
15   million. If we don't convince you of that, if we don't  
16   present evidence that allows you to make that finding, and in  
17   fact, you make that finding, then indeed we do eat that \$6  
18   million. We will have provided insurance against the  
19   detriment you were directing the condition toward.

20                   Let me be clear about one other thing, because  
21   I think that perhaps there's been a little confusion about  
22   this. It's shareholders who are going to bear that \$6  
23   million in that example. It's not Illinois customers.  
24   Illinois simply would not have given us the opportunity to  
25   transfer -- in effect, transfer this generation via the

1 MetroEast transfer, had the liabilities stayed with Illinois.  
2 They're not going to give up the cheap generation and also  
3 keep the liabilities. So it's shareholders that would be  
4 provided that insurance.

5 Now, regarding the second JDA Amendment, under  
6 the JDA, as I think you know, Ameren Energy Generating, or  
7 AEG, has the opportunity to take power that UE does not need  
8 to serve its native load at incremental cost. Staff contends  
9 that at least some of that power could be sold off-system.  
10 If it's sold off-system, there would be profits, and those  
11 profits would reduce UE's revenue requirements.

12 Staff says, in effect, that that's a subsidy  
13 to AEG by UE. I think it's interesting to contrast Staff's  
14 position on that particular point with the position taken in  
15 the pleading they filed before agenda last week, which  
16 basically indicates that Staff thinks it's all right for AEG  
17 to subsidize UE with capacity, that as the filing we made  
18 yesterday indicates, AEG, in fact, doesn't have.

19 But regardless, as with the liabilities  
20 condition, the condition you impose related to the second JDA  
21 Amendment means that ratepayers not only get all the benefits  
22 of the transfer, but on top of that, they also get additional  
23 profits from off-system sales.

24 So to put some numbers on it. Let's assume  
25 for a minute that the profits lost due to increased energy

1 transfers to AEG caused by the MetroEast transfer, let's say  
2 those are \$3 million. But let's say the transfer has  
3 benefits of \$10 million. What ratepayers should receive is a  
4 net benefit of \$7 million. Under the condition you imposed,  
5 however, ratepayers get \$10 million. They get, in effect, a  
6 check written by shareholders for \$3 million.

7                   Nevertheless, we have agreed to accept that  
8 condition as well, but again, with essentially the same  
9 modification. If we can't prove to you our legal burden,  
10 it's not somebody else's burden, it's our burden. If we  
11 can't prove to you that the benefits from the transfer  
12 outweigh any lost profits relating to the second JDA  
13 Amendment caused by the MetroEast transfer, then you can  
14 impute those revenues, and in effect, shareholders are going  
15 to write that \$3 million check in the example that I just  
16 gave.

17                   To summarize the problems with these two  
18 conditions. The problem with them is that unless they're  
19 modified, not only do they provide an insurance policy --  
20 there's a lot of talk in the hearings about insurance and  
21 hold harmless and indemnity. Not only do they provide an  
22 insurance policy that's underwritten by shareholders against  
23 any possible financial detriments on these two issues, but  
24 they provide an insurance policy like one we've never seen  
25 because they provide an insurance policy that must pay even

1     when there is no loss.

2                     By agreeing to the modified conditions we've  
3     proposed, the insurance policy is still there, but it's only  
4     payable if ratepayers actually suffer a loss, which is the  
5     same thing you would have with any other insurance policy  
6     that any insurance company would issue. Insurance companies  
7     don't pay when there's no loss. They pay when there's a loss  
8     and that's what we're offering to do. If there's a loss, the  
9     insurance policy kicks in.

10                    In light of foregoing, we would ask why would  
11     the Commission forego the proven, low cost, coal-fired  
12     baseload generation that is being transferred to Missouri at  
13     \$374 per kilowatt in lieu of building CTG's at \$471. At  
14     bottom, doesn't it make sense for Missouri, long-term,  
15     because in the long-term, AmerenUE is going to need to add  
16     baseload capacity. Doesn't it make sense to have that  
17     coal-fired generation in Missouri's portfolio? If Missouri  
18     had to build it today, that would cost about \$1,800 per  
19     kilowatt to build.

20                    Now, before concluding my remarks, I want to  
21     briefly address Noranda, because obviously it's been brought  
22     up in this case and it has some relevance to it because of  
23     the capacity issues that we have. I want to be crystal clear  
24     about one thing in particular. Contrary to what may have  
25     been suggested by others, we did not hold back anything,

1 nothing, with respect to Noranda, and any belief to the  
2 contrary is mistaken.

3 Noranda approached us in 2003 about AmerenUE  
4 becoming their power supplier. We told them very early in  
5 those discussion that we cannot proceed with serious  
6 discussions to serve you unless and until the MetroEast  
7 transfer is done, because we do not have enough capacity to  
8 serve both you and to handle the MetroEast service territory.

9 Mr. George Swogger has filed testimony in the  
10 Noranda docket. He is the manager of Energy Procurement for  
11 Noranda that says just that. I want to be clear on another  
12 related point that we -- we made in the filing that we made  
13 yesterday.

14 As those filings and earlier filings in the  
15 Noranda case show, we do not have enough capacity to serve  
16 both MetroEast and Noranda. Moreover, the, quote, Ameren  
17 system, as Staff referred to it in the pleading they filed  
18 last week, does not have the capacity to, in effect, give to  
19 AmerenUE to serve both either.

20 Now, why didn't we talk about Noranda during  
21 the MetroEast case? We believe that had we done so, we have  
22 really no doubt, that we would have been accused then of, in  
23 effect, what we've been accused in some circles now, for  
24 example, in the press. That is, we would have been accused  
25 of injecting Noranda for some kind of leverage to gain an

1 advantage in the MetroEast case. We didn't do that.

2                   When the resolution of the MetroEast case was  
3 delayed, and it was delayed beyond what we had expected,  
4 Noranda pressed us to go ahead and proceed with an agreement,  
5 even if that agreement needed to be contingent on MetroEast.  
6 We proceeded to reach a letter of agreement with them in the  
7 Fall, then we proceeded to reach a definitive agreement,  
8 filed the case in December because the case simply had to be  
9 filed then in order to meet their need for service by June 1.

10                   So how do we, as I believe one of you recently  
11 said, get where we need to go in this case and ultimately, we  
12 hope, in the Noranda? We intend to file the Scenario 1  
13 analysis on January 24, and the Scenario 2 analysis on  
14 January 31, as you've requested, unless as we've requested of  
15 you, you indicate that it's not necessary for us to do so.  
16 But even with regard to those scenarios, for example,  
17 Scenario 2, we have to make some assumptions in order to do  
18 that analysis.

19                   We've got to assume when we can add capacity,  
20 and we don't believe there's any way we can add capacity in  
21 order to serve both customers, Noranda and MetroEast, for two  
22 to three years, so we're going to assume that kind of  
23 capacity addition when we do that analysis. Regardless of  
24 those kinds of issues, we think that common sense,  
25 intuitiveness, basic logic, whatever you want to call it, at

1 the end of the day, we'll demonstrate to you that Missouri  
2 ratepayers are better off if the following three things  
3 happen in the following order than if they don't happen.

4 First of all, if MetroEast is transferred.  
5 Second, if in turn, Pinckneyville and Kinmundy can be  
6 transferred. And third, if AmerenUE is then able to serve  
7 Noranda.

8 If you read our recent pleadings filed with  
9 regard to the other analyses we've already submitted, what I  
10 just described is Scenario 4, the status quo is Scenario 1.  
11 I said at the beginning of my remarks to you that I was going  
12 to give you straight talk, and I've tried my very best to do  
13 that. In that spirit, let me be clear in concluding my  
14 remarks this morning.

15 There is no other proposal on the table.  
16 AmerenUE will not transfer MetroEast under the conditions  
17 you've previously imposed relating to the liabilities on the  
18 JDA, but we will do so under the alternative conditions we've  
19 proposed with the insurance policy the company guarantee that  
20 we are putting -- that we are willing to do and that we are  
21 willing to prove to you. If we can't prove it, then our  
22 shareholders will bear those costs. AmerenUE will not serve  
23 Noranda if the MetroEast transfer does not occur.

24 And finally, AmerenUE will only serve Noranda  
25 if you approve a service to them as part of our certificated

1 service area under a Commission-approved tariff. Following  
2 that path leads to a very simple result. We think everyone  
3 in this room and in the state, in fact, wins. We may have  
4 killed a lot more trees, we may have ruffled some feathers  
5 along the way, but in the end, everyone wins.

6 With that, I appreciate your time. I'd be  
7 happy myself to try to answer questions that you might have.  
8 And as you requested, our subject matter experts are here as  
9 well to try to address your questions. Thank you again.

10 JUDGE MILLS: I think before we go to  
11 questions, we'll hear from all the parties and then we'll  
12 bring the attorneys back as we need to address Commissioner  
13 questions.

14 MR. LOWERY: Thank you, Judge.

15 JUDGE MILLS: So we'll go next to  
16 Mr. Dottheim.

17 MR. DOTTHEIM: Good morning, may it please the  
18 Commission. I had not prepared any comments for this morning  
19 on the basis of the numerous filings that have been made with  
20 the Commission. I think probably the Staff's position is --  
21 is fairly clear. Hopefully it is. And I didn't see and  
22 don't see now a need to go into any great detail.

23 There are a couple of items that I might  
24 address that Mr. Lowery raised in his opening statement, and  
25 in particular, the matter of Noranda, of which the Staff was



1 not aware of during the large part of the proceedings in this  
2 case.

3 I'm quite sure the Commissioners will recall  
4 and have in their minds the various matrices, two of which  
5 were in the Commission's own Order, and matrices that various  
6 parties filed in their -- in their briefs and other  
7 pleadings. Those -- from the Staff's prospective, those  
8 matrices changed based upon the Noranda transaction that is  
9 pending before the Commission.

10 Mr. Lowery mentioned the conditions that  
11 AmerenUE has proposed in order for it to proceed forward with  
12 the MetroEast transfer. At the moment, they are just  
13 pleadings with the Commission. There is no record on the  
14 conditions that AmerenUE has proposed, and the Staff would  
15 suggest to the Commission that if it chooses to consider  
16 those proposals, that a record be established.

17 Regarding those conditions, again, they are  
18 not easy to effectuate. The Staff has attempted to address  
19 that in the pleadings it's filed with the Commission so far.  
20 It's akin to trying to determine a merger case, which a  
21 number of Commissioners have been through. What are merger  
22 savings as opposed to savings that otherwise would have  
23 occurred. It's a, in many respects, a counterfactual type of  
24 analysis. So the conditions that AmerenUE have proposed  
25 should be reviewed with -- with close scrutiny.

1                   Finally, the Staff continues to be interested  
2     in AmerenUE filing on January 24 and January 31, the Scenario  
3     1 and Scenario 2 analyses. The Staff proposed a procedural  
4     schedule in both cases, in essence, the Noranda case and in  
5     this case, to also address the Scenario 1 and 2 analysis.

6                   The Staff has here this morning its subject  
7     matter experts, and of course, they will be available to  
8     attempt to answer any questions that the Commissioners and  
9     the RLJ may have. Thank you.

10                  JUDGE MILLS: Thank you, Mr. Dottheim.

11                  COMMISSIONER CLAYTON: Steve, can I ask you a  
12     question real quick -- I'm not clear on something -- before  
13     we go to the next person?

14                  On the alternatives that have been suggested  
15     by Ameren, I didn't hear you say one way or another whether  
16     Staff was supportive or not supportive of those. All I heard  
17     was saying that we need more of a record in this case, which  
18     frankly disturbs me. When can we expect to hear a position  
19     from Staff on those alternatives?

20                  MR. DOTTHEIM: The Staff is not supportive of  
21     those conditions. I think the Staff addressed that in its  
22     filing in November when the Staff did not, as it  
23     traditionally does not, respond to applications for  
24     rehearing. The Commission directed the Staff to respond and  
25     the Staff did. I believe the filing was on November 12, and

1 the Staff was not supportive of -- of those conditions.

2 COMMISSIONER CLAYTON: Okay. Thank you.

3 JUDGE MILLS: Mr. Coffman.

4 MR. COFFMAN: May it please the Commission. I  
5 guess I should first thank you for granting the Office of the  
6 Public Counsel's request for rehearing in this case, and you  
7 may or may not recall, we asked the Commission to reconsider  
8 several aspects of its Order approving the MetroEast transfer  
9 with regard to the claim that there are generation savings,  
10 with regard to this transfer, and correcting what we believe  
11 is failure to take into account SO2 tax implications, and a  
12 failure to recognize that UE is entitled to a significant  
13 amount of low cost power from the EEInc. Joppa plant, and  
14 also in rejecting the RFP condition that we had suggested,  
15 which would allow requests for proposals to see if this  
16 really is the least cost alternative.

17 It continues to be our opinion that the  
18 Commission's Order in this case did not go far enough to  
19 protect consumers, and that clearly without any conditions,  
20 this would be a deal that would be detrimental to consumers.  
21 Now, I don't know that the impact of the two significant  
22 conditions that the Commission did impose to protect  
23 consumers have been entirely quantified, and that we can give  
24 an exact number, but we do agree with the Commission's  
25 decision that but for any conditions this would be

1 detrimental, and that those are important condition, I guess,  
2 probably reinforced by the fact that AmerenUE is so  
3 vociferously imposing those two conditions.

4                   Those were Staff'-sponsored conditions for the  
5 most part, and we do support the Commission at least keeping  
6 those two conditions, if not recognizing the other conditions  
7 that we thought would be necessary to remove the detriment to  
8 consumers. We -- we agree with the Staff's analysis of the  
9 alternative conditions that UE has interjected in their more  
10 post-hearing pleadings.

11                   I believe Commissioner Clayton, you would find  
12 Staff's response on pages 39 to 47 of that Staff pleading on  
13 November 12, and I think that I'm in general agreement with  
14 that analysis, but the difficulty in tracking and the  
15 uncertainty about whether these conditions really would be of  
16 any benefit.

17                   I think that it's fair to say the -- what's  
18 been described as an insurance policy and as some sort of a  
19 protection, probably at best, would simply extend and  
20 continue the controversies that we've had in this case  
21 indefinitely into the next case and the case after that as we  
22 continue to argue the different assumptions and perspectives  
23 that we have on these issues.

24                   So at a minimum, we would urge that the  
25 Commission would hold fast to the conditions that it have

1 imposed and reemphasize how important it is that this deal  
2 not get confused in matters that are not in the record here  
3 and that the Commission does its best to hold harmless the  
4 consumers that are the monopoly captive ratepayers of  
5 AmerenUE.

6 We also support strongly the Commission  
7 continuing to receive all of the scenarios that they have  
8 requested. The scenario that is, I guess, expected on the  
9 24th of January, we might also suggest that perhaps a  
10 technical meeting could be held between AmerenUE and the  
11 other parties once -- after that is filed so that it may be  
12 discussed and understood in a little more detail because we  
13 would then have only one week after that to respond to it  
14 after the plan of the expectation is here.

I would just maybe make a couple comments about the Ameren presentation. The idea that what's been called the second JDA Amendment somehow violates a deal in the previous rate case proceeding is -- is not -- is not accurate. Obviously that case was litigated without any expectation of the MetroEast transfer occurring and the controversy there was resolved with the understanding that no party was making any commitment one way or the other with regard to changes to the JDA. And obviously it is a -- a condition that would help mitigate the detriments.

25 And as we have in subsequent pleadings,

1 subsequent to the hearing, expressed concern about the other  
2 liabilities condition, we -- we want to make sure that the  
3 Commission does not look to Illinois to help craft the  
4 contours of how this issue is addressed in Missouri. That  
5 was a settlement in Illinois dealing with a set of facts and  
6 concerns that Illinois needs to deal with as a restructured  
7 state, and we would hope that the Commission would look at  
8 this issue and try to do what it can to protect consumers as  
9 -- as they are here in a regulated state.

10 I think that covers any comment I would have.  
11 Of course I don't have a PowerPoint presentation for you, but  
12 any questions?

13 JUDGE MILLS: Thank you, Mr. Coffman. Ms.  
14 Langeneckert.

15 MS. LANGENECKERT: May it please the  
16 Commission. I'm Lisa Langeneckert, representing the Missouri  
17 Energy Group, which are current large use customers of  
18 AmerenUE. I have no prepared statements and I have no  
19 expert, but we are just here as interested parties concerned  
20 that lifting the two conditions in the Commission's Order  
21 would somehow cause financial harm or reliability issues for  
22 customer service.

23 JUDGE MILLS: Thank you. Ms. Vuylsteke.

24 MS. VUYLSTEKE: May it please the Commission.  
25 I'm Diana Vuylsteke appearing on behalf of the Missouri

1 Industrial Energy Consumers.

2 Our position in this case is that native load  
3 customers should not be detrimentally impacted by AmerenUE's  
4 proposal to transfer its MetroEast assets. The PSC's  
5 approval of the transfer included some very important  
6 ratepayer protection conditions and these should not be  
7 removed.

8 First, the PSC's Order that preclosing  
9 liabilities that are directly assigned to UE's Illinois  
10 ratepayers or to the transferred assets must transfer to CIPS  
11 as a condition of the Commission's approval is crucial. The  
12 Commission made similar conditions relating to UE's refusal  
13 to indemnify Missouri customers from Illinois' 6 percent  
14 responsibility for uncertain environmental liability costs.  
15 These conditions must be upheld, and I think the importance  
16 of the preclosing liability conditions is underscored by this  
17 morning's Post-Dispatch article regarding very significant  
18 asbestos claims that UE is facing.

19 The Commission also made the Joint Dispatch  
20 Agreement conditions and UE agreed and the Commission  
21 approved the amendment to the JDA to distribute profits from  
22 losses and sales on the basis of generation instead of load.  
23 This is obviously crucial.

24 Also the Staff's recommendation to amend the  
25 JDA to price intercompany energy sales at market prices

1     rather than at incremental costs, the Commission found the  
2     termination of the JDA would expose Missouri customers to  
3     transmission charges on power generated at UE's Illinois and  
4     Iowa plants, and refused to include a condition that the JDA  
5     be terminated. The PSC condition must be upheld unless UE  
6     finds a remedy to protect Missouri customers.

7                     So our view is that the Commission should not  
8     and the conditions unless UE proves that doing so is not  
9     going result in harm to Missouri ratepayers. And we think  
10    the existing record shows that the conditions are really  
11    needed to protect consumers.

12                    With regard to Noranda, we just want to  
13    express support for the Commission's requirement that  
14    information be provided with respect to the assertions  
15    relating to Noranda. That evidence is going to be crucial to  
16    this case.

17                    And we also have our witness, Mike Gorman,  
18    available this morning to answer any questions the Commission  
19    might have. Thank you.

20                    JUDGE MILLS: Thank you. As I said at the  
21    beginning that the primary purpose of this proceeding is to  
22    allow the Commission to inquire of the parties, so I --  
23    rather than try to call you back individually and have the  
24    Commissioners ask questions, I think I will simply go through  
25    the -- through the Commissioners and allow them to ask



1 questions of whomever they wish, beginning with the Chairman.

2 Chairman Davis.

3 CHAIRMAN DAVIS: I'll pass right now.

4 JUDGE MILLS: Commissioner Murray.

5 COMMISSIONER MURRAY: Thank you. Let me  
6 figure out where to start here. As to the -- the liability  
7 issue, the condition regarding preclosing liabilities, why is  
8 it not sufficient for the company to agree that if they don't  
9 meet a burden of proof at a time those liabilities are, you  
10 know, after those liabilities -- certain liabilities have  
11 been determined, if they don't meet a burden of proof that  
12 the benefits exceeded those liabilities, why is that not  
13 enough and why does that not leave the company with more of a  
14 risk than anyone because they've still got burden. And if  
15 there are, indeed, a great deal of arguments over it, it's  
16 going to be the company's burden. It's going to -- I -- I  
17 don't understand why that's not sufficient.

18 From Staff, would you like to go first?

19 MR. DOTTHEIM: Commissioner, the time and  
20 effort that would likely be involved in that -- in that  
21 process, the Staff does not believe that that would be  
22 productive, would produce a clear record for the -- for the  
23 Commission.

24 In fact, the Staff is concerned that it would  
25 be almost an impossible task to attempt to address that

1 situation in dealing with quantifying and identifying  
2 supposed benefits over a -- over an extended period of time.

3 COMMISSIONER MURRAY: Okay. And let me ask  
4 you this. If there were benefits that exceeded those costs,  
5 would it not be appropriate that the shareholders not be  
6 charged with all those costs?

7 MR. DOTTHEIM: I think that's something that  
8 the Staff certainly would consider.

9 COMMISSIONER MURRAY: But the Staff would  
10 prefer to just say that regardless of whether the benefits  
11 outweigh the costs, the company will pay those costs rather  
12 than make the effort of determining whether the benefits  
13 outweigh the cost?

14 MR. DOTTHEIM: Again, the Staff doesn't  
15 believe that that is a simple task to do, if doable at all.

16 COMMISSIONER MURRAY: But the Staff  
17 frequently, it seems to me, spends a lot of time and effort  
18 trying to convince this Commission that certain merger  
19 benefits did not exceed certain merger costs or things of  
20 that nature. You do it, don't you?

21 MR. DOTTHEIM: Commissioner, I think we do it,  
22 so to speak, in the merger case itself. There's a discussion  
23 of -- of merger costs, transaction costs, and transition  
24 costs, but as far as merger savings, the Staff has always  
25 opposed any plans that have been proposed for an attempt to

1 identify merger savings as a means of even permitting  
2 recovery of a merger premium if the merger savings exceed the  
3 cost of the merger. I don't believe that that has ever been  
4 effectuated before the Commission.

5 COMMISSIONER MURRAY: Okay. Mr. Coffman, did  
6 you have a response?

7 JUDGE MILLS: Mr. Coffman, before you come to  
8 the podium, I think because we're going to be jumping around  
9 so much, I think as long as you all speak clearly into the  
10 microphones, I don't think there's reason for us to keep  
11 bouncing you back and forth to the podium. I think that will  
12 just take longer.

13 MR. COFFMAN: Okay. Thank you. That's  
14 easier. Yes, we agree with the Staff analysis on this. It  
15 is or would be akin to trying to track merger savings over  
16 time. It would be, you know, an additional concern to me  
17 with a very small office having the resources to do that  
18 fairly, and also given the difficulties that we face in  
19 trying to get the information that we -- we need sometimes  
20 through discovery.

21 It's a -- it would be a -- it would be a  
22 difficult process. I am not saying that it wouldn't or  
23 couldn't possibly work out to a -- a resolution, but it -- it  
24 would -- it appears to me to simply be a continuation of this  
25 proceeding into -- into the future in a way that I'm not

1 looking forward to.

2 COMMISSIONER MURRAY: You understand that the  
3 company's would have the burden?

4 MR. COFFMAN: Yes, although it -- I guess it  
5 could come up in a variety of situations. I understand that  
6 I guess they said they would. I guess it's -- I would -- I  
7 guess I would take that as their assertion. I don't know.

8 We -- this particular offer is difficult to  
9 talk about because it's not in the record of this case  
10 either, and we don't really have more than, I guess, the --  
11 the one pleading from Ameren and what they've said today  
12 about it, but certainly seems, hard, difficult, if not  
13 unworkable.

14 COMMISSIONER MURRAY: Okay. Ms. Langeneckert.

15 MS. LANGENECKERT: I have nothing.

16 COMMISSIONER MURRAY: Ms. Vuylsteke.

17 MS. VUYLSTEKE: Just that we agree with the  
18 Staff and OPC that it would create a very difficult burden in  
19 order to demonstrate that in a future case.

20 COMMISSIONER MURRAY: And that burden would be  
21 on UE; is that correct?

22 MS. LANGENECKERT: I think it would be -- it  
23 may be on UE as a technical matter, but I think the parties  
24 would end up, in effect, bearing that burden.

25 COMMISSIONER MURRAY: Okay. Thank you. As to

1 the second amendment to the JDA, I need some help, really, in  
2 understanding if -- if there are transactions between the  
3 affiliates -- well, let me just ask you this:

4 Perhaps it would just be simpler if I just  
5 asked Mr. Lowery to give me just a brief refresher on that  
6 second amendment to the JDA and why specifically the company  
7 finds it unacceptable.

8 MR. LOWERY: I'll do my best. The second  
9 amendment to the JDA simply says that energy transfers from  
10 UE to AEG, and actually, it would work the other way if there  
11 were transfers from AEG to UE. Energy transfers  
12 prospectively would be priced at a market price presumably  
13 the MISO day two realtime price as opposed to incremental  
14 cost, which is how they're priced today. Today, AEG pays the  
15 next dollar that it costs to produce that kilowatt that they  
16 buy.

17 COMMISSIONER MURRAY: Let me stop you there  
18 and ask you is that permissible to be done? I mean, does  
19 FERC not frown on that?

20 MR. LOWERY: Well, I don't know if I'm the  
21 best one to answer that, to be honest with you. FERC does  
22 certainly take a very jaundiced eye at affiliated purchase  
23 power agreements. The JDA has been approved by the FERC, but  
24 an amendment to the JDA would have to be approved by the  
25 FERC, and so it's possible that there are some issues there,

1 particularly given FERC's recent cases where they are taking  
2 a much more jaundiced eye at looking at affiliated  
3 transactions, so that's possible.

4 COMMISSIONER MURRAY: And in terms of any  
5 purchases, do they not -- in the future, will they not  
6 require -- okay. I guess the Joint Dispatch Agreement,  
7 you're saying that any transfers for purchases back and forth  
8 would be under that JDA so that they would not require a new  
9 agreement?

10 MR. LOWERY: Well, they would be under the JDA  
11 as amended, but as I understand it, the amendment to the JDA  
12 would have to be approved by FERC.

13 COMMISSIONER MURRAY: Yes. Okay.

14 MR. LOWERY: Now, the concern that the company  
15 has about the condition as imposed is that the Staff's  
16 contention is that the MetroEast transfer will result in  
17 additional megawatt hours transferred from UE to AEG, and  
18 that if it's that incremental cost as opposed to market,  
19 there's a subsidy, there's a difference there.

20 Even if that is true, that is going to be a  
21 finite difference. It's going to a calculable difference.  
22 We're going to know what the market's worth, presumably in  
23 the MISO, and we're going to know what the megawatt hours  
24 transferred were.

25 Our position is that when you force us to do

1 the second JDA Amendment, you are forcing -- you are forcing  
2 those revenues to be taken from shareholders' pockets, in  
3 effect, even if it turns out that the MetroEast transfer has  
4 benefits that are greater than those revenues that otherwise  
5 supposedly are lost, via the subsidy that Staff talks about.

6 And all that we are saying is, look, if we can  
7 come in and prove, and I think Mr. Dottheim and Mr. Coffman  
8 really proved our point in their remarks. They say it's  
9 impossible for us to prove benefits. Well, if it's  
10 impossible, then we're not going to be able to prove it. And  
11 if we're not able to prove, then shareholders are going to  
12 write those checks that I talked about before. Ratepayers  
13 are not going to do so.

14 The attitude that they've taken is a  
15 just-don't-even-bother type of attitude, and we think it's  
16 unlawful and fundamentally unfair to, in this case, close the  
17 door on the company's ability to come in as a matter of due  
18 process and present relevant evidence in a rate case that  
19 says, look, the benefit's outweighed and here's our proof.  
20 If you don't accept our proof, then we lose. But if you do  
21 accept our proof, that's going to be because you found that  
22 it was substantial and competent and it was convincing and it  
23 was true. And we think we, to be honest, are entitled to the  
24 opportunity to do that.

25 So I hope I've answered your question, but I

1 mean, basically all we are saying is if you -- if you force  
2 the second JDA Amendment, it's done, we cannot recover the,  
3 essentially, the subsidy that shareholders would have to  
4 give, even if benefits outweigh the amount of that subsidy  
5 attributable to MetroEast transfer, then you're putting us in  
6 a position where our shareholders have to pay something that  
7 they should not have to pay.

8 COMMISSIONER MURRAY: What is the length of  
9 the JDA?

10 MR. LOWERY: The JDA is currently on, as I  
11 understand it, rolling one year terms, so it can be  
12 terminated on 12 months notice, I think effective at the end  
13 of any calendar year.

14 COMMISSIONER MURRAY: And is it not -- has it  
15 not been, at least alleged, that following the -- following  
16 the MetroEast transfer and following an approval of Noranda,  
17 service to Noranda, that there would be little, if any,  
18 transfer from UE to AEC -- AEG, sorry?

19 MR. LOWERY: I don't know the magnitude, but I  
20 think it is absolutely fair to say, and I'm confident in  
21 saying that -- that adding Noranda will have a very, very  
22 substantial impact on, and a reduction in terms of the  
23 transfers from UE to AEG because we're now going to have a  
24 Missouri customer that needs those kilowatt hours or megawatt  
25 hours, whichever way we should measure them. We're going to



1 have a Missouri customer that's going to be consuming those  
2 because one of the great benefits of Noranda is that UE has  
3 baseload energy, Noranda is a 99 or 98 percent load factor  
4 customer, and so Noranda is going to be able to take energy  
5 that during the off-peak, UE probably couldn't sell anyway,  
6 and consume those megawatt hours. So Missouri customers are  
7 going to be receiving those, a large number of those, as  
8 opposed to going to Illinois.

9 In all the honesty, I can't say there are no  
10 transfers. We do think that over time, load growth and other  
11 factors are going to mitigate amount of transfers, but I  
12 guess bringing back to the original point, if there are  
13 transfers and if -- if there is a subsidy, so to speak, if we  
14 can't prove the benefits of the transfers outweigh that, then  
15 our shareholders are going to, in effect, give that subsidy  
16 back by having revenues imputed to us.

17 COMMISSIONER MURRAY: What's the likelihood in  
18 the future of sales being made in the reverse direction?

19 MR. LOWERY: I won't venture to answer that  
20 because I don't know.

21 COMMISSIONER MURRAY: I guess I'm having  
22 trouble understanding why that amounts to a big issue for  
23 Ameren. I see it as potentially very deminimus, but I  
24 suppose I think it could be potentially hard.

25 MR. LOWERY: Well, I guess there's -- there's

1 two answers to that. One problem with the condition as  
2 imposed, the condition says make the second JDA Amendment.  
3 There are Staff's allegations in the MetroEast case, in this  
4 case, was that the MetroEast case caused additional transfers  
5 that don't exist today. It exacerbated, I think they would  
6 say, a problem that they say already exists.

7 By imposing the condition in this case, you  
8 didn't address just any effects of the MetroEast case on --  
9 related to the JDA. You said make the amendment, and that  
10 has nothing to do with any energy transfers that have nothing  
11 to do with MetroEast. In other words, if there were X number  
12 of transfers, regardless of MetroEast and MetroEast adds an  
13 incremental number, it's one issue to address that  
14 incremental number because that ties it at least to this  
15 case, but the condition you've imposed goes much farther than  
16 that.

17 It's also true that there's a lot of  
18 complexity as to what's going to happen in the future. MISO,  
19 their markets, we believe, perhaps are going to start filing  
20 on March 1. We don't know for sure how they're going to  
21 work. We don't know how the JDA is going to look in the  
22 future because there are other parties to the JDA; AEG, AEM  
23 in Illinois. As I think you probably know, post-2006, the  
24 landscape changes in Illinois considerably, so there are just  
25 a lot of uncertainties.

1                   And all we're saying is we don't know for sure  
2   what the transfer profile is going to look like, which way it  
3   may go, but we shouldn't be put in a position of today being  
4   foreclosed, having revenues imputed to us if it turns out  
5   that how -- whatever those revenues are are less than the  
6   benefits that come to Missouri from the transfer. It's  
7   really a fundamental fairness issue.

