

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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5 TRANSCRIPT OF PROCEEDINGS
6 On-The-Record Presentation
7 October 7, 2008
8 Jefferson City, Missouri
9 Volume 2
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12 In Re: Union Electric Company's)
2008 Utility Resource Filing)Case No.
13 Pursuant To 4 CSR 240-)EO-2007-0409
Chapter 22)
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17 MORRIS L. WOODRUFF, Presiding,
DEPUTY REGULATORY LAW JUDGE
18 JEFF DAVIS, Chairman
CONNIE MURRAY,
19 ROBERT M. CLAYTON III,
TERRY JARRETT,
20 KEVIN GUNN,
COMMISSIONERS
21
22
23
24 REPORTED BY:
25 MINDY VISLAY, CCR 1224 (T)

1 A P P E A R A N C E S

2

3 WENDY TATRO, Attorney at Law
4 AmerenUE
5 1901 Chouteau Avenue
6 St. Louis, MO 63101
7 (314)621-3222

8 FOR: AmerenUE

9

10 LISA LANGENECKERT, Attorney at Law
11 Sandberg, Phoenix & von Gontard, P.C.
12 515 North 6th Street
13 St. Louis, MO 63101
14 (314)231-3332

15 FOR: Missouri Energy Group

16

17 STUART W. CONRAD, Attorney at Law
18 Finnegan, Conrad & Peterson, L.C.
19 1209 Penntower Office Center
20 3100 Broadway
21 Kansas City, MO 64111
22 (816)753-1122

23 FOR: Noranda Aluminum, Inc.

24

25 SHELLEY A. WOODS, Attorney at Law
26 Missouri Attorney General
27 P.O. Box 899
28 Jefferson City, MO 65102
29 (573)751-8795

30 FOR: Missouri Department of Natural
31 Resources

32

33

1 HENRY B. ROBERTSON
Great Rivers Environmental Law Center
2 705 Olive Street, Suite 614
St. Louis, MO 63101
3 (314)231-4181

4 FOR: Sierra Club, Missouri Coalition
for the Environment, Mid-Mo
5 Peaceworks and Acorn
6

7 LEWIS R. MILLS, Public Counsel
200 Madison Street
8 P.O. Box 2230
Jefferson City, MO 65102
9 (573)751-5565

10 FOR: Office of the Public Counsel and
the rate payers
11

12 STEVEN DOTTHEIM, Chief Deputy General Counsel
13 200 Madison Street
P.O. Box 360
14 Jefferson City, MO 65102
(573)751-3234
15

16 FOR: Staff of the Missouri Public
Service Commission
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18
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20
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1 P R O C E E D I N G S

2 JUDGE WOODRUFF: This is Case No.
3 EO-2007-0409, and we are here today for an
4 on-the-record presentation regarding AmerenUE's IRP
5 for 2008.

6 And we're going to start out today by taking
7 entries of appearance beginning with AmerenUE.

8 MS. TATRO: Good afternoon, my name is
9 Wendy Tatro, 1901 Chouteau Avenue, St. Louis,
10 Missouri, appearing on behalf of AmerenUE.

11 I have also brought with me today several
12 individuals for when we're on the record later. I
13 have with me Mr. Steven Kidwell who is the Vice
14 President of Regulatory Affairs, Ajay Arora who is the
15 Director of Corporate Planning, Rick Voytas who is
16 Manager of Energy Efficiency and Demand Response, Bill
17 Davis who is Senior Load Research Specialist and Mike
18 Whitmore who is formerly of Corporate Planning and has
19 since fled us to go to Operations.

20 JUDGE WOODRUFF: For Staff?

21 MR. DOTTHEIM: Steven Dottheim, Post Office
22 Box 360, Jefferson City, Missouri 65102, appearing on
23 behalf of the staff of the Missouri Public Service
24 Commission.

25 The staff also has technical staff here today, in

1 particular Lena Mantle, but other staff are available,
2 too, if need be.

3 JUDGE WOODRUFF: Thank you. Let me check
4 on the phone.

5 We heard some noises on the phone.

6 MS. LANGENECKERT: Lisa Langeneckert just
7 joined. I might be the noises you heard.

8 JUDGE WOODRUFF: Thank you for telling us
9 you're here. We just started doing entries of
10 appearance. We'll get to you in a moment.

11 Public Counsel?

12 MR. MILLS: On behalf of the Public Counsel
13 and the public, my name is Lewis Mills. My address is
14 Post Office 2230, Jefferson City, Missouri 65102.

15 And I have brought my entire integrated resource
16 planning staff with me, and he sits to my left; Ryan
17 Kind.

18 JUDGE WOODRUFF: Thank you, Mr. Mills.

19 Missouri Joint Municipal Electrical Utility
20 Commission? I don't see anyone.

21 MIEC? No.

22 MEG?

23 MS. LANGENECKERT: Lisa Langeneckert
24 appearing on behalf of the Missouri Energy Group, law
25 firm of Sandberg, Phoenix and von Gontard, 515 North

1 Sixth Street, St. Louis, Missouri 63101. And I can
2 spell whatever the court reporter needs spelled.

3 JUDGE WOODRUFF: Just the last name.

4 MS. LANGENECKERT: L-A-N-G-E-N-E-C-K-E-R-T.

5 JUDGE WOODRUFF: For Noranda?

6 MR. CONRAD: Your Honor, on behalf of
7 Noranda, Stuart W. Conrad from the law firm of
8 Finnegan, Conrad and Peterson, 3100 Broadway, Kansas
9 City, Missouri 64111.

10 JUDGE WOODRUFF: Anyone here for Aquila?
11 Sierra Club?

12 MR. ROBERTSON: Your Honor, Henry
13 Robertson, Great Rivers Environmental Law Center, 705
14 Olive Street, Suite 614, St. Louis 63101.

15 JUDGE WOODRUFF: And for the Department of
16 Natural Resources?

17 MS. WOODS: Shelley Ann Woods, Assistant
18 Attorney General, Post Office Box 899, Jefferson City,
19 Missouri 65102, appearing on behalf of the Missouri
20 Department of Natural Resources.

21 JUDGE WOODRUFF: I believe that's all the
22 attorneys for all the parties.

23 To get things started today we're going to start
24 with a presentation from AmerenUE from Mr. Kidwell.
25 If you come up here, I'll swear you in and you can

1 give your presentation. First of all, identify
2 yourself for the court reporter.

3 MR. KIDWELL: Steve Kidwell, Vice President
4 of Regulatory Affairs, AmerenUE.

5 STEVE KIDWELL,
6 Of lawful age, being first duly sworn by the
7 Notary Public, testified as follows:

8 THE WITNESS: Thank you, Judge Woodruff,
9 Mr. Chairman, Members of the Commission, thank you for
10 the opportunity to address you today.

11 I want to take a few minutes to talk about energy
12 efficiency. Later on today we are going to be
13 discussing some things that are still at issue with
14 AmerenUE's integrated resource plan, but here for the
15 next few minutes I think we're going to talk about
16 something that is, at least largely, not at issue, and
17 that is that AmerenUE needs to get serious about
18 energy efficiency.

19 And that's really my simple message, that we're
20 pursuing energy efficiency and demand response on our
21 system. We have an aggressive well-thought-out plan
22 that stakeholders have contributed to, we're making
23 that happen, and we can't do it alone. We need
24 partners, we need stakeholder input as we go forward,
25 and we need your support if we're going to be

1 successful.

2 I'm going to try to keep my prepared remarks
3 brief, and I invite any questions that you might have
4 as we go along so we can make this as much of an
5 educational and informational session as we can.

6 In Missouri demand for electricity has increased
7 by about 50 percent since the late 1980's and will
8 likely increase 25 to 30 percent over the next 20
9 years. At the same time, we have aging power plants
10 and strict environmental mandates. And that means
11 that older power plants will probably need to be
12 retired at some point, and as you know, new power
13 plants and equipment don't come cheap.

14 We are exploring options to improve the production
15 of power in Missouri to continue to provide reliable
16 power and to keep our state as energy independent as
17 possible.