8                   It also, contrary I think, to what  
9   Mr. Dottheim said or the position that we have, these issues  
10   were in the last rate case, and as Dr. Proctor testified at  
11   the hearings in this case, the JDA issues were on the table,  
12   they were resolved by the settlement. They weren't fixed. I  
13   think Judge Thompson asked him a question rhetorically if  
14   they were settled and not fixed, and Dr. Proctor said that's  
15   correct. But they were on the table. And we don't think in  
16   the middle of a rate moratorium that it's appropriate for  
17   that bargain to be broken.

18                  COMMISSIONER MURRAY: Mr. Coffman, you look  
19   like you want to respond.

20                  MR. COFFMAN: Yeah, just one point, but I  
21   think it may be an important point on this with regard to  
22   what we're calling the second JDA Amendment.

23                  Well, first of all, I do disagree with Mr.  
24   Lowery that the matter was resolved. The rate case was  
25   resolved through a settlement, but that issue still remains

1 about whether the current JDA is -- is fair with regard -- I  
2 guess the first and second amendments.

3                   There is, I think, some ambiguity about the  
4 Order that the Commission has issued in this case with regard  
5 to the second JDA Amendment, and I think that that confusion  
6 is about whether the second JDA Amendment applies to the  
7 entire system or to simply the incremental additional sales  
8 that would result from the MetroEast transfer. And obviously  
9 the -- the impact of the condition would not be as great if  
10 it was only with regard to the incremental sales as a result  
11 of the transfer, and I believe that Staff has alternatively  
12 addressed it in its -- in its response.

13                   If the Commission were to clarify that this  
14 condition only applied to the incremental amounts related to  
15 the MetroEast transfer, I think that would probably be a -- a  
16 logical response, obviously not as -- as helpful to my  
17 clients as a -- the fixing of the second JDA Amendment  
18 overall, and I'm not sure exactly if Staff has a preference  
19 or an actual interpretation, but if the Commission were to  
20 clarify that it only related to the incremental amounts, it  
21 would clearly relate to the transfer and not something else,  
22 and would actually minimize, perhaps, this is a way to  
23 resolve this issue.

24                   COMMISSIONER MURRAY: Okay. Let me ask you  
25 how can the JDA be amended to read that way? I mean,

1 wouldn't it be required in the JDA Amendment language, and I  
2 -- and then that would have to be approved by FERC?

3 MR. COFFMAN: This wasn't our issue, but I  
4 know it is -- it has been outlined in subsequent pleadings,  
5 and if you give me a minute, I might be able to find that.

6 COMMISSIONER MURRAY: I think Staff wanted to  
7 respond. Mr. Dottheim.

8 MR. DOTTHEIM: Yes, Mr. Coffman has raised an  
9 issue that exists as far as the -- the clarity of the  
10 Commission's Order on this -- on this item. It reads or  
11 could be argued that it reads to apply to the entire JDA.  
12 The Staff has interpreted, though, the intent of the Order as  
13 applying to the MetroEast piece, just that piece.

14 COMMISSIONER MURRAY: Excuse me. Is that  
15 something that's difficult to determine what just applies to  
16 the MetroEast piece or is that very simple to determine?

17 MR. DOTTHEIM: I don't know how simple it is.  
18 I don't think that it's terribly difficult at all. Dr.  
19 Proctor could probably respond to that, if that is something  
20 that --

21 COMMISSIONER MURRAY: I don't know if we want  
22 to get into witnesses. Can Dr. Proctor respond briefly?

23 MR. DOTTHEIM: Yes, in fact, it may help, too,  
24 if -- I have copies of the matrix that the Staff submitted in  
25 response on November 12, when the Commission requested that

1 the Staff respond to AmerenUE's and Public Counsel's  
2 application -- applications for rehearing. The number that  
3 the Staff has in the matrix is only on the MetroEast piece.  
4 It is not for the entire JDA.

5 MR. LOWERY: Commissioner Murray, while Mr.  
6 Dottheim is handing that out, I would just offer that it's no  
7 more difficult to track that kind of analysis or that kind of  
8 result than it is to prove the benefits that we said that we  
9 would take on the burden to prove or indeed to do the  
10 Scenario 1 and 2 analyses that we are currently doing. So we  
11 would disagree that it is impossible to do these kinds of  
12 analyses.

13 COMMISSIONER MURRAY: And that was basically  
14 my next question. How would that be any easier? And that's  
15 my question to you, Mr. Dottheim. How would that kind of --

16 MR. DOTTHEIM: We think it's an entirely  
17 different analysis. Dealing with the JDA and actual  
18 transactions that -- that are occurring, we don't see the  
19 analysis as in any manner similar as far as -- as far as the  
20 ease with identifying what is actually occurring and  
21 quantifying it.

22 COMMISSIONER MURRAY: And in -- as opposed to  
23 what kinds of things would you have to look at to prove that  
24 the benefits outweighed the detriments or vice versa?

25 MR. DOTTHEIM: Well, with the JDA, with this

1 -- with this item, the transfer pricing, with the transfer  
2 pricing being at market as opposed to incremental costs, we  
3 think those numbers are identifiable.

4 COMMISSIONER MURRAY: But as to the  
5 liabilities, why do -- the liability numbers would be fairly  
6 easily identifiable, I would assume, but what other issues  
7 would you have to look at in terms of the benefits?

8 MR. DOTTHEIM: Well, if -- if we're talking  
9 about the -- the other items, it, again, it's just -- it's  
10 not as identifiable. I don't believe that the company has  
11 given any examples as to the ease with which that can be  
12 done. I can ask Dr. Proctor if he might address that item  
13 and your other question, Commissioner.

14 COMMISSIONER MURRAY: I guess he'll have to be  
15 sworn, Judge.

16 (THE WITNESS WAS SWORN.)

17 DR. PROCTOR: I try to get to, I think, the  
18 heart of your question, Commissioner Murray. A large portion  
19 of what was determined or looked at in terms of benefits, and  
20 in this particular transfer, deals with such things as  
21 off-system power sales that Ameren may or may not have been  
22 able to make from the combustion turbines that they would  
23 have to add in order to meet the MetroEast load.

24 And when you get into those hypotheticals, and  
25 you're trying to measure those things as you go through time,

1 it just -- I mean, you can do it. You know, if you make  
2 enough assumptions, you can do it.

3 With respect to the Joint Dispatch Agreement,  
4 the MetroEast load is metered. It's very easy to determine  
5 what the MetroEast load is each hour, and what it is is a  
6 fraction of the total load that's -- for AEG or CIPS under  
7 the Joint Dispatch Agreement. That's a very simple  
8 straightforward type of measurement. You don't make a bunch  
9 of assumptions and you don't do some hypothetical analysis.

10 So those things are completely different, and  
11 I really struggle with the concept of allowing a subsidy to  
12 go forward because some benefits from a MetroEast transfer  
13 cover that subsidy. I mean, it just -- conceptually, that  
14 bothers me, so.

15 COMMISSIONER MURRAY: Okay. Does anybody else  
16 want to respond to this issue? Mr. Lowery?

17 MR. LOWERY: Just very briefly on this  
18 difficulty of analysis. Staff in its pleading in November,  
19 and we responded in December, but I'll summarize it very  
20 briefly.

21 They basically took this  
22 we're-not-going-to-bother, we're-not-going-to-try approach,  
23 they'll-never-be-able-to-prove-it-type approach, and in  
24 pointing that out, they cited the alternative regulation plan  
25 that company used to have. And there were six years of those



1 plans, two separate plans.

2 In five of the six years, I'm not saying we  
3 didn't have disagreements initially with Staff, but  
4 ultimately we came to agreement on five of the six years on  
5 what the sharing credit should be, and for those  
6 Commissioners who were not around, essentially, those plans  
7 said that if UE earned over a certain return on equity, 50/50  
8 sharing of that excess earnings would go back to  
9 shareholders, and I think about 180 million went back to  
10 shareholders over that six-year period.

11 Each year of the six years, we had to  
12 determine what the return on equity was and how much that  
13 credit should be, and we did that, and five of the six years  
14 we came to agreement. In the sixth year, the last year of  
15 the second plan, we could not agree with Staff, and so we  
16 brought the matter to the Commission so the Commission could  
17 decide who was right, in effect.

18 We said the sharing credit, and I'm going to  
19 round these off, but we said the credit should be 26 million.  
20 Staff said the credit should be 41 million. The Commission  
21 arrived at 28 million and some change, and so Staff had used  
22 that in their pleading to say look how difficult it is, we'll  
23 never be able to agree with them. They'll never be able to  
24 prove it.

25 Well, I think that illustrates that we did

1    prove it.  We came very close, frankly, at the end of the day  
2    to what the Commission found to be the right sharing credit  
3    level.  It was Staff that said 41 million, we said 26, the  
4    Commission said 28.  We were much closer to the mark, and  
5    what Staff is saying now is don't let UE come in and put on  
6    any evidence, we're not going to bother, we're not going to  
7    believe their numbers.

8                   And so we are going to take that decision away  
9    from you, Commission.  We are going to act as a gatekeeper,  
10   take it away from you, not let you hear the evidence and  
11   decide that for yourself.  And all we are saying is you ought  
12   to decide that issue for yourself based on the evidence that  
13   we present, and if you don't believe our evidence, then our  
14   shareholders will pay.  But if you do believe our evidence,  
15   they shouldn't pay.

16                  COMMISSIONER MURRAY:  Thank you.  I remember  
17   that issue pretty well.  I remember those fights, and it  
18   appears -- well, I'll resist saying that.

19                  I'd like to ask just a few more questions, and  
20   then I'll pass this along, but Mr. Dottheim, do you agree  
21   that Illinois has a policy that their investment-owned  
22   utility should divest of generation?

23                  MR. DOTTHEIM:  I believe that's the case.  
24   There was even a proceeding in -- in Missouri because of the  
25   Public Utility Holding Company Act.

1                   COMMISSIONER MURRAY: You don't have to  
2 explain. I'm just asking you do you think Missouri policy,  
3 is it your understanding that Missouri has had either a  
4 written or an unwritten policy that the investor-owned  
5 utilities should own their own generation that's preferable.

6                   MR. DOTTHEIM: I don't know how defined of a  
7 policy that is, but I think that is what has been the case in  
8 Missouri.

9                   COMMISSIONER MURRAY: And was there a  
10 stipulation and agreement entered into with Ameren to improve  
11 their generation supply by a certain date?

12                  MR. DOTTHEIM: Yes, that was covered. There  
13 were certain matters addressed on infrastructure in the  
14 stipulation agreement in Case No. EC-2002-1.

15                  COMMISSIONER MURRAY: And do you understand  
16 that Illinois opposed the Pinckneyville and Kinmundy  
17 transfers to Ameren?

18                  MR. DOTTHEIM: That is what I've been told,  
19 yes.

20                  COMMISSIONER MURRAY: Do you believe that?

21                  MR. DOTTHEIM: I have no reason not to.

22                  COMMISSIONER MURRAY: And is it your  
23 understanding that Missouri -- Missouri Commission has been  
24 -- has looked favorably and has attempted to express that to  
25 the FERC upon the Kinmundy and Pinckneyville transfers?

1                   MR. DOTTHEIM: Commissioner, did you refer to  
2 the Staff? The Commission itself has submitted some -- a  
3 number of letters to the FERC, not the Staff.

4                   COMMISSIONER MURRAY: That's what I said, the  
5 Commission. I believe I said Commission.

6                   MR. DOTTHEIM: Okay. Excuse me.  
7 Commissioner, also, too, as far as Illinois is concerned, I  
8 think what has been indicated to the Staff from AmerenUE is  
9 that the Illinois Staff has opposed the  
10 Pinckneyville/Kinmundy transfer.

11                  COMMISSIONER MURRAY: I believe you're  
12 correct. I should have said Illinois Staff.

13                  And do you agree that if AmerenUE sheds its  
14 MetroEast load, that there won't be any reason for Illinois  
15 Staff to have a concern because there won't be an Illinois  
16 IOU?

17                  MR. DOTTHEIM: When you say the Illinois Staff  
18 not have a concern, is that -- you're referring to  
19 Pinckneyville and Kinmundy?

20                  COMMISSIONER MURRAY: Yes.

21                  MR. DOTTHEIM: Yes, I think that's -- well, at  
22 least was the plan of AmerenUE as to how to effectuate the  
23 transfer of Pinckneyville and Kinmundy.

24                  COMMISSIONER MURRAY: Do you disagree that  
25 that's a likely outcome?

1                   MR. DOTTHEIM: No, not as I understand the  
2 procedures that are being taken.

3                   COMMISSIONER MURRAY: Do you challenge or --  
4 well, do you challenge AmerenUE's assertion that they will  
5 have lower cost to serve Noranda than to serve MetroEast  
6 based upon the nature of the loads?

7                   MR. DOTTHEIM: I don't know that I can agree  
8 with that on the basis of what we've seen so far. There are  
9 various assertions, allegations.

10                  COMMISSIONER MURRAY: So you -- you don't  
11 know. Do you agree that the SCC must approve both the  
12 MetroEast transfer and the Pinckneyville/Kinmundy transfers?

13                  MR. DOTTHEIM: That's my understand. I don't  
14 have any independent knowledge for myself having looked at  
15 federal statute.

16                  COMMISSIONER MURRAY: Do you have any reason  
17 to dispute that Missouri approval must come first?

18                  MR. DOTTHEIM: That, I don't know.

19                  COMMISSIONER MURRAY: Have you checked? Have  
20 you looked --

21                  MR. DOTTHEIM: No.

22                  COMMISSIONER MURRAY: -- to try to find out?  
23 Do you disagree that FERC approved the Pinckneyville/Kinmundy  
24 transfer?

25                  MR. DOTTHEIM: I think that's correct.

1                   COMMISSIONER MURRAY: Do you disagree that  
2     there was significant -- that took a significant effort --  
3     pretty significant amount of time to get that done?

4                   MR. DOTTHEIM: I believe it did.

5                   COMMISSIONER MURRAY: Do you disagree that it  
6     would have taken a lot of resources to get that done?

7                   MR. DOTTHEIM: I don't have any independent  
8     knowledge. I wouldn't doubt that it would take considerable  
9     resources.

10                  COMMISSIONER MURRAY: Do you disagree that the  
11     Pinckneyville/Kinmundy transfers will not take place without  
12     the MetroEast transfer?

13                  MR. DOTTHEIM: That I don't know.

14                  COMMISSIONER MURRAY: On what basis do you  
15     challenge that allegation?

16                  MR. DOTTHEIM: There is a statement by one of  
17     the AmerenUE witnesses in the -- in this proceeding  
18     indicating that that transfer would otherwise occur. I can't  
19     recall whether it was Mr. Nelson or Mr. Voytas. I certainly  
20     can provide that citation. I think I have made reference to  
21     that citation in at least one pleading that -- that I filed  
22     with the Commission regarding the proposed MetroEast  
23     transfer.

24                  COMMISSIONER MURRAY: Okay. I'm going to go  
25     to Ms. Vuylsteke for a couple of minutes. Ms. Vuylsteke, you

1 indicated that the ratepayer conditions shouldn't be removed.  
2 Do you -- and I don't recall your position with them that --  
3 when we were hearing this, but do you think that there are  
4 benefits that will result from this transfer to the  
5 ratepayers?

6 MS. VUYLSTEKE: Commissioner Murray, in this  
7 proceeding, we did not put testimony into the record  
8 regarding the economic benefits or detriments of this  
9 transfer. I don't know, frankly, if the Commission, and I  
10 looked at your Order on rehearing to see if you were taking  
11 new evidence on all issues or on any issues.

12 It's not entirely clear to me what the  
13 evidentiary posture of the case is, but you know, when we  
14 looked at the evidence, it seemed to us that there were no --  
15 there was some slight detriment to the transfer, and that  
16 there was not an economic benefit, but that the ratepayer  
17 conditions went a long way to removing the detriment that  
18 would otherwise have resulted to ratepayers, and that's why  
19 we're supporting the conditions now.

20 COMMISSIONER MURRAY: So you didn't evaluate  
21 whether those detriments were listed as any potential --  
22 maximum potential detriment that could possibly occur from  
23 the transfer?

24 MS. VUYLSTEKE: I'm not sure I understand your  
25 question. Are you asking if we quantified on our own what

1 the detriments would be?

2 COMMISSIONER MURRAY: Yes.

3 MS. VUYLSTEKE: No, we looked at the evidence  
4 that was in the record submitted by the Staff and the Office  
5 of Public Counsel.

6 COMMISSIONER MURRAY: And you did not evaluate  
7 whether the detriments were listed in terms of, okay, here's  
8 a potential detriment, maybe at 5 percent likelihood that it  
9 would occur, and if it did, it would be a million dollar  
10 detriment, lets say, for round numbers and then it was listed  
11 as a detriment of \$1 million. You didn't identify whether  
12 that occurred, did you?

13 MS. VUYLSTEKE: Well, no, we identified it in  
14 the sense that we looked at the evidence that was in the  
15 record submitted by other parties, but our witnesses did not  
16 do an independent calculation of that on their own, only  
17 relied on evidence by others.

18 COMMISSIONER MURRAY: Okay. Would you agree  
19 that if there are benefits, and those benefits outweigh any  
20 detriments, that -- let's say if they outweigh the costs of  
21 any future liabilities -- any additional liabilities that  
22 would result from the transfer, do you agree that it would be  
23 fair that those be equaled out rather than the shareholders  
24 taking out those -- all of those additional costs?

25 MS. VUYLSTEKE: I think that what's important



1 is that the Commission balance that and make sure that Ameren  
2 proves its case that this transfer is, you know, not  
3 detrimental in the public interest -- to the public interest.  
4 That's Ameren's burden of proof. And if you don't mind, I'd  
5 like to check with our witness, Mike Gorman, to see if he  
6 might better be able to address your question than I would,  
7 if you don't mind giving me one second.

8 COMMISSIONER MURRAY: All right.

9 MS. VUYLSTEKE: I think we would like to,  
10 Judge Mills, see -- have Mike Gorman sworn in so he can  
11 address Commissioner Murray's question.

12 JUDGE MILLS: Okay. Why don't you step  
13 forward to a microphone, please.

14 (The witness was sworn.)

15 MR. GORMAN: Our concern is that rates we pay  
16 are just and reasonable, and that entails providing the  
17 company an opportunity to earn a fair rate of return on the  
18 assets that's used to provide service to Missouri customers.

19 COMMISSIONER MURRAY: Where have I heard that  
20 before?

21 MR. GORMAN: Well, it's a basic concept,  
22 obviously. By sharing some of the benefits, in effect, we  
23 may be allowing the company to earn a return, which is higher  
24 than the return the Commission finds appropriate for those  
25 assets. And if that's the case, then we have some concerns

1 about that.

2                   We also have concerns about the balance of  
3 paying -- sharing the benefits during periods there are  
4 savings and paying rates for those assets during periods  
5 where savings may not be produced. It's -- would be a very  
6 long period over which we will provide the company full  
7 compensation of return on these assets will be transferred to  
8 Missouri.

9                   During the short-term, there may be periods,  
10 like right now, where the wholesale market is very expensive,  
11 and these assets will produce benefits to Missouri customers.  
12 But if the wholesale market changes in the long-run, then its  
13 alternative to the assets are being transferred may be  
14 cheaper than those assets. In which case, there won't be  
15 benefits but will still pay a return on those assets, even  
16 though they may not -- they may be higher cost than an  
17 alternative generation supply.

18                   So we're concerned about fairness, we're  
19 concerned about just and reasonable rates, we're concerned  
20 about the level of compensation the company is permitted to  
21 earn on these generating assets.

22                   COMMISSIONER MURRAY: I'm not sure that  
23 helped, but thank you. And Judge, I will pass to somebody  
24 else.

25                   JUDGE MILLS: Thank you. Commissioner Gaw.

1     Why doesn't we take a five-minute recess. Make it a  
2     ten-minute recess and we'll go off the record.

3                     (A BREAK WAS HAD.)

4                     JUDGE MILLS: Let's go back on the record.  
5     Mr. Lowery, I think we broke before you had a chance to  
6     finish -- to make a response; is that correct? Were you  
7     leaning forward towards the microphone at that point?

8                     MR. LOWERY: I don't think that I had any  
9     response at this point, Judge.

10                    JUDGE MILLS: Okay. Thank. Commissioner Gaw.

11                    COMMISSIONER GAW: Thank you, Judge.

12                    As I am going through a few of these  
13     questions, some of them may be appropriately handled at the  
14     full hearing, and to the extent that anyone wishes to just  
15     defer anything to that, I certainly don't have a problem with  
16     that, especially considering the limited time we have today  
17     and the nature of the on-the-record.

18                    I would ask -- I think this question first to  
19     Dr. Proctor, since he's already been sworn. In the Order  
20     directing the filing, the Commission ordered Ameren to  
21     prepare a least cost analysis regarding several scenarios,  
22     Dr. Proctor, and I'd like your feedback on whether or not you  
23     would characterize Ameren's filings as consistent with that  
24     Order and follow-up, do the analysis file represent a least  
25     cost analysis or something else?

1 DR. PROCTOR: Okay. A major difference in the  
2 filing -- filings that they've made in the Noranda case that  
3 address your Scenarios 3 and 4, and what we looked at in this  
4 case, in the MetroEast case, is the application of the JDA.

5 The numbers that you will see in Scenarios 3  
6 and 4 are the Noranda scenarios, and they assume and the --  
7 there is no JDA in effect. They look at Union Electric on a  
8 standalone basis. In the MetroEast transfer case; however,  
9 all of the analysis that was done on production costs and  
10 those types of things were done with the JDA in effect. Now,  
11 those are differences.

12 One of the things Ameren has taken a position  
13 on, and I don't necessarily disagree with that, but it is  
14 that when you -- looking at capacity expansion, you need to  
15 look at that on a UE standalone basis, and I don't disagree  
16 with that. But as we address the question and testimony in  
17 the Noranda case, I'll address that in more -- in more  
18 detail, but is it least cost? I don't think the Staff is  
19 going to have any issue over the units that -- and the cost  
20 of those that are included that they're planning or putting  
21 in to meet the Noranda load.

22 COMMISSIONER GAW: I think my question, I  
23 think, is more directed at whether or not what you have been  
24 presented with up to this point in time is truly a least cost  
25 analysis or is it something else? Are you telling me that it

1 is?

2 DR. PROCTOR: In part, it is, yes.

3 COMMISSIONER GAW: And part is it not?

4 DR. PROCTOR: In part, it reflects in terms of  
5 the opportunity costs or loss, if you want to put it that  
6 way, of off-system sales. It does not reflect the operation  
7 of the Joint Dispatch Agreement, otherwise, I think it's a  
8 least cost analysis, yes.

9 COMMISSIONER GAW: Okay. So should there be  
10 something else done in your opinion?

11 DR. PROCTOR: I think the Staff would like to  
12 see what the impact of the Joint Dispatch Agreement would be  
13 on the off-system sales that are being assumed in -- in both  
14 Scenarios 3 and Scenario 4. We -- and that can be a crucial  
15 -- that's a crucial part of the information.

16 COMMISSIONER GAW: Is Staff procuring that  
17 information? In the process of doing that?

18 DR. PROCTOR: No, we haven't.

19 COMMISSIONER GAW: Do you intend to?

20 DR. PROCTOR: We can, yes. We can either have  
21 the company do additional runs or the Staff can make  
22 adjustments to those runs in their case.

23 COMMISSIONER GAW: Okay. So does Staff have  
24 the information to make the adjustments themselves?

25 DR. PROCTOR: I believe we do, yes.

1                   COMMISSIONER GAW: All right. And you're  
2     telling me you think that might be important or am I  
3     understanding you correctly?

4                   DR. PROCTOR: Yes, I think it might be very  
5     important to the Noranda case, and it might be very important  
6     to the MetroEast transfer case.

7                   COMMISSIONER GAW: All right. Prior to filing  
8     the Noranda docket, would you say that -- appears that  
9     AmerenUE had already prepared cost comparisons regarding two  
10    scenarios, both serving and not serving Noranda?

11                  DR. PROCTOR: That's correct, with the  
12    MetroEast transfer assumed.

13                  COMMISSIONER GAW: All right. Were you -- are  
14    you surprised that Ameren is suggesting that it did not  
15    prepare similar cost comparisons prior -- prior to filing the  
16    Metro transfer case, with the transfer not assumed?

17                  DR. PROCTOR: Let's see if I can -- you're  
18    asking me if I was -- the Staff was --

19                  COMMISSIONER GAW: Would you have expected it  
20    to have been done?

21                  DR. PROCTOR: Yeah, the Staff is totally  
22    unaware of anything related to Noranda until November of this  
23    year. We had no knowledge. The company never approached us  
24    about it, so that was a total surprise to us. Looking back  
25    on it now, if we had known something about it prior to that,

1 we would have -- we would have requested that it be included  
2 in the MetroEast transfer case.

3 COMMISSIONER GAW: Would you -- are you -- are  
4 you surprised in regard to Scenarios 1 and 2 that were  
5 requested --

6 DR. PROCTOR: No.

7 COMMISSIONER GAW: -- that they have not --  
8 that they had not completed those analysis before this?

9 DR. PROCTOR: Well, Scenarios 1 and 2 had to  
10 do with the -- with the Noranda issue.

11 COMMISSIONER GAW: Yes.

12 DR. PROCTOR: Or serving Noranda with the  
13 MetroEast transfer. So with and without -- I guess I would  
14 put it this way.

15 Having done quite a bit of -- or some degree  
16 of discovery in the Noranda case, it's hard for me to  
17 comprehend that this analysis hadn't been done before it was  
18 done, yes.

19 COMMISSIONER GAW: Mr. Lowery, would you -- do  
20 you want to respond to that or do you have somebody that  
21 wishes to respond to it?

22 MR. LOWERY: I'll take a shot at it,  
23 Commissioner Gaw. The reason those analyses were not done is  
24 because the capacity position that AmerenUE has. Those  
25 scenarios assume that we're serving both. And if we're -- if

1 we're serving both -- well, we can't serve both. And so  
2 that's why the analyses were not done.

3 We assumed and believed and have for some time  
4 that MetroEast was going to transfer, and when the Noranda  
5 deal came along, we assumed that was going to happen. That's  
6 a completed fact. That allows Pinckneyville and Kinmundy to  
7 happen, and then we can serve Noranda. If MetroEast doesn't  
8 transfer, we never get to serving Noranda, so looking at that  
9 scenario didn't occur to us as being relevant. I think it's  
10 really just that simple.

11 COMMISSIONER GAW: Is it correct that -- that  
12 up to this point in time, Ameren has refused to share the  
13 information on the -- that's been requested by Staff in data  
14 requests from AEG on -- on the ability of AEG to serve some  
15 -- some of this load that's under discussion?

16 MR. LOWERY: I cannot recall absolutely  
17 whether Staff asked us, but I believe in late December they  
18 asked us a data request for that capacity information and it  
19 is true that we did not believe that was relevant because UE  
20 is the -- the utility to serve Noranda, not AEG or another  
21 utility and we didn't believe that was relevant.

22 Because Dr. Proctor filed an affidavit that we  
23 think, and I'm not in any way suggesting that Dr. Proctor  
24 didn't believe everything he said in his affidavit, but we  
25 think the affidavit is inaccurate, we needed to set the



1 record straight on that, and yesterday we filed information  
2 in a highly confidential version of Mr. Voytas' affidavit  
3 that provides that information because there was a -- there  
4 was inaccurate information on the record.

5 COMMISSIONER GAW: Mr. Dottheim, does Staff  
6 now have the information it requested in data requests  
7 regarding the capacity position of non-AmerenUE companies  
8 that are affiliated?

9 MR. DOTTHEIM: No.

10 COMMISSIONER GAW: So that's still an  
11 outstanding request --

12 MR. DOTTHEIM: Yes.

13 COMMISSIONER GAW: -- that's being objected  
14 to?

15 MR. DOTTHEIM: All we have is the numbers that  
16 were provided in Mr. Voytas' testimony yesterday, which would  
17 not completely respond to the outstanding data request.

18 COMMISSIONER GAW: And Mr. Lowery, will there  
19 be other information forthcoming or not without intervention  
20 of our order in regard to that?

21 MR. LOWERY: I probably cannot entirely answer  
22 that, but my initial thought is there may not be additional  
23 information coming because the bottom line -- the bottom line  
24 number that we provided gives the bottom line Ameren system,  
25 as Staff calls it, capacity position. The only other

1 information would really look at which company has what, and  
2 even to rebut the point or even to look at it on an Ameren  
3 total system basis, as I understand it, that's a level of  
4 detail that's simply not relevant at all.

5 COMMISSIONER GAW: So in other words, it would  
6 have to be an order if there was any information produced?

7 MR. LOWERY: I would point out that we  
8 objected to the data request in a timely fashion, five to  
9 seven days, or whatever the time was, and this isn't a  
10 criticism, but Staff has not pursued that objection. It's  
11 been pending for some time, and if that objection is pursued,  
12 we will -- we will have a conference with the Judge and deal  
13 with it appropriate. We'll make a decision at that time,  
14 Commissioner, to be honest with you, but just my initial  
15 thought thinking it through on the fly is that it's really  
16 not relevant, but we will consider whatever -- whatever  
17 arguments are put forth or whatever direction the Judge may  
18 give us on that.

19 COMMISSIONER GAW: Mr. Dottheim.

20 MR. DOTTHEIM: Commissioner, we would  
21 traditionally ask for the support behind, for example, the  
22 affidavit that Mr. Voytas provided yesterday. We haven't  
23 done that yet. That was filed yesterday. But I think the  
24 indication from Mr. Lowery and prior indications are that  
25 even though some of that information is -- is used in an

1 aggregated manner, we would probably not receive a response,  
2 we would receive an objection from AmerenUE.

3 COMMISSIONER GAW: So -- so I'm not sure I  
4 understood what your response -- are you saying that you will  
5 pursue this information that was requested earlier or not?

6 MR. DOTTHEIM: Yes, and that based upon  
7 Mr. Lowery's response here today, and prior response, even  
8 though it's now been used in some fashion in an affidavit,  
9 we're likely to receive an objection, but we will request  
10 that information. We will request work papers and supporting  
11 information.

12 COMMISSIONER GAW: Okay. Dr. Proctor, did you  
13 have anything to add?

14 DR. PROCTOR: No.

15 COMMISSIONER GAW: Anyone else wants to get in  
16 on any of that? Okay. I see no one saying yes.

17 In the Commission's vacated order in the  
18 MetroEast transfer case, the Commission imposed three  
19 conditions. It seems to be the most highly contested;  
20 transmission condition, liability condition, and the second  
21 amendment to the JDA.

22 I'd like to ask, first, Ameren, which of these  
23 conditions -- conditions are effected by the addition of the  
24 Noranda load and how.

25 MR. LOWERY: I probably can't answer that,

1 Commissioner Gaw. I probably cannot answer that. It's not  
2 readily apparent to me that they are affected at all.

3 COMMISSIONER GAW: Okay. Do you have someone  
4 you want to consult with?

5 MR. LOWERY: If you give us just a moment.

6 COMMISSIONER GAW: Sure.

7 MR. LOWERY: Yeah, I think my instinct on two  
8 of the three are absolutely correct. The transmission issue  
9 isn't affected at all. We're talking about the effect of  
10 transferring these Illinois located transmission assets and  
11 how it affects allocation, and that's not going to effect  
12 anything because, in effect, Noranda is a similar sized load  
13 to the MetroEast load, and so the allocations of allocated  
14 costs are going to come out about the same, I think within a  
15 couple of tenths.

16 I recall some of the meetings we had with  
17 Staff. It's still going to be that 92 to 98 percent. With  
18 regard to the liabilities, the liabilities that may show up  
19 later from preclose events in Illinois, they are what they  
20 are, and Noranda doesn't effect that.

21 The only one that we think would be affected  
22 is instead of energy that might have transferred to Illinois  
23 to serve MetroEast load under the JDA going to Illinois, a  
24 big chunk of that is going to be consumed by Missouri  
25 customer Noranda, so the second JDA Amendment condition or

1 the problems Staff identified with regard to that is going to  
2 be much less with Noranda than without Noranda, so that one  
3 is affected.

4 COMMISSIONER GAW: I assumed you would say  
5 that, but I wanted to hear it. Staff, either --  
6 Mr. Dottheim, you want to respond to your position on this?  
7 And I can repeat it if you need to -- or Dr. Proctor.

8 DR. PROCTOR: I'm trying to get the  
9 perspective here, but does the Noranda have an impact on --  
10 on the MetroEast transfer is the way I am hearing this.

11 COMMISSIONER GAW: Well, on the conditions  
12 that were in the original Order on the transfer, which of  
13 those conditions potentially are impacted by the Noranda  
14 addition?

15 DR. PROCTOR: Okay. I understand that better,  
16 which is not the answer I was hearing before.

17 If you look at it on -- on an after the fact  
18 basis, and let's assume the Noranda load comes into play, I  
19 agree with the company that the energy transfers will likely  
20 be reduced that go to serve MetroEast. How that impacts the  
21 condition is that the dollar value that the company says the  
22 ratepayers would be paying from that would also be  
23 significantly reduced, and it would seem to me that that  
24 would make that condition that the Commission has set out a  
25 much more palatable condition to the company.

1                   COMMISSIONER GAW: Do you think it has any  
2 effect on the transmission condition or the liability  
3 condition, either one?

4                   DR. PROCTOR: No, I don't. I agree with the  
5 company there. I don't think Noranda has any impact on that.  
6 Now, clearly if Noranda -- if Noranda load stays there past  
7 the 15-year period, I mean, that's what the contract's for,  
8 and these liabilities come through and they get put into  
9 rates, Noranda is going to pick up, in some sense, that  
10 portion that the MetroEast is not picking -- I mean it just  
11 shifts the percentages around.

12                  At that point, the MetroEast, right now, we're  
13 thinking of it as a 6 percent contribution to that. If you  
14 add the Noranda load, the MetroEast load becomes a smaller  
15 percentage. It's no longer 6 percent. I haven't calculated  
16 it, but it would be something smaller. So in that sense, it  
17 would reduce -- from the Commission's initial Order, it would  
18 reduce whatever liabilities they believe they're having to  
19 pick up from those conditions.

20                  COMMISSIONER GAW: Public Counsel or any of  
21 the other parties have anything to add?

22                  MR. COFFMAN: Just a -- a doubt, I guess. The  
23 -- the relationship between Noranda and the second JDA  
24 condition is -- is apparent if the JDA condition is being  
25 made system-wide. If the JDA condition is being interpreted

1 as -- some are interpreting it to be only the incremental  
2 additional sales relating to the MetroEast area, then I'm not  
3 sure I understand the relationship of Noranda. That's all.

4 MR. LOWERY: Commissioner Gaw, if I may.

5 COMMISSIONER GAW: Yes, please.

6 MR. LOWERY: I think it's also a relevant  
7 consideration to determine what exactly the second JDA  
8 Amendment is intended to mean. I think your Order is very  
9 clear. I think your Order says we amend the JDA to provide  
10 the energy transfers at market rather than incremental cost  
11 and there's no qualifier, that it has to do only with that  
12 incremental piece, and if -- if there is no qualifier, then  
13 Noranda has the effect that I indicated to you, but it's --  
14 it's, you know, it's diluted to a great extent. It's still  
15 an issue that exists, and even to the extent that Noranda  
16 mitigates even if it's interpreted more laterally, the same  
17 issue pertains, and that is if we're able to prove the  
18 benefits outweigh, no matter what the number is, we don't  
19 think the shareholders should have to pay that -- pay that  
20 difference.

21 COMMISSIONER GAW: Okay. While I'm sort of on  
22 this subject of the JDA, I would like to ask this question:  
23 If the JDA were left -- if the second amendment were not  
24 done, would the -- would it make more sense for Pinckneyville  
25 and Kinmundy not to be transferred and the energy from those

1 two plants be purchased at -- under the JDA at incremental  
2 costs rather than buying the two plants and putting them  
3 under the regulated utility?

4 MR. LOWERY: Commissioner Gaw, I'll take a  
5 crack at that. Pinckneyville and Kinmundy are primarily  
6 being added in order to provide capacity for AmerenUE, not  
7 really to provide all that much energy. I mean, the peakers  
8 are only going to run a fairly limited amount of time, so I  
9 think intuitively, to me, it really doesn't change that  
10 equation because we need the capacity. And if that's the  
11 best way to get the capacity, it shouldn't really effect the  
12 JDA issues because the JDA deals with energy, not capacity.  
13 That would be my belief.

14 COMMISSIONER GAW: The JDA would allow the  
15 purchase of energy from AEG -- from AEG by AmerenUE at  
16 incremental costs, so would it not be cheaper for AmerenUE  
17 customers to get their supply as on an as-needed basis in  
18 incremental costs rather than purchasing and paying for those  
19 two plants under the -- AmerenUE?

20 Since that -- if that JDA continues to be  
21 there without the second amendment, and I'll ask -- I may be  
22 completely off here. I'm interested in that topic. Which,  
23 earlier, I might not have been interested in. Dr. Proctor?

24 DR. PROCTOR: You're raising a question that  
25 the MISO is attempting to address currently in terms of



1    what's called the PJM reliability model. And if you don't  
2    have the capacity, under this model, and believe me, I'm  
3    going to Caramel tomorrow to learn more about it, but if you  
4    don't have the capacity, this model would, in essence, allow  
5    -- MISO would charge you for that capacity, even though  
6    you're taking energy from the market, would charge you for  
7    that capacity and then would -- would pay the holders of that  
8    capacity or people that contributed to that capacity to the  
9    market.

10                   I'm a little reluctant to call it a market  
11    because it really isn't, and so -- and that's done in order  
12    to maintain reliability on a system. Capacity is about  
13    reliability. Capacity is about having enough generation  
14    capability to serve the load in peak times, even when there's  
15    outages on the transmission system and outages on the  
16    generation system, so -- so this is -- this all has to do  
17    with an area that's called resource adequacy.

18                   So buying energy at incremental cost is an  
19    option, but -- but my -- in addition to that, you're going to  
20    have to contribute to the reliability of the system. So  
21    you're going to have to make some kind of capacity payment  
22    ultimately. Otherwise, you're going to be deficient in  
23    meeting your reliability requirements.

24                   COMMISSIONER GAW: Well, I'm not sure -- I  
25    understand you're focusing on capacity, I'm focusing on

1 energy, and I'm trying to understand if I take the capacity  
2 issue out of it, and that may not be realistic, but if I take  
3 it out of it, I mean, right now, I have a JDA that allows --  
4 if this MetroEast transfer goes through -- the incremental --  
5 without that condition, allows that energy to be purchased in  
6 incremental cost by those Illinois customers of CIPS, true?

7 DR. PROCTOR: True.

8 COMMISSIONER GAW: Why can't it work the other  
9 way? I mean, it's designed to work that way, so what's wrong  
10 with just acquiring the Illinois generation that AEG owns in  
11 incremental cost to supply some of those energy needs of  
12 AmerenUE. I mean, isn't it cheaper than buying these two  
13 plants at this stage? I realize I'm asking this question not  
14 because that's what I think ought to be done. I'm raising it  
15 because somebody needs to ask that question.

16 DR. PROCTOR: They're various alternatives  
17 that you have. I guess what I was trying to say before,  
18 those alternatives need to be -- need to be presented in an  
19 analyzed -- in the concept of you meeting your 15 percent  
20 reserve requirement. If you don't -- or contributing to the  
21 resource adequacy of the region.

22 Now, the difference is that if I buy  
23 Pinckneyville and Kinmundy, I agree with what Mr. Lowery  
24 said. Those plants aren't going to be run very often to  
25 serve Union Electric customers. That doesn't mean they won't

1 run. They will run and they will sell energy into the  
2 market, and that's because those units are highly efficient  
3 combustion turbines and -- and they will sell energy into the  
4 market and the profits from -- from that energy sold into the  
5 market are then used to reduce costs to UE ratepayers.

6                   You can -- you can go that way and there's a  
7 trade off. I can add these capacity things and -- and sell  
8 them to the market, or I can -- I can just make capacity  
9 payments, like we were talking about in the PJM reliability  
10 market, which doesn't entitle me to anything related to the  
11 energy from that, and buy from the market. So -- so I've got  
12 this -- I've got those choices, and I need to do an economic  
13 evaluation of which of those two choices is the best choice  
14 from an economics standpoint.

15                   Is it -- is it to make the capacity payment  
16 and buy from the market or is it to be -- to actually buy the  
17 capacity, own the generation, and sell to the market. And  
18 that's why on -- on a lot of these decisions, what happens in  
19 the -- we call them off-system sales -- what happens in those  
20 markets are very critical.

21                   COMMISSIONER GAW: I understand. Public  
22 Counsel, do you have any thing you want to add?

23                   MR. COFFMAN: On this matter, I would be happy  
24 to offer my expert witness, Ryan Kind, for an answer. I  
25 believe he would need to be sworn.

1 (The witness was sworn.)

2 COMMISSIONER GAW: Judge, just to clarify, I'm  
3 not trying to get to the bottom of this question today. I'm  
4 just raising it so that the parties can more fully explore it  
5 later, but if you have something that would be helpful now,  
6 Mr. Kind, I'd be glad to hear it.

7 MR. KIND: I'll just give you some initial  
8 thoughts on this issue. First of all, I guess you need to  
9 think about what are the contractual obligations of AmerenUE  
10 in terms of reserve margin and reserve requirements and  
11 there's a couple of them.

12 One has to do with the conjoint control area  
13 of UE and CIPS. And for that joint control area, those  
14 Ameren subsidiaries need to have sufficient generation  
15 resources either that they own or under contract to meet the  
16 main reserve requirement, which I believe last summer was  
17 about 14.1. And again, that's the joint resources of the two  
18 entities combined.

19 Now, I think there is a provision in the Joint  
20 Dispatch Agreement, I don't know the extent to which it's  
21 really binding or just sort of a recommendation that each of  
22 the entities in that Joint Dispatch Agreement have to  
23 independently be able to -- to meet reserve requirements.  
24 From my recollection, that requirement or recommendation was  
25 waived last summer, and the -- AmerenUE did not actually have

1 sufficient capacity to meet its reserve requirement. I know  
2 they claimed that they needed the MetroEast transfer to go  
3 through in order to have that capacity.

4                   There's another question of, you know,  
5 Pinckneyville/Kinmundy having to do with the timing of the  
6 addition of those resources. From what I recall, they really  
7 didn't need those resources until, I think, maybe 2006, had  
8 to do with the EEI capacity going away at the end of 2005, so  
9 you -- you know, there may be some less expensive way, sort  
10 of what you're suggesting, just taking advantage of transfers  
11 for one year, at least, if the capacity is not needed. But  
12 that issue is, you know, the importance of that issue would  
13 have to do with, well, how are the costs within that year  
14 potentially treated in a future, you know, test year and a  
15 future rate proceeding.

16                   COMMISSIONER GAW: When's Pinckneyville and  
17 Kinmundy scheduled to be transferred?

18                   MR. LOWERY: They're scheduled to be  
19 transferred once MetroEast is done, and we believe in a very  
20 short period of time, the SCC will give their final approval  
21 and then they'll be transferred, so shortly after MetroEast  
22 is transferred.

23                   COMMISSIONER GAW: Okay.

24                   MR. LOWERY: Commissioner Gaw, could I comment  
25 just a couple of other -- in trying to answer your question a

1 little bit more fully.

2 COMMISSIONER GAW: Sure.

3 MR. LOWERY: The CTGs, to the extent they run,  
4 and I think Dr. Proctor was eluding to this a little bit. To  
5 the extent they run, they're probably going to run when the  
6 market is greater than the cost of operating them. And  
7 incremental cost for running a CTG is a whole lot higher than  
8 incremental cost for running a baseload plant.

9 And so even if, you know, you're sort of  
10 pursuing a theory or asking a question, sort of talking out  
11 loud, about what the result might be under the JDA, that  
12 energy is going to be at a lot higher cost than I think,  
13 perhaps, your question assumes.

14 It's probably not going to be economic to do  
15 that, and the point of -- of having the CTGs owned by  
16 AmerenUE was to have steel in the ground, reliability, I  
17 think you even made some of these points in your concurrence  
18 in the last rate case settlement, and I think that's why the  
19 Commission had sent letters to the FERC supporting the  
20 transfers.

21 And so I don't really think anything has  
22 changed in terms of energy transfers under the JDA one way or  
23 the other that really bears on Pinckneyville and Kinmundy.

24 COMMISSIONER GAW: I might suggest to you,  
25 Mr. Lowery, that my recollection is those letters did not

1 express specific support for particular transfers, rather  
2 they suggested that the Commission generally has a preference  
3 for owned generation, and that would not be inconsistent with  
4 that, and I -- and that the Commission has the full ability  
5 to review the prudence of that decision and later rate-making  
6 matter.

7                   So I know that there seems to be some lacing  
8 of suggestions that the Commission had somehow, I don't want  
9 to say pushed Ameren towards this, but that was certainly not  
10 my recollection. And my understanding is that any such  
11 transfers would be fully reviewed in a rate case subsequent  
12 to this to determine its -- the prudence of the -- of the  
13 matter.

14                   And the feeling that there was -- there was  
15 sufficient ability within the state Commission to do that  
16 prudence review, so -- and I suppose that's more of a comment  
17 than a question.

18                   This -- let me -- let me ask if there is  
19 anyone that believes that the -- and I -- I don't want to go  
20 too far down this road, but the connections here have been  
21 made, whether that's fortunate or unfortunate, that's where  
22 we are.

23                   Would the addition of the Noranda load result  
24 in the creation of any additional detriments not previously  
25 considered in the MetroEast transfer case in anyone's

1 opinion? Staff?

2 MR. DOTTHEIM: I'd like to attempt to address  
3 that from the perspective of -- I think I mentioned this  
4 earlier when I handed out a copy of the matrix that was in  
5 the Staff's November 12 filing with the Commission, one or  
6 more numbers that are in that matrix as far as calculating  
7 the benefits and detriments will change.

8 For example, Commissioner, that second row,  
9 JDA Amendment to share profits by generation, that \$7 million  
10 number, as we believe, is likely to decrease because with  
11 Noranda, there won't be the opportunity for off-system sales  
12 for interchanged sales because of the Noranda load.

13 Now, you might recall, and I actually have,  
14 AmerenUE's matrix where they used a number of 24 million, and  
15 I've actually got -- maybe it might facilitate matters --  
16 I've got copies of the two pages from the Commission's own  
17 Report and Order where it had those two matrices, so I can  
18 provide those again. I don't know how much the Commissioners  
19 might want to go into that, but it's -- it's illustrative of  
20 -- of the effect of Noranda in a fashion.

21 COMMISSIONER GAW: Okay. If you want to hand  
22 them out, that's fine with me.

23 MR. DOTTHEIM: The first document I'm going to  
24 hand out is from the Commission's own Report and Order.  
25 There's pages 50 and 58 where there are two matrices.



1 COMMISSIONER GAW: Are you sure this isn't  
2 from your brief?

3 MR. DOTTHEIM: No.

4 COMMISSIONER GAW: You mean our Report was  
5 over 50 pages?

6 MR. DOTTHEIM: And I also have copies of page  
7 20 from, I believe, AmerenUE's application for rehearing.

8 COMMISSIONER GAW: Go ahead, Mr. Dottheim.

9 MR. DOTTHEIM: I have nothing further at this  
10 time.

11 COMMISSIONER GAW: All right. The two things  
12 that you handed out, I see where -- what you're referring to,  
13 I think, but I guess my -- my question -- maybe you've  
14 answered it, but are those -- do you have the numbers with  
15 regard to the changes at this point or is that something you  
16 anticipate presenting at the hearing?

17 MR. DOTTHEIM: We don't have the numbers at  
18 this time, and that's something we can attempt to address.

19 COMMISSIONER GAW: It would be some -- I would  
20 assume some benefit, also, adding back from the addition of  
21 the Noranda load that would have to be factored into all of  
22 this. Would that not be -- would that not be true?

23 So on one hand you might see some benefits go  
24 down on off-system sales, but you also have to net that  
25 against the pickup of the Noranda load, and I'm not sure what

1 else might be there.

2 MR. DOTTHEIM: Yes.

3 MR. LOWERY: Yes.

4 MR. DOTTHEIM: That's something that would  
5 need to be looked at or factored in.

6 COMMISSIONER GAW: Okay. Does Ameren or  
7 Public Counsel, anyone else want to say anything? Only if  
8 you feel it's necessary.

9 MR. COFFMAN: Briefly.

10 COMMISSIONER GAW: Yeah.

11 MR. COFFMAN: The -- we did not analyze the  
12 impact of Noranda, although we were not aware that the  
13 Noranda deal was being negotiated during the past year, but  
14 we did ask, we thought, pretty thorough discovery. We -- off  
15 the top of my head, one item that may have relationship is  
16 the S02 allowance credits, and I know the Commission in its  
17 Order seemed to indicate that they did not think it was a  
18 detriment, but to the extent you're adding a high load  
19 customer, you will be depleting S02 allowances at a quicker  
20 pays, perhaps, and that is something that perhaps might have  
21 been analyzed differently if it were known that it was  
22 possible that Noranda might be a customer in the future, but  
23 apart from that, we just haven't analyzed it and we would  
24 need the data, I guess, that the Commission has requested to  
25 -- to do that analysis.

1 COMMISSIONER GAW: Okay. Ameren.

2 MR. LOWERY: I was simply going to make the  
3 point that there would be some offsetting benefits that go  
4 the other way that you made, Commissioner.

5 COMMISSIONER GAW: Okay. Thanks. Okay.  
6 Let's see --

7 MS. VUYLSTEKE: Commissioner Gaw, are you  
8 moving on to your next question?

9 COMMISSIONER GAW: Yes, if you wish to say  
10 something, go ahead, Ms. Vuylsteke.

11 MS. VUYLSTEKE: I do. And I apologize, if  
12 this isn't responsive to your question, but a concern that  
13 we've had throughout, ever since Ameren has made the Noranda  
14 application, and we've expressed this in our pleadings, but I  
15 just wanted to highlight this again.

16 You asked about any detriments in this case  
17 because of Noranda. I mean, we're concerned about a  
18 fundamental detriment that could occur if -- Ameren's taking  
19 the position that unless the conditions are removed from a  
20 prior order, that they're not going to go through with the  
21 Noranda deal. I think that implication is there, and if the  
22 Commission were to, based on that assertion, remove the  
23 ratepayer protective conditions based on the fact you want  
24 Noranda to be served, I think that would be a very  
25 significant detriment of the Noranda contract -- of the

1 Noranda deal to this proceeding.

2 COMMISSIONER GAW: Okay. And I'm assuming  
3 that you all will develop these issues at the hearing, and I  
4 would expect you to also address what, if any, additional  
5 liability in the short-term there might be from additional  
6 generation capacity need, if there is any. And -- and the --  
7 especially -- well, I'll just leave it at that.

8 The -- if the Noranda load is added, you can  
9 answer this question later in the other proceeding, if you  
10 wish. If the MetroEast transfer is approved, would AmerenUE  
11 still have energy available to transfer to Illinois under the  
12 JDA?

13 And I know that answer probably depends on  
14 what time of the day it is, but anyone want to venture down  
15 that right now or you want to just wait, ride it later?

16 MR. LOWERY: Your question was if Noranda's  
17 served and the MetroEast is transferred, will there still be  
18 energy transfers to Illinois?

19 COMMISSIONER GAW: Uh-huh.

20 MR. LOWERY: I think during the off-peak  
21 times, there will still be some energy transfers. I can't be  
22 specific because I don't know, but I think there will still  
23 be some energy transfers as load growth occurs, after EEI is  
24 not available, those types of things. Those are going to be  
25 less and less over time, but initially, I think there will be

1 some.

2 COMMISSIONER GAW: And is it true that the JDA  
3 does not provide for exchange of capacity? That's accurate?

4 MR. LOWERY: Yes.

5 COMMISSIONER GAW: Okay. If the -- if the  
6 MetroEast transfer occurs and Noranda is added to AmerenUE's  
7 load, how does Ameren, the parent company overseeing all of  
8 its energy needs, intend to address its capacity requirements  
9 considering the fact that everything here is still under the  
10 one tent and -- and I don't expect you to answer that today,  
11 but I would expect you to answer that in the upcoming  
12 hearing.

13 MR. LOWERY: Commissioner, I'll try to give  
14 you at least an initial answer.

15 COMMISSIONER GAW: All right.

16 MR. LOWERY: From a -- from an energy  
17 perspective with the JDA, Ameren, I guess, as you say, is  
18 under one tent, but from a capacity perspective, AmerenUE is  
19 under a different tent than AmerenCIPS and AEG and so on.  
20 And if MetroEast is transferred and if Noranda is  
21 transferred, UE will be fine on capacity.

22 We will, as our Noranda testimony indicates,  
23 in 2006, have to add I think around 500 megawatts of CTGs,  
24 peaking capacity. But other than that, it doesn't affect our  
25 resource plan, it doesn't accelerate adding baseload capacity

1 later or anything else. It's just a one-time addition of  
2 some speaking capacity in a year or two to provide capacity  
3 needs relating to Noranda. That's the only effect on UE.

4 COMMISSIONER GAW: And I would -- I will ask  
5 the question about the affiliates in the upcoming hearing in  
6 regards to how their capacity ability is impacted.

7 MR. COFFMAN: Yes, may we respond?

8 COMMISSIONER GAW: Please.

9 MR. KIND: Commissioner Gaw, I wanted to just  
10 respond to the remarks that Mr. Lowery made regarding no  
11 impact on the -- the timing of future resource additions for  
12 AmerenUE.

13 That's something that Public Counsel is -- has  
14 not been able to get comfortable with that assertion on the  
15 part of the company, and the main reason that we cannot is  
16 that it sort of relates to a question you asked earlier, I  
17 think to Dr. Proctor, about least cost analysis and what's  
18 included in that.

19 From our point of view, an essential part of  
20 least cost analysis has to do with optimizing the timing and  
21 the mix of the future resource additions. And Ameren  
22 generally refers to that type of analysis as asset-mix  
23 optimization studies, I think AMO's.

24 We have not been able to discover any  
25 asset-mix optimization studies that had been done subsequent

1 to the plan to add the Noranda load. And in fact, I think --  
2 I'm not absolutely certain of this, but my recollection is we  
3 just received an objection to a data request this week asking  
4 if there were any such studies, and there was an objection to  
5 providing any such studies.

6                   And for instance, there is an assertion that  
7 Ameren has -- AmerenUE did a study about its optimal mix in  
8 terms of the mix and timing of resources, I think about a  
9 year ago, and they're saying that study is still valid today.  
10 That in terms of when a new coal plant would be needed, and  
11 it just intuitively seems like that's something that you  
12 would want to actually do some quantitative analysis on to  
13 reassess that when you go out and add essentially 500  
14 megawatt load, you know, of high load factor customer such as  
15 Noranda.

16                   And I'm afraid that, you know, that type of  
17 study, it takes some time. I'm sure that would be one of  
18 Ameren's assertions, although we just don't know if they've  
19 taken the time to perform the study yet or not, but if it  
20 hadn't been performed, it would take some time and be very  
21 difficult to get accomplished within the compressed time  
22 schedule of this case.

23                   But lacking that information, it leads to some  
24 uncertainty, really, in terms of how valid the minus analysis  
25 is, which just utilizes certain assumptions that is come out

1 of a previous asset-mix optimization study not reflecting the  
2 Noranda load.

3 COMMISSIONER GAW: And you say you have or  
4 have not seen that previous study?

5 MR. KIND: We have seen the previous study,  
6 and --

7 COMMISSIONER GAW: Previous study does not  
8 include any addition of Noranda?

9 MR. KIND: That's correct.

10 COMMISSIONER GAW: All right.

11 MR. KIND: That's correct.

12 COMMISSIONER GAW: And Ameren, you wish to --

13 MR. LOWERY: I do, Commissioner. The Noranda  
14 load, as you know, is very similar in terms of -- in terms of  
15 energy and capacity needs with respect to -- although there  
16 are some additional energy needs as we talked about.

17 We provided evidence in the Noranda docket  
18 that shows that AmerenUE has more than enough energy to serve  
19 Noranda, and so there really is not a significant difference  
20 in the asset-mix that is going to take place with regard to  
21 Noranda. In terms of the information that -- that Mr. Kind  
22 indicates has been requested or they have or they don't have,  
23 the data requests that they ask for are broader than just  
24 asking for those studies.

25 But we did respond and indicate that you've



1 got what we've done. You have our most recent resource  
2 plans, you have our most recent AMOs, as he says. There  
3 isn't a new AMO that says MetroEast is gone and Noranda is  
4 added. That's true. There isn't much difference between the  
5 two from that perspective, and we have evidence in the  
6 Noranda case backed up by those analyses of energy  
7 availability that we have demonstrates we've got enough  
8 energy, so we would disagree with that basic point that  
9 Public Counsel is making.

10 COMMISSIONER GAW: There is significant  
11 difference in the characteristics of the load between  
12 MetroEast and Noranda, though, isn't there?

13 MR. LOWERY: Noranda does need some amount of  
14 incremental energy, that's true, between 79 percent load  
15 factor and 98 or 99 percent, that's correct. But our load  
16 duration curve that we do have and that we've provided in the  
17 Noranda case shows that we've got, even with the addition, we  
18 show this in the Noranda case, that -- the addition of how  
19 much energy is going to be consumed, we've still got a lot  
20 of head room, so to speak, plenty of room where we have  
21 plenty of energy.

22 And as long as we have plenty of energy, we  
23 don't need to accelerate, we don't need to add more plants.  
24 What we need is capacity to serve Noranda, and we're going to  
25 add that in 2006 with some peaking plants on a one-time basis

1 that doesn't effect anything else.

2 COMMISSIONER GAW: But Noranda's load  
3 characteristics are characteristics of requirements of a  
4 baseload generation, not peaking, correct?

5 MR. LOWERY: Correct, and that's what I'm  
6 saying, perhaps not very well, is that we have plenty of  
7 baseload energy to handle the Noranda load. There's plenty of  
8 baseload energy there to take on the Noranda load, even  
9 though it is somewhat incrementally more than the MetroEast  
10 load, we have plenty of energy to do that.

11 And the only reason we would need to  
12 accelerate baseload capacity is if we didn't have enough  
13 energy. We have plenty of baseload energy, as you say,  
14 that's the characteristic to the kind of energy Noranda  
15 needs. We have plenty of that to take on Noranda.

16 DR. PROCTOR: Commissioner Gaw, if I can  
17 interject.

18 COMMISSIONER GAW: Go ahead.

19 DR. PROCTOR: One of the things that's missing  
20 in this conversation is the fact that with other without  
21 Noranda load, AmerenUE is planning to add significant  
22 baseload capacity in 2011, and -- and that was based on an  
23 asset optimization study that was done when the MetroEast was  
24 still a part of the load, and -- I just wanted to be clear  
25 it's -- it's highly unlikely that -- that that new baseload

1 capacity can be done any earlier than 2011.

2 The only question in the analysis that -- that  
3 arises is as additional peaking capacity is -- as additional  
4 capacity is needed beyond 2011, should that be baseload  
5 capacity or peaking capacity.

6 I think the other thing I'd point out is that  
7 in the asset optimization -- mix optimization study involving  
8 MetroEast, it was borderline between whether or not to add --  
9 I mean, the present value of the cost for almost very close  
10 between not doing that baseload coal plant or adding,  
11 instead, combustion turbine, so it was very close with  
12 MetroEast in there.

13 And my best guess is that it will be less  
14 close, and the adding the baseload coal plant in 2011 makes  
15 even more sense if you put the Noranda load in there instead  
16 of the MetroEast load, so I just wanted to clarify.

17 COMMISSIONER GAW: Okay. And that would be  
18 assuming that the Noranda load would be there beyond the  
19 15-year period of the contract that's -- that I understand.

20 DR. PROCTOR: Yes, I believe that's -- that  
21 would be the case, though we haven't -- I mean, that's kind  
22 of asking the question with the MetroEast transfer and with  
23 -- without the Noranda load, would you still build the coal  
24 plant is the question you're asking.

25 COMMISSIONER GAW: I mean, it's a contingency

1     that's -- that's built into that analysis, I would assume.

2                     DR. PROCTOR:   In that -- that analysis is  
3     there -- I don't want to confuse the Commission with four  
4     scenarios, but the company -- company actually ran your --  
5     what has been called your scenarios 3 and 4.  They ran those  
6     both for a coal case in 2011 and for a CT case.

7                     COMMISSIONER GAW:  Okay.

8                     DR. PROCTOR:   So the information is thereto  
9     answer your question.

10                    COMMISSIONER GAW:  Okay.  Thank you.  And  
11     Judge, do you want me to stop for now?

12                    JUDGE MILLS:   Mr. Lowery, do you have a final  
13     comment before we break for lunch?

14                    MR. LOWERY:   Ten seconds.  I don't think I was  
15     understanding your questions about the characteristics of the  
16     load.  The MetroEast load is also a very heavily industrial  
17     based load, so its characteristics are very similar to  
18     Noranda, it's just the load factor is different.  That's the  
19     primary difference.

20                    COMMISSIONER GAW:  Okay.  Thanks.

21                    JUDGE MILLS:   Why don't we go ahead and take a  
22     break for lunch.  We'll go back on the record at 1:30.  We're  
23     off-the-record.

24                    (A LUNCH BREAK WAS HAD.)

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

1 We're back on the record continuing with questions from the  
2 bench. Commissioner.

3 COMMISSIONER GAW: Thank you, Judge.

4 Yesterday -- I think it was yesterday in a  
5 filing that Ameren had, Mr. Lowery, you noted that the FERC  
6 has recently set forth new standards for the approval of  
7 wholesale agreements with affiliates. And I was just curious  
8 about given the new standards, whether you believe the  
9 current version of the JDA satisfies those new standards.  
10 And I realize you may have to say yes, but if you do have an  
11 opinion otherwise, I would like to know that, obviously.

12 MR. LOWERY: Well, I guess I won't feel  
13 compelled to say yes because it's an approved agreement and  
14 there's really no issue with respect to it. The second part  
15 of the answer is I honestly don't have any idea an answer to  
16 your question. Haven't given it any thought.

17 COMMISSIONER GAW: Let me see if anyone else  
18 has opinions in that regard, if anyone's had time to examine  
19 those new standards. Staff is saying no.

20 MR. COFFMAN: I guess we don't have an opinion  
21 either.

22 MR. DOTTHEIM: Staff is saying no -- or  
23 Dottheim is saying no that he hasn't had a chance to review  
24 those standards.

25 COMMISSIONER GAW: We all agree on something.

1 And Public Counsel is saying they haven't had a chance to do  
2 that analysis and no one else has had either, it looks like.

3 Let me ask you this: If the -- if the new  
4 standard somehow -- if the -- if the JDA some how was  
5 arguably volitive of that standard, is it possible for -- for  
6 someone to file a compliant about a current JDA procedurally  
7 with FERC? If anyone has knowledge of that procedure.  
8 Staff? I'm not going to put Ameren on the spot on this one.

9 MR. DOTTHEIM: I would suspect so, but I  
10 literally don't know the answer to that, so there's nothing  
11 other than that I can tell you.

12 MR. COFFMAN: I haven't researched or looked  
13 into that.

14 COMMISSIONER GAW: Okay. No one seems to have  
15 done that yet, so perhaps later on the next time we meet,  
16 someone can give me -- shed some light on that.

17 In particular, I would be curious about how  
18 the ability, if the -- if an entity in -- under Ameren's  
19 umbrella has access to incremental cost generation that's  
20 owned by UE, how that would withstand scrutiny under -- on  
21 market power evaluations, in particular when -- when that  
22 cost -- when the cost that the access to that cost is limited  
23 just to affiliates of AmerenUE and would not be available to  
24 others participating in the market place in Illinois on the  
25 retail level, if that makes sense.