18 And I might mention that the red line there is
19 just demand. If we put 17 percent reserves on that
20 line it would cross in 2014 as opposed to, I think,
21 around 2022, just so you know.

22 I'll talk just briefly about the integrated
23 resource planning process. Missouri, I think, can be
24 proud of its integrated resource planning rule. We
25 are, I think, a best practice in terms of this. I

1 just got back from the American Council for Energy
2 Efficient Economy -- ACEEE -- summer study, and it
3 seems to me that restructured states struggle with
4 fractured and fuzzy accountability for long-term
5 planning, and I would say that is not the case in this
6 state.

7 AmerenUE's mindset regarding integrated resource
8 planning has changed a lot over the last couple of
9 years, and I'll talk a little bit about why that is,
10 but I think, in part, it is largely due to the fact
11 that we are facing a new reality in terms of carbon,
12 in terms of the need for base load generation. And so
13 the rigors that we have to go through in terms of
14 integrated resource planning, and the openness and the
15 transparency, is something that we welcome and that we
16 think is really a leading practice among the states,
17 and we very much support it and look forward to
18 working with the Staff as we even seek to continue to
19 improve those rules going forward.

20 We did have an extensive stakeholder process
21 during this resource plan, a total of 40 workshops
22 over 30 different meetings over 13 months beginning in
23 January of 2007. And we also had three public
24 meetings, in St. Louis, in Jefferson City and in Cape
25 Girardeau. So we had stakeholder input across the

1 spectrum of issues; energy efficiency, renewables,
2 supply-side resources, risk analysis and integration.

3 And I want to actually make sure that I thank the
4 stakeholders for the time commitment. If you can
5 imagine 30 different meetings, I mean, it's a day trip
6 into St. Louis, and a lot of them we had in Jefferson
7 City, but it was a major time commitment by everyone
8 and we think that we learned a lot from the process --
9 I know we learned a lot from the process -- and we
10 hope that the stakeholders understand our business a
11 little bit better. That said, we are open to
12 improvement ideas for our next time going through the
13 process as well.

14 Next slide. So, energy efficiency, why is it that
15 we are -- why the sudden change of heart, okay? If
16 AmerenUE was standing here ten years ago, I think it's
17 fair to say we wouldn't be making the kinds of
18 statements we are making now. So why is that?

19 First and foremost, carbon is an important
20 consideration. This resource plan was the first time
21 that we incorporated carbon as a specific variable
22 with a number on it, and that changed the look of our
23 resource plan. It makes energy efficiency really the
24 most cost-effective thing you can go after.
25 Renewables are an important part of plan as well, and

1 then finally, when and if necessary, base load
2 generation. So that's an important consideration.

3 That base load generation need is also important.
4 We've had, historically, on the margin on our system,
5 combustion turbines, a peaking unit, so the economics
6 is obviously different, you know, when you're looking
7 at something that the base load unit -- and
8 potentially being able to defer or limiting portions
9 of a base load power plant.

10 And finally, and not least important at all,
11 customer satisfaction. We've seen that we have a gap
12 in terms of customers not really seeing us as being a
13 company that has a lot of programs to help them manage
14 their bills and information to manage their bills, and
15 we need to close that gap. So, for all those reasons,
16 we think energy efficiency is key to our strategy
17 going forward.

18 At the risk of generating even more data requests,
19 I will say that our board is engaged on this. I
20 actually briefed them on it yesterday. So I'm getting
21 support from our board, from our senior executives,
22 everybody is on board with the idea that we need to
23 aggressively go after energy efficiency.

24 I'm going to get into just a few details. For a
25 frame of reference, our budget in 2008 is probably

1 less than a million dollars for energy efficiency
2 programs. And so, as you see on this slide, I'm
3 showing you 2009, 2010, and 2011. By the end of 2009
4 that one million will become 24-and-a-half million.
5 In 2010, 31 almost 32 million. And in 2011, almost 40
6 million. So over \$90 million in energy efficiency
7 expenditures. That turns out to be approximately, at
8 the end there, in 2011, 1.7 percent of electric
9 operating revenues, which is getting close to -- 2
10 percent of electric operating revenues is kind of a
11 leading practice, I'd say, across the country at this
12 point, so we're closing in on that. And I've got a
13 slide later on that.

14 More importantly, these are not caps for us. We
15 are committed to finding and acquiring as much
16 cost-effective energy efficiency and demand response
17 as we can over this period. So the integrated
18 resource plan has given us a stake in the ground, it's
19 a place that we are starting from. But as we get more
20 experience in the market, I can't imagine -- the
21 number might go down, but I think it has a lot more
22 chance of potentially going up than going down as we
23 engage with the market.

24 Long-term, as the slide says. By 2025 our
25 integrated resource plan contemplates 540 megawatts of

1 load that is basically replaced by energy efficiency
2 and demand response. That's close to half of the
3 Callaway nuclear plant. Estimated cost at this point,
4 in 2008 dollars, to accomplish that is approximately
5 \$900 million over that time period.

6 So we think that in order to be successful with
7 energy efficiency you need to have a long-term
8 commitment to it, not just the company but
9 stakeholders and the Commission as well.

10 The only other thing I'd note is that in our last
11 rate case the Commission set a target in 2016 of load
12 growth reduction of about 25 percent, if I'm recalling
13 correctly, and this plan has a reduction on the
14 demand-side of 45 percent of load growth and 36
15 percent of energy in 2016.

16 Any questions so far? That's a lot of data so
17 far.

18 I want to talk just a little about how we're going
19 to market with energy efficiency. On this slide
20 you'll see Lockheed Martin identified as a prime
21 contractor for us, and I want to address a little bit
22 of why we are going with a prime contractor model.

23 The first reason is that we want to leverage
24 national experience. AmerenUE has not had a lot of
25 programs. We've had a small scale commitment to

1 energy efficiency over time, mostly pilot programs,
2 our smaller scale programs resulting from rate cases.
3 This, as you can see with the numbers, is a much more
4 robust and aggressive set of programs, and so we felt
5 like we needed to bring someone in who had experience
6 in other leading markets for energy efficiency; New
7 York, Oregon, California, Wisconsin. So Lockheed
8 Martin provides that. That's the first important
9 thing, is leveraging national experience.

10 The second is speed to market. It is important
11 for us, as I said, to get as much as we can out of the
12 next two or three summers. And it's going to be
13 important going forward, but we need to demonstrate
14 what we can get from energy efficiency and demand
15 response as a resource, so we wanted to jump start
16 that process with getting a recognized firm.

17 And finally, incentivized performance. Lockheed
18 Martin -- and I think my next slide -- let's just go
19 to my next slide, Greg -- has some skin in this game
20 in terms of customer satisfaction metrics that we need
21 to meet for residential and small commercial. We have
22 also megawatt hour savings targets, as the slide said,
23 that we've been able to negotiate that are actually
24 20 percent higher than we proposed in our integrated
25 resource plan. So if you look over those cumulative

1 megawatt hours that I just showed you for the next
2 three years, they are actually 20 percent higher than
3 the IRP.

4 And we also have pay for performance built into
5 both the residential and commercial and the industrial
6 contracts. While we are paying for performance we
7 want to make sure that we have programs offered to all
8 customer segments as well, and we're making sure that
9 happens.

10 Next slide. This shows you some information from
11 ACEEE as to where Missouri ranks currently in spending
12 per capita, and as you can see we are way over on the
13 right end of that graph down near probably \$1 or so,
14 you know, per capita in terms of energy efficiency
15 programs.

16 With the expenditures that I've outlined to you --
17 this data is for 2006. With our spending, that would
18 move you way over to the left where Rhode Island,
19 Massachusetts and California are. Not quite to
20 Vermont, but it would get to Rhode Island,
21 Massachusetts and California. And that would happen
22 by 2011.

23 Now, of course, these bars are going to be moving
24 through time as more people invest in energy
25 efficiency. And the bars on the left will move

1 somewhat, but that's getting close to 2 percent of
2 revenues already over on the left side so we don't
3 think the left side is going to move as dramatically
4 as the right side. I hope that makes sense to you.