1                   Okay. I want to ask Public Counsel, I had the  
2 impression in the original evidentiary proceeding in this  
3 case in a -- that there may -- that the -- I believe the  
4 Kentucky utilities that have access to the Joppa -- Joppa  
5 generation that are partners with Ameren -- help me out.

6                   MR. COFFMAN: They have a 20 percent  
7 entitlement and as has been indicated in this case, AmerenUE  
8 has a 40 percent entitlement.

9                   COMMISSIONER GAW: And does anyone else have  
10 anything?

11                  MR. COFFMAN: The remaining percentages are  
12 owned by affiliates of Ameren -- well, let --

13                  COMMISSIONER GAW: Mr. Kind, you're already  
14 sworn in, I believe.

15                  MR. KIND: Yes. The entire Ameren system  
16 have, I believe, all the Ameren subsidiaries combined have an  
17 80 percent ownership and entitlement, and then Kentucky  
18 Utilities, as you mentioned, has the remaining 20 percent.

19                  COMMISSIONER GAW: All right. Now, I also  
20 have some recollection that these contracts for generation  
21 network are coming to an end at some point; is that correct?

22                  MR. KIND: Yes, that's correct. The UE  
23 contract ends at the end of 2005.

24                  COMMISSIONER GAW: End of 2005. Do the other  
25 affiliates of Ameren have contracts for generation from the

1 Joppa unit?

2 MR. KIND: I am unclear about that. I think I  
3 have tried to discover some information about the other  
4 Ameren affiliates and their contractual terms, and I think it  
5 was an issue that we had, you know, discovery issues with and  
6 never was able to obtain that information.

7 COMMISSIONER GAW: Okay. Now, were the  
8 Kentucky utilities, did they also have contracts that were  
9 coming to an end or have come to an end?

10 MR. KIND: I am not sure about that, but I  
11 think the important factor is that the entitlement is  
12 separate from the contract. The contract was really just the  
13 -- from my understanding, the contract is just the terms  
14 under which you are exercising your entitlement to that  
15 power.

16 COMMISSIONER GAW: Okay. I'm going to come  
17 over there in a minute, Jim, so you can reply.

18 MR. COFFMAN: And if I might add, it's our  
19 belief that the deal is much more than that. In fact, that  
20 this Public Service Commission has required Missouri  
21 ratepayers to, in a sense, guarantee certain improvements on  
22 those plants. And even to the extent that this plant is not  
23 in AmerenUE's rate base, the Missouri ratepayers have been  
24 required to make significant contributions to it, and that it  
25 is something that is dedicated -- and is dedicated to



1 ratepayers, or at least that has been the promise from this  
2 Commission over the years.

3                   And so we have a particular interest to the  
4 degree, I mean, we believe that it was relevant to or is  
5 relevant still to this case, what happens to that energy from  
6 the EEInc. Joppa -- particularly Joppa plant, but that also  
7 we not be precluded from addressing whether or not that  
8 should continue to be serving Missouri ratepayers in a future  
9 rate case, and any decision in this case does not preclude  
10 our ability to address that.

11                   COMMISSIONER GAW: Well, I'm trying to  
12 understand, I thought that there might have been a suggestion  
13 to -- help me to recall this, if you would, that the Kentucky  
14 Utility somehow had renegotiated or had procured the access  
15 to that generation in contracts that had been renewed or  
16 something similar to that, and I'm not clear about that.

17                   MR. COFFMAN: The issue came up in the recent  
18 merger case with Illinois Power and Ameren Corporation, and a  
19 condition that Ameren willingly offered was to protect that  
20 20 percent interest that Kentucky Utilities had, and it was  
21 in that testimony that they acknowledged that these -- that  
22 the relationship is an entitlement.

23                   MR. KIND: I think I can elaborate on that  
24 just a little bit is the reason the issue came up in that  
25 merger case is that the Ameren holding company would go from

1   owning a 60 percent to an 80 percent ownership share of EEI,  
2   and the -- that would -- that would put their ownership share  
3   beyond the threshold that is necessary in order for them to  
4   revise the EEI bylaws.

5                   And I believe as what I recall Mr. Nelson had  
6   stated in his sworn testimony was that it was the EEI bylaws  
7   that provided the entitlement to the various operating  
8   subsidiaries of Ameren as well as Kentucky Utilities. And so  
9   essentially they were just agreeing we're not going to  
10  exercise our rights to change the bylaws after getting an 80  
11  percent ownership share, we won't exercise our right to  
12  change them in a way that would eliminate the Kentucky  
13  Utilities' entitlement, and basically what Public Counsel was  
14  -- had sought was some guarantees that they wouldn't.

15                   We'd also make a similar guarantee that Ameren  
16  holding company not exercise its right to change the  
17  entitlement for the operating subsidiary UE to continue  
18  receiving its 40 percent entitlement.

19                   COMMISSIONER GAW: I don't see Ameren nodding  
20  heads in agreement, but I would like to hear what you have to  
21  say about it, whoever you want to speak on it.

22                   MR. LOWERY: I think I can speak on it  
23  initially. If I need help, I'll get it.

24                   COMMISSIONER GAW: Okay.

25                   MR. LOWERY: It's difficult to know where to

1 start. Public Counsel starts from the premise that  
2 ratepayers have somehow contributed to the ownership of the  
3 stock and provided financial monies, et cetera, et cetera,  
4 and that's just simply not true. This stock is owned below  
5 the line, it's paid for by UE shareholders, and what Public  
6 Counsel refers to is back in the 70's, a time when EEInc. was  
7 a regulated public utility, today it's not, it's a regulated  
8 public utility or exempt wholesale generator.

9                   The nature of its business has changed. But  
10 back in the 70's when Joppa was going to expand, I think had  
11 some additional generation units to its footprint, UE was  
12 asked to provide a financial guarantee in case Joppa didn't  
13 pay its bonds off, and we came to the Commission because  
14 that's something within the purview of the Commission's  
15 jurisdiction, it's essentially contingent debt that we would  
16 issue, and the Commission approved that.

17                   We were never asked to make good on that  
18 guarantee, we were never paid a dime on it, and EEInc. paid  
19 off its bonds, and those bonds have been long paid off. So  
20 the idea that this is in rate base, ratepayers have paid for  
21 it, from that base, that's a mistaken idea from the  
22 beginning.

23                   We also have never -- we do not agree that  
24 there is an entitlement that just because you own an X  
25 percent of share, you're entitled to X percent of the

1 capacity. The contract that we have, that gives us a  
2 contractual entitlement, that contract is going to end at the  
3 end of 2005. The EEInc, the nature of its business is such  
4 as an exempt wholesale generator, that it's not interested in  
5 selling power at incremental cost.

6           It's going to sell power, it has a bid on  
7 RFP's that UE has issued in the past. It's not interested in  
8 doing that, and with the transaction rules that we have in  
9 place, and I'm not commenting that they're right or wrong,  
10 but they're just reality to have them, that's what would have  
11 to happen, and as we -- I don't want to plow all the old  
12 ground in the MetroEast case, we'd be here for a week, but as  
13 we indicated in the proceedings and filings and so on, it's  
14 been very clear from filings that Public Counsel has made at  
15 FERC and otherwise that they're not interested in a waiver of  
16 the transaction rules, they want that power at cost. Public  
17 Counsel wants that power at cost, and we -- that's just not  
18 on the table.

19           We also think with respect to the debt  
20 utilities, they're a minority shareholder, we're a majority  
21 shareholder. We have certain obligations not to freeze them  
22 out, not to take their rightful share of profits, not to take  
23 away benefits that they have that put us in a little  
24 different position than they would be if it was a minority  
25 shareholder.

1                   So that's our view of EEInc.'s situation. We  
2 think you were correct in your prior Order where you  
3 indicated that's not an issue. In fact, Staff didn't believe  
4 in this case, at least at an earlier time, that considering  
5 EEInc. an available resource was the appropriate view with  
6 respect to the MetroEast case.

7                   COMMISSIONER GAW: Do to the Kentucky  
8 Utilities have a contract -- contractual relationship with  
9 EEInc. -- is it EEI?

10                  MR. COFFMAN: I say EEInc. to distinguish it  
11 from the Edison Electric.

12                  COMMISSIONER GAW: I knew we weren't talking  
13 about the same entity, so I'll try to be consistent.

14                  MR. LOWERY: They have a power contract like  
15 UE does.

16                  COMMISSIONER GAW: They do. And when was the  
17 last time a contract was entered into?

18                  MR. LOWERY: I don't think -- we don't know.  
19 It's been a long time.

20                  COMMISSIONER GAW: When's it -- when is it  
21 supposed to expire?

22                  MR. LOWERY: Same time UE's.

23                  COMMISSIONER GAW: And will that contract also  
24 not be renegotiated?

25                  MR. LOWERY: It's up to EEInc.'s Board, and I

1 don't know the answer to that question. And I don't think  
2 Mr. Nelson does either.

3 COMMISSIONER GAW: Here's where I'm having  
4 difficulty. I'm having difficulty if there's disparate  
5 treatment with the Kentucky Utilities and AmerenUE, and I  
6 want -- I will want some assurances at the hearing that there  
7 will not be. I don't know if you're capable of giving me  
8 that or not, but without it, it would cause me concern.  
9 Anyone else on this?

10 MR. COFFMAN: Just briefly. It is a very  
11 confusing issue because of the affiliate matters here. We  
12 hear -- we hear the word we, and we don't always know what we  
13 means, if that means the entire Ameren Corporation and all of  
14 its affiliates or if it just means AmerenUE.

15 If AmerenUE is just a 40 percent owner, then  
16 this -- they would appear to be a minority shareholder as  
17 well as Kentucky. If -- and on the other hand, if EEInc. has  
18 not responded to RFP's from Ameren, it is, you know, 80  
19 percent of the ownership is AmerenUE or an affiliate of  
20 Ameren's, controlled by Ameren Corporation, and so this  
21 remains a very, very important issue from our perspective.

22 COMMISSIONER GAW: One of the things that  
23 Ameren suggests that would be acceptable to them in regard to  
24 conditions and was referred to earlier has to do with the  
25 potential liabilities that have -- that would otherwise be

1 shared by the CIPS, the AmerenUE customers in Illinois.

2                   And I think I heard Ameren suggesting that the  
3 way to handle that is going forward that you would somehow  
4 measure the particular detriment that you could -- could  
5 attribute to these liabilities as they are incurred, going  
6 forward in other rate cases. And I understand -- sort of  
7 understand that concept on that side of the equation, and  
8 then you would somehow then develop whatever these benefits  
9 are going forward to see whether or not the detriments  
10 exceeded those benefits. And then if they did, Ameren  
11 shareholders would pick up the difference. Am I close to the  
12 --

13                   MR. LOWERY: You got it.

14                   COMMISSIONER GAW: Okay. If -- let me ask you  
15 this: Can I expand on that a little bit and say if your  
16 modeling is wrong on what you're assessing your benefits to  
17 be going forward, and ultimately we find in rate cases coming  
18 up that looking at the whole transfer, that the benefits  
19 weren't really as great as what you anticipated, and the  
20 detriments exceed -- not just the ones from the liabilities,  
21 but the detriments actually exceed the benefits, is Ameren  
22 willing to accept the condition that they will pick up all of  
23 those detriments as they're measured and as they're incurred  
24 going forward to be determined in the future whenever we get  
25 to those rate cases?

1 MR. LOWERY: I think the answer --

2 COMMISSIONER GAW: That's giving everybody the  
3 same shot here on, okay, let's assess these things when they  
4 actually come about in the future, and if we're wrong on  
5 models, shareholders pick it up.

6 MR. LOWERY: I think the short answer to your  
7 question is we're not prepared to make that kind of  
8 commitment. I mean, the direct answer. I told you I was  
9 going to try to give you straight talk, and I'm trying to do  
10 that.

11 COMMISSIONER GAW: I'm just wanting to make  
12 sure that my sense of that was not incorrect, and it's  
13 probably not incorrect, but go ahead.

14 MR. LOWERY: Let me try to give you a couple  
15 of reasons, though, I think that makes sense. The  
16 liabilities, and, you know, I've heard you folks talk about  
17 asbestos, so it's an easy example to use.

18 It's not going to be tough to see if, after  
19 the transfer takes place, if Mr. Jones got a judgement in the  
20 asbestos case, we're going to be able to identify that.  
21 We're going to know the dollars. It's not going to be tough  
22 at all. And it's not going to be tough to measure  
23 incremental energy transfers as a result of the JDA of an  
24 issue that we talked about going over to MetroEast. So those  
25 are things that we can deal with pretty easily.



1                   A lot of these other things are -- I think  
2     that your other conditions were directed toward, that we've  
3     agreed to accept those conditions and effectively that is a  
4     hold harmless, that's the term that Staff has used  
5     throughout, I think are more complex to deal with. And so  
6     while it's something that we think we can do as to the two  
7     conditions, it's -- it's harder to do, in my sense as to the  
8     others.

9                   And at the end of the day, if you think the  
10    other conditions are necessary, we've said we'll take them.  
11    Ratepayers have all of the protection they want and maybe  
12    even more on those, and on these two, they have all of the  
13    protection that they ought to have that is an insurance  
14    policy that pays if there's a loss. So that is our view. I  
15    think that's where we are. I don't think we're prepared to  
16    go any farther.

17                  COMMISSIONER GAW: I understand, and I was  
18    just trying to be consistent. If we're going to assess these  
19    things going forward in the future, because as I understand  
20    your proposal, we still have to -- and I'm not sure how -- I  
21    see this as ripe with argument, not necessarily so much on  
22    the detriment side of those particular liabilities, but on  
23    the side of who's going to calculate and who's going to come  
24    up with a formula of calculating what constitutes the benefit  
25    at the time that you are going to exceed.

1                   And that is what I find, at least initially,  
2   sort of problematic with that approach that we -- that it's  
3   not the identification of the -- of those particular  
4   liabilities. That should be something that's fairly easy to  
5   see. It's the other side that I'm struggling with, so I'm  
6   going to leave it at that, because that's something you-all  
7   can develop later on. It's already been pointed out there  
8   isn't a record yet on that kind of an approach, so -- but I  
9   wanted to -- I'm raising some of these things now so you-all  
10   can maybe anticipate helping us through that when we get to  
11   that point.

12                   Earlier, Mr. Lowery, there was this reference  
13   to Illinois not being willing to approve transfers without --  
14   if they had to continue to take the liability share, for lack  
15   of better phrasing. And I guess my question is to you just,  
16   I mean, I understand why Illinois would say that, but why  
17   should Missouri agree to it? Why should Missouri agree to  
18   say, just, okay, Illinois won't take their share, so by God,  
19   you, Missouri ratepayers, you're going to take it.

20                   MR. LOWERY: Well, I think there's two  
21   reasons, at least two reasons. One reason is we think the  
22   analysis that we've done indicates that it's beneficial to  
23   Missouri, even with those liabilities. But putting that  
24   aside, you, with the conditions we've offered, you're not  
25   taking it. If benefits outweigh those liabilities, we pay.

1                   And back to your other point, you're concerned  
2   about the benefit side being more complicated, those types of  
3   things. If we can't -- we don't convince you, we can't prove  
4   it, we can't do modeling that you think is sound, and Staff,  
5   I think no doubt will throw all the arrows at it they deem  
6   appropriate, if there are arrows to be thrown, then our  
7   shareholders are going to stand behind it, so Missouri's not  
8   taking it. Missouri -- the shareholders are taking it unless  
9   we prove to you otherwise.

10                   So at the end of the day, Missouri's protected  
11   and that, I think, is the bottom line on those points.

12                   COMMISSIONER GAW: I think I've already raised  
13   my concerns.

14                   MS. SHEMWELL: May I just make a point?

15                   COMMISSIONER GAW: I don't know. Who's in  
16   control of your case?

17                   MS. SHEMWELL: Well, I did the liabilities  
18   section, so.

19                   COMMISSIONER GAW: Mr. Dottheim is deferring  
20   to you.

21                   JUDGE MILLS: I do think you need to enter  
22   your appearance.

23                   MR. DOTTHEIM: I did.

24                   MS. SHEMWELL: For one thing, Illinois didn't  
25   take it because Ameren drafted that Order. So Ameren wrote

1 the Order itself so that Illinois didn't take those  
2 liabilities. Staff's point is that had this been an  
3 arm's-length transaction, this would have never come up with  
4 Missouri to carry these because Ameren standing alone would  
5 not have taken these liabilities or would have dealt with it  
6 in the contract in the cost of the transfer, so that --

7 COMMISSIONER GAW: And those things have not  
8 occurred as of now, anyway.

9 MS. SHEMWELL: I'm sorry, what things?

10 COMMISSIONER GAW: There has not been an  
11 assessment of the value of those liabilities for purposes of  
12 the sale price of this transfer.

13 MS. SHEMWELL: No, because Ameren didn't do it  
14 because it wasn't an arm's-length transfer. Staff tried to  
15 quantify. And also in terms of the balancing the benefits  
16 and the liabilities, Staff remains concerned with getting  
17 adequate information to be able to check Ameren's numbers and  
18 to be able to verify. As you've heard throughout the  
19 morning, Staff is concerned in a number of areas of getting  
20 adequate information. Okay. That's all I have. Thank you.

21 COMMISSIONER GAW: Thanks.

22 MR. LOWERY: Your Honor, if I may, I feel like  
23 I have to respond from a couple of points.

24 It's not an arm's-length transaction, we never  
25 said that it was. The transfer price was book value. It's

1 not a fair market value transfer price, and had it been, the  
2 terms of the deal might have been different. Secondly --

3 COMMISSIONER GAW: If it were, we probably  
4 would have less -- a few less issues to deal with here, I  
5 would assume, too.

6 MR. LOWERY: We probably would, but this isn't  
7 a willing buyer /willing seller kind of situation. The fact  
8 is CIPS and UE are affiliates and it doesn't make sense to  
9 transfer that to anybody but CIPS, and that's an entirely  
10 different transaction.

11 In terms of we drafted the Order, we drafted  
12 the asset purchase agreement, but it was absolutely clear  
13 what the ICC Staff and ultimately what the Commission's  
14 position was going to be, so that wasn't just we propose  
15 something and they said, oh, sure, that's great. We knew  
16 what the transaction had to be in order for the transaction  
17 to happen at all. If it doesn't happen in Illinois, that  
18 approval doesn't come, there's no opportunity for that  
19 generation to be able to be made available in Missouri.

20 COMMISSIONER GAW: And vice versa. It doesn't  
21 happen in Missouri, there's no opportunity for Ameren to --  
22 and for those -- for that pocket that's over there in  
23 Illinois to be segregated out and dealt with in the way the  
24 rest of the Illinois markets would be done, so.

25 MR. LOWERY: But at the end of the day, with

1 the conditions we've offered, we've provided the assurance  
2 that's been asked for.

3 COMMISSIONER GAW: I understand. I understand  
4 your position. Anyway, I think the rest of -- I have a  
5 number of other questions, but they are so intertwined with  
6 the Noranda issue, that I really don't think I'm going to  
7 raise them right at this point. And I may look at these a  
8 little bit more, Judge, while other people are asking  
9 questions to see if there's any things that I want to  
10 actually bring up right now. I'll pass for right now.

11 JUDGE MILLS: Commissioner Clayton.

12 COMMISSIONER CLAYTON: I first want to start  
13 with Mr. Dottheim. You supplied some documents to us and I'm  
14 wondering if they were marked or they should be marked, at  
15 least for clarity's sake because I'm going to make some  
16 references to them.

17 JUDGE MILLS: I think all those documents have  
18 been already filed in this case, they're simply one or  
19 two-page excerpts.

20 COMMISSIONER CLAYTON: Okay. Mr. Dottheim,  
21 the first document that you -- well, I'm not sure what the  
22 order was. You supplied a document, which I believe is a  
23 Staff document. It's marked page 31 and it has the grid --  
24 these are the grids with the cost benefit analysis or benefit  
25 detriment analysis.

1 MR. DOTTHEIM: Yes.

2 COMMISSIONER CLAYTON: And what pleading is  
3 that from?

4 MR. DOTTHEIM: That pleading is from the  
5 Staff's November 12, 2004, filing with the Commission in  
6 response to AmerenUE's and Public Counsel's applications for  
7 rehearing.

8 COMMISSIONER CLAYTON: Okay. So what did the  
9 figures on this chart represent? I know that they are --

10 MR. DOTTHEIM: Those are the figures, those  
11 are the Staff's quantification.

12 COMMISSIONER CLAYTON: Of the benefits and  
13 detriments?

14 MR. DOTTHEIM: Yes.

15 COMMISSIONER CLAYTON: Okay. And in response  
16 to the utilities --

17 MR. DOTTHEIM: And that's -- and that's based  
18 upon the conditions that the Commission had set.

19 COMMISSIONER CLAYTON: Based on the Report and  
20 Order?

21 MR. DOTTHEIM: Yes.

22 COMMISSIONER CLAYTON: Okay. Secondly, the  
23 document, which I believe reflects Ameren's position, which  
24 is -- has the page 20.

25 MR. DOTTHEIM: Yes.

1                   COMMISSIONER CLAYTON: Which also has a grid,  
2     which is a much larger grid.

3                   Thank you, Ameren, for using larger grids.  
4     That's helpful.

5                   Is that their application for rehearing to  
6     which Staff was responding?

7                   MR. DOTTHEIM: I believe it is.

8                   MR. LOWERY: Yes, it is.

9                   MR. DOTTHEIM: Mr. Lowery can verify that.

10                  MR. LOWERY: It is.

11                  COMMISSIONER CLAYTON: Okay. Good. And  
12     Mr. Lowery, this is representative of the company's position  
13     in the quantification of benefits and detriments, yes?

14                  MR. LOWERY: Yes.

15                  COMMISSIONER CLAYTON: Okay. And then I  
16     think, Mr. Dottheim, you also supplied page 50 of the  
17     Commission's Report and Order, which I believe is out of our  
18     Report and Order setting out what the Commission found or  
19     assumed or guessed or however.

20                  MR. DOTTHEIM: Yes, pages 50 and 58.

21                  COMMISSIONER CLAYTON: Okay. Okay. I want to  
22     start with Mr. Proctor, if I may, now that I'm clear on what  
23     these documents represent.

24                  Dr. Proctor, is doing a grid like this the  
25     best way of assessing the benefits and detriments associated



1 with a transfer of this nature?

2 DR. PROCTOR: I think it -- I think it is a --  
3 a good approach. Is it the best? Right now, I can't think  
4 of or offer you a better one, let's put it that way.

5 COMMISSIONER CLAYTON: That was going to be my  
6 next question.

7 DR. PROCTOR: Yeah.

8 COMMISSIONER CLAYTON: If this is one  
9 approach, what would be another approach in judging benefits  
10 and detriments? Can you think of any other?

11 DR. PROCTOR: Not off the top of my head.

12 COMMISSIONER CLAYTON: Are there any issues  
13 that are -- where they are not -- it's not possible to  
14 quantify them? Are there any reliability issues or service  
15 issues or any benefits or detriments that simply can't be  
16 quantified and be made part of two columns of numbers?

17 DR. PROCTOR: Yes, there certainly are issues  
18 that are very difficult to quantify in terms of dollars. You  
19 mentioned reliability is one of those issues. I mean, those  
20 are things that -- that as a Staff, we need to look at. And  
21 if we see a detriment out there that can't be quantified, we  
22 need to relate that to the Commission, and if there's a way  
23 to fix that, also relate that to the Commission.

24 COMMISSIONER CLAYTON: In this case,  
25 specifically, to the best of your knowledge, are the issues

1 at the -- are the issues at issue, that doesn't sound very  
2 good. The issues in this case, are they all of a nature that  
3 can be quantified, at least by a range or some estimate of a  
4 range, in your opinion?

5 DR. PROCTOR: In my recollection, now, I  
6 wasn't responsible for all the issues. I primarily focused  
7 on the ones that are near the top of the page in the  
8 Commission's Order; the generation-related savings, the JDA  
9 Amendment, the transmission-related savings, those were --  
10 and of course the fourth one, the JDA requirement that  
11 surplus power be available to CIPS at incremental costs,  
12 those were the ones -- and possible transmission charges --  
13 those were the ones that I dealt with. The rest of these  
14 other Staff folks dealt with in -- generally, I think all of  
15 those were quantifiable or were quantified.

16 COMMISSIONER CLAYTON: Well, let's qualify the  
17 question. The issues that you are responsible for in this  
18 case, the five lines in this chart, they are of a nature that  
19 can be quantified and you're comfortable with quantifying  
20 those?

21 DR. PROCTOR: That's correct.

22 COMMISSIONER CLAYTON: Okay. Now, in the  
23 Commission's Report and Order, and I have all these charts  
24 sitting out here, so I may error in stating the parties'  
25 positions, it seems to me that there is -- there was no

1     dispute on generation-related savings. Is that a fair  
2     statement.

3                     MR. COFFMAN: No -- I'm sorry, we do not  
4     believe that there are any generation-related savings.

5                     COMMISSIONER CLAYTON: Okay. Okay.

6                     MR. COFFMAN: Or at least that the record  
7     would support.

8                     COMMISSIONER CLAYTON: Okay. Did you supply a  
9     chart here today?

10                    MR. COFFMAN: No, I didn't.

11                    COMMISSIONER CLAYTON: Okay. Has your chart  
12     been referenced here today by me?

13                    MR. COFFMAN: No, sorry, I apologize.

14                    COMMISSIONER CLAYTON: Okay. I'm going to  
15     come to you, get to some issues. Hang on. Just bear with me  
16     for a second. I've got three charts here, and they all say  
17     .9 million dollars. There's -- on this level of analysis,  
18     Dr. Proctor, you're comfortable with that figure as being a  
19     \$900,000 benefit?

20                    DR. PROCTOR: Well, I think we agreed that  
21     that number was consistent with what the company had filed  
22     and what we had reviewed. I also have to state that the  
23     Staff had raised concerns about getting a multi-year analysis  
24     to get a better estimate of that number. Based on  
25     information that we had in the case, I think we would say

1     that's the best estimate that we have -- we had available to  
2     us.

3                     COMMISSIONER CLAYTON:   Okay.   On the second  
4     issue, the JDA Amendment -- the first JDA Amendment to share  
5     profits by generation, would you refrect -- refrect --  
6     refresh my memory of what your original position was on the  
7     value of either a benefit or detriment on that issue?

8                     DR. PROCTOR:   I don't think we disagreed with  
9     the company's numbers.   I think the issue here between the --  
10    the 7 million and the 24 million is whether you look at the  
11    initial years of the transfer or you look at the company's  
12    forecast to out years.

13                    And the company's position in this case is  
14    that the market, from their perspective, it appears to be  
15    somewhat -- I'll use the word depressed -- in the initial  
16    years where they calculated the seven million, and that if  
17    you -- if you forecast in the out years, then AmerenUE or  
18    Ameren in total becomes much more profitable under those  
19    scenarios in their ability to sell energy.   So part of it has  
20    to do with whose forecast do you believe and are those things  
21    ever going to come about, and we don't know.

22                    COMMISSIONER CLAYTON:   You discussed earlier  
23    that -- I believe you said that this number would be subject  
24    to change significantly with -- with the Noranda sale of  
25    power, would it not?

1 DR. PROCTOR: That's correct.

2 COMMISSIONER CLAYTON: Okay. With that  
3 information in mind, what would be -- what is your estimate  
4 of what the value of that benefit will be? Is it reduced?

5 DR. PROCTOR: It would be reduced, and I  
6 should also point out that the generation-related savings  
7 number is likely to change as well.

8 COMMISSIONER CLAYTON: Why would that change  
9 also?

10 DR. PROCTOR: When you add load, the  
11 incremental cost of supplying that load increases, okay, and  
12 generally that's the case. Once you -- when you're adding  
13 load, the -- the additional cost to meet that load is going  
14 to go up, which pulls the average cost up.

15 So we would have to look at that and it  
16 depends on the -- you know, this is the scenario with and  
17 without MetroEast and no Noranda, so we would look at a  
18 scenario, for example, with the MetroEast transfer and  
19 Noranda compared to with the MetroEast transfer and our -- my  
20 general conclusion -- the direction I think that will hit is  
21 -- is to reduce some of those generation-related savings  
22 because the increment -- the incremental cost to meet the  
23 Noranda load --

24 COMMISSIONER CLAYTON: Do you believe there  
25 will still be savings or do you believe there will be no

1 savings or additional cost?

2 DR. PROCTOR: The savings here are very thin.  
3 That's why I'm -- they could go negative. It could -- it  
4 could move it from the benefits to the detriment column.

5 COMMISSIONER CLAYTON: Okay.

6 DR. PROCTOR: I just don't know until we see  
7 the runs.

8 COMMISSIONER CLAYTON: And then there would  
9 be, I think you said earlier, no change in  
10 transmission-related savings or very little impact?

11 DR. PROCTOR: There shouldn't be any impact on  
12 that because Noranda is picking up the transmission cost to  
13 -- with AEI on their own. They're paying those outside of  
14 the -- outside of the tariff, and so those costs would not be  
15 included in a Missouri --

16 COMMISSIONER CLAYTON: Okay.

17 DR. PROCTOR: -- cost of service.

18 COMMISSIONER CLAYTON: And it appears from my  
19 grids here that, at least among Staff and the company, that  
20 there's no general disagreement on the savings associated  
21 with transmission. Is that an accurate statement?

22 DR. PROCTOR: That's correct. My recollection  
23 was that initially AmerenUE -- the Commission asked for that  
24 calculation during the hearing, AmerenUE provided that, and  
25 it was a somewhat lower number than these numbers. We

1 reviewed that, put in our analysis of it where we thought  
2 there were some mistakes, and I believe AmerenUE agreed with  
3 the changes that we made and agree with this range.

4 COMMISSIONER CLAYTON: Now, before I go on, I  
5 want to make sure that I give Mr. Coffman a chance to chime  
6 in here, if he disputes either the first JDA Amendment figure  
7 or the transmission-related savings figure.

8 MR. COFFMAN: I don't -- I don't think that we  
9 dispute the transmission-related savings figure, I don't know  
10 that we address that, but we do have a dispute with the  
11 generation-related savings.

12 COMMISSIONER CLAYTON: I was talking about the  
13 JDA Amendment to share profits by generation, the first JDA  
14 Amendment. Remind me what your position was on that issue.

15 MR. COFFMAN: We accept Staff's.

16 COMMISSIONER CLAYTON: Okay. So you're with  
17 Staff on that.

18 MR. COFFMAN: Yes.

19 COMMISSIONER CLAYTON: Okay. And Mr. Lowery,  
20 the \$24 million that -- that is forecast in savings, over  
21 what time period?

22 MR. LOWERY: The 7 million, Commissioner  
23 Clayton, is based upon 2002's test year, the test year that  
24 was used for the analysis, so that was the actual. But based  
25 upon the forward curve, what our view of electricity prices

1 was going to be in 2005, 24 million was based on 2005. It  
2 wasn't in the out years.

3 It was -- it was the best information that we  
4 had, and we just note that your Order, in fact, that's been  
5 vacated, but your Order agreed that it was likely that it was  
6 going to be 24 million, not 7 million.

7 COMMISSIONER CLAYTON: Do you all want us to  
8 change that? Do you want us to change that in your  
9 application for rehearing?

10 MR. LOWERY: No that one was acceptable.

11 COMMISSIONER CLAYTON: Got that one right,  
12 okay.

13 MR. LOWERY: Yeah.

14 COMMISSIONER CLAYTON: Now, Dr. Proctor, I  
15 want to come back to you. How does the transmission-related  
16 savings relate to the fifth item, the transmission charges,  
17 possible transmission charges? Do those connect with each  
18 other?

19 DR. PROCTOR: In some sense. The  
20 transmission-related savings occur because the transmission  
21 located in Illinois would be -- then go to CIPS. The concern  
22 was that with the Pinckneyville and Kinmundy plants, and I  
23 think in the short-term the Joppa plant, which is also in  
24 Illinois, and the -- the Keokuk plant, yeah, Keokuk plant  
25 actually has to -- it's a run-a-river hydro, but the



1 transmission has to come through Illinois to get to AmerenUE.

2 With those four plants, there was a concern,  
3 and it was just -- it was raised as an issue. And during the  
4 hearing, we came up with the \$13.8 million, if AmerenUE were  
5 charged a transmission rate by AmerenCIPS to deliver that  
6 power to AmerenUE. And the concept was they no longer owned  
7 any transmission in Illinois, and if -- if something would  
8 happen, either in a JDA negotiation or in a FERC filing or we  
9 didn't know, we were just concerned and raised that as a  
10 concern, so they are somewhat interrelated.

11 COMMISSIONER CLAYTON: Okay. And I -- as I  
12 recall, you estimated a probability, I suppose, that that  
13 \$13.8 million detriment would occur and 25 percent --

14 DR. PROCTOR: 25 percent was kind of the back  
15 of the envelope estimate of the probability.

16 COMMISSIONER CLAYTON: All right. Has your  
17 position changed at all since the hearing?

18 DR. PROCTOR: No, it hasn't.

19 COMMISSIONER CLAYTON: Okay. It's not going  
20 to happen -- it's not more or less likely?

21 DR. PROCTOR: I'm not going to commit to --  
22 there are some things that I found out subsequent to that  
23 that -- that indicate to me that it's probable -- I don't  
24 know how far to go here. Probable that -- that the JDA will  
25 go away.

1                   On January 1st, 2007, AmerenUE will have to  
2 bid like every other generator. The contracts that they have  
3 to serve the load, the CIPS load, for example, go away, and  
4 -- and Illinois has set up a bidding procedure, so they will  
5 have to be through a bidding procedure. And we're -- what  
6 I'm struggling with is how is that consistent with the JDA  
7 now? How does AEG, that owns this generation in Illinois,  
8 how does it bid? Is it allowed to bid based upon fuel  
9 savings that it gets from the JDA?

10                   I think there's going to be a lot of pressure  
11 for that JDA to go away. But I still believe that the Ameren  
12 control area will remain in tact, even without the JDA, and  
13 that may be a more important fact related to this 13.8  
14 million. But again, Commissioner Clayton, I haven't -- I  
15 haven't sat down and thought through all those things and  
16 process.

17                   COMMISSIONER CLAYTON: I haven't either.

18                   DR. PROCTOR: I didn't want to commit and  
19 sound like I'm committed to staying at 13.8, but I haven't  
20 got a better number right now.

21                   COMMISSIONER CLAYTON: Okay. Is on the -- on  
22 the final -- on the final issue in your list of issues, the  
23 second JDA Amendment on selling power to CIPS at incremental  
24 cost, that amendment, as a condition of the Report and Order  
25 would cause a benefit or a detriment?

1 DR. PROCTOR: If you implemented the Report  
2 and Order, it would cause a benefit.

3 COMMISSIONER CLAYTON: It would cause a  
4 benefit, and I think the Staff position was \$10 million?

5 DR. PROCTOR: That was an estimate.

6 COMMISSIONER CLAYTON: Is that your estimate  
7 or is that Mr. Dottheim's estimate?

8 DR. PROCTOR: Well, it was -- it was a rough  
9 estimate that was taken from my testimony where it was just  
10 an example.

11 COMMISSIONER CLAYTON: Okay. Let's say the  
12 amendment is not -- if it is not done -- is there a greater  
13 detriment to -- to the Missouri ratepayer? Certainly you  
14 would eliminate the benefit, but would there be a detriment  
15 to the Missouri ratepayer?

16 DR. PROCTOR: I wouldn't characterize it that  
17 way. If you don't do the amendment, there's -- I can't put a  
18 number in the detriment column. It's whether or not you --  
19 you need to implement that in order to -- to make the  
20 benefits larger than the overall detriments.

21 COMMISSIONER CLAYTON: Okay. Okay. It's  
22 still your opinion that the second JDA Amendment is -- is --  
23 well, let me take back that question.

24 Is it Staff's position, I don't know if this  
25 is a fair question or not, but I mean is -- I guess Staff

1 can't file an application for rehearing on a Report and  
2 Order, but are you -- so Staff doesn't have -- I'm sure isn't  
3 going to say whether they have a position one way or another  
4 on the Report and Order, but I guess Dr. Proctor, are you  
5 satisfied or not with the conditions that are placed in the  
6 Report and Order? Do you believe they don't go far enough,  
7 go too far in assessing the benefit/detriment impact on  
8 Missouri?

9 DR. PROCTOR: Well, I will speak to the issues  
10 that I have addressed.

11 COMMISSIONER CLAYTON: And that's -- really,  
12 that's what I'm asking.

13 DR. PROCTOR: And I was satisfied that they  
14 went far enough, but there are other issues, and I'll let  
15 Steve -- these -- my attorney just reminded me of a couple of  
16 things that we want to make clear, and one is that the \$10  
17 million is just the application of -- of market price to the  
18 energy transfer to serve the MetroEast load. It is not an  
19 estimate of what -- what benefits would come to AmerenUE  
20 customers if you applied that pricing to all the entire load  
21 to which it will be transferred. It's just that segment  
22 that's the MetroEast portion of it.

23 I think the other -- I guess the thing I would  
24 point out, too, that was just a back of the envelope  
25 estimate. The Staff did not do a detailed calculation of

1     that.

2                   COMMISSIONER CLAYTON:   To arrive at the \$10  
3     million?

4                   DR. PROCTOR:   To arrive at the \$10 million.

5                   COMMISSIONER CLAYTON:   Is that \$10 million  
6     subject to change if Noranda were to go through?

7                   DR. PROCTOR:   Absolutely.

8                   COMMISSIONER CLAYTON:   And would it go up or  
9     would it go down, on the back of the envelope, which gives me  
10    a lot of confidence when you say that.

11                  DR. PROCTOR:   Well, it would go down.

12                  COMMISSIONER CLAYTON:   It would go down?

13                  DR. PROCTOR:   Yeah, it would go down because  
14    AmerenUE would have less energy to transfer to serve that  
15    load, and therefore, and less energy to sell into the market,  
16    so that's what you're comparing is transferring to the  
17    incremental -- you're really looking at the margin that you  
18    can earn on that if you were able to sell it to the market  
19    instead of transferring it to serve the MetroEast load.

20                  COMMISSIONER CLAYTON:   Okay.   After going  
21    through just your -- oh, I'm sorry, Steve, you want a piece  
22    of this?

23                  DR. PROCTOR:   We -- when we looked at this  
24    condition, I want to make it clear because -- because we have  
25    been characterized in the filings as supporting doing away of

1 the Joint Dispatch Agreement. The Staff has never proposed  
2 to do away with the Joint Dispatch Agreement. What the Staff  
3 has proposed is a different way to price transfer energy  
4 under that Joint Dispatch Agreement. We see other benefits  
5 from that Joint Dispatch Agreement, so we just looked at the  
6 pricing. We don't want to be characterized as saying that  
7 this Joint Dispatch Agreement needs to go away.

8 COMMISSIONER CLAYTON: When I started off, I  
9 was asking about nonquantifiable benefits or detriments.  
10 There are no other factors in whether this would be a benefit  
11 or detriment that -- on the issues that you worked on that  
12 are not addressed in the chart, correct?

13 DR. PROCTOR: That's correct.

14 COMMISSIONER CLAYTON: Okay. Okay. At this  
15 point, does anyone want to respond to anything that Dr.  
16 Proctor said? I know, Mr. Lowery, you --

17 MR. LOWERY: Well, I could be confused on a  
18 point, but the way that this chart that I think you're  
19 referring to and it's Staff's chart in the filing that's set  
20 up, I think they assume that the conditions have been  
21 implemented, and I think there's been discussion on the \$7  
22 million number that Noranda happens, maybe that number goes  
23 down, but Noranda could directionally go the other way, on  
24 the second amendment, the \$10 million number.

25 In other words, Noranda -- adding Noranda

1 mitigates -- reduces the subsidy that Staff is identifying  
2 with respect to the need for the second JDA Amendment.  
3 Stated another way, the second JDA Amendment is not needed as  
4 much, and perhaps not at all, but certainly not as much if  
5 you add the Noranda load, because Noranda is going to use --  
6 use some of that energy that otherwise would be transferred.  
7 And I don't think Dr. Proctor -- he may not even misled you,  
8 but I think his answer was a little bit confusing to me, and  
9 I want to clarify that point. They go in opposite  
10 directions, and if one goes one way, the other goes the other  
11 way.

12 COMMISSIONER CLAYTON: Mr. Lowery, do you  
13 believe that there are any nonquantifiable benefits that  
14 would fall outside of a mathematical grid like this that --  
15 that should be part of the analysis?

16 MR. LOWERY: Well, one that we made the point  
17 of UE, and it comes to mind immediately, is the fact that UE  
18 would become a Missouri-only utility, and issues about  
19 whether we can get Pinckneyville and Kinmundy transferred and  
20 other issues that may come up in the future that might be  
21 like that, we wouldn't have those problems.

22 We wouldn't have to juggle those, and I don't  
23 think it's -- when I say we, I mean AmerenUE, but I think in  
24 this case I'm going to expand it to the Commission and Staff  
25 and everybody else. You can't put a number on it. There's

1 no way I can put a number on that. But it is important, and  
2 it's been proven to be important by our need to serve Noranda  
3 and our need to get the capacity and the problems that we  
4 have with respect to it.

5 If I can also just reference Noranda, Noranda  
6 is a Missouri customer; MetroEast, those are Illinois  
7 customers. And from a capacity standpoint, we can't do both  
8 and we think that -- that what's -- it's an intangible  
9 consideration, but I think this Commission would probably  
10 prefer that we serve Missouri customers, all other things  
11 being equal.

12 MR. COFFMAN: Commissioner.

13 COMMISSIONER CLAYTON: Yes.

14 MR. COFFMAN: May we respond quickly to that?

15 COMMISSIONER CLAYTON: Yes, please.

16 MR. COFFMAN: Mr. Kind.

17 MR. KIND: I just wanted to respond regarding  
18 the \$10 million benefit figure that Staff's identified that  
19 that addition would create an estimated \$10 million benefit.  
20 And Mr. Lowery's response is that that benefit would not be  
21 as large if we look at the Noranda transaction in conjunction  
22 or simultaneously with this transaction.

23 And I guess I wouldn't argue with that, but  
24 what we're looking at here in this table are just -- just  
25 solely the economics of the MetroEast transfer, and if this



1 condition was just intended to change it so that the  
2 additional transfers that would take place as a result of the  
3 MetroEast transfer, not considering any other transactions,  
4 that those transfers would be priced at market price instead  
5 of incremental cost, the \$10 million number is the right  
6 number.

7                   If you want to look at the two transactions  
8 simultaneously and combined effect of those two transactions,  
9 then what the -- the other issue that Mr. Lowery brought up  
10 has some bearing on it, but these are, you know, these are  
11 applications in separate cases. You've got a rehearing  
12 that's just on the MetroEast transfer. Alone. And given  
13 that that -- you know, if looked at from that perspective,  
14 \$10 million figure is the right figure to be looking at.

15                   MR. LOWERY: Mr. Clayton, the reason I brought  
16 it up is because you asked the converse of that question with  
17 respect to the -- basically the 7 million, what would be the  
18 effect of Noranda. I wanted to be clear that it went the  
19 other way with respect to the other amendment.

20                   COMMISSIONER CLAYTON: Okay. I don't have any  
21 other questions at this time. Thank you.

22                   JUDGE MILLS: Thank you. Commissioner --  
23 Chairman Davis.

24                   CHAIRMAN DAVIS: Mr. Lowery, what is the  
25 difference between a transfer at book value versus a transfer

1 at fair market value?

2 MR. LOWERY: Book value is simply the original  
3 cost of whatever the assets are less whatever depreciations  
4 occur on the books.

5 CHAIRMAN DAVIS: Okay:

6 MR. LOWERY: So if you have assets that have  
7 been around quite awhile, their book value is typically a  
8 whole lot less than what it would cost to replace them.  
9 Sometimes fair market value is similar to replacement cost,  
10 sometimes it's not.

11 Fair market value says -- and this doesn't  
12 really apply to MetroEast, but let's just say we had a  
13 generating plant sitting out here, and we were interested in  
14 selling it and someone was interested in buying it, another  
15 power company. That would be what we, in the market -- what  
16 would the market bear to sell that selling price -- purchase  
17 price from their perspective -- and that that really bears no  
18 relationship to the book value in the typical case. It's  
19 usually much higher than book value, much higher.

20 CHAIRMAN DAVIS: Right. Do you have anyone  
21 here who could maybe talk about, and I don't know if this is  
22 HC or not, so somebody feel free to stop me or object or go  
23 in camera or whatever.

24 Is there someone here who can -- who can maybe  
25 testify as to what the fair market value of these -- these

1 plants might be as well as the fair market value of the  
2 transmission lines at issue?

3 MR. LOWERY: Are you talking about essentially  
4 the generation that was freed up -- that would be freed up by  
5 MetroEast?

6 CHAIRMAN DAVIS: Yes.

7 MR. LOWERY: I think perhaps there is. I'll  
8 share one figure with you, and then I'll inquire of one of my  
9 experts. To build this generation would cost about \$1,800  
10 per kilowatt. The transfer, the book value price, was 374.  
11 So at least if we're looking at replacement cost, that's the  
12 order of magnitude you're talking about. If you'll bear with  
13 me just a second, I'll see if we can answer your question.  
14 I'm afraid we just really can't give you a more specific  
15 answer than we have.

16 CHAIRMAN DAVIS: All right. Let's move on  
17 then, and so you may need to confer with your experts again.

18 In terms of -- now, this is just speaking in  
19 general. When you have a coal plant, it takes, you know, the  
20 upfront costs are much more substantial to a -- a gas-fired  
21 plant. How many -- at what, I mean, any idea how many years  
22 it takes to sort of to break even where you're -- your, you  
23 know, ongoing expenses are cheaper from operating a coal  
24 plant versus a gas plant for baseload generation?

25 MR. LOWERY: Mr. Nelson might be able to help

1     you with some of these questions, at least in general terms.

2 I don't know if we can give you specific answers, but Craig.

3 JUDGE MILLS: Can we move him to a microphone

4 and we'll swear him in?

5 MR. LOWERY: I'll let him have mine.

6 (The witness was sworn.)

7 JUDGE MILLS: Please begin by stating your

8 name for the record.

9 MR. NELSON: My name is Craig Nelson.

10 JUDGE MILLS: And you're going to have to pull

11 the microphone real close.

12 MR. NELSON: My name is Craig Nelson.

13 CHAIRMAN DAVIS: All right. Mr. Nelson, did

14     you understand my question?

15 MR. NELSON: Yes, I did.

16 CHAIRMAN DAVIS: Okay. And can you enlighten

17 me?

18 MR. NELSON: There really never is a

19 break-even point, Chairman. The cost of running gas fired

20 CTG's is -- it's a -- let's just -- let me start over.

21                There's a lot of people dedicated to running a

22 coal plant where there are very few dedicated to running gas

23 fired CTG.

24 CHAIRMAN DAVIS: Okay.

25 MR. NELSON: So and that stays constant

1 throughout the life. You've got more people running a coal  
2 plant, obviously a coal plant costs a lot more to build as  
3 you stated in your question. So if they both start at the  
4 same time and they both depreciate over a 30-, 40-year life,  
5 there's never really a break-even there.

6                   Of course, coal is cheaper to buy and operate  
7 than natural gas, that's why coal plants run more. It's  
8 really hard to make the comparison you're talking about. It  
9 depends on the market price of electricity. If market price  
10 of electricity is very high, then gas fired peaking  
11 generation is going to run, and so I'm not answering -- it's  
12 very difficult to determine a break-even, if there ever is a  
13 break-even.

14                   CHAIRMAN DAVIS: So why do we even have coal  
15 plants anymore then?

16                   MR. NELSON: The -- we have coal plants  
17 because the -- the baseload plants operate very cheaply as  
18 compared to gas-fired plants. Are you asking how does it  
19 make sense to run a coal plant versus a gas plant?

20                   CHAIRMAN DAVIS: I mean, my instinct is that  
21 over the long-term for baseload generation, it's cheaper to  
22 operate a coal plant than it is to operate some sort of  
23 natural gas facility, and I'm -- and Mike Proctor -- or Dr.  
24 Proctor is shaking his head yes.

25                   DR. PROCTOR: I think I can help you.

1 CHAIRMAN DAVIS: Help me, Dr. Proctor.

2 DR. PROCTOR: The break-even point that you're  
3 looking for isn't in terms of years of operation. It's in  
4 terms of hours of operation within a year. If you are going  
5 to operate that plant, say, for something like 8,000 years --  
6 I'm sorry -- 8,000 hours.

7 CHAIRMAN DAVIS: That's a long time.

8 DR. PROCTOR: Yeah, 8,000 hours during a year,  
9 there's 8760 hours in a year. If you're going to operate at  
10 8,000 hours at its full capacity, okay, so you're running it  
11 a lot, you will want the lower running cost and you have the  
12 higher capital cost.

13 But if you're only going run it, say, 200,  
14 300, 400, 500 hours a year, okay, then the high operating  
15 cost gets traded off against a much lower capital cost. So  
16 the break-even point is -- I mean, I can't tell you the exact  
17 number of hours of operation. I'm going to guess that it's  
18 probably in the 1,000 hour range, that if you're going to  
19 operate that plant over a thousand hours a year, you want it  
20 to be a base -- baseload plant. If it's less than a thousand  
21 hours, would you want it to be a peaking plant, so that's the  
22 break-even that you're looking for.

23 CHAIRMAN DAVIS: Okay. And let me ask you  
24 this, Dr. Proctor. When, in your opinion, is AmerenUE going  
25 to hit that point where they need at least a thousand hours

1 of this, quote, freed-up generation to supply Missouri  
2 customers?

3 DR. PROCTOR: Well, I think the -- this is the  
4 way I would characterize it. I mean, they looked at if we do  
5 the MetroEast transfer, we're going to build combustion  
6 turbines for capacity needs, but we're going to use some of  
7 the energy from that baseload generation to meet the  
8 MetroEast load, okay. If we free up that -- if we -- if we  
9 transfer this thing, we don't have to build these combustion  
10 turbines, plus we're going to get sanctions savings to  
11 customers from this baseload generation.

12 And the Staff generally agreed, I mean, we  
13 agreed with that and we came up with that's what we're  
14 calling generation-related savings here from that is if you  
15 look at the difference between those -- those two scenarios,  
16 it amounts to about a million dollars a year, okay, so -- so  
17 we see benefits from the MetroEast transfer in terms of the  
18 things that you're talking about, the generation cost that  
19 you're talking about.

20 We were able to buy this stuff at 300,  
21 whatever it was, dollars a KW, in essence the book value of  
22 it. In addition, we get some cost savings because we're  
23 going to now have more baseload available to AmerenUE  
24 customers than we had before. And those got factored into  
25 this -- it's 0.9 million, but just say it's \$1 million a year

1 calculation. So there were other -- I don't want it make it  
2 more complicated, but there are other things that have to do  
3 with what goes on in your ability to sell into the market  
4 that impact that number.

5 CHAIRMAN DAVIS: Dr. Proctor, let me ask you  
6 this question: Which do you think is more valuable, the  
7 transmission lines that got transferred to the AmerenCIPS or  
8 the baseload generation that was freed up?

9 DR. PROCTOR: In terms of values to -- value  
10 to ratepayers, okay, just on a strict economics calculation,  
11 the transmission -- transferring the transmission transferred  
12 something of the order of \$3 million worth of cost away from  
13 AmerenUE ratepayers, okay. Where the getting this new  
14 generation added about a million dollars in savings, so if I  
15 look at the 3 million versus 1 million, although it sounds  
16 strange, the answer is the transmission rather than the  
17 generation.

18 CHAIRMAN DAVIS: Okay.

19 DR. PROCTOR: And that's just looking at these  
20 numbers.

21 MR. NELSON: The T & D property located in the  
22 MetroEast territory has a book value of \$138 million. I'm  
23 doing that from memory, but I think that's accurate, and then  
24 if you take the \$374 a KW for the generation plant that will  
25 be dedicated to Missouri and multiply that times the 510



1 megawatts, I think you get a number of about 250 million or  
2 higher. So UE Missouri is getting 250 million plus, and the  
3 138 million of T & D property which was Illinois jurisdiction  
4 anyway is what's being transferred to CIPS.

5 CHAIRMAN DAVIS: Thank you. Dr. Proctor, do  
6 you have anything to add to that?

7 DR. PROCTOR: That's the comparison of book  
8 values, and I didn't -- I wasn't sure that was your question.  
9 I was looking at the economic value, which is what reflected  
10 in the charts.

11 CHAIRMAN DAVIS: Okay. Then define economic  
12 value for me.

13 DR. PROCTOR: For the transmission-related  
14 savings, those are pretty close to book value, but they're  
15 reflected on an annual basis transmission charges that  
16 Missouri customers would no longer have to pay if those  
17 assets are transferred to AmerenCIPS, okay.

18 In terms of the generation-related savings,  
19 all of the elements that I was talking about went into that.  
20 What's the -- what are the -- what's the opportunity cost for  
21 AmerenUE, what does it have to do if it -- if it doesn't get  
22 the transfer of these assets. What's it going to have to  
23 pay, what -- what's it going to cost to serve AmerenUE  
24 customers on a per year basis. And to me, that is -- that is  
25 the way I was -- I was putting economic value on it.

1 CHAIRMAN DAVIS: Dr. Proctor, how far forward  
2 do you look in your analysis?

3 DR. PROCTOR: Well, we wanted to look several  
4 years forward. Unfortunately, in this particular analysis,  
5 we only had the test year.

6 CHAIRMAN DAVIS: Let me ask you this: In your  
7 opinion in the future, is it going to be more difficult to  
8 construct coal-fired generation?

9 DR. PROCTOR: Yes. It's going to be more  
10 expensive to construct it, and I think it's -- from an  
11 environmental standpoint it's going to be more difficult,  
12 too. I think even on the plant that Ameren has -- AmerenUE  
13 has scheduled for 2011, I think you're going to face some  
14 issues with -- with respect to clean air.

15 CHAIRMAN DAVIS: Do you have any idea how long  
16 it should take to build a coal plant these days?

17 DR. PROCTOR: We're -- depending upon the  
18 issues, we're estimating a general, estimating, between 6 and  
19 8 years from -- from the start that I made a commitment to do  
20 this and now I have to go get all my permits and all of that,  
21 to the time that the plant's operational is somewhere in the  
22 range of 6 to 8 years, depending on what kinds of  
23 difficulties you encounter.

24 CHAIRMAN DAVIS: All right. Dr. Proctor, can  
25 you reconcile for me Staff's position in this case where, and

1 correct me if I'm wrong, but my impression was that Staff  
2 argued that AmerenUE should sell electricity, you know,  
3 off-system sales or, to Illinois or whatever, at market  
4 rates, but that AmerenUE customers in Missouri should not be  
5 forced to pay any increased transmission costs for all  
6 perpetuity as a result of the transfer.

7                   Is that a fair analysis and how do you  
8 reconcile those positions other than just advocating for the  
9 ratepayers?

10                   DR. PROCTOR: The -- the argument about  
11 transmission costs, the one that you're -- you brought up,  
12 that's correct. Our concern was if you -- if you transferred  
13 these assets, that -- that AmerenUE customers would actually  
14 have to end up paying more than what they paid today. Now,  
15 it turns out is AmerenUE went through that analysis and  
16 initially in the filing we didn't have that analysis. It  
17 turned out that it actually turns out to be about a \$3  
18 million a year savings, okay.

19                   Now, the Staff's position about having to pay  
20 more was relative to where they are today. Okay. And I  
21 don't know that the Staff has really taken a position that  
22 with the \$3 million savings that we discovered or asked for  
23 and got through that, that I don't know that our position is  
24 that there shouldn't be any charges. I mean, I'm not -- we  
25 haven't even discussed that as a staff.

1                   Our concern was just the potential for  
2 increased cost to AmerenUE customers in terms of transmission  
3 from that, so the other thing that we're talking about is  
4 we're talking about the transfer of energy from plants that  
5 AmerenUE customers are paying for. They're in rate base.  
6 They're paying for those plants.

7                   If you transfer energy at incremental cost,  
8 what that essentially means is you're covering your out of  
9 pocket cost to produce that. You're covering the cost of the  
10 coal, you're covering the cost of the labor, or at least  
11 estimates of those costs, and, and you are getting no  
12 benefit, no return on the capital that you have paid for, the  
13 commitment that you have made to pay the capital charges for  
14 that plant.

15                  It's like asking an investor to sell something  
16 at 0 profit when they have put the investment dollars into  
17 it, and we basically do not see that as -- now, realize that  
18 AG also during sometimes has to pay -- has to do the same  
19 thing. And our concern is about the balance that occurs  
20 there, so.

21                  So to me, those two positions are -- are  
22 compatible. I don't see a contradiction in them, but maybe  
23 you do and I'll think about it some more, but that's --  
24 that's where my sense of -- of fairness with respect to those  
25 two issues came from.

1                   CHAIRMAN DAVIS: Since there is a book value  
2 transfer between AmerenUE and AmerenCIPS, and assuming the  
3 AmerenCIPS ratepayers, you know, put down their \$120 million  
4 or whatever, and then they own -- own that transmission, then  
5 shouldn't be -- shouldn't they be entitled to the same  
6 benefits that the Missouri ratepayers would be entitled to  
7 for having excess capacity generation, except their benefits  
8 would accrue to owning the transmission?

9                   DR. PROCTOR: If -- I haven't thought about it  
10 in -- in terms of that -- of the transmission portion of what  
11 you're -- what you're talking about. I think what you're  
12 saying is -- is if -- if the CIPS customers are providing  
13 transmission capability to Missouri customers to have access  
14 to these plants, aren't they entitled to get some benefit  
15 back from Missouri customers and their plants to balance that  
16 out, and I'm not disagreeing with that. I don't disagree  
17 with that.

18                  CHAIRMAN DAVIS: I think in legal terms, it  
19 would be some sort of a mutuality of obligation.

20                  DR. PROCTOR: Right. In -- I think the  
21 important question is whether or not those obligations are,  
22 in fact, balancing out.

23                  CHAIRMAN DAVIS: One more question,  
24 Mr. Proctor.

25                  DR. PROCTOR: Sure.

1                   CHAIRMAN DAVIS: In terms of, you know, we  
2 have discussions about AmerenUE and AmerenCIPS, and I guess  
3 there's AEG and all these other, why are we not looking at  
4 Ameren as a whole, I guess?

5                   DR. PROCTOR: There's probably lots of -- one  
6 of the major reasons, I think, is -- is different  
7 jurisdictions in Illinois and in Missouri is, in my mind, one  
8 of the major issues that's -- that's at play here. I think  
9 it's -- I think it is important for certain aspects,  
10 particularly for reliability, that we look at Ameren as a  
11 whole.

12                   But from a rate concept, from a Missouri  
13 Commission obligation concept, from an Illinois Commerce  
14 commission obligation, to oversee what the ratepayers pay,  
15 you've got two different systems; one in Illinois, which is a  
16 retail access system, and then one in Missouri, which is a  
17 regulated system. And so you have to do the separation for  
18 those -- for that purpose, if for not no other. Now, if that  
19 wasn't --

20                   CHAIRMAN DAVIS: So you're saying if we got in  
21 a rate case, then you would want to advocate for the  
22 consolidated capital structure?

23                   DR. PROCTOR: That's correct. But I'm not  
24 that kind of witness, so I don't advocate one way or the  
25 other. It comes up -- when a merger occurs, I think the

1 question always sits out there is shouldn't we treat the  
2 merged entity as a single entity, okay, and -- and we may  
3 have gotten there with AmerenUE and AmerenCIPS down the road.

4 I mean, when we first started off, everyone  
5 committed to we'll keep these separate, we'll do this JDA,  
6 and down the road, you might have gotten there had Illinois  
7 remained a regulated state. But as soon as Illinois went to  
8 deregulation, any thought or concept of that just didn't  
9 work. And in the original merger, Ameren set up two  
10 companies because they knew that this would be very -- a very  
11 difficult issue to -- to -- to get through either the  
12 Illinois or the Missouri Commission, whichever one benefits.

13 Because if you combine those two companies, I  
14 will guarantee you one ratepayer's rates are going to go down  
15 and other ratepayer's rates are going to go up. And so if  
16 you're looking for Missouri Commission and Illinois  
17 Commission to approve that merger, and they say they're --  
18 one of those Commissions is not going to agree to combine.  
19 In this case, it would have been AmerenUE's customers whose  
20 rates would have gone up if we combined the two.

21 CHAIRMAN DAVIS: When does Illinois' rate  
22 freeze come off?

23 MR. NELSON: The end of 2006, the rate freeze  
24 is over.

25 CHAIRMAN DAVIS: All right. All right. Thank

1     you Mr. -- Dr. Proctor.

2                     DR. PROCTOR: Thank you.

3                     CHAIRMAN DAVIS: All right. Mr. Lowery, I got  
4     a little sidetracked there. I apologize.

5                     MR. LOWERY: Not a problem.

6                     CHAIRMAN DAVIS: Let's go back to preclosing  
7     liabilities for a moment. In one of the Illinois acquisition  
8     merger cases, and I do not recall which one, one of the  
9     Ameren subsidiaries or companies or whatever, and we had some  
10    reference to it earlier today, did not assume any of the  
11    preclosing liabilities associated with that transaction. And  
12    I apologize, I can't remember which ones, but do you know  
13    what I'm talking about?

14                    MR. LOWERY: I am not entirely sure whether  
15    you're talking about Illinois Power or you're talking about  
16    another -- you're talking about the Illinois Power  
17    acquisition?

18                    CHAIRMAN DAVIS: I think it was Illinois  
19    Power.

20                    MR. LOWERY: Okay. Okay.

21                    CHAIRMAN DAVIS: Can you distinguish that case  
22    from this one? I mean, why should this case be any  
23    different?

24                    MR. LOWERY: Well, I think when -- when Ameren  
25    acquired Illinois Power, and that -- maybe this isn't what



1     you have in mind, Mr. Raybuck reminds me, and I'm not  
2     intimately familiar with this transaction.

3                     CHAIRMAN DAVIS: Right, you're a Missouri  
4     lawyer.

5                     MR. LOWERY: But the generation in that deal  
6     had been spun off well before that acquisition took place.  
7     And spun off, by that I mean out of the integrated regulated  
8     utility that Illinois Power operated into, into a generator,  
9     and so I don't know if it's an apples to apples comparison  
10    between what happened there and what's taking place here.

11                    CHAIRMAN DAVIS: All right.

12                    DR. PROCTOR: Commissioner Davis, I think it  
13    was the Silco merger, if not the IP merger. Generation  
14    wasn't involved in the IP merger and generation was involved  
15    in the Silco merger.

16                    CHAIRMAN DAVIS: Okay.

17                    DR. PROCTOR: So just to clarify that.

18                    MR. DOTTHEIM: Chairman Davis, you may be  
19    referring to in the Commission's Report and Order, in its  
20    proceeding on page 53, there's the sentence the record  
21    reveals that when CIPS and Silco transferred generation  
22    assets to GenCo and AERG, they agreed to indemnify them for  
23    any pretransfer asbestos-related claims.

24                    CHAIRMAN DAVIS: Thank you, Mr. Dottheim.

25                    Okay. Mr. Lowery, do you have anyone present

1     that can address this issue? I mean, how is -- how is this  
2     case here in front of us any different from the transfer of  
3     generation assets that we referenced in our first Report and  
4     Order on this case on page 53?