5 But the key idea here is that, regardless,
6 Missouri is going to be moving up the ranks in terms
7 of both dollars and expected resources coming out of
8 energy efficiency.

9 Next slide. To give you a little bit of an idea
10 on where we are in implementation, the first 60 days
11 here we are working on design details. One of the
12 things we are trying to do, that is a leading practice
13 nationally these days, is to get our monitoring and
14 validation -- our EM and V -- contractors involved at
15 the beginning of these programs so they are not trying
16 to validate results after the fact for a program whose
17 design they did not see. So we're spending time
18 making sure that our EM and V contractors are working
19 with Lockheed and Martin to get the best designs we
20 can into the field.

21 This says October. We're a little behind because
22 of the time we have spent with EM and V contractors
23 and the staffing for Lockheed Martin, but we will
24 expect to have our first tariff filings to you at the
25 end of this month or early November at the latest.

1 And in terms of keeping this on schedule, the key
2 things for me here are also beginning to have
3 quarterly reports to stakeholders beginning at the
4 first quarter of next year as to where we are with
5 implementation and full implementation programs by the
6 summer. And that's my responsibility.

7 There's lots of people working on this. We are
8 not outsourcing that responsibility. That is me
9 keeping the pressure on to make sure we get quality
10 programs into the field as quickly as we can. Getting
11 experience out of the next summer is very important to
12 us.

13 Next slide. Just a little bit more about EMV.
14 It's not an afterthought for us. It's integral. We
15 want to make sure we get cost-effective verifiable
16 kilowatt and kilowatt hours out of these programs and
17 that we are delivering them cost-effectively for the
18 State of Missouri.

19 To that end, we are going to be offering training
20 to stakeholders later this quarter on EM and V. You
21 see there, Cadmus Group is going to be dealing with
22 our -- evaluating our residential programs. ADM will
23 be evaluating our business programs. And we are going
24 to have those people in later on this quarter before
25 we get to our rate case hearings to make sure that

1 stakeholders have the opportunity to get some training
2 on EM and V principles and how we plan to do that. So
3 you will be hearing more about that and we will
4 certainly provide dates to Staff and OPC and the
5 interveners when that's available.

6 If you can take three things away from this slide
7 I'd like you to take the last one, which is
8 transparency, accountability and continuous
9 improvement. That's what we are about here. We want
10 to make sure that our EM and V efforts and what we're
11 doing in the field is transparent to you, the
12 Commission, to the Staff and to the stakeholders, that
13 we have accountability for the results and for
14 incorporating stakeholder feedback into the process,
15 and that we are after continuous improvement so we can
16 make these programs better as we learn from the
17 market.

18 COMMISSIONER JARRETT: Can I jump in and
19 ask you a quick question?

20 THE WITNESS: You bet. Sure.

21 COMMISSIONER GUNN: You have up there
22 independent third party evaluations, and I think
23 that's an important component to a lot of this stuff.

24 How is that going to work? Are those auditing
25 firms, or is it somebody that you will pay? Are they

1 academic groups, are they truly independent, or are
2 you guys hiring them?

3 THE WITNESS: We are hiring them, but we
4 want to make them accountable, not just to us but to
5 the stakeholder process in the state. So, yes, they
6 will be hired by us, but they will be separate from
7 the implementers. And they actually report -- they
8 both report to me, but they report through different
9 reporting chains to me. So I've tried to create some
10 separation between who is actually managing and
11 running the evaluation process for us and who is
12 managing implementation. And I've tried to set things
13 up and will continue to encourage the evaluators to
14 think independently.

15 Good example: We're working through what's called
16 a technical reference manual right now. And that's
17 really the bible by which the evaluator looks at what
18 the implementer is going to do and understand what the
19 implementer is going to do in the field and therefore
20 can develop a sampling plan around that.

21 We are encouraging the evaluators to give
22 independent assessment of that, give critique, and at
23 the end of the day we will need to provide that,
24 obviously, to stakeholders, provide the results of
25 that to stakeholders so that they get some

1 transparency into what's happening as well.

2 COMMISSIONER GUNN: Do you see a role of
3 the Commission in any part of this?

4 THE WITNESS: If the Commission would like
5 to have a role -- an independent role -- in the
6 process, that would be fine with us. We still feel
7 like we need to do this because at the end of the day
8 we are accountable for the kilowatts, the kilowatt
9 hours, and the cost coming out of it.

10 But should the Commission decide that it needed
11 another verification mechanism, we would be happy to
12 work with that.

13 Any other questions?

14 I just have one more slide, I think, and that's
15 really to talk about where we are and just summarize
16 that we are serious about energy efficiency. I've
17 tried to go through this pretty quickly. I hope you
18 see that we've given this a lot of thought, the
19 stakeholders have given it a lot of thought, and that
20 we can't do it alone. We will be going out to the
21 business community.

22 We see ourselves as -- the analogy I like to use
23 is the oil in the machine. There are lots of people
24 that are involved with delivering energy efficiency
25 products and services to market already. What we need

1 to do is provide good, high quality technical
2 information, financial support, education, billing
3 information. We need to support those markets and
4 allow them to function better so that customers choose
5 energy efficiency more often. That is really what we
6 want to do.

7 I had mentioned tariffs there that provide
8 required market flexibility. We will be filing, as I
9 said, our first tariffs here shortly. We won't ask
10 for expedited treatment for those first ones. We know
11 that it's important to begin thinking about how we
12 deal with these programs in a way that allows market
13 flexibility but also has appropriate oversight from
14 the Commission and from the Staff.

15 That said, once we get through this first round of
16 tariffs, we would really like to talk about how we can
17 streamline that process so that we have the proper
18 amount of oversight and review but that they're also
19 responsive to changes in the market, because we think
20 that's going to be important to being successful in
21 the marketplace, having some flexibility in that area.

22 And with that, I am finished and will entertain
23 any questions or comments.

24 JUDGE WOODRUFF: Any questions from
25 Commissioners for Mr. Kidwell?

1 COMMISSIONER GUNN: The budgets that you
2 sent out -- and you may have said this -- are those
3 all going to be internal expenditures, or do you
4 envision any of those to be grants to programs that
5 currently exist, like winterization programs or --

6 THE WITNESS: Good question. The low
7 income program that we have, in that number is
8 \$9 million of new money going into low income programs
9 over the next three years. The way we envision doing
10 that at this point is to add resources to existing
11 weatherization and community action agencies as much
12 as possible. So, in some places like that, we will be
13 adding resources to existing programs.

14 COMMISSIONER GUNN: Existing programs that
15 you administer, or existing programs that some third
16 party --

17 THE WITNESS: Yes. There could be both.
18 There may be some things from the last -- and Greg
19 Lovett of my staff is not here today but is working
20 through the collaborative from the last rate case. So
21 if there are things that we can build on from that
22 collaborative, absolutely we will.

23 Another example might be critical peak pricing.
24 We did a pilot on that three years ago, and so now we
25 will begin scaling up the results of that pilot. So

1 we build off of --

2 You know, the things we're planning to do in the
3 market, Commissioner, are not rocket science.
4 Lighting is a big resource, and we are going to go
5 after lighting, both residential and commercial.
6 Loaders are a big resource. So we've been working on
7 a lot of these end-uses in the past, it's just not
8 with this intensity.

9 So to that extent, yes, we're going to build on
10 the experiences we've had in the past and programs
11 that we have had and expand them.

12 JUDGE WOODRUFF: Anything else from any
13 other Commissioners?

14 COMMISSIONER DAVIS: Is rate design a part
15 of this? Should we be looking at rates?

16 THE WITNESS: I think rate design could
17 very well be part of this. We need to look at how we
18 might encourage customers. Think of a variety of ways
19 to do that. Critical peak pricing is just one example
20 of what you might do there. So, in the residential
21 class and the commercial class, a lot of the load
22 growth is coming from those classes so we need to
23 think about ways we might encourage those classes to
24 save energy.

25 And if that is something the Commission would like

1 to go forward with, we would very much like to be part
2 of workshops or discussions of that over the next
3 several months because we do think rate design could
4 be an important component of energy efficiency.