5                     MR. LOWERY: I think if I understand --  
6     understand the transaction, I think I can probably at least  
7     address that, in part.

8                     CHAIRMAN DAVIS: Okay.

9                     MR. LOWERY: And this goes back to some of the  
10    things that Dr. Proctor was talking to you about, and that's  
11    the difference between Missouri and Illinois. Illinois  
12    favors, in fact strongly encourages, moving generation out of  
13    integrated public utilities into generation companies.

14                    And I think that the ICC viewed the benefits  
15    of doing that, and consistent with their policy differently  
16    than they viewed what is really a different transaction here  
17    and that is we're shedding load here and it frees up  
18    generation.

19                    And so I think that the -- as we indicated  
20    earlier today, the ICC simply was not going give us the  
21    opportunity to get this baseload capacity to Missouri if  
22    those liabilities stayed -- stayed with Illinois ratepayers.  
23    But in the case where that step was being taken that's  
24    consistent with their policy to get that generation out of  
25    that regulated utility into the generating company, they

1 viewed that differently in that situation.

2 I'd also incidentally add at the end of the  
3 day, it doesn't really matter, given the condition that we've  
4 agreed to give because if we can't prove those benefits, that  
5 indemnity, that you're talking about that wasn't given is, in  
6 effect, being given in this transaction, which also  
7 distinguishes this transaction from that one.

8 CHAIRMAN DAVIS: Okay. All right.

9 MS. SHEMWELL: Would you like a response from  
10 Staff?

11 CHAIRMAN DAVIS: Sure, and anyone else who's  
12 out there, if I get to moving, just stop me if you want to  
13 say something here.

14 MS. SHEMWELL: Staff doesn't see that much of  
15 a difference. I want -- I want to address the issue, and I'm  
16 sure Mr. Lowery would, perhaps, knows more about what went on  
17 in Illinois than I do, but I spoke with four of the Illinois  
18 Staff that were on the Illinois case --

19 CHAIRMAN DAVIS: Uh-huh.

20 MS. SHEMWELL: -- and the point they made to  
21 me was the issue of them accepting the liabilities, and I  
22 think I can quote never came up. The indication I got from  
23 them was it wasn't presented to them to consider when they  
24 were considering the case.

25 Now, what the Commission considered, I don't

1 know. I can't have any way of knowing that, but I  
2 specifically spoke to Illinois Staff about it more than once.  
3 So that's just my notes. We see this as a very similar  
4 situation where the cost-causer should pay for those costs,  
5 and that it's fair for Illinois consumers to pay for the  
6 costs that they created while they were benefiting from the  
7 generation. So we see it as a very similar situation to what  
8 the Commission referenced.

9 Let me see if Greg Meyer has anything he'd  
10 like to add?

11 CHAIRMAN DAVIS: Has he been sworn in?

12 MS. SHEMWELL: He can be, sir, if you're  
13 interested, so.

14 CHAIRMAN DAVIS: Greg, do you have anything to  
15 add before we go back to Mr. Lowery?

16 (The witness was sworn.)

17 MR. MEYER: In the area of the liabilities, we  
18 believe that 6 percent should have been directly assigned to  
19 Illinois from the very beginning. There was a mention  
20 earlier about this not being an arm's-length transaction, and  
21 in our mind, that was a paramount hurdle that it should have  
22 been, so that the benefit tasks that Mr. Lowery keeps  
23 referring to that he wants to try to meet in the future would  
24 be a no point.

25 And that's exactly why Ms. Shemwell pointed

1 out earlier that when you dealt with the transfer of the  
2 generation before with the Silco that that -- that the  
3 Illinois ratepayers, and I think that's what needs to be  
4 distinguished here, that the Illinois ratepayers, when those  
5 assets were transferred to the GenCo, through that  
6 transaction, they took on the 6 percent, whatever the  
7 percentages of those asbestos plants.

8                   Now you've got a situation where we have  
9 Illinois generation that's being transferred back to  
10 Missouri, and yet Illinois ratepayers don't have to assume  
11 it. And the reason you've got -- at least in my opinion --  
12 the fact that now it's being shed on by -- or put the burden  
13 on -- put on the shareholders is because you didn't -- you  
14 didn't do an arm's-length transaction, that the -- the basis  
15 for the contractor or the deal over in Illinois, you just  
16 made a bad deal.

17                   You didn't look at the liabilities and say  
18 that you should come up to the plate and take that 6 percent,  
19 you just get it let go. Now when Missouri comes along after  
20 the fact and says we're not going to take the 6 percent, now  
21 it does rest with the shareholders, and why should there be  
22 -- why should we allow a benefit to us after the fact.

23                   MR. LOWERY: Chairman Davis, I think there is  
24 another key distinguishing factor. After UE completes the  
25 MetroEast transfer, there won't be any Illinois customers of

1 AmerenUE. There's no Illinois customers to leave those  
2 liabilities with.

3 In the case of SilCo, SilCo's still there.  
4 Those ratepayers are still getting the generation from the  
5 generation that was transferred to GenCo, so it's a different  
6 situation. It's not an arm's-length transaction because it's  
7 a book value. If Staff wants it to be an arm's-length  
8 transaction, I guess there would have had to be a fair market  
9 value paid by Missouri for those assets, and that was never  
10 the deal. That was never contemplated.

11 So the transactions are distinguished in that  
12 respect. It's just two different situations, particularly  
13 given that there are no Illinois customers if UE's not in  
14 Illinois.

15 MR. MEYER: The customers don't disappear.  
16 They're there. I think you heard earlier that starting in  
17 2007, this -- Illinois is going to go to a new form of  
18 regulation. There's no guarantee that GenCo will even serve  
19 those customers post-2007, so I somewhat disagree with  
20 Mr. Lowery's statements.

21 CHAIRMAN DAVIS: Okay. Mr. Kind.

22 MR. KIND: Thank you. Mr. Lowery thought that  
23 there was a way to distinguish the SilCo transaction from the  
24 MetroEast one, and I disagree with that.

25 I also think that the Commission in its

1 rehearing should be aware of the treatment that Ameren gave  
2 in the Illinois Power transaction, in which case in that  
3 transaction Ameren, as a part of the transaction, agreed to  
4 set up a \$120 million fund where they would fund the first  
5 \$20 million in the liability relating to asbestos a.nd on top  
6 of that, they would take 10 percent of anything above and  
7 beyond the \$20 million fund would be the responsibility of  
8 Ameren.

9                   And that's a situation where the generation  
10 that was formerly serving Illinois Power, Ameren did not  
11 acquire that generation, but instead the generation stayed in  
12 the hands of Dynagy, which was the owner of the Illinois  
13 Power distribution and transmission assets as well as the  
14 generation assets that were used to serve that service  
15 territory. And I don't think there's any reason to believe  
16 that that generation is going to be a long-run resource  
17 that's available to -- to continue serving the Illinois Power  
18 service territory.

19                   And furthermore, it's just interesting how in  
20 that case, there was a -- it was sort of a prolonged case,  
21 not after the Commission issued its Order, but there were a  
22 lot of back and forth between the Commission Staff in  
23 Illinois and company as to, well, okay, you know, we  
24 initially the company we can't agree to any of these  
25 liabilities. Then it was, well, 20 million, then it was,

1 well, the 20 million's the end and we're not going to do the  
2 transaction if it was beyond that. And then it was, well,  
3 okay, 20 million plus an additional 10 percent.

4 And a lot of the -- one of the major issues  
5 over there as to why there should be an ongoing obligation  
6 for the company to share in at least some percent, like 10  
7 percent, you know, maybe above and beyond initial amount is  
8 that if there is not that obligation, then the company  
9 doesn't really have a financial incentive to manage and  
10 decrease the cost of the -- anything that's awarded resulting  
11 from these asbestos liabilities lawsuits. Otherwise, it's  
12 just a cost-plus thing and they can just pass it on to  
13 ratepayers.

14 CHAIRMAN DAVIS: Mrs. Vuylsteke.

15 MS. VUYLSTEKE: I'm going to see if my witness  
16 has anything that he would like to add, if you can just give  
17 me a second. My witness asked if you would be willing to  
18 hear his comments on the fair value methodology.

19 CHAIRMAN DAVIS: Sure.

20 MR. GORMAN: Well, I just --

21 CHAIRMAN DAVIS: I don't have any big plans  
22 this evening.

23 MR. GORMAN: I just briefly wanted to respond  
24 to Mr. Lowery's description of the fair valuation based on  
25 replacement costs.



1                   He implies that the MetroEast assets might be  
2   worth per as high as \$1,800 per KW comparison to 350 KW price  
3   at which they be transferred. And I don't know what the  
4   market price is or market value is in an arm's-length  
5   transaction, but I would say that his description of a fair  
6   value methodology based on replacement cost is incomplete.

7                   Because in a fair value determination based on  
8   replacement costs, you not only look at replacement cost, but  
9   you look at the age of the asset. If the asset isn't brand  
10   new, it's not worth the same amount of money of an asset that  
11   is brand new. So for example, if an asset is 50 percent into  
12   its economic life, the original cost of the asset would be --  
13   or the fair value of the asset would be \$1,800. The 50  
14   percent into the asset's life, it would be worth about \$900  
15   per KW.

16                  There would also be distinguishing  
17   adjustments made for technological differences. For example,  
18   environmental compliance through mediation ability of a new  
19   asset compared to the old asset. The old assets would have  
20   to incur additional remediation costs to bring it up into  
21   standards to meet the new environmental compliance codes  
22   whereas a new generation asset might not.

23                  There might also be technological differences  
24   in terms of heat rates, thermal efficiencies, and operating  
25   costs, which we distinguish the fair value. All of that kind

1 of determination goes into a replacement cost analysis in  
2 determining fair value of an asset, so I didn't want to leave  
3 you with the impression that the MetroEast assets, based on a  
4 replacement cost analysis would clearly indicate a fair  
5 market value of \$1,800 a KW. That simply has not been  
6 reasonably established in this by Mr. Lowery.

7 CHAIRMAN DAVIS: Okay. Let me ask you this:  
8 I mean, long-term, the industrial consumers that you  
9 represent, are they better off with coal-fired generation or  
10 natural gas?

11 MR. GORMAN: Well, right now, they're better  
12 off with coal-fired generation because it appears to be the  
13 lower cost alternative. What it's going to be in 5 years,  
14 I'm not sure. So right now there appears to be economic  
15 advantage to the transfer, but that advantage could turn to a  
16 detriment depending on the changes in commodity markets and  
17 wholesale market in general.

18 So if we're going to take the risk, the market  
19 turning against us, and these whole units being golden, that  
20 is below market prices now, and possibly changes to above  
21 market generation sources later, then we think we deserve all  
22 the benefits they create right now because we're taking the  
23 risk that those benefits turn to detriments later.

24 CHAIRMAN DAVIS: Is fuel diversification  
25 important to, you know, achieve some stability in the market

1     between generation provided by -- between natural gas and  
2     coal and nuclear?

3                     MR. GORMAN:  It is a hedge against potential  
4     variability of commodity risk, yes, and that does have value,  
5     of course.

6                     CHAIRMAN DAVIS:  Give me a few -- can you give  
7     me a few more minutes here, and I'll try to wrap this up?

8                     Okay.  Mr. Lowery, back to you.  Assuming this  
9     transfer is concluded and assuming that it's concluded on  
10    terms that Ameren is willing to accept, and you've stated it  
11    earlier, and I just want to make sure for the record, that  
12    AmerenUE has no obligation to serve the MetroEast customers.  
13    Is that what I heard earlier?

14                    MR. LOWERY:  If the transfer is completed?

15                    CHAIRMAN DAVIS:  That is correct.

16                    MR. LOWERY:  That's correct.  AmerenUE will no  
17    longer be an Illinois utility.  Those customers will not be  
18    AmerenUE's customers, they will be the customers of  
19    AmerenCIPS.

20                    CHAIRMAN DAVIS:  Okay.  And regarding your  
21    Missouri customers that you will still have or that you do  
22    have currently, I mean, what is Ameren's obligation with  
23    regarding to providing base -- the cheapest baseload  
24    generation?

25                    MR. LOWERY:  Well, I think Ameren has two

1 fundamental obligations. I think we have an obligation to  
2 provide safe and adequate and reliable service, and those are  
3 sorts of legal terms in a way, but good service to our  
4 customers. Keep the lights on within what a reasonable  
5 operator would do.

6                   And the second obligation we have is to do  
7 that at just and reasonable rates, which doesn't absolutely  
8 always mean the absolute lowest rate, lowest cost resource,  
9 because sometimes there might be reliability, steel in the  
10 ground, other considerations that Missouri might want to pay  
11 a little more to get some of those other benefits, but  
12 basically to provide that service at just and reasonable  
13 rates. The lowest cost resource is one of the factors you  
14 look at. There's no question about that, and that's one of  
15 the factors we look at, but I think those are our two  
16 obligations to our Missouri customers.

17                   CHAIRMAN DAVIS: Okay. If Ameren is going to  
18 use all of its available baseload generation to serve  
19 Missouri customers, why is the language in the second  
20 amendment of the -- or the -- the second proposed amendment  
21 to the JDA so offensive?

22                   MR. LOWERY: Okay. Maybe -- I might have  
23 misunderstood your earlier question. Let me make sure I  
24 didn't.

25                   CHAIRMAN DAVIS: I mean, I'm assuming based on

1    what you said earlier that Ameren is going to use all of its  
2    baseload generation to serve Missouri customers; is that  
3    correct?

4                   MR. LOWERY:  And I think that's probably an  
5    incorrect assumption.  As we talked about earlier today, even  
6    after the transfer, there will still be during off-peak times  
7    when Missouri does not consume all of that energy, there will  
8    still probably be transfers from Missouri, from AmerenUE to  
9    AEG that ultimately serves that load that CIPS has.  It's  
10   only when Missouri doesn't need it, and it's going to be a  
11   different slice of the generation.

12                   If you look at AmerenUE's generation  
13   portfolio, it's a portfolio.  Today, the Illinois customers  
14   of AmerenUE, they get -- they get in on the ground floor, the  
15   cheapest level of generation, just like the Missouri  
16   customers do as to 6 percent of that generation, because  
17   they're just like the Missouri customers, they're UE  
18   customers.  After the transfer, UE customers are going to  
19   take that cheapest stuff first, and those CIPS customers with  
20   respect to those transfers, they're going to get in on the  
21   next step.

22                   CHAIRMAN DAVIS:  Let me just cut you off here.  
23   How do we know that the Missouri customers are going to get  
24   the cheapest energy first?

25                   MR. LOWERY:  Because the way -- and I think

1 I'm saying this right, and I'll be corrected if I'm wrong.  
2 The way that the generating units are dispatched, if UE is a  
3 Missouri-only utility, dispatch, as I think you know, is when  
4 we turn them on and turn them up. The way they're dispatched  
5 is UE is going to dispatch the lowest cost unit first to  
6 serve Missouri load.

7 CHAIRMAN DAVIS: Okay.

8 MR. LOWERY: Then the dispatch is going to  
9 take place to -- to makes transfers if transfers are going to  
10 happen, so we're always going to be assured, I think it's  
11 called economic dispatch is the term that's used. We're  
12 going to be assured that the most economic resource is going  
13 to be dispatched to serve Missouri load first. That's the  
14 way it works is those lowest cost resources are going to  
15 serve Missouri first. Always.

16 CHAIRMAN DAVIS: Okay. Okay. So ...

17 DR. PROCTOR: Can I respond to that?

18 CHAIRMAN DAVIS: Sure.

19 DR. PROCTOR: Actually, the units are  
20 dispatched jointly to jointly meet the load, but the Joint  
21 Dispatch Agreement determines how the -- each -- how the  
22 costs then are allocated to each. And Mr. Lowery's correct  
23 that the cost of the cheapest UE units -- the Joint Dispatch  
24 Agreement requires that those costs be allocated to -- to the  
25 UE customers first.

1                   MR. LOWERY: I would agree with that. When I  
2 say economic dispatch, he's correcting me that my physical  
3 description wasn't right, but my economic description was  
4 accurate.

5                   CHAIRMAN DAVIS: Okay. Has there -- and  
6 forgive me, I don't recall reading this in the record. Has  
7 there been any analysis as to how much off-system sales or  
8 sales that there will be after this transfer, Dr. Proctor?

9                   DR. PROCTOR: The way -- in this particular  
10 case, the way that was analyzed, it was only analyzed for the  
11 case of the transfer not going through, and AmerenUE adding  
12 the combustion turbines that are needed to meet the load.

13                   The Staff requested a full analysis of the  
14 impact through the JDA on off-system sales. The company  
15 thought about responding to that and came back and said we're  
16 not willing to -- we're not going to provide that, but -- but  
17 the only analysis that was done was what's called a mark to  
18 market analysis that just compared the --

19                   CHAIRMAN DAVIS: Right.

20                   DR. PROCTOR: -- the cost of generating this  
21 electricity out of these combustion turbines to the market  
22 price. Whenever the market price was higher, they would  
23 sell, and then a kind of a fudge factor of 50 percent was  
24 applied times that to come up with the -- those numbers for  
25 the case that you didn't have the MetroEast transfer, but

1 they really were not analyzed in the case of where you do do  
2 the MetroEast transfer. Now, that is not the case in the  
3 scenarios that you are -- that you have gotten, scenarios --  
4 I'm sorry, scenarios 3 and 4.

5 CHAIRMAN DAVIS: Okay.

6 DR. PROCTOR: We are going to get multi-year  
7 -- more information in those scenarios.

8 CHAIRMAN DAVIS: Mr. Lowery.

9 MR. LOWERY: The only other comment that I  
10 would make is that as we pointed out on our application for  
11 rehearing, we're going to lose the EEInc. contract at the end  
12 of 2005, and so additional baseload energy that used to  
13 transfer to Illinois is going to be needed to cover Missouri  
14 needs. We also have load growth each year.

15 If we add Noranda as we talked about earlier,  
16 it's just -- it's axiomatic. It's obvious that more baseload  
17 energy is going to be consumed in Missouri, so while there's  
18 still going to be energy transfers at some level for some  
19 period of time during the off-peak, they're going to be less  
20 going forward than they have been, but they're still there  
21 for a period of time.

22 I don't have analysis to tell you when. And  
23 that still creates, we think, a significant issue if the  
24 second amendment has to be made unconditionally, and even if  
25 the lost opportunities related to that outweigh the benefits.



1                   CHAIRMAN DAVIS: And can you refresh for my  
2   recollection, and I'm reading your page 7 of your PowerPoint  
3   presentation here, second bullet point, second JDA Amendment.  
4   The company must prove that -- must meet its legal burden and  
5   prove to the Commission's satisfaction that transfer-related  
6   benefits outweigh any lost profits relating to increased  
7   energy transfers due to the transfer. Otherwise,  
8   shareholders, in effect, indemnify ratepayers.

9                   Okay. So you have no trouble tracking those  
10  off-system transfers, correct?

11                  MR. LOWERY: And I don't think we're talking  
12  about off-system transfers --

13                  CHAIRMAN DAVIS: Okay.

14                  MR. LOWERY: -- but off-system --

15                  CHAIRMAN DAVIS: Well, these are going to be  
16  -- I guess --

17                  MR. LOWERY: Intercompany.

18                  CHAIRMAN DAVIS: -- intercompany transfers.

19                  MR. LOWERY: Maybe that's a better way to look  
20  at it.

21                  CHAIRMAN DAVIS: Okay.

22                  MR. LOWERY: Yes, I don't think there is a  
23  problem with tracking those. What we would do, and there's  
24  been discussion about this --

25                  CHAIRMAN DAVIS: Well, now, does Staff agree

1 with that?

2 MR. LOWERY: Well, earlier they expressed that  
3 they don't agree with that, they don't agree with one side of  
4 the equation. Let me try to put my arms around it for a  
5 minute. We can run analyses with and without Noranda and we  
6 can say where would you have gone.

7 CHAIRMAN DAVIS: Noranda is irrelevant to me  
8 at the present moment.

9 MR. LOWERY: I apologize. We can run with and  
10 without MetroEast. We can run analyses and we can say where  
11 would the energy have gone with and without MetroEast. We're  
12 going to know what energy went to Illinois because there's  
13 meters, as Dr. Proctor indicated. You're going to be able to  
14 meter that.

15 So you run those models and you say with  
16 MetroEast and without MetroEast, where would that energy have  
17 gone, what would the price have been, you're going to have to  
18 do a base case without the MetroEast transfer base case.  
19 Let's assume MetroEast transfers, we're still going to have  
20 to -- in order to prove these benefits to you, we're going to  
21 have to run analysis to show -- let's assume we didn't  
22 transfer it, what would the numbers have been.

23 Now, we did transfer it, we have actual data,  
24 what were the numbers, and that's what we're going to present  
25 to you to establish whether or not the overall benefits from

1 the transfer, and those are going to be production cost  
2 analysis, similar to what we submitted in the Noranda case,  
3 and similar to what we submitted a couple weeks ago in this  
4 case, and similar to what we're going to submit in this case.

5           You're going to have those and you're going to  
6 be able to compare them, and when we say that we have to meet  
7 our legal burden, there was discussion earlier, well, that's  
8 what AmerenUE has said in their pleadings. What we're saying  
9 to you is it's not going to be in our pleading that we say we  
10 have a legal burden. Your Order is going to say the burden  
11 is on you. The legal burden is on you, AmerenUE, to prove to  
12 us that those benefits exist.

13           So you're going to take a comparison of  
14 MetroEast's transfer, those are actual numbers, and if  
15 MetroEast didn't transfer, those are going to be those  
16 numbers, and you're going to see whether or not there are  
17 benefits that outweigh this issue.

18           CHAIRMAN DAVIS: Okay. I want to give Staff a  
19 chance to respond -- an opportunity to respond to that, but I  
20 wanted to ask a follow-up question. Okay?

21           Describe to me how you would articulate the  
22 benefits of the transfer in a rate case proceeding here in  
23 the future, you know, to show that the benefits outweigh the  
24 lost revenues from not requiring that the intracompany sales  
25 be at market rate. Can you just briefly walk me through

1 that?

2 MR. LOWERY: I think you would look at what  
3 were AmerenUE's production cost netted against those lost  
4 opportunities with and without MetroEast, and you'd know what  
5 those -- you'd know what the difference between market and  
6 incremental costs were for the energy transfers to CIPS, and  
7 you know what the difference between AmerenUE's production  
8 cost with MetroEast and without. And you compare those two  
9 numbers, and if the production cost savings outweigh the  
10 revenue shortfall, so to speak, between market and  
11 incremental cost on the energy transfers, then we know that  
12 the transfer had more benefit than what I'll call the second  
13 JDA Amendment, that shortfall between market and incremental.  
14 We'll know that. We'll either -- it either will or it  
15 wouldn't. If it doesn't to your satisfaction, then  
16 shareholders are going to have to make up that difference.

17 CHAIRMAN DAVIS: Okay. Now, Dr. Proctor.

18 DR. PROCTOR: My -- you're probably not -- my  
19 response is I appreciate Mr. Lowery's description. I never  
20 got that out of these words. I never -- frankly, I'm not  
21 sure --

22 CHAIRMAN DAVIS: You guys should talk.

23 DR. PROCTOR: -- what these words meant. I'm  
24 not sure that the thing that he describes makes a bit of  
25 sense to me, but I need to sit down and talk to him in more

1 detail about what it is.

2 It's a -- it's an analysis that can be done.

3 The one that he described is one that is -- that is doable  
4 with production cost models, it's basically doing it on a  
5 historical test period rather than doing it on a future  
6 basis, and it's the type of modeling that we do all the time  
7 in rate cases.

8 So, you know, from my perspective, what I've  
9 heard. Now, I'm not telling you that what I've heard makes a  
10 whole lot of sense to me, but from what I've heard, I can  
11 tell you that the modeling to do this is -- is -- is doable.  
12 It's --

13 CHAIRMAN DAVIS: Okay.

14 DR. PROCTOR: I can tell you that. Now, what  
15 I can't tell you is trying to think through it fast enough  
16 here whether or not what he's proposing actually makes sense.  
17 And there's details of it. For example, are we including the  
18 transmission-related savings in this calculation? Are we  
19 including the first JDA Amendment to share profits in this  
20 calculation? There's details that --.

21 CHAIRMAN DAVIS: And that burden of proof is  
22 going to be on Mr. Lowery --

23 MR. LOWERY: That's correct.

24 CHAIRMAN DAVIS: -- correct?

25 DR. PROCTOR: That's correct.

1                   MR. LOWERY: I hope not on me alone, but yes,  
2 it's going to be on us.

3                   CHAIRMAN DAVIS: All right. Mr. Coffman.

4                   MR. COUNSEL: Yes, Mr. Chairman.

5                   CHAIRMAN DAVIS: Did you have any -- you or  
6 Mr. Kind have any response to that?

7                   MR. COFFMAN: I think there were a variety of  
8 things we felt like interjecting along that last few minutes,  
9 but I'm not sure I have anything else -- just, yeah, one or  
10 two things.

11                  MR. KIND: Just a brief response. You know,  
12 running production cost models is way beyond the resources  
13 that the Office of Public Counsel has. My experience is that  
14 the Staff has some limited abilities to do that, and they  
15 have, you know, in terms of their resources, they can only do  
16 what seems like so much of that modeling.

17                  One of my concerns about the whole procedure  
18 being set up by Ameren here is that it's analogist in the  
19 past as setting up -- having a black box analysis, provide  
20 the solutions that drives regulation. I would compliment  
21 Ameren on some of their steps that they've taken recently to  
22 reveal what's inside that black box, but I can't say that I'm  
23 confident that anyone outside of the people that actually run  
24 that model have a very complete understanding of actually  
25 what it's actually modeling.

1                   MR. COFFMAN: I would add, again, earlier  
2 today, we had some discussions about, you know, what the  
3 difficulty and analysis here in comparison to the EARP and  
4 some other things. The difficulty here is that you have to  
5 model certain hypotheticals, at least with the -- you have to  
6 assume that the transfer didn't occur, and that's one of the  
7 very difficult things.

8                   I guess I accept what I've heard that Ameren  
9 is willing to accept some legal burden, and this is another  
10 point. It's just I assume we're talking about a rate case,  
11 but it's still not entirely clear what exactly the standard  
12 is and what -- what exactly -- how that burden is described  
13 legally, but.

14                  CHAIRMAN DAVIS: Okay.

15                  MR. COFFMAN: It's still a little bit fuzzy to  
16 me.

17                  MR. LOWERY: Chairman Davis, just on that last  
18 point. Our pleading is very specific. In subsequent rate  
19 cases, we must establish by a preponderance of the evidence.  
20 You're going to make that decision, our burden. If it's a  
21 tie -- a tie doesn't go to the runner. We lose. We have to  
22 establish and -- we're talking about rate cases that these  
23 benefits exist, so our pleading and our alternative condition  
24 was very specific and very clear on this point, and we would  
25 expect that to be in any Order that would you issue.

1 MS. SHEMWELL: Chairman Davis, if I could  
2 speak to Staff's position on the liability issue. Staff is  
3 very concerned that you're going to consider this particular  
4 -- the liability recommendation by Ameren that's separate --

5 CHAIRMAN DAVIS: You mean the separate JDA --  
6 or their proposed alternative condition to the second JDA  
7 Amendment?

8 MS. SHEMWELL: I'm talking about the  
9 liabilities, sir.

10 CHAIRMAN DAVIS: Okay. So you're back to  
11 liabilities. Okay.

12 MS. SHEMWELL: Yes.

13 CHAIRMAN DAVIS: All right. Go ahead.

14 MS. SHEMWELL: That separate books and records  
15 be maintained so Staff can actually verify what they're  
16 doing. It's been a problem for Staff getting -- Steve, are  
17 you shaking your head?

18 MR. DOTTHEIM: No, in essence, I'm agreeing  
19 from the perspective what Mr. Lowery just described that the  
20 second JDA Amendment is not inconsequential analysis. It  
21 involves a fair number of people, involved -- in doing very  
22 detailed work over an extended period of time, and we don't  
23 have a record on this at the moment other than what's being  
24 created today. Before today, all that we had was in essence  
25 what the company proposed in its application --



1 CHAIRMAN DAVIS: Okay.

2 MR. DOTTHEIM: -- for rehearing.

3 CHAIRMAN DAVIS: All right. Thank you,  
4 Mr. Dottheim. Mr. Lowery, what about that? What about the  
5 -- what about the separate books issue, separate records?  
6 It's an administrative nightmare and it's going to cost you  
7 lots of money.

8 MR. LOWERY: I don't think I can really give  
9 you a very meaningful response, other than to say it's going  
10 to be quite clear if -- and I go back to the asbestos because  
11 I think it's the one that's easiest to understand.

12 It's going to be quite clear if a lawsuit if  
13 filed relating to an employee exposed to asbestos prior to --  
14 let's say we made this transfer on April 1, 2005. It's going  
15 to be real clear when that employee was exposed to asbestos,  
16 and so I am not sure where will the separate books and record  
17 needs to come in. We're going to know whether it's a  
18 preclosing liability or it's one that arose from an event  
19 that occurred after April 1, 2005. I mean, it seems pretty  
20 simple to me. I don't think -- I don't think -- I don't  
21 think that it's nearly as difficult as it's being made out to  
22 sound.

23 CHAIRMAN DAVIS: But wouldn't it also go to, I  
24 guess, well where the cause of action accrued should be  
25 fairly self-evident, I guess.

1 MS. SHEMWELL: What may not be self-evident is  
2 things like internal legal costs, those sorts of things that  
3 the company may incur, but could just be mingled in with all  
4 other legal costs, those types of things in terms of hours  
5 spent on a particular case. Those are the kinds of things  
6 that also have to be counted in terms of these liabilities.

7 MR. LOWERY: That's not a separate books and  
8 records issue. There's no two sets of books issue there.  
9 Ameren Services has a legal department that provides legal  
10 services to all the Ameren companies. If they hire outside  
11 counsel to handle a particular lawsuit, that's going to be  
12 pretty apparent, so it's not a two sets of books issue.

13 CHAIRMAN DAVIS: Does anyone want to add  
14 anything on the record keeping? I mean, the -- I know the  
15 affiliate transaction records were an issue earlier. I mean,  
16 does anybody -- anybody have any comments about that? I  
17 think that was an important issue to Staff.

18 MR. DOTTHEIM: Yes, and in part, it's because  
19 of the lack of reach, so to speak, that's involved. The  
20 discussion earlier today about the other subsidiaries,  
21 companies under the Ameren umbrella and the Staff being  
22 denied access or the company objecting to that or to data  
23 requests as far as the Staff attempting to review what is the  
24 capacity situation in -- other Ameren subsidiaries is, from  
25 the Staff's perspective, a real problem.

1                   CHAIRMAN DAVIS: What does capacity of other  
2 subsidiaries have to do with?

3                   MR. DOTTHEIM: In part, the company is arguing  
4 that in the Ameren system, the capacity does not exist to  
5 serve Noranda, for example, without the MetroEast transfer.  
6 And in the affidavit that was filed yesterday, I think the  
7 indication is the capacity just doesn't exist.

8                   CHAIRMAN DAVIS: Well, what does that have to  
9 do with this case?

10                  MR. DOTTHEIM: As far as the Staff's  
11 verification of those assertion.

12                  CHAIRMAN DAVIS: All right. Dr. Proctor.

13                  DR. PROCTOR: Just real quick. The linkage is  
14 to the scenario that the Noranda does not go through,  
15 transfer does not take place, but Noranda is added, and the  
16 issue is whether -- and this is in part a reliability issue  
17 and part a financial issue -- whether or not there's  
18 sufficient capacity for the Ameren system to handle all of  
19 that load.