5 COMMISSIONER DAVIS: I guess we hear a lot
6 of talk about critical peak pricing, and obviously I
7 understand that demand is not constant and the fact
8 that when everybody wants the electricity at the same
9 time it does create sort of a premium in the market,
10 but obviously I have concerns that your rank and file
11 customer who needs the electricity, just average
12 residential customers, is at somewhat of a
13 disadvantage there. Is there anything else out there?

14 THE WITNESS: Sure. Let me describe a
15 couple things that we're doing in addition to the
16 actual energy efficiency programs, and it has to do
17 with information.

18 We have an energy savings tool kit that's out on
19 our website that really we haven't utilized as well as
20 we should over the last several years. We have just
21 put some new features into that. It brings customers'
22 bill histories, in both electric and gas. So if you
23 are an electric customer or a gas customer of ours, I
24 encourage you to go out and go to Ameren.com. You can
25 go to the Missouri Energy Efficiency Program website,

1 click on that, and you'll get right to something for
2 the tool kit.

3 The idea there is to give customers a specific --
4 a more customized set of recommendations as to what
5 they can do with energy efficiency just based on their
6 usage. That's the first thing we're doing.

7 The second thing we're doing is upgrading that,
8 first quarter of next year, to give customers
9 yesterday's usage today so they can actually see the
10 readings from their meter from yesterday on the
11 website today, and, again, customize information for
12 them.

13 We'll also be later on next year sending out -- we
14 are designing now -- a customized customer energy
15 efficiency statement that we envision right now
16 mailing to customers some time next spring.

17 So those are things we are trying to do within the
18 existing rate design. But there may be things we can
19 do with the rate design itself that incentivize
20 customers to save energy. And, again, that's
21 something that I think if the Commission is interested
22 in looking at, we would be happy to participate in
23 that.

24 Does that answer your question?

25 COMMISSIONER DAVIS: I think so. I don't

1 think I have any more questions at this time.

2 JUDGE WOODRUFF: You can step down Mr.
3 Kidwell.

4 Now we're going to move on to discussions about
5 the current IRP. What I want to do is give the
6 Commissioners a chance to ask questions, any kind of
7 question that may be directed to the attorneys, or
8 there may be questions for the subject matter experts
9 in which case we will swear the subject matter experts
10 in as a witness.

11 Commissioner Murray, do you have any questions
12 about the IRP?

13 COMMISSIONER MURRAY: I guess I will direct
14 my first questions to the Staff regarding the alleged
15 deficiencies.

16 Does Staff have a position as to any of those
17 alleged deficiencies?

18 JUDGE WOODRUFF: We'll need to swear you
19 in.

20 LENA MANTLE,

21 Of lawful age, being first duly sworn by the
22 Notary Public, testified as follows:

23 MS. MANTLE: My name is Lena Mantle.
24 M-A-N-T-L-E is the last name. I'm manager of the
25 energy department of the Commission's utility

1 operations division.

2 Staff has resolved its deficiencies that it
3 found -- it's alleged deficiencies that it found in
4 its review of AmerenUE's resource plan. Some of
5 them -- a lot of the resolutions came through doing
6 things different the next time around. But all the
7 deficiencies that we noted have been resolved.

8 COMMISSIONER MURRAY: And in terms of the
9 deficiencies that are alleged by Office of the Public
10 Counsel, DNR and Sierra Club, any position on those?

11 MS. MANTLE: At this point we haven't taken
12 a position on those.

13 MS. LANGENECKERT: I can't hear any
14 presentation at this time.

15 JUDGE WOODRUFF: Ms. Mantle, make sure you
16 are speaking into the microphone.

17 COMMISSIONER DAVIS: That's because there
18 was a moment of silence. If people were present in
19 this room then they would know that no one was
20 talking.

21 COMMISSIONER MURRAY: This one I will
22 direct to Ameren --

23 MR. DOTTHEIM: Commissioner, I might also
24 address your question. I think Ms. Mantle was
25 directing her response from -- I don't know if a

1 micro-perspective is the way to characterize it --
2 from the very specific concerns in deficiencies. The
3 Staff has a kind of macro concern which I think the
4 other parties are going to get into and the Staff can
5 address from the perspective of.

6 There's been various characterizations as to what
7 the Commission's power and authority is or is not, and
8 there have been various concerns that have been raised
9 respecting Chapter 22. The Staff does not view
10 Chapter 22 as the limit of the Commission's authority
11 regarding a generating facility plant. Chapter 22 is
12 directed to the process itself.

13 So I don't want to leave you with the impression
14 that the Staff has absolutely no concerns whatsoever
15 regarding the matters that have been raised in a more
16 macro level, which even the Office of the Public
17 Counsel has addressed yesterday with the filing of
18 their motion -- or petition -- to open a case, which
19 has been docketed as EO-2009-0126.

20 And actually, even some of the issues that have
21 been raised in the manner in which the Commission may
22 address them in this docket also may have some
23 carryover into the pending AmerenUE rate case where
24 there are some Calloway 2 issues, which I won't go
25 into, but I just wanted to raise that matter also.

1 COMMISSIONER MURRAY: Mr. Dottheim, in
2 relation to the partial stipulation on agreement that
3 is before us and the Commission's charge under the
4 rule to issue an order containing findings of the
5 electric utility's filing pursuant to this rule either
6 does or does not demonstrate compliance with the
7 requirements of the chapter, do you have a position as
8 to whether or not the filing complies?

9 MR. DOTTHEIM: I think Ms. Mantle has
10 addressed that, that the company, from our perspective
11 of Chapter 22, as it is presently drafted -- and the
12 Staff is on record that we believe Chapter 22 needs to
13 be revised. But as Chapter 22 is presently drafted,
14 the company has addressed the Staff's concerns and
15 what the Staff identified as deficiencies in
16 AmerenUE's filing on February 5 of this year.

17 COMMISSIONER MURRAY: So, in other words,
18 do you agree that it is in compliance with the rule as
19 drafted?

20 MR. DOTTHEIM: From our perspective within
21 the straight confines presently of the rule, the Staff
22 would say yes.

23 COMMISSIONER MURRAY: And indeed, we can't
24 hold anyone to compliance with a rule that is not on
25 their books, could we?

1 MR. DOTTHEIM: And we wouldn't suggest that
2 the Commission do so. But the Staff's concern, again,
3 is what, for example, AmerenUE or any other party has
4 characterized as the bounds of Chapter 22. So our
5 concern is what the Commission itself would
6 characterize as the bounds of Chapter 22.

7 But within the Staff's views of what the present
8 bounds of Chapter 22 is or are, AmerenUE has complied
9 with those narrow bounds.

10 COMMISSIONER MURRAY: All right. And
11 Ameren can answer this question, or Staff can.

12 Was there a request for authorization or
13 reauthorization of non-traditional accounting
14 procedures for demand-side resource cause?

15 MS. TATRO: Not beyond that which has
16 already been granted to UE in the last rate case.

17 COMMISSIONER MURRAY: So it probably is a
18 request for reauthorization?

19 MS. TATRO: We didn't request that because
20 we would interpret that as not being necessary. I
21 mean, the order in the last rate case says that we can
22 set up essentially an accounting authority order or a
23 regulatory asset to capture those costs.

24 So we didn't ask for reauthorization of that
25 because I don't think we thought the authorization had

1 any expiration.

2 If you would like to reauthorize it just to be
3 clear, we're fine with that.

4 MS. MANTLE: I would agree. We didn't feel
5 that it was necessary at this time because in the last
6 rate case there was a DSM regulatory asset account
7 created where the DSM expenses can go into this
8 account, they'll accumulate until the next rate case,
9 they actually earn interest at that time, at the time
10 of the rate case they will be amortized over ten years
11 and earning a return.

12 And that's what we continue in this current rate
13 case. That's not really an issue, but that's the way
14 it's been treated.

15 COMMISSIONER MURRAY: Do any parties
16 disagree with that characterization?

17 I'm going to pass right now. Thank you.

18 JUDGE WOODRUFF: Mr. Jarrett, do you have
19 any questions?

20 COMMISSIONER JARRETT: Thank you. I wanted
21 to -- Commissioner Murray went over some of Staff's
22 issues. I wanted to start with OPC's list of
23 deficiencies.