20                  CHAIRMAN DAVIS: You mean from a transmission  
21 perspective?

22                  DR. PROCTOR: Transmission and generation. We  
23 -- primarily from a generation perspective.

24                  CHAIRMAN DAVIS: Okay.

25                  DR. PROCTOR: And we were very concerned when

1 we saw the filing yesterday where it appears that the Ameren  
2 system is short of being able to serve both the MetroEast  
3 load and the Noranda load and we're going to talk to the  
4 company about that. I mean, we're concerned that there is a  
5 reliability issue out there that needs to be addressed, but  
6 -- but we need to talk to the company in more detail about  
7 that. I don't want to alarm the Commission today. I just  
8 want to make you aware that we are concerned. If there's not  
9 enough capacity out there, we want to know that.

10 CHAIRMAN DAVIS: Okay. All right. I'm trying  
11 to wrap this up here.

12 MS. VUYLSTEKE: Commissioner Davis.

13 CHAIRMAN DAVIS: Yes.

14 MS. VUYLSTEKE: Are you moving on from the  
15 bookkeeping issue? I just wanted to make a brief comment on  
16 that.

17 CHAIRMAN DAVIS: Miss Vuylsteke, let's here  
18 your comments.

19 MS. VUYLSTEKE: Just very briefly and this is  
20 very broadly on the issue of record keeping, just that if  
21 Ameren asserts benefits or liabilities, it doesn't provide  
22 data to support its assertions, I think it would be very  
23 important to -- for the Commission to consider not permitting  
24 rate case recovery with respect to things that they haven't  
25 provided data to support, just a very general comment.

1 CHAIRMAN DAVIS: Mr. Lowery, any response?

2 MR. LOWERY: I think the only response is it's  
3 our burden to prove the benefits, and if we don't do that to  
4 your satisfaction, including whatever backup is appropriate  
5 to do that, then we're not going to get recovery and our  
6 shareholders are going to pay.

7 CHAIRMAN DAVIS: Okay. All right. Now,  
8 Mr. Dottheim and Mr. Proctor, and this is more of a devil's  
9 advocate question here. Going back to preclosing  
10 liabilities, is 6 percent really going to make a difference  
11 in the grand scheme of things when Missouri ratepayers are  
12 already on the hook for 92 percent?

13 MR. DOTTHEIM: Depending upon the size of  
14 those liabilities. It if's hundreds of millions of dollars  
15 --

16 CHAIRMAN DAVIS: Well, if it's hundreds of  
17 millions of dollars, let's just pick out a big round number  
18 and say if it's \$500 million, then we're already on the hook  
19 for, I mean, just hypothetically speaking, \$460 million. Is  
20 another 30 million in the grand scheme of things going to  
21 make a difference at that point?

22 MR. DOTTHEIM: The Staff would say yes. The  
23 Staff would view that Missouri ratepayers paying that -- that  
24 cost would be inappropriate, and even for a company the size  
25 is of Ameren, \$30 million is not inconsequential, and it's

1 not inconsequential for Ameren's ratepayer base.

2 CHAIRMAN DAVIS: Mr. Coffman.

3 MR. COFFMAN: Sounds material to me.

4 CHAIRMAN DAVIS: Okay.

5 MR. LOWERY: Chairman Davis, maybe I can just  
6 give you some numbers that would put this in perspective.

7 CHAIRMAN DAVIS: Thank you, Mr. Lowery.

8 MR. LOWERY: And we've already -- we've  
9 already made clear that we don't think, and neither --  
10 neither did really the Commission that we don't think that  
11 future capital expenditures that are going to be made to  
12 plants -- may or may not be made at a time when the  
13 generation is only serving Missouri is a liability and it's  
14 really separate and apart from these liabilities that we've  
15 been talking about.

16 But let's say Public Counsel made arguments in  
17 this case that there's going to be 900 million or a billion  
18 dollars of capital expenditures. Let's say all those were  
19 made at one time. When you look at -- and this is in the  
20 record and it's in our brief, I believe it's in our brief.  
21 If you look at even a figure like that and the 6 percent that  
22 you're talking --

23 CHAIRMAN DAVIS: Right.

24 MR. LOWERY: I think it came out to be \$6.50  
25 per year. Now we think those numbers, they're wildly out of

1 any realm of possibility. I don't want to suggest that --

2 CHAIRMAN DAVIS: All right. We're just  
3 speaking hypothetically here.

4 MR. LOWERY: But if they were, it's \$6.50 per  
5 year. Every customer that's got to pay that extra \$.50 per  
6 month, maybe they're not happy about it, and we're not trying  
7 to raise people's rates, but that's the kind of magnitude  
8 that goes to your question. It's not -- it's not much in the  
9 grand scheme of an electric bill.

10 CHAIRMAN DAVIS: Mr. Coffman, do you want to  
11 rebut that anecdotal evidence?

12 MR. COFFMAN: Well, it wasn't -- I don't  
13 consider it anecdotal, of course it's hypothetical --  
14 potential speculative numbers, which happen to be filed  
15 publicly, and I believe SEC reports. They are the company's  
16 numbers. They are potential impacts, and yes, I do believe  
17 \$6.50 per customer would be a very material amount of money  
18 considering what that economic impact has on Missouri.

19 MR. DOTTHEIM: If the numbers aren't  
20 consequential, then why isn't the company willing to forgo  
21 recovery of those dollars?

22 CHAIRMAN DAVIS: Did I hear a whisper back  
23 there?

24 MS. SHEMWELL: Yes, sir.

25 CHAIRMAN DAVIS: Now, Mr. Lowery, can you

1 extrapolate what that -- what the effect would be on using  
2 those same hypothetical numbers, 900 million or a billion,  
3 saying that there were, you know, roughly, you know, 6  
4 percent of those liabilities or whatever.

5                   What would the effect be on Ameren's  
6 shareholders if they had to, I mean, I would assume that if  
7 would be more than \$6.50 per shareholder. I mean, I don't  
8 know.

9                   MR. LOWERY: I'm not trying to dodge your  
10 question. I have no idea.

11                  CHAIRMAN DAVIS: Okay. Mr. Dottheim, when did  
12 Staff make its first data request for the scenarios that were  
13 the subject of Ameren's motion to dismiss?

14                  DR. PROCTOR: It was the -- I think Ameren  
15 filed their case December 18th. It was a Monday,  
16 mid-December on Monday. Our data request -- December 20th.  
17 Okay. Our data request went in --

18                  CHAIRMAN DAVIS: Okay. So this was in the  
19 Noranda case?

20                  DR. PROCTOR: In the Noranda case, yeah.

21                  CHAIRMAN DAVIS: Okay.

22                  DR. PROCTOR: Our data request went in I  
23 believe it was that Wednesday. That's my recollection. The  
24 Wednesday after the Monday they filed.

25                  MR. DOTTHEIM: We submitted the data request



1     that should have gone to Mr. Lowery and Mr. Fitzhenry and  
2     Mr. Raybuck, counsel for AmerenUE. It went instead to a  
3     paralegal, who we, in other cases, have interfaced with, so  
4     it didn't catch up officially with the company until the  
5     following week. I think December 27, but we had previously  
6     asked for the scenarios informally.

7                   CHAIRMAN DAVIS: And then at some point, you  
8     know, when you were refused, then those scenarios somehow  
9     made it to the Commission and an Order was issued that Ameren  
10    respond to those scenarios; is that correct?

11                  MR. DOTTHEIM: Yes.

12                  CHAIRMAN DAVIS: I mean, was -- were these  
13    data requests, you know, public records? Do we have access  
14    to those?

15                  MR. DOTTHEIM: They're filed with EFIS.

16                  CHAIRMAN DAVIS: So can I pull them up, do you  
17    know?

18                  MS. SHEMWELL: I don't think so, Mr. Chairman.

19                  MR. DOTTHEIM: I think parties to the case can  
20    pull those DR's up.

21                  CHAIRMAN DAVIS: So if we Commissioners  
22    weren't party to the case, how could -- how could we receive  
23    those without some sort of ex parte communication?

24                  MR. DOTTHEIM: I don't know. I don't think  
25    that those data requests or asking for those scenarios is

1 anything highly unusual or unique, but to your question, I  
2 don't know, Chairman.

3 CHAIRMAN DAVIS: Well, wouldn't the proper  
4 form be to bring it before the Commission as opposed to --

5 MR. DOTTHEIM: Well, there's a question in  
6 part 2 as to whether without bringing it to the Commission,  
7 and one of the basis for -- for the company objecting was is  
8 that they have no obligation for discovery to produce  
9 analysis such as the Staff had requested.

10 CHAIRMAN DAVIS: So if you wanted that  
11 information and the company responded we have no obligation  
12 to provide it for you, then wouldn't -- wouldn't the correct  
13 response be to file some sort of motion with the Commission?

14 MR. DOTTHEIM: Yes, if we're going to pursue  
15 that -- that matter. The Commission issued an Order seeking  
16 similar analysis and -- and we ultimately submitted a  
17 pleading a week ago yesterday setting this all out and  
18 indicating our support or request that the Commission pursued  
19 -- would pursue the scenarios 1 and 2, which the company had  
20 indicated that, in essence, it objected to and asking the  
21 Commission to be relieved providing those scenarios.

22 CHAIRMAN DAVIS: So let me ask you, this  
23 Mr. Dottheim. If it were determined that that data request  
24 were the product of an improper ex parte communication,  
25 should all that data be thrown out?

1                   MR. DOTTHEIM: I don't think so. I mean, I  
2 think it would be of concern to the Commission and everyone  
3 that an ex parte communication had occur.

4                   CHAIRMAN DAVIS: Do you think an ex parte  
5 communication has occurred?

6                   MR. DOTTHEIM: I'm not aware of one.

7                   CHAIRMAN DAVIS: Well, how did the Commission  
8 get the information? How did the Commission magically get  
9 the same data requests that we cannot access in EFIS?

10                  MR. DOTTHEIM: Chairman, I don't know the --  
11 the answer to that. I think what we had requested was  
12 considerably more detailed than what the Commission requested  
13 in its Order that it issued on I think it was maybe December  
14 30th. And in fact, as far as the data request is concerned,  
15 what we had requested, I had placed that in -- in footnotes  
16 in the pleading that I filed with the Commission on January  
17 11th, so the detail of -- of the data requests are -- are  
18 there for -- for review.

19                  It's considerably, as I recall, considerably  
20 more detailed than what the Commission requested in its -- in  
21 its Order. It asked for scenarios. The MetroEast -- no  
22 MetroEast transfer, with and without Noranda, MetroEast  
23 transfer with and without Noranda, and that was the detail,  
24 as I recall, as much detail as that, that the Commission  
25 requested in its Order.

1                   CHAIRMAN DAVIS: Can you provide us with a  
2   copy of the original data request?

3 MR. DOTTHEIM: Yes.

4 CHAIRMAN DAVIS: Anything else out there?

5 That's all I have.

6 JUDGE MILLS: We're going to take a  
7 five-minute recess. We'll be back at a couple of minutes  
8 before 4:00. We're off the record.

9 (A BREAK WAS HAD.)

10 JUDGE MILLS: We're back on the record.

11 COMMISSIONER APPLING: Let's get back to for  
12 just a second to ground 0. Okay. I promise you I won't keep  
13 you long. Okay? Staff and OPC, what makes this transfer of  
14 data, if we say we're going to do MetroEast and Noranda, what  
15 makes this a bad transfer? Think about that just for a  
16 second, but let me ask you another question before we get  
17 there.

18                               From our standpoint, the transfer of MetroEast  
19   to include Noranda, gives the perception, make good business  
20   sense for Ameren, give that perception out there, unless it  
21   is found that these transfers are detrimental to the  
22   ratepayers of Missouri. So with that said, what make this  
23   transfer a bad deal for the ratepayers of Missouri, Dr.  
24   Proctor?

25 DR. PROCTOR: First, I would say that the

1 Staff doesn't have the position that the Noranda transfer is  
2 a bad deal for the state of Missouri.

3 Q. Okay.

4 A. We haven't submitted testimony on that  
5 particular issue. On the MetroEast transfer, I think our  
6 position is fairly clear and I just want to reiterate it that  
7 the -- the net benefits of this are very, very thin. It's a  
8 very, very close deal in terms of the economics of it.

9 So once you bring these threats, these  
10 potential liabilities in, they tend to swing it into the  
11 negative column, and therefore, the Staff felt there needed  
12 to be conditions that would cover those things that could  
13 cause it to go negative because it was -- it was so close and  
14 it was so razor thin in terms of -- in terms of being of  
15 benefit. So that -- on the MetroEast side that's what we've  
16 got testimony in right now.

17 The Noranda, we have not taken the position  
18 that that's detrimental and we're supposed to submit our  
19 testimony January 31st on what the Noranda is.

20 COMMISSIONER APPLING: Okay, Dr. Proctor. OPC  
21 comments?

22 MR. COFFMAN: Thank you. If you look, and  
23 again, we've not taken a position yet on the Noranda proposal  
24 and, I mean, it's my assumption going into it that Noranda  
25 could be served under some conditions in some way, and that's

1    what we hope that we can find a way to recommend, but my  
2    understanding is that Noranda really isn't relevant to this  
3    particular case.

4                   COMMISSIONER APPLING:   Okay.

5                   MR. COFFMAN:   Unless you were considering that  
6    there's someone's trying to use this case or use Noranda one  
7    way or the other to do it, but I'm understanding we're here  
8    on the record in only the MetroEast case, and the answer to  
9    your question is that by itself, a simple transferring of the  
10   load and the facilities involved is a resource planning  
11   decision.  It is a decision that involves planning for the  
12   future, energy and capacity of the system just as if building  
13   a plant would be.  It's a very major decision that effects  
14   AmerenUE's planning.

15                   And on that basis, we believe that it would  
16   tend to increase rates for consumers, and that other resource  
17   planning decisions would likely be cheaper and make better  
18   sense and be least cost.  The -- the way that we believe  
19   would be the fairest way to approach would be to require  
20   AmerenUE to do a request for proposals, and actually compare  
21   side-by-side what proposals are out there for meeting future  
22   need along side-by-side the transfer of this property in  
23   Illinois away, transferring away that load.

24                   The approach that the Commission chose in its  
25   Order is this cost benefit balance sheet approach, and that

1 is an approach, I think, that can be used and we believe that  
2 the Commission's analysis in the Order that they -- that you  
3 did issue and then vacated is correct, that absent any  
4 conditions, this deal would be detrimental to the public,  
5 would be -- would tend to increase rates for consumers.

6 And although the Commission didn't order all  
7 of the Commission -- all of the conditions that we would have  
8 liked and would have done, we were happy that at least these  
9 two significant conditions were added and that there was some  
10 attempt to protect ratepayers, and of course, I guess that's  
11 what's been the main focus of discussion here today. I mean,  
12 obviously if the Commission can, you know, eliminate the  
13 detriments to a significant degree, then a deal doesn't have  
14 to be detrimental.

15 COMMISSIONER APPLING: Well, what would your  
16 answer be if we said there was no conditions?

17 MR. COFFMAN: It would be our firm conviction  
18 that it would be detrimental with no conditions, yes.

19 COMMISSIONER APPLING: Okay. Dr. Proctor?

20 DR. PROCTOR: Yes.

21 COMMISSIONER APPLING: Same?

22 DR. PROCTOR: Yes.

23 COMMISSIONER APPLING: Okay. Ameren, in  
24 listening to that, and protecting the ratepayers for the  
25 state of Missouri, can you tell me that the risk, if this

1 Metro transfer took place, can you tell me that the rest of  
2 your Missouri ratepayers wouldn't be hurt? Can you -- and  
3 how would you protect them from not being hurt?

4 MR. LOWERY: Commissioner Appling, I think  
5 that we've laid out a mechanism to do just that, that pretty  
6 clearly does that. You impose a number of conditions in your  
7 prior Order, and we've indicated we'll accept all of those  
8 except two. And with respect to those two, we've indicated  
9 that we'll accept those, but with modifications that in  
10 effect say if we can't prove that the benefits from the  
11 transfer outweigh the detriments that those two conditions  
12 are directed towards, we'll guarantee those, our shareholders  
13 will pay them.

14 So with that, in effect, we have given, we  
15 think, all of the conditions that you thought were necessary  
16 in order to approve the transfer so it's not detrimental. We  
17 don't think those conditions are necessary, but we're willing  
18 to give them, so on the existing record you have in this  
19 case, we think you found the transfer is not detrimental with  
20 conditions that addressed A, B, C, D, and E. We think we've  
21 given you the equivalent of A through E, and I'm just using  
22 that as an example. So we think that you have everything  
23 that you need to approve the MetroEast transfer.

24 Going back to your original question, we -- I  
25 said this morning that we think it's going to be absolutely



1 clear to you that approving the MetroEast transfer with the  
2 conditions that we've offered to make, which in turn allows  
3 the Pinckneyville and Kinmundy combustion turbines to be  
4 transferred, which we need in order to serve Noranda, which  
5 in turn then allows Noranda to be served.

6 At the end of the day, it's going to be  
7 absolutely clear to you that Missouri ratepayers are better  
8 off if those three things happen than if they don't happen.  
9 And if we aren't able to get MetroEast done, then Noranda  
10 simply can't happen. It's a circumstance we find ourselves  
11 in. I explained this morning why we -- we simply didn't  
12 think we were ever going to be here without MetroEast, we  
13 would be done long ago, but it turns out that it's not, but  
14 if those things happen, we think it's going to be clear that  
15 ratepayers are better off.

16 COMMISSIONER APPLING: Staff and OPC again,  
17 for the transfer, what does AmerenUE have to have, or what do  
18 you think that you would have to have from Ameren in order to  
19 make a Commission order acceptable?

20 MR. COFFMAN: We -- Commissioner, we outlined  
21 a variety of conditions that we thought would mitigate the  
22 detriments. Are you wanting a summary of those or?

23 COMMISSIONER APPLING: Oh, just a short clip,  
24 please. I'm trying to get down to the point. What do we  
25 need to do here? What does Staff want and what do Ameren

1 want from the Staff in order to get to an order that we could  
2 accept?

3 MR. COFFMAN: Our suggestion, which was  
4 rejected initially, was the -- was the idea of a request for  
5 proposals, get actual proposals, compare side-by-side, all  
6 the options. I mean, we know that there are a variety of  
7 other things that could be available to meet future needs  
8 that could be put side-by-side and were not.

9 I mean there was just one, this building of a  
10 CT proposal that was compared and that's what the cost  
11 benefit -- least-cost analysis was done on. We think that  
12 there are a variety of plethora of other options that could  
13 be analyzed, and we think that if you looked at that, you  
14 might see that there are other least-cost options, but  
15 barring that, we would hope that the Commission would just do  
16 its best to impose conditions that made sure that the  
17 ratepayers were held harmless.

18 COMMISSIONER APPLING: Thank you.

19 MR. COFFMAN: And I think that's what the  
20 Commission has attempted to do. Staff?

21 MR. DOTTHEIM: Commissioner, during the course  
22 of the hearings in this case, there was a request from the  
23 bench for a list of conditions from the Staff as to what  
24 would address the Staff's concerns and cause the transaction  
25 to be not detrimental to the public interest. The Staff put

1 together those conditions with an explanation of them and --  
2 and submitted those to the Commission. And in April, we  
3 briefed those -- those items.

4 In fact, on -- I think it was possibly the  
5 last day of the hearing, Mr. Nelson took the stand and  
6 responded to the conditions that the Staff had identified.  
7 The company also responded in -- in writing. The -- the  
8 Staff ultimately in response for the application for  
9 rehearing, the Commission directed the Staff to provide a  
10 response. And in doing so, we raised concerns regarding the  
11 conditions which AmerenUE proposed in its application for  
12 rehearing. Amongst other things, not only do we have  
13 concerns substantively about the conditions which AmerenUE  
14 proposed, but we have concern that there is no record  
15 respecting those -- those conditions.

16 COMMISSIONER APPLING: Mr. Lowery?

17 MR. LOWERY: Commissioner Appling, to try to  
18 answer your question directly, what we need for the  
19 Commission to do in order to allow this transfer and  
20 ultimately Noranda to take place just simply is a matter of  
21 capacity because we have to have one to have the other. We  
22 need for the Commission to agree that the two conditions that  
23 we indicated we will accept and therefore we will transfer  
24 MetroEast if they're imposed, which amount to insurance  
25 policies underwritten by our ratepayers, we need the

1 Commission to agree that those are appropriate and to impose  
2 those conditions, and the other conditions, if you think  
3 those are appropriate that you had previously imposed.

4                   And I would note I disagree that you don't --  
5   that you need a further record to do that. You found that  
6   the transfer was not detrimental to the public interest if  
7   you impose certain conditions and address certain issues.  
8   You are still, if you accept our conditions, you are still  
9   addressing all of those issues, you're still providing  
10  ratepayers protection, the existing record allows to you do  
11  that. So I disagree that interminable hearings and  
12  interminable analyses are needed to do that. So we need to  
13  do that.

14                   And the second thing we need is we need to  
15   then get Pinckneyville and Kinmundy transferred, which we do  
16   not believe will be any problem at all in that circumstance.  
17   And third, we need a certificate to serve Noranda, and if we  
18   get those things, then we think that it's going to be clear,  
19   and you will agree that ratepayers are better off than if  
20   those things don't happen.

21 (REPORTER'S NOTE: At this point, an in camera  
22 session was held, which is contained in Volume 20, pages 2014  
23 through 2016.)

24 ///

25

1                   COMMISSIONER APPLING:   Okay.   How many will  
2   you need to serve your native Missouri load and the new  
3   Noranda load if you were to combine those two?   Would that be  
4   about the amount you have?

5                   MR. LOWERY:   We will be -- we will be fine in  
6   summer 2005, assuming a 15 percent planning reserve margin,  
7   in other words we will have 15 percent more than we will  
8   actually need.   And in 2006, as we indicated in the Noranda  
9   case, we will need to add about 100 megawatts of peaking  
10   capacity.   And after that, we should be fine for the  
11   foreseeable future, at least insofar as the effect of Noranda  
12   is concerned.

13                  COMMISSIONER APPLING:   Thank you.   Anyone else  
14   want to comment?

15                  MR. COFFMAN:   Yes.   Just one other point that  
16   I -- that I mentioned earlier, and I just think it's  
17   important to reemphasize this.   Apparently AmerenUE is  
18   interpreting the original Order on the second JDA Amendment  
19   to be system-wide, and it seems to me that, and I guess one  
20   estimate in the -- that has been in the record is that that  
21   might be \$100 million.

22                  As opposed to interpreting that second JDA  
23   Amendment as only impacting the additional incremental energy  
24   related to the MetroEast transfer, which the record suggests  
25   is a \$10 million impact.   It's a much smaller impact, and

1 obviously wouldn't have that big, you know, be one-tenth of  
2 the impact on Ameren. These are, of course, rather round  
3 estimates.

4 But if the Commission can simply clarify that,  
5 I think that's a much preferable and much more defensible  
6 condition for the Commission to support than the larger one.  
7 It's directly tied to the MetroEast transfer itself, and I  
8 think certainly preferable to the condition that Mr. Lowery  
9 is suggesting that you do, which is this hypothetical  
10 tracking and speculation where we will continue to be -- we  
11 will continue to argue about this into the future and future  
12 cases, and that's the way I see that.

13 COMMISSIONER APPLING: Thank you.

14 MS. VUYLSTEKE: Commissioner Appling, would  
15 you be interested in hearing the MIEC's view on your initial  
16 question? I know you moved on.

17 COMMISSIONER APPLING: Oh, yes.

18 MS. VUYLSTEKE: I'll try to keep it really  
19 short, but you asked what the Commission needed to do in  
20 order to -- or what we thought the Commission needed to do.

21 COMMISSIONER APPLING: Right.

22 MS. VUYLSTEKE: I think that the Commission's  
23 Order is a good Order. It is a compromise of the issues that  
24 were involved in the case. And it is a very solid Order. It  
25 isn't everything that the consumers wanted. It isn't

1 everything that Ameren wanted. And now the Noranda issue has  
2 come up, and UE has put that into this case by saying in the  
3 Noranda case that unless they get the MetroEast transfer  
4 conditions removed and get it changed the way they want it,  
5 they're in the going to serve Noranda.

6 I believe that the Commission should hold  
7 Ameren's feet to the fire a little bit and really ask it to  
8 explain why that's true. You know, we think the Commission's  
9 initial Order is good. If Ameren wants that to be changed,  
10 why does Noranda mean those conditions have to be moved? The  
11 transfer can occur. The Commission approved the transfer.  
12 It's going to occur the way things stand right now, which is  
13 what Ameren says needs to happen in order to have the  
14 capacity to serve Noranda, they just want it to be exactly  
15 the way they want, but that doesn't mean that the conditions  
16 have to be removed in order for Ameren to serve Noranda.

17 COMMISSIONER APPLING: Mr. Lowery?

18 MR. LOWERY: We -- if we want it to be exactly  
19 the way we want, we wouldn't have a transmission-related  
20 condition imposed, for example, that assumes a \$13.8 million  
21 annual detriment that was pulled out the air at the hearing,  
22 that has a 20 to 25 percent chance of happening, and that  
23 can't happen unless the control area is split and a whole  
24 host of other things.

25 So the Order that we are proposing that we're

1 willing to accept is far from what we want and what we think  
2 is appropriate, but we want to try to get something done, and  
3 we have -- we have proposed two substitute conditions that  
4 give ratepayers a shareholder underwritten insurance policy,  
5 and if we can't prove that that insurance is good, that the  
6 company is solvent, so to speak, then shareholders are going  
7 to pay. So the characterization that we just want it to be  
8 the way we want, that's a completely false characterization.  
9 It's as far from what we really want and think is  
10 appropriate.

11                   We have agreed to step up to the plate and  
12 give you the insurance for ratepayers that you were trying to  
13 get with the condition that you -- that you imposed. If I  
14 might, I'd like to address one thing Mr. Coffman brought up  
15 as well.

16                   I think this is a real important point because  
17 it's come up today for the first time. I think it's really  
18 important to understand the position of the Commission and  
19 the position of the parties with respect to this second JDA  
20 Amendment. Your Order is not ambiguous. It says that the  
21 company shall amend the JDA, provide that the transfers of  
22 energy, basically to AmerenCIPS, will be at market and not at  
23 incremental cost. It has no qualifiers, it doesn't say only  
24 the transfers that are caused by the MetroEast transfer.

25                   Now we've heard Staff today say that that's not how



1 they interpret it. They believe that the condition you  
2 imposed only applies to transfers that are caused by  
3 MetroEast, and I think we heard Mr. Coffman say a minute ago  
4 that he may very well agree with that. I don't know what the  
5 position of the industrials are, but that's a pretty material  
6 fact for all of us to understand what these -- all of these  
7 parties in the room. And I think we need to make sure is  
8 that we're clear about that from all of them before we leave  
9 today, and I think it's important that we understand from the  
10 Commission what the Commission intended.

11 We still believe that the condition we've  
12 proposed is still necessary, it's something we've got to have  
13 in order to complete the transfer, but obviously the issue is  
14 not as big of an issue if we're talking about just that piece  
15 as it would be if we're talking about the entire second JDA  
16 issue, so to speak. So I -- you know, I'd like to hear  
17 whether -- whether other parties agree with Staff in terms of  
18 its perspective on that.

19 MR. COFFMAN: I would agree that the Order was  
20 ambiguous. We were not sure what the Commission -- whether  
21 the Commission meant for it to be system-wide, and there's  
22 some -- maybe ambiguousness in the Staff's position.  
23 Although as I understand the response that to the application  
24 for rehearing, and in one of these charts that you have,  
25 Staff has included only the \$10 million amount in the

1 calculation, so.

2 COMMISSIONER APPLING: Anyone else before I  
3 turn this over to my colleague?

4 Mr. Lowery, can we do something to get this  
5 Order in front of everybody to -- so that we get one that  
6 everybody can accept?

7 MR. LOWERY: We will do our level best.

8 COMMISSIONER APPLING: Judge.

9 JUDGE MILLS: Thank you. Commissioner Murray,  
10 do you have further questions?

11 COMMISSIONER MURRAY: I'm sorry, but I do have  
12 several more questions, and I'll try to make it quick. First  
13 of all, I do not understand why we have to go through another  
14 evidentiary hearing. I do not understand why we don't have  
15 enough in this record to make this decision whether this is  
16 detrimental to the public interest, this transfer. And it  
17 seems to me that that's all we have before us is this  
18 transfer application. We don't have Noranda before us in  
19 this. And I guess I'd like to hear from the parties why we  
20 cannot issue an Order based on what we have that would allow  
21 this transfer to go forth. And Mr. Coffman, you want to go  
22 first?

23 MR. COFFMAN: I'll take the first shot at it.  
24 I'm not aware, and I could be wrong, but I'm not sure that a  
25 rehearing actually requires an additional evidentiary

1 hearing, legally; however, the two new conditions that we've  
2 heard about from Ameren involve things that I don't think are  
3 supported by evidence in the record, and there have been some  
4 additional things mentioned in numerous posthearing pleading,  
5 including, I mean, the IP Order in Illinois, and how that  
6 effects, you know, how that relates to the liabilities  
7 condition that's currently in there.

8 I mean, that is something that would be  
9 relevant and probably should be brought out if the Commission  
10 is going to mention that and rely on that as an Order. In  
11 other words, the Commission, I think, may be able to legally  
12 do a new Order, create a new Order, but the -- it may depend  
13 on what the Commission wants to say, whether or not there is  
14 evidence to support is that in the current record.

15 COMMISSIONER MURRAY: Okay. Let's pursue  
16 those two conditions. They were actually alterations of  
17 conditions that the Commission's Order had -- had included,  
18 they were a method for -- that Ameren was proposing to be  
19 able to prove that the benefits outweighed the detriments on  
20 those two particular conditions and that they would only be  
21 liable for these conditions if they could not meet -- meet a  
22 burden of proof that the benefits outweighed those. Why --  
23 how much more evidence do we need on that or why do we need  
24 more evidence?

25 MR. COFFMAN: Well, I'm not convinced that

1 everything that Ameren has filed in support of those  
2 positions is in the record. Perhaps the Commission can draft  
3 an Order that is based on evidence that is currently in the  
4 record. I'm only saying that if -- if some of the arguments  
5 are to be relied upon by the Commission, that have been made  
6 in posthearing pleadings, I believe they would require some  
7 sort of competent evidence.

8 COMMISSIONER MURRAY: And what would that  
9 evidence entail? We're talking about future. We're talking  
10 about in a future rate case, a party with a burden to prove  
11 that the benefits outweighed the detriments so that they  
12 wouldn't be liable for those detriments. What kind of  
13 evidence can we take now to support that?

14 MR. COFFMAN: Well, I'm not aware of any  
15 evidence currently in the record regarding the ability --  
16 feasibility, nature of tracking these issues into the future  
17 as we've heard today. That was not addressed.

18 COMMISSIONER MURRAY: I think we heard a  
19 little bit of suggestion today that I believe Dr. Proctor was  
20 under the impression that something that was suggested was --  
21 was doable in terms of understanding and weighing benefits  
22 over detriments. Is that correct?

23 DR. PROCTOR: I think it's what I heard  
24 described, and part of my struggle is I really don't have the  
25 details of this proposal. What I've got is some general

1     concept that was submitted in -- in -- by an attorney in a  
2     motion for rehearing. I don't know what the specifics are  
3     and I really don't know what -- I heard some things today  
4     that I heard for the first time.

5                     COMMISSIONER MURRAY: Dr. Proctor, let me stop  
6     you.

7                     DR. PROCTOR: Yes.

8                     COMMISSIONER MURRAY: What specifics do you  
9     want? What do you need?

10                    DR. PROCTOR: I think we need to sit down and  
11     say exactly how are we going to implement this -- this  
12     concept.

13                    COMMISSIONER MURRAY: Implement by in terms of  
14     exactly what would the company have to show?

15                    DR. PROCTOR: Yes.

16                    COMMISSIONER MURRAY: What, to meet their  
17     burden?

18                    DR. PROCTOR: Yes.

19                    COMMISSIONER MURRAY: And why -- I guess I'm  
20     having trouble understanding how that fits in with a need to  
21     have an evidentiary record here.