24 Mr. Mills, I think the first one the OPC listed
25 was related to the demand-side. "UE was unable to

1 analyze demand-side and supply-side resources on an
2 equivalent basis due to a lack of experience in
3 implementing large scale DSM programs in the service
4 territory."

5 And I'm looking at your all's report dated
6 June 19, 2008, on Page 3. And then toward the bottom
7 of Page 3, the last couple of paragraphs, you talk
8 about that this deficiency can be remedied by UE
9 performing additional IRP analysis prior to committing
10 to any major supply-side investment, which I take to
11 mean the proposed nuclear plant, and then apparently
12 there was some commitment -- verbal commitment
13 anyway -- by the company to perform another IRP prior
14 to making a decision.

15 Would that remedy the deficiency, if there was
16 some memorialization that they will pledge that they
17 will do another IRP before that decision?

18 JUDGE WOODRUFF: Mr. Kind, let me swear you
19 in.

20 RYAN KIND,

21 Of lawful age, being first duly sworn by the
22 Notary Public, testified as follows:

23 THE WITNESS: That commitment that came
24 rather late in the process from UE was not a
25 sufficient remedy, and the reason for that is because

1 they committed to filing a new IRP and giving,
2 essentially, as I recall, about six months for the
3 process beyond that filing to work. And the process
4 for reviewing IRP filings takes nearly a year to get
5 to the point where the Commission actually makes its
6 findings.

7 So what they committed to do was to file an IRP,
8 give parties the opportunity to file reports in
9 response to that IRP before they made a decision on a
10 new base load unit, but they would not commit to
11 giving the Commission time to make a ruling on those
12 reports and determine whether or not the findings that
13 are required pursuant to .080, Section 13, should be
14 made or not.

15 And we just feel like, you know, if this were
16 really an ordinary IRP case, the kind of cases we've
17 had up to now, where there hadn't been any really
18 major resource decisions that are considered in the
19 near future by the company filing the IRP, that
20 perhaps that type of remedy might be acceptable. But
21 there are just so many implications of this future
22 resource decision that we feel it's essential for the
23 Commission to get engaged, to exercise their authority
24 in probably a number of ways, but one of those ways
25 would be making the filings required by .080, Section

1 13.

2 COMMISSIONER JARRETT: So let me see if
3 I've got this correct. Your position is that for this
4 to be remedied Ameren would have to go through the IRP
5 process again, and complete it, getting our approval
6 of another IRP before they make the decision for
7 building a new base load --

8 MR. KIND: Right. Yes. And the
9 decision -- I think it's important to talk about what
10 are the decisions that are made and what are the
11 implications of those decisions.

12 Ameren has already made a number of decisions with
13 respect to Calloway 2 and has already spent a
14 considerable amount of money, made some very large
15 binding financial commitments, and our main concern is
16 that there be no further substantial binding
17 commitments made by the company prior to going through
18 the entire IRP process.

19 And an example of this type of binding commitment
20 that I talk about there would be their engagement of
21 an EPC contractor for the Calloway 2 plant. In other
22 words, that's a contractor that would take on the task
23 of engineering, procuring and construction for a new
24 Calloway plant.

25 COMMISSIONER JARRETT: Ameren, your

1 response to that? Are you guys willing to go through
2 an IRP process again?

3 MR. KIDWELL: Yes, Commissioner, a couple
4 of responses.

5 Mr. Kind indicates we are only giving six months
6 consideration. Actually, I submit here that we're
7 giving at least 21 months of consideration. If you
8 look at what we did in our last resource plan -- well,
9 at least 19, let's put it that way. In our last
10 resource plan we began engaging stakeholders 13 months
11 ahead of our filing.

12 With what is bound to be a more complex and
13 contentious filing the next time, I submit to you that
14 we would at least start 13 months ahead of time with
15 stakeholders.

16 So there will be a long process. And we welcome
17 stakeholder involvement in that process, especially
18 before we file the next resource plan, but also
19 afterward.

20 In terms of the commitment, yes, Mr. Kind is
21 correct, the commitment that we've stated is that we
22 will not make a binding commitment to construct the
23 Calloway -- any base load plant, nuclear or
24 otherwise -- without giving at least 180 days --
25 filing an integrated resource plan at least 180 days

1 ahead of that. We're very comfortable with that.

2 MS. TATRO: If I can address kind of the
3 legal, perhaps, portion of Mr. Kind's comment.

4 While it says -- while our commitment is to allow
5 the six months to recognize that, first of all, this
6 Commission doesn't bless the IRP plan in terms of
7 saying yes, go forth and build Callaway 2, or another
8 coal plant, or whatever it is.

9 So when the Commission finds deficiencies at the
10 end, it's saying that we've met the requirements of
11 the rule, not necessarily -- if you'd like to
12 bless the money, I guess we could work with that, too,
13 but I don't think that's the purpose of the IRP rules.

14 And the other thing we point out in the pleading
15 is, obviously this would be a major commitment, some
16 type of base load plant. If there are major concerns
17 which are brought forth by the other parties, it would
18 be incumbent and prudent by AmerenUE to make our
19 decision in the best manner possible. And if they
20 find a major deficiency that means our analysis is
21 wrong and it has to be redone and it takes longer than
22 six months, than that's our burden and that's
23 something that's required by prudence. And what time
24 you all would address that is when we seek to put
25 those costs in rates.

1 So I see the six months as a minimum kind of
2 thing. We'll at least wait six months. We could wait
3 longer. It depends on how the process goes. And I
4 think that's perfectly consistent with the way the IRP
5 process works. Because it's not Commission blessing
6 of the plan, it's saying you did or didn't comply with
7 the IRP rules.

8 MR. KIDWELL: If I can add a couple more
9 things from an operational perspective.

10 What we've done so far on the base load side is to
11 try to preserve options, and the Energy Policy Act of
12 2005 is a weighty matter associated with those
13 options. It has in it production tax credits for
14 nuclear power plants that could be anywhere from 50 to
15 100 million dollars a year for eight years.

16 So we feel and we are required to have a docketed
17 COLA in front of the Nuclear Regulatory Commission
18 before the end of 2008 in order to make the first
19 hurdle for that. So that was a really important
20 consideration in our timing in terms of the COLA
21 filing, so we see that as a preservation of options on
22 revenue extremes, production tax credits, that would
23 accrue to Missouri rate payers. That's point number
24 one.

25 And point number two, other things that we've done

1 are along the same lines. For example, major forgings
2 for a nuclear power plant. There's only one place in
3 the world you can get those so preserving a place in
4 line gives us the option to procure those forgings if
5 we decide to do so in the future and it also gives us,
6 really, an asset that's tradeable. Those places in
7 line, just like combustion turbines, are things that,
8 if we decided to do it later, would be tradeable and
9 have economic value. So we think of these as options,
10 as options we need to pursue to keep our options open
11 for base load power.

12 COMMISSIONER JARRETT: OPC, your next
13 deficiency that you discuss is on top of Page 4
14 talking about the transmission upgrades to the Audrain
15 gas-fired generating facility. I think you indicate
16 that -- Mr. Kind, you'd pointed out --

17 MR. KIND: That's been resolved.

18 COMMISSIONER JARRETT: Good. How about
19 number three, the street lighting retrofits?

20 MR. KIND: I think that's the one other OPC
21 deficiency that's been resolved at this point.

22 COMMISSIONER JARRETT: What about number
23 four then, about the methodology to estimate
24 demand-side programming based on best available
25 information?

1 MR. KIND: We had lots of discussions about
2 that, and I think, you know, both sides benefitted
3 from the discussions, but we weren't able to resolve
4 it. And, basically, we just think there should be
5 more granularity to the DSM impacts that are estimated
6 and that are lined up in the integration analysis
7 against supply-side option in order to figure out
8 what's the best combination of resources. And there
9 are some very important studies that need to be done
10 in order to achieve that level of granularity. We
11 feel like UE is making some commitments to move in the
12 direction of performing those types of studies but we
13 weren't able to come to an agreement on exactly what
14 all would be covered by the studies.

15 COMMISSIONER JARRETT: Can you give me a
16 brief explanation of what they are doing and why it's
17 deficient?

18 MR. KIND: Well, basically, what I've said
19 in here is they should have -- the modeling should
20 have been done on a time differentiated basis. So, in
21 other words, when you have a DSM program that's
22 altering the load for a certain type of customer,
23 certain time of day, certain day of the week in a
24 certain manner, you shouldn't just be having an
25 approximate load reduction that's spread out over the

1 entire year when in fact it ought to reflect the
2 specific reductions in the hours where you expect to
3 be receiving the reductions.

4 COMMISSIONER JARRETT: Is that what they
5 are doing now, they're just estimating?

6 MR. KIND: Well, yeah, what they're doing
7 now is more just scaling down the load, you know,
8 based on sort of an estimate of what the megawatt
9 impacts are. You go from there to get megawatt hour
10 impacts.

11 COMMISSIONER JARRETT: Any response from
12 the company?

13 JUDGE WOODRUFF: We'll need to swear you
14 in.

15 RICK VOYTAS,
16 Of lawful age, being first duly sworn by the
17 Notary Public, testified as follows:

18 THE WITNESS: My name is Rick Voytas. My
19 title is Manager of Energy Efficiency and Demand
20 Response for Ameren Services.

21 The issue that we're discussing is a modeling
22 issue, and you can get as complex or as simple as you
23 want to in just about any modeling exercise. And when
24 the DSM portion of the integrated resource planning
25 takes place, we do have hourly load shapes. There are

1 approximately 1,000 end-use measures; windows,
2 appliances, lighting. They all have an hourly load
3 shape associated with those. And we've got the
4 ability, we've got the load shapes, to look at those
5 right now.

6 The trick is when you pass this on to integration
7 to look at supply-side options, what are the things
8 the model needs to operate on? And right now the
9 model is currently set up to use blocks of data. And
10 instead of having 8,760 hours per year, the model
11 requires off peak and on peak type inputs, two inputs,
12 as opposed to hourly inputs. And so that's the way
13 we're currently working on this.

14 So as we develop the model and look in the
15 capability to get this hourly capability to model the
16 DSM efforts, that's something we can look at. The
17 amount of rigor and extra cost and extra time for the
18 gain, that's yet to be determined, and that's one
19 thing we want to look at.

20 That's basically the issue. If the modeling was
21 set up that we could use these inputs, we would. And
22 they're looking into that as we speak.

23 COMMISSIONER JARRETT: What are other
24 companies -- how is AmerenUE's modeling compared to
25 what other companies are doing? Is it better, worse?

1 MR. VOYTAS: I can only address that
2 from -- the contractor that we hired to develop this
3 specific model was ICF out of San Francisco,
4 California, and they are one of the major DSM modelers
5 in the country and this is their standard approach for
6 all their clients that they use.

7 COMMISSIONER JARRETT: OPC, do you have any
8 thoughts on what other companies are doing?

9 MR. KIND: Yes. I don't know that I want
10 to get into the particulars of actually naming names
11 of other Missouri utilities, but there are other
12 Missouri electric utilities that do this more detailed
13 level of modeling, and I think that they have seen the
14 benefits of doing their modeling that way, and it just
15 seems to make sense. I mean, you don't want detail
16 just for the sake of detail, but when you are making
17 really critical decisions about how much, for
18 instance, of a new base load plant you might need, do
19 you need 500 megawatts , 1,000 megawatts, it's
20 important to get things right.

21 MS. MANTLE: Commissioner Jarrett, I would
22 add that there are at least two other utilities that
23 use hourly loads as DSM inputs into their integration
24 model -- Missouri utilities, excuse me.

25 COMMISSIONER JARRETT: Let's move on to the

1 fifth deficiency identified by OPC, which is the
2 estimated design impacts from its industrial demand
3 response. "Programs are flawed and unrealistic."

4 Could you expound on that, Mr. Kind?

5 MR. KIND: I'd be glad to. This is a part
6 of, unfortunately -- you know, there are a lot of
7 parts of the stakeholder process that works well with
8 UE, but this was a part where things just sort of
9 broke down for a variety of reasons.

10 And stakeholders, despite, really, some efforts
11 that I felt I was making, like initiatives to get some
12 discussion going in this area of how this should be
13 done, it really wasn't part of the stakeholder process
14 to try and review how these estimates were made.

15 And I think the actual estimates themselves, they
16 are probably confidential and I shouldn't mention what
17 the numbers are, but you look at the numbers and you
18 just see, okay, they have said they can get this
19 number in year one and it's going to stay constant for
20 the next 20 years. It just doesn't make any sense at
21 all.

22 You would think that you are going to learn more
23 about demand response as the years go on. You are
24 going to be able to outreach to more and more
25 customers as time goes on. And, in fact, we've seen

1 other Missouri utilities that have had tremendous
2 growth in demand response resources that they have
3 been able to acquire over the last few years that put
4 them at a level that was several times the amount that
5 UE thought they could achieve in both the first year
6 and the final year of the 20-year period.

7 So it's just the kind of thing that, as an input
8 then to the integrated process, if you are figuring
9 that's all you are going to get for demand response,
10 well, you are going to have to make it up with some
11 generating capacity or some other resources, and we
12 feel like you are not going to get the right results
13 if you use such flawed assumptions as an input to the
14 integrated modeling process.

15 COMMISSIONER JARRETT: Response from the
16 company?

17 MR. KIDWELL: In terms of whether we see
18 this as a deficiency, I think our pleadings are pretty
19 clear that we see it as not a deficiency. However,
20 Mr. Kind does make some good points about program
21 design.

22 We are certainly trying to get as much demand
23 response as we possibly can, as I think I've already
24 indicated, over the next several years. So to the
25 extent that these estimates can be refined and

1 improved by field experience over the next
2 three years, we will definitely make changes to the
3 way we model demand response based on that experience.

4 COMMISSIONER JARRETT: Thank you. And then
5 the number six on Page 5, just kind of expand on that,
6 Mr. Kind.

7 MR. KIND: Sure. This is one of the more
8 important deficiencies we feel -- at least it was at
9 the time we filed this report. Another deficiency has
10 arisen since that time that we hope to have an
11 opportunity to address.

12 But, you know, the process involves figuring out,
13 you know, coming up with a range of alternative
14 resource plans and then doing an integrated and risk
15 analysis of those plans to figure out, you know,
16 basically how well they fare according to some
17 different measurement performance criteria that you
18 use to sort of evaluate the performance of your plans.

19 And so you have some basic things you want to look
20 at like, well, what's the long run present value of
21 revenue requirements? In other words, what's the cost
22 of the plan? But there's other factors that are
23 important as well. What's the maximum rate increase
24 in any given year? And some of those things are
25 required by the rules, certain performance measures

1 are required by the rule, and the utility is able to
2 choose additional ones that would be important to its
3 planning process.

4 We felt like, in this case, we have a utility
5 that's considering some very large base load
6 investments that it really should be a no-brainer.
7 That one of those performance measures has got to be
8 what's your credit quality going to be for pursuing
9 this plan, financing this plan? What sort of an
10 impact does the implementation of the plan have on
11 your financial metrics, things like debt coverage
12 ratios, the things that determine your credit quality
13 and your cost of debt?

14 And basically what they did was they ignored
15 financial metrics as a performance measure. And then
16 you can look at their financial ratios and you can
17 say, boy, you're going to have a hard time borrowing
18 money with these kind of ratios, and you're not going
19 to be able to borrow at the cost of debt which you've
20 assumed and the way you've modeled your system so
21 you're not really looking at the actual real cost of
22 acquiring this resource and fairly comparing it to the
23 cost of other resources that wouldn't have the same
24 impact on your credit quality.

25 So obviously this is sort of becoming a high

1 profile issue in Missouri where we have UE starting to
2 make suggestions that we need to change some laws in
3 Missouri to allow different financing method CWIP.
4 And in that, certainly a different financing method
5 like that can have other -- it can impact your credit
6 quality as you pursue a major construction program
7 like this, just as having a regulatory plan in place
8 like KCPL does can really strongly impact your ability
9 to maintain your credit quality as you pursue a major
10 construction program like this.