22                    DR. PROCTOR: Well, I don't know. I'll let my  
23     attorney respond to that. I would just, I mean, I would  
24     think you would want to know specifically what this proposal  
25     is and what it's doing. I mean, that's just the way the

1 Staff operates. We want to know what the specifics of the  
2 proposal really are and we don't have those right now.

3 COMMISSIONER MURRAY: Let's let your attorney  
4 respond quickly and then I'm going to move on.

5 MR. DOTTHEIM: The Staff's suggestion that  
6 there should be a record is, in particular, not knowing if  
7 some party might appeal the decision, concern about the  
8 decision of the Commission based on what presently exists in  
9 the record, notwithstanding appeal. When the Commission  
10 issued its Order for the proceeding today, I think it clearly  
11 states that today was not to be an evidentiary hearing.

12 COMMISSIONER MURRAY: Uh-huh.

13 MR. DOTTHEIM: So that's -- I mean, other than  
14 what Dr. Proctor indicated as far as the Staff wanting to  
15 know what are the details and think that the details need to  
16 be set out much more than what is conceptual -- conceptually.

17 COMMISSIONER MURRAY: But you're talking about  
18 factual details, right? And I'm wondering why this is more  
19 than a legal issue that we can decide.

20 MR. DOTTHEIM: Commissioner, I think it goes  
21 -- it goes to the question of whether the company -- well,  
22 what -- whether what the company is suggesting can be  
23 accomplished through their conditions can actually be  
24 accomplished. I think there's something more needed than --  
25 than what presently has been presented.

1                   COMMISSIONER MURRAY: What form would that  
2 evidence take?

3                   MR. DOTTHEIM: Testimony.

4                   COMMISSIONER MURRAY: But I mean what would it  
5 consist of?

6                   MR. DOTTHEIM: Procedures, protocols, what  
7 type of analysis is going to be performed. I think we,  
8 again, we've heard more conceptually than anything else.

9                   COMMISSIONER MURRAY: Mr. Lowery, how do you  
10 respond to this?

11                  MR. LOWERY: Commissioner Murray, there is  
12 absolutely no need for any additional hearing. What they are  
13 talking about is they want evidence today about the mechanics  
14 of how we're going to meet our burden two years from now or  
15 whatever. We haven't given a concept any more than the  
16 Commission gave a concept when the Commission said you shall  
17 not recover 6 percent of these liabilities. We've said goes  
18 too far.

19                  We've said UE, we won't -- we won't recover 6  
20 percent of these liabilities unless we can meet our burden to  
21 prove that the benefits from the transfer outweigh those. If  
22 we can't, however mechanically we do that, if we can't meet  
23 that burden, as a legal matter, then the effect of your  
24 condition remains in place. And you have a record already  
25 that says as long as that ratepayer protection is there, this

1 transfer is not detrimental to the public interest. Well,  
2 that ratepayer protection is there with our conditions.

3 What they're suggesting is that we go through  
4 interminable discussion about the mechanics of  
5 production-cost analysis and all kinds of things that we,  
6 frankly, we won't get this case done for 6 more months if  
7 that's the posture we're going to take. And there is no need  
8 legally to do that. On rehearing, you have the power to  
9 decide what process you're going to give and what the scope  
10 of the rehearing is going to be, and you can rely on the  
11 existing record.

12 And we have given you as a matter of law a  
13 condition that provides the protection that you found was  
14 necessary to approve the transfer once, it allows you to do  
15 it now, and all this business about -- Mr. Coffman used the  
16 word their feasibility of proving it, we want to know what  
17 the proposal is specifically. The proposal is we have to  
18 prove it. The proposal about how we do is that has nothing  
19 to do with the public interest standard in this case and  
20 whether or not it's detrimental. That's an issue for the  
21 rate case as to whether or not we have proved it.

22 COMMISSIONER MURRAY: And if you don't prove  
23 it, if we're not satisfied with where you prove it, then the  
24 condition that we originally imposed is applicable.

25 MR. LOWERY: It's equivalent of the same



1 condition if we can't prove it. If we can prove it, however  
2 mechanically we do that, then we have a different result.  
3 But in that instance, you will have found as a matter of law  
4 based on a record in a rate case, that ratepayers weren't  
5 harmed, so how is it that we need -- we don't need additional  
6 record.

7 COMMISSIONER MURRAY: Okay. And that is  
8 exactly the way I understand it, and I'd like to know why it  
9 is that the parties are so intent upon stopping this. I  
10 mean, it just appears that there is an effort to stop this  
11 transfer. So I guess my question, my basic question to Staff  
12 is are you taking the position that it is most advantageous  
13 to Missouri ratepayers to maintain the status quo, and that  
14 is that MetroEast transfer not occur, that AmerenUE continue  
15 to be regulated in both Illinois and Missouri, that  
16 Pinckneyville and Kinmundy transfer not occur, and then if it  
17 becomes relevant that Noranda not be served? Is that Staff's  
18 position?

19 MR. DOTTHEIM: Our recommendation on -- on the  
20 record that exists with the conditions as AmerenUE has  
21 proposed is that the AmerenUE proposal is detrimental to the  
22 public interest.

23 COMMISSIONER MURRAY: So that is Staff's  
24 position, maintain the status quo?

25 MR. DOTTHEIM: Not approve what AmerenUE has

1 proposed in the way of the MetroEast transfer with the  
2 conditions that it has set out in its application for  
3 rehearing.

4 COMMISSIONER MURRAY: Okay. So the MetroEast  
5 transfer not occur. Mr. Coffman, is that your position?

6 MR. COFFMAN: I think I would phrase it  
7 differently. I mean my -- our -- our goal is to encourage  
8 you to protect ratepayers, to hold them harmless, at the  
9 least, which is the standard that it not be detrimental, and  
10 although there is considerable disagreement about how that be  
11 calculated and under what conditions, our strong desire is  
12 not necessarily to preserve the status quo, but just that if  
13 this is to occur, the conditions that are part of that  
14 approval be sufficient to protect ratepayers and that is the  
15 goal.

16 And there have been proposals that we have  
17 looked at and gosh darn it we couldn't think of enough  
18 conditions to make it not detrimental, and that, for  
19 instance, the merger between UtiliCorp and St. Joseph Light &  
20 Power. We just couldn't see a way that that was not  
21 detrimental. I think this is a case where I think conditions  
22 can be imposed, and I think the Commission made a pretty good  
23 effort in its first try at this.

24 COMMISSIONER MURRAY: And if we can't --

25 MR. COFFMAN: And we weren't completely happy,

1 but it wasn't too bad.

2 COMMISSIONER MURRAY: If we can't eliminate  
3 the conditions that Ameren considers too burdensome for it to  
4 go through with the transfer --

5 MR. COFFMAN: Yes.

6 COMMISSIONER MURRAY: -- then it is your  
7 preference that the transfer -- that we maintain the status  
8 quo, basically, is that correct? You think that's more  
9 beneficial to the ratepayers than accepting the two  
10 alterations to the conditions that the Commission originally  
11 imposed?

12 MR. COFFMAN: Frankly, there's too much  
13 uncertainty about those conditions. It is -- giving --  
14 giving the benefit of the doubt to those conditions, it's  
15 simply insures, I think, that we will be financing to wrestle  
16 and argue about these things in -- for infinity.

17 COMMISSIONER MURRAY: So it's better for the  
18 ratepayers if Ameren stays in Illinois and does not get  
19 Pinckneyville and Kinmundy and they continue to be regulated  
20 by Illinois as well; is that right?

21 MR. COFFMAN: Well, we're not convinced that  
22 Pinckneyville/Kinmundy is a good deal either.

23 COMMISSIONER MURRAY: Okay. So you'll be  
24 satisfied with the status quo for the benefit of Missouri  
25 ratepayers?

1                   MR. COFFMAN: Without that, and if the  
2 transfer cannot be made with any significant protection for  
3 ratepayers, then no, we would be satisfied if it had not  
4 occurred, and we hope that there can be a way that Noranda  
5 can be served in a way that does not significantly harm other  
6 ratepayers.

7                   COMMISSIONER MURRAY: Well, we're not really  
8 talking about Noranda.

9                   MR. COFFMAN: Right, that's correct.

10                  COMMISSIONER MURRAY: As I understand it,  
11 AmerenUE won't make the transfer, even without consideration  
12 of Ameren with the conditions as they were imposed in the  
13 Order. Is that your understanding?

14                  MR. COFFMAN: I'm sorry, could you ask that  
15 again?

16                  COMMISSIONER MURRAY: Well, perhaps I should  
17 ask this of Mr. Lowery instead. It's my understanding that  
18 Ameren is opposed to the Order as it was written because of  
19 those two conditions that you considered unacceptable and  
20 would not make the transfer with those conditions, and that  
21 is without regard to consideration of Noranda.

22                  MR. LOWERY: Correct.

23                  COMMISSIONER MURRAY: Okay. Thank you. Ms.  
24 Vuylsteke, you want to make a comment?

25                  MS. VUYLSTEKE: Yes, I wanted to respond to

1 your comment about the need for taking more evidence into the  
2 record. An example of an issue on which there is no evidence  
3 in the record would be whether it's appropriate for Missouri  
4 ratepayers to pay for those environmental liabilities and  
5 that there is not evidence in the record regarding what the  
6 environmental liability costs might be.

7 COMMISSIONER MURRAY: Let me stop you just a  
8 second, because you say whether it's appropriate for Missouri  
9 ratepayers to pay. If there is, in fact, an economic benefit  
10 that exceeds any environmental liability that Missouri  
11 ratepayers would have to pay, in other words they get more  
12 monetary benefit than they would end up paying, is that still  
13 a question in your mind?

14 MS. VUYLSTEKE: I think so because at any  
15 given time, you have to look at what are the costs that are  
16 being incurred by a particular group of customers, and not  
17 just look to, you know, overall, you know, benefits versus  
18 costs. I think you have to look at whether the cost is  
19 appropriate as a separate matter, whether that cost should  
20 even be born in the first instance. And I think regarding  
21 the liabilities, I think that has to be -- there has to be  
22 some evidence in this case regarding that with what those  
23 liabilities might be.

24 COMMISSIONER MURRAY: How do you know what  
25 those liabilities will be? I don't see how that's even

1 possible.

2 MS. VUYLSTEKE: It seems like that's something  
3 that Ameren would have to show to the Commission.

4 COMMISSIONER MURRAY: But let's take this a  
5 step further, because couldn't we just go on forever and ever  
6 and ever looking at every potential possible detriment that  
7 could come from this transfer and never get to a point where  
8 we could say positively, absolutely there is no risk to a  
9 Missouri ratepayer ever from any detriment from this  
10 transfer, therefore it is in the public interest. I mean, is  
11 that what we're asking here?

12 MS. VUYLSTEKE: I don't think we're trying to  
13 -- I'm sorry, I'll let my witness respond.

14 MR. GORMAN: I don't think that's the position  
15 we're taking because we're willing to assume a hundred  
16 percent of the liabilities after the assets have been  
17 transferred --

18 COMMISSIONER MURRAY: The Missouri assets, of  
19 course?

20 MR. GORMAN: Then Missouri customers assume  
21 all the responsibility.

22 COMMISSIONER MURRAY: Sure.

23 MR. GORMAN: But it's the liabilities incurred  
24 while they were serving Illinois customers is what is at  
25 issue, and there's been no justification for covering those

1 costs of providing service to Illinois customers and  
2 recovering them from Missouri customers.

3 COMMISSIONER MURRAY: And we don't know that  
4 there are any, or if there are what they will be. We don't  
5 know if all the benefits will be in excess of those costs.

6 MR. GORMAN: Well, we didn't know if there's  
7 more better information to help better understand what those  
8 liabilities might be and how similar costs have been treated  
9 with Ameren in other cases.

10 COMMISSIONER MURRAY: And how far do we go in  
11 requiring certainty into the future that there will never be  
12 a detriment?

13 MR. GORMAN: I think to the point where  
14 Missouri customers assume responsibility for the cost this  
15 company incurs in providing them service. That, I think, is  
16 a pretty clear line, and that's what we're asking the  
17 Commission to protect.

18 COMMISSIONER MURRAY: And you don't believe  
19 that Ameren's condition that they would have the burden of  
20 proof to show that the benefits outweighed any costs,  
21 otherwise the ratepayers would be relieved, indemnified  
22 against those costs, you don't think that's sufficient?

23 MR. GORMAN: I don't think that creates a  
24 level playing field for the reason is because the generating  
25 units may produce benefits early after the transfer, but many

1 years down the road, the units may actually be above market,  
2 above an alternative supply source. At which point, we will  
3 not be indemnified from playing book value costs on their  
4 assets when, indeed, we may have -- there may be other  
5 options available in the market that are lower costs.

6                   So if we're going to assume those risks, which  
7 you do under regulation, then we should get all the benefits  
8 that regulation provides and that is during periods where  
9 those assets provide the low market service, we should get  
10 all of those benefits and pay all of the company's legitimate  
11 expenses for providing that service. Some of these  
12 liabilities that were incurred for providing service to  
13 Illinois customers, we don't believe are part of their  
14 legitimate cost of service of providing service to Missouri  
15 customers.

16                   COMMISSIONER MURRAY: So your position is you  
17 should never share in those costs?

18                   MR. GORMAN: Our position is they incur the  
19 cost while they're providing us service, then they're  
20 legitimate costs. If they incur costs serving other groups  
21 of customers, then the other groups of customers should take  
22 responsibilities for those.

23                   COMMISSIONER MURRAY: Even though the assets  
24 would come into Missouri at book value, which I think  
25 nobody's in disagreement is -- should be very much below



1 market value?

2 MR. GORMAN: Well, that has not been  
3 established. That's the point I was trying to make before --

4 COMMISSIONER MURRAY: Perhaps it's not been  
5 agreed to.

6 MR. GORMAN: -- is there is a sense that maybe  
7 the fair market value of those assets might be higher than  
8 book, but that hasn't been established.

9 MS. VUYLSTEKE: I think, Commissioner Murray,  
10 though, your point about the status quo and whether or not  
11 the this should occur, it's our position that the  
12 Commission's prior Order is reasonable, that the transfer  
13 should occur with the conditions that you have.

14 And on Noranda, I know that you've pointed out  
15 that Noranda isn't really an issue properly in this case, but  
16 I do think that Ameren has injected into this case, and I do  
17 think that the Commission -- I think the Commissioners will  
18 probably be asking themselves can we decide this MetroEast  
19 transfer case without consideration of this looming issue of  
20 great and public importance of Noranda.

21 I mean, I don't see at this point how the  
22 Commission might be able to decide this case without  
23 consideration of that issue, and if it is going to become a  
24 consideration for you, it seems that it would be the most  
25 just and reasonable thing to protect the public and Noranda

1 and Ameren to -- to take evidence on the assertion that  
2 without these conditions, this transfer -- or that these  
3 conditions will cause this transfer not to occur and Noranda  
4 not be served. I think that you have to really look at that  
5 and ask for some evidence on that question.

6 COMMISSIONER MURRAY: Well, we decided the  
7 case before Noranda was an issue, and I don't, I mean, the  
8 characterization that AmerenUE wrought it in or injected it  
9 into this case, I don't quite understand because it appears  
10 to me it's the other parties that are saying we've got to  
11 look at Noranda. Ameren answered the question here today --  
12 Mr. Lowery answered the question that with or without  
13 consideration of Noranda, they would not make this transfer  
14 with the conditions that we ordered.

15 MR. LOWERY: Your Honor -- Commissioner  
16 Murray, that is absolutely correct, and the only injection of  
17 Noranda into this case that exists, and it's really the other  
18 way around, is in the Noranda case, we have said and we've  
19 been clear, we can't serve Noranda if we don't get MetroEast.  
20 It's a capacity issue.

21 It has nothing to do with analyses, comparing  
22 revenues and costs of the two scenarios. It is a result of  
23 data requests that the Staff has -- has sought in the Noranda  
24 case, the Commission's Order ultimately that requires us to  
25 provide the same analysis that we were asked for in those

1 data requests. That's the reason that Noranda costs and  
2 benefits are being compared to MetroEast.

3 We said from the beginning that's not relevant  
4 in the Noranda case, it's not relevant in the MetroEast case,  
5 so yes, we injected it to extent that we've been clear as a  
6 factual matter we don't have the capacity to serve both. We  
7 never injected, we never said, we didn't file a pleading in  
8 both cases last week, for example, that injects that issue in  
9 this case. That has been done by others.

10 COMMISSIONER MURRAY: And maybe that raises a  
11 political hut button. I would think it would have been to  
12 your advantage to have injected it.

13 MR. LOWERY: As I said this morning, had we  
14 wanted to improperly leverage Noranda, which is I think what  
15 we have been accused of, we would have done it last March  
16 when we were in this hearing room in the MetroEast case and  
17 all these issues about capital expenditures and SO2 and  
18 everything was being brought up. That's when we would have  
19 done it. We didn't do it because it's not a relevant  
20 consideration.

21 We didn't have a deal with Noranda. We told  
22 Noranda from the beginning, unless we get MetroEast done,  
23 there's no sense in us talking to you with any seriousness  
24 because we can't do both and we didn't inject it then.

25 MS. VUYLSTEKE: The impropriety, Commissioner,

1 Murray, is if we don't see impropriety with the Commission  
2 considering new evidence regarding Ameren, if Ameren wants to  
3 say in the Noranda case that the MetroEast transfer has to  
4 happen with no conditions, that's proper. But then in this  
5 case, I think they need to show that. I think they need to  
6 produce some evidence regarding that, and I think that the  
7 cases became tied together when they said in the Noranda case  
8 that unless the MetroEast transfer happens without the  
9 conditions, it's just -- then Noranda is not going to happen.

10 COMMISSIONER MURRAY: I don't agree with that  
11 legal analysis. The Noranda case is a separate case, and  
12 there -- in my opinion, there's no reason to consider Noranda  
13 in this case other than someone wants to throw it in as a  
14 political issue.

15 I think that -- I'd like to know from Staff  
16 exactly how those two scenarios, and it's my understanding  
17 that those two scenarios that have not yet been produced,  
18 that the company is asking us to not require that Staff and  
19 the other parties are still taking the position that they  
20 should be required, how are those scenarios going to be used  
21 in this particular case in determining whether we should  
22 approve this MetroEast transfer as not detrimental to the  
23 public interest?

24 MR. DOTTHEIM: Commissioner, we think that it  
25 should be considered that Noranda is a factor that should

1 have been in the case and should have not been withheld.

2 COMMISSIONER MURRAY: Why should it -- why  
3 must it be in this case if there is evidence to show that the  
4 transfer, which would occur first, is not detrimental to the  
5 public, and then Noranda comes along later, why should we  
6 consider it in this case?

7 MR. DOTTHEIM: A proper analysis of the  
8 capacity position of a company in the transactions that the  
9 company is proposing require from the Staff's perspective  
10 that Noranda be considered along with the MetroEast transfer.

11 COMMISSIONER MURRAY: If -- the capacity  
12 issues were addressed without; is that correct?

13 MR. DOTTHEIM: I'm sorry?

14 COMMISSIONER MURRAY: For purposes of this  
15 transfer?

16 MR. DOTTHEIM: Originally when they were  
17 addressed, the Staff was unaware of the pendency or the  
18 likelihood of the Noranda transaction. If the Staff had been  
19 aware, the Staff wasn't even made aware of the impending  
20 Noranda transaction through the integrated resource planning  
21 process.

22 COMMISSIONER MURRAY: And if Staff had been  
23 aware that it was a proposed -- or even that there was a  
24 contract being considered, wouldn't Staff have thought that  
25 Ameren was using that as an attempt to get this Commission to

1    approve this transfer, as further leverage to approve the  
2    transfer?

3                   MR. DOTTHEIM:   The Staff would have looked at  
4    it as an impending possibility that should be considered as  
5    part of the resource planning position of the -- of the  
6    company.  It was a real possibility -- a real possibility,  
7    although there wasn't a signed agreement until December 14th  
8    -- or December of -- of last year.  There were -- there were  
9    serious negotiations, which the Staff thinks that under --  
10   well, for whatever circumstances, the Staff was unaware of  
11   and we would have thought that we -- if nothing else, through  
12   the integrated resource planning process, we'd be aware of  
13   the situation.

14                  COMMISSIONER MURRAY:  And actually, it's still  
15    only a possibility, there's been no approval of it and  
16    there's been no contract signed; is that right?  There's a  
17    contract signed, but it hasn't been approved.

18                  MR. DOTTHEIM:  There was a letter of intent  
19    that was executed by Noranda in addition to AmerenUE and  
20    there is an agreement.  The agreement is also embodied in  
21    tariffs that have been filed.

22                  COMMISSIONER MURRAY:  And if we approve this  
23    MetroEast transfer, which came first, and we had even decided  
24    it prior to the Noranda issue arising, and if we find that it  
25    is based upon the evidentiary record at the time and not

1 considering the Noranda transfer, potential Noranda service,  
2 that it is not detrimental to the public interest, then if in  
3 consider -- in later consideration of Noranda, if we found  
4 that them serving Noranda plus the MetroEast transfer was  
5 detrimental to the public interest, I assume we wouldn't  
6 approve the Noranda service. Staff, would you agree with  
7 that?

8 MR. DOTTHEIM: Well, I would think that the  
9 Commission would want -- given the pendency of the two cases,  
10 how they're tied together, I would think that the Commission  
11 would want to make that -- the decision even in the MetroEast  
12 transfer case cognizant of the reality of -- of the Noranda  
13 case and the concerns that the company has -- has raised  
14 about its capacity position.

15 COMMISSIONER MURRAY: Okay. Does anybody else  
16 have anything on that? Just give me another minute.

17 MR. COFFMAN: Just briefly, Commissioner.  
18 Again, I'm not wanting to cast dispurgen or claim that there  
19 was anything improperly done, although this case -- this  
20 MetroEast transfer case is a resource planning case, and we  
21 believed it was prudent and appropriate for us to look at all  
22 resource planning decisions, supply and demand, and the  
23 potential for a Noranda contract is a very significant  
24 demand-side issue, and we now know that negotiations on the  
25 now signed contract had been going on for approximately a

1 year while this case was going on, and perhaps we didn't ask  
2 exactly the right question to find that information, but  
3 again, we would have -- we would have expected to hear about  
4 it in integrated planning resource meetings. We held a  
5 meeting in July, we did not hear about it at that time, and  
6 --

7 COMMISSIONER MURRAY: Mr. Coffman, did I hear  
8 you earlier -- I wrote down that you said that Noranda wasn't  
9 relevant to this case unless someone wanted to use it. Was  
10 that you that said that here a few minutes ago?

11 MR. COFFMAN: Yes, and I'm responding to the  
12 question about whether that is appropriate to be brought up  
13 here, and I heard -- most of the Commissioners have asked  
14 questions about Noranda, and I've heard discussions in agenda  
15 about Noranda.

16 COMMISSIONER MURRAY: But are you arguing that  
17 it is appropriate? Because you said earlier it wasn't  
18 relevant.

19 MR. COFFMAN: It doesn't have to be relevant,  
20 but if the Commission is going to consider Noranda in its  
21 decision, certainly there would need to be evidence take on  
22 it.

23 MR. LOWERY: Commissioner Murray, the record  
24 in this case was closed on around June the 6th. Yes,  
25 resource planning briefings took place in July, that's true.



1 But when the record closes, the record closes. At what point  
2 are we supposed to bring every potential deal that we might  
3 have to the Staff? At what point are we supposed to inject  
4 it into every case? That's what's being suggested that we  
5 have to, you know, something happened subsequent, reopen the  
6 record, let's continue to move on.

7 We had initial discussions with Noranda about  
8 UE serving them in the fourth quarter of 2003, but we told  
9 them we can't really negotiate on a serious basis and come to  
10 a deal. We didn't know 10 years, 15 years, we didn't know  
11 the price, we didn't know those things. And we didn't bring  
12 it up in the MetroEast case because we would have been  
13 accused of impropriety at that time.

14 At what point do we do it? So the record in  
15 this case was closed. We ultimately reached a deal with  
16 Noranda. You have an evidentiary record that allows you to  
17 approve -- already allowed you to approve the transfer once.  
18 We propose conditions that give you the same protections.  
19 You're still in the same position to do that.

20 COMMISSIONER MURRAY: That's all I have.

21 Thank you.

22 JUDGE MILLS: Any further questions from the  
23 bench?

24 COMMISSIONER GAW: Yeah. Just for purposes of  
25 clarification in regard to the JDA Amendment No. 2, I would

1 appreciate an understanding as to how Noranda impacts that  
2 Amendment, if at all, in the numbers that you-all are coming  
3 up with. And -- and in particular, in the matrix that Mr. --  
4 I think Mr. Dottheim had excerpts from the Order and from the  
5 company's position at some point.

6 I also would -- would request a -- as in the  
7 assuming we have a hearing, which I thought we were going to  
8 have, and that's -- my questions today were based upon that  
9 concept that we were going to have a -- an evidentiary  
10 hearing in the future. I want to say that if that's not the  
11 case, then I would not be done with my questions.

12 But I would be interested in knowing that in  
13 regard to the transmission issue, Dr. Proctor, in particular,  
14 and how important the -- that's broken down into two -- two  
15 issues that are sort of under transmission, as I recall, and  
16 it has never been completely clear, I don't believe, how  
17 those two issues interrelate with one another. And I don't  
18 know if -- if it's worthwhile at this late hour to try  
19 explore that, but assuming we come back for a full hearing on  
20 this, I want to have a better sense of that to see how -- how  
21 important that is in regard to any conditions that might be  
22 set, and I'll let -- I don't know how long that would take  
23 you to respond to that, but --

24 DR. PROCTOR: Probably just a -- at this  
25 point, not in detail, but just very briefly, that -- the two

1 things that are in the matrix. One is the benefit and one is  
2 a detriment.

3 COMMISSIONER GAW: Right?

4 DR. PROCTOR: And the benefit occurs because  
5 you transfer plant and that reduces the cost of service to  
6 serve AmerenUE's customers.

7 COMMISSIONER GAW: You remove it out of rate  
8 base actually.

9 DR. PROCTOR: You remove it out of rate base.  
10 Before you were allocating it, now you're assigning it, and  
11 there's a -- there's a benefit from that.

12 COMMISSIONER GAW: Yes.

13 DR. PROCTOR: So the second issue had to do  
14 with a possible detriment for getting additional transmission  
15 charges for the plants that are located in Illinois and  
16 definitely would be needing to use the CIPS system to deliver  
17 power to AmerenUE's customers. And we were concerned about  
18 that.

19 The company's position is there is no  
20 detriment, single control area. I didn't disagree with that.  
21 I said our concern, I mean, that's the way it is now. Our  
22 concern is down the line, we're renegotiating the JDA.  
23 Currently, the JDA doesn't have any transmission charges in  
24 it. There's a potential to put those kinds of things in  
25 there, and -- and we were concerned about that. We just

1 raised that as a general concern, a possible detriment, and I  
2 was asked to quantify that detriment on the stand, and that's  
3 what I did.

4 COMMISSIONER GAW: If -- if the transmission  
5 from the plants in Illinois that you were concerned about, if  
6 the transmission remained in the ownership of AmerenUE, but  
7 the rest of the transfer took place, have you assessed  
8 whether that would be preferable or not?

9 DR. PROCTOR: It would make it much more  
10 difficult to -- to put transmission charges in if -- if  
11 AmerenUE's own transmission system is physically connected to  
12 those -- to those plants.

13 COMMISSIONER GAW: It would, and but what I'm  
14 trying to understand is in assessing this transfer, if I --  
15 if I looked at that -- that hypothetical, is that -- is that  
16 better or worse, and I don't know that you -- then  
17 transferring all of that transferring over to the Illinois  
18 side and letting CIPS have it or whoever gets it, I'm not  
19 sure. I think it's CIPS. And I don't expect you necessarily  
20 to have an answer right now.

21 DR. PROCTOR: Okay.

22 COMMISSIONER GAW: I'm trying to assess that  
23 part of the equation here because it's -- it's one that, to  
24 me, is -- needs -- needs some additional development and  
25 understanding. And if anyone else wants to -- to hit that

1 right now or not.

2 MR. LOWERY: Maybe in just a sentence or two.  
3 We would probably love for there to be less conditions in any  
4 reissue order, but we've agreed that we'll accept the  
5 condition related to the transmission detriment, so it really  
6 shouldn't matter. We're going to give the hold harmless.

7 COMMISSIONER GAW: The reason I'm asking is  
8 because in assessing all of these conditions that you don't  
9 appear to be willing to assess, I'm trying to understand the  
10 level of importance if there was some -- if this is a bottom  
11 line, this is a dollar impact to the company assessment from  
12 the company, how important that condition that you have  
13 agreed to accept is if the -- if the others were to remain in  
14 effect or be slightly altered, so -- and I realize that's  
15 difficult to respond to right now.

16 Is it -- how important to Ameren is it that --  
17 to you in regard to the JDA No. 2 -- No. 2 that the  
18 Commission confine its Order just to the -- to those  
19 transactions involving CIPS or the old MetroEast, what would  
20 be MetroEast?

21 MR. LOWERY: When you say that, you mean to  
22 transact to additional transfers caused by -- I think we're  
23 saying the same thing.

24 COMMISSIONER GAW: Probably.

25 MR. LOWERY: It's a transfer caused by the

1 MetroEast transfer.

2 COMMISSIONER GAW: Yeah.

3 MR. LOWERY: Well, certainly that's a  
4 significant difference from what we understood the condition  
5 to be. It's my -- it's my belief that it doesn't change our  
6 position with regard to the need to modify the condition.  
7 The magnitude of risk to both sides is smaller, so to speak,  
8 but it's still important.

9 COMMISSIONER GAW: All right. All right. So,  
10 and then the liability side, of course, I think that's  
11 already been explored, and I don't -- I don't need to discuss  
12 that here.

13 That's all I have, Judge. Thanks.

14 JUDGE MILLS: Thank you. Anything further?

15 MR. DOTTHEIM: Yes. One last thing, the  
16 Chairman had earlier this afternoon asked for copies of the  
17 Staff's data requests, and I have copies. I have the data  
18 request as I received an e-mail from Mr. Lowery on December  
19 31, with the company's responses.

20 I also will print them out and provide them as  
21 they appear in EFIS. I couldn't do both, so I've printed  
22 them. I've printed them out from the e-mail that I had from  
23 -- from Mr. Lowery, and I'll provide those now and submit the  
24 others -- the other copy -- the other set in a different  
25 format to --

1                   CHAIRMAN DAVIS: One copy is sufficient,  
2 Mr. Dottheim.

3                   MR. LOWERY: You were -- I apologize, but  
4 there's one other thing that I forgot. I'm not sure whether  
5 the Court Reporter can -- I assume that she can do this. We  
6 can't stop what went over the waves, but when we were talking  
7 about those capacity numbers, we really should have been in  
8 camera, and that was an oversight on my part, but I ask that  
9 the transcript at least be changed so that those megawatt,  
10 those capacity numbers -- there was just one portion of the  
11 hearing this afternoon we were talking about particular  
12 numbers of AmerenUE's, and that should have been highly  
13 confidential.

14                   Can I ask that the transcript be ordered to be  
15 -- those to be excised from the transcript.

16                   JUDGE MILLS: Yeah, there shouldn't be any  
17 problem with marking those, I think the problem may be for  
18 the Court Reporter to identify exactly what they are. If you  
19 can provide something to the Court Reporter, a more  
20 definitive description so that when she is preparing the  
21 transcript she will be able to pick out what you're talking  
22 about.

23                   MR. LOWERY: I'll talk with her after the  
24 hearing and figure out how to get that done. Thank you.

25                   UDGE MILLS: Okay. Is there anything further?

1     Okay.   Hearing nothing, we're off the record.

2                     WHEREUPON, the recorded portion of the on the  
3     record presentation was concluded.

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