11 So we believe that, basically, some of the most --
12 well, they got to the point of deciding a certain
13 plan. The plan with the 1600 megawatt nuclear unit
14 was the best plan. But we don't feel like it was
15 fairly evaluated in terms of all of the costs that
16 they would need to incur to actually implement that
17 plan.

18 And then, of course, there's the question, I
19 guess, of there's this other deficiency that I think
20 we need to get into talking about later, which is
21 where they have identified that as their best plan and
22 yet they seem to now be saying that they have a
23 preferred plan that is actually not one of the
24 different plans that they have evaluated as part of
25 the integrated and risk analysis. So that's another

1 complication I hope we can get into later.

2 COMMISSIONER JARRETT: Thank you. Company
3 response?

4 MR. KIDWELL: Yes, Commissioner. I'll
5 start and then turn things over to Wendy Tatro and
6 Ajay Arora.

7 In terms of AmerenUE's senior management response,
8 we are comfortable with the analysis that was done for
9 this resource plan in that it allows us to take a look
10 at nuclear and to preserve the option for that
11 decision in the future.

12 As we have said already, we are committed to doing
13 another integrated resource plan before we make a
14 decision on a base load unit. And we think that these
15 issues are much better dealt with at that time when we
16 are closer to the need and closer to the decision.
17 There are many details that need to be looked at, not
18 just financing. Capital costs will be important, the
19 effectiveness of our energy efficiency programs will
20 be important, credit markets will be important, carbon
21 regulation is going to be important. There's lots of
22 factors that need to be looked at, not just one in
23 isolation.

24 So in terms of for this plan, AmerenUE's senior
25 management is pleased with the results and are

1 comfortable with living with them. We do not see a
2 deficiency here and we don't see anything that
3 couldn't be dealt with in the next plan.

4 Now, that said, if we were at the next plan, the
5 types of analysis that Mr. Kind identifies in terms of
6 financial credit metrics would be crucial and so,
7 therefore, we would need to look at them.

8 And with that, I think I'll turn it over to my
9 lawyer for any legal comments.

10 MS. TATRO: I want to only comment on the
11 assertion that OPC may have a new deficiency to add
12 today and to state that UE's position would be they
13 had their opportunity to list their deficiencies, and
14 they did that.

15 Our plan hasn't changed since we filed in April.
16 In fact, our preferred plan is found in the volume
17 that's titled "risk analysis and strategy selection,"
18 it's even got a citation to the Commission regulation,
19 and our preferred plan is set forth starting on Page
20 57 of that document.

21 So if we get into that we'd ask that you give us
22 an opportunity to discuss whether or not we should
23 vary from the Commission's rules to bring up something
24 completely new when we are supposed to be talking
25 about whether or not the settlement agreement should

1 be approved and answering Commissioner questions on
2 things that were raised back in June.

3 MR. KIDWELL: And Commissioner Jarrett, I'm
4 informed by my technical expert that I did a
5 reasonable job on that answer. So unless you need to
6 go any further, I think we're okay.

7 COMMISSIONER JARRETT: That's fine. Thank
8 you.

9 Let's go to number seven talking about failure to
10 construct a wide range of alternative resource plans.

11 MR. KIND: This particular deficiency is
12 really -- is linked to the prior deficiency that we
13 discussed in that we believe that, given the
14 performance on credit metrics that were associated
15 with them seeking to actually acquire and own
16 100 percent of a 1600 megawatt nuclear plant, it would
17 make a whole lot of sense for them to look at some
18 smaller investments that would also make sense in
19 addition to their system.

20 And that would mean, you know, just looking at --
21 and they have, of course, looked at other options as
22 well, like coal plants, but specifically what this is
23 saying is that they looked at the option of investing
24 in either 100 percent of a 1600 megawatt nuclear plant
25 or 75 percent of a plant that size. And they looked

1 pretty bad on the credit metrics, the investments of
2 either one of those size.

3 So we think it would have made a whole lot of
4 sense for them to look at investing in only, you know,
5 50 percent of a nuclear plant. In other words,
6 getting some partners to share the cost of half the
7 plant in a manner similar to what KCPL did with their
8 Iatan 2 plant.

9 And so, to us, if they had used performance
10 measures that we think are crucial to getting a
11 realistic view of your ability to implement a plan and
12 the cost of implementing a plan, then that would have
13 driven them to consider a wider range of alternative
14 resource plans such as just 50 percent ownership.

15 COMMISSIONER JARRETT: Okay. And the
16 company's response?

17 MR. KIDWELL: Ajay Arora of our corporate
18 planning department on behalf of AmerenUE senior
19 management presided over this part of our integrated
20 resource plan, and I'll let him answer your question.

21 AJAY ARORA,

22 Of lawful age, being first duly sworn by the
23 Notary Public, testified as follows:

24 THE WITNESS: My name is Ajay Arora, I'm
25 Director of Corporate Planning at Ameren Services.

1 I'd like to address Mr. Kind's comments by saying,
2 you know, we went through the stakeholder process to
3 identify the weakest numbers of resource plans that we
4 should consider. And as part of that process we
5 evaluated 110 resource plans. And as Mr. Kind
6 correctly points out, you know, we did look at various
7 ownership options for Calloway 2 nuclear plant. We
8 considered 75 percent. We considered 100 percent. As
9 part of the stakeholder process, 50 percent was not
10 necessarily brought up as an option.

11 Now, given the fact that, you know, our resource
12 plan is clearly outlined in our filing, it is focused
13 on energy efficiency, it's focused on getting
14 renewable resources, it's focused on upgrading our
15 existing plants. And there is identified a need for
16 an additional plant, and we are considering options
17 regarding that.

18 So I think it's a good point. It's a good point
19 on, you know, how we would finance that plan, and, I
20 think, as we fully evaluated, potentially proceeding
21 with construction with a base load plant in the future
22 in the next IRP. I think this could be one of the
23 plans we would evaluate.

24 But I'd like to say we did evaluate 110 resource
25 plans with numerous uncertainties around them, so we

1 do not believe that this is a deficiency and doesn't
2 comply with the rule.

3 MR. KIDWELL: If I might just add briefly,
4 it's my job to deliver energy deficiency and demand
5 response. So I'd love to see a credible scenario next
6 time where we only need 50 percent of the new base
7 load plant regardless of technology.

8 If the concern is that we should look at a wider
9 array of base load options next time, that's certainly
10 something that we would entertain with stakeholders as
11 we design the resource plan.

12 MR. KIND: I think I understand the point
13 Mr. Kidwell is making here, and it's a good one.
14 There really are -- there's sort of an elephant in the
15 room behind the need for Calloway 2 that a lot of
16 people aren't aware of and it's not discussed very
17 much. And the idea is, well, we've got load growth,
18 we need 1600 megawatts of new capacity. Well, that's
19 all based on the assumption that you're going to
20 retire an 800 megawatt Meramec coal plant.

21 So really you're talking about a need for not 1600
22 megawatts but just 800 megawatts at that retirement.
23 And so far, the retirement analysis has not been done.
24 It's yet to be done. That's one of the crucial
25 things, that it will be a very important part of their

1 next IRP filing, and that we hope will be a filing
2 that continues through all the way through to the
3 point where the Commission makes its findings about
4 compliance with the IRP rule.

5 MR. KIDWELL: On this point we are in total
6 agreement. This is a commitment we've made that we
7 need a retirement study on Meramec as part of the next
8 resource plan. We totally agree with Mr. Kind on
9 that.

10 COMMISSIONER JARRETT: And OPC, you had one
11 more. Number eight?

12 MR. KIND: That's correct. Number eight is
13 we said that they failed to identify all of the
14 uncertain factors that were critical to performance of
15 the resource plan which is a requirement of .070(2).

16 And, you know, after the filing of their resource
17 plan, we hear UE's president and CEO saying, "We can't
18 actually go forward with our preferred plan without
19 getting change in the law to permit CWIP."

20 Well, it seems to me that CWIP, by definition, was
21 a critical uncertain factor. Their plan would not
22 work without it. Now, they'll argue that our
23 preferred plan is not, in fact, the nuke 1600
24 aggressive, low, no-wind, alternative resource plan.
25 But it clearly is. I mean, it appears in Staff's

1 report, you know. In the first few pages of Staff's
2 report they describe what UE's preferred plan is.

3 Clearly, if Public Counsel had some confusion
4 about what their preferred plan was, we were not the
5 only party that did.

6 COMMISSIONER JARRETT: The company's
7 response?

8 MS. TATRO: Well, let me start by first
9 pointing out that the quotation that OPC offers up is
10 something -- a decision that was -- a statement that
11 was made by Mr. Voss after the filing of that IRP.

12 And I would ask you, of course, to go back to our
13 September 12th filing that talks about what is
14 supposed to be going on here. And that is evaluating
15 the plan and whether or not it complies with the IRP
16 rules as of the time of the plan.

17 Our planning doesn't stop. Our analysis doesn't
18 stop just because we have filed an IRP plan. And I
19 don't think that you all want it to.

20 On the other hand, to continually be called to
21 task or asked to reevaluate things based on
22 discoveries or things that occur after that filing has
23 been done means that this docket never ends. I don't
24 know about you all, but I would like this docket to
25 end.

1 So with that caveat, I will turn this over to my
2 technical staff to talk a little bit more about that.

3 MR. ARORA: Once again, you know, the rules
4 are pretty clear -- the IRP rules that is -- on what
5 we are supposed to do in this section. It identifies
6 the critical uncertain factors that we should analyze.
7 And I can point out once again, under that section we
8 analyze 11 independent uncertain factors.

9 And, again, I'd like to just read out the rule
10 which says, "The modeling procedure shall be based on
11 the assumption that the rates will be adjusted
12 annually in a manner that is consistent with Missouri
13 law."

14 The current law does not allow equipment rate
15 base. That's the law we had to abide by when we were
16 performing this analysis.

17 Again, you know, financing a potential base load
18 plant is a major undertaking, and we need to evaluate
19 options in the next IRP.

20 MR. KIND: May I respond?

21 COMMISSIONER JARRETT: Sure.

22 MR. KIND: Well, Mr. Arora is correct about
23 that provision of the rule that says that you need to
24 model the performance of your plan consistent with
25 Missouri law.

1 Of course, we do have another way for utilities to
2 maintain their financial integrity as they embark on
3 major base load construction projects, and that's the
4 regulatory plan similar to the one KCPL has that has
5 been in place, approved by this Commission, and is
6 consistent with Missouri law. And there is nothing
7 that stopped them from doing that type of analysis.

8 And one other point is that, you know, they have
9 got flexibility in this planning process to do
10 analysis in ways other than ways that are prescribed
11 by the rule so long as they get waivers in advance.

12 And the whole point of this exercise -- we're not
13 just going through this exercise for the purpose of
14 just seeing if everybody can just, you know, dot all
15 the I's and cross all the T's. The whole point of
16 this exercise is to come up with some resources that
17 are going to result in just and reasonable rates for
18 Missouri rate payers.

19 So we ought to be, if they need -- you know, they
20 asked for quite a few waivers from the rule in order
21 do their modeling in a way they thought was superior
22 to the ways that are prescribed by the rule, and they
23 certainly could ask for a waiver in this area as well.

24 MS. TATRO: Can I just respond for just a
25 moment? I really think that the disagreement here

1 between the company and the Office of the Public
2 Counsel really comes down to a matter of timing and
3 how much analysis had to be done and when. And yet
4 OPC is telling us that if we don't retire Meramec then
5 we don't need as large of a plant, and that's all
6 true.

7 And I think what UE has very clearly indicated --
8 and if it's not clear, let me make it very clear --
9 that analysis will be done before we go into any type
10 of base load plant decision.

11 And to the extent that the Office of the Public
12 Counsel has set forth analysis that we do do, that
13 should be done, we appreciate that, we learn from
14 that. You decide that it's a deficiency, we'll learn
15 from that. And it's work that's going to be done in
16 the next -- it's really a timing issue not an issue of
17 whether or not this analysis should be done. It
18 should be.

19 COMMISSIONER JARRETT: Thank you, Ms.
20 Tatro.

21 And I appreciate the Commission's indulgence, it's
22 kind of tedious going through those, but I wanted to
23 do that to get it in my own mind.

24 I agree completely. It seems to me there wasn't
25 much disagreement other than the timing as far as what

1 OPC wanted. I didn't hear much disagreement other
2 than, again, should it be in this IRP or the next IRP.

3 So let me ask OPC, why do you think it's important
4 for some of these things to be included now given
5 Ameren's allegations that they haven't made a final
6 decision, you know, they are just doing some
7 preliminary things to preserve their options?

8 MR. MILLS: For example, some of the
9 preliminary things they are doing, you know, we've got
10 an issue about Calloway 2 and the rate case that's \$50
11 million already. When you start talking about getting
12 a place in line for castings, you are talking about
13 some serious money.

14 It's not very far off before we really start going
15 down the path where it's going to be harder and harder
16 to turn around and go back. So, sure, you can say
17 it's a question of timing, but in this case I think
18 timing is critical.

19 If you end up with an IRP filing, you know,
20 six months before UE starts to make these significant
21 commitments, then six months is really not enough time
22 to get into all these questions. We really need to
23 have a lot of it done ahead of time so that we can use
24 those six months -- if that's what we end up with -- a
25 lot more productively.

1 If you think about the timing of this particular
2 case, six months into this case you all really didn't
3 have much exposure to what was going on. Sure,
4 there's a lot of behind the scenes work that the
5 stakeholders produced, and there's been a lot of
6 discussion among the parties, but this really had not
7 gotten to the Commission by the time you were
8 six months into the case really. I mean, we're just
9 barely getting started with the process that gets the
10 Commissioners involved in deciding whether the IRP
11 planning process was adequately done.

12 And I think part of it really has to do with the
13 whole approach to the IRP process. And I don't want
14 to make this sound derogatory, but I think UE's
15 approach is more one of crossing the T's and dotting
16 the I's, and ours is really a more holistic approach,
17 and I think if you end up with something --

18 For example, Mr. Arora just acknowledged that
19 their planning process identifies a need for a base
20 load plant. And yet, from the way they described
21 their preferred plan, they don't have one. So, I
22 mean, what is the point of a process that identifies
23 the need but doesn't provide a way to fulfill that
24 need.

25 So you either have to look behind what they say is

1 their preferred plan to some of the things they've got
2 listed in their preferred alternatives to see what
3 they are really talking about doing, or you have to
4 just sort of ignore that whole question all together
5 about whether, you know, are you going to retire
6 Meramec or not. Well, we don't know, we're going to
7 worry about that later. Are you going to build
8 Calloway 2 or not? Well, we don't really know, we're
9 going to worry about that later.

10 Some of those things have to be decided, and you
11 can't -- the reason the IRP process has a 20-year
12 horizon is because you need to start looking at a lot
13 of these things early on. And I think, particularly
14 when you talk about something as significant as a
15 nuclear plant, you know, you can't address it too
16 early. You can't address it too often.

17 COMMISSIONER JARRETT: I'll let the company
18 give a response and then I'm done with my questions.

19 MR. KIDWELL: Commissioner, we take the
20 decision on whether or not to begin constructing a
21 base load unit very, very, very seriously. There is
22 no decision that I think a senior management team
23 makes that might be more important than that. And
24 that's exactly why we think delaying this is the best
25 course and is actually in the public interest, because

1 we feel like the best thing to do is wait as long as
2 possible before making that decision.

3 And we need more information. We need updated
4 information. If we were to rely on information in
5 this resource plan for a decision that is, say,
6 36 months in the future, I'd say that's impertinent.
7 We need to have the most current information we
8 possibly can vetted through the stakeholder process.

9 Mr. Mills again identifies the six-month time of
10 the actual formal case. I will commit that, at the
11 very least, we will have 13 months of stakeholder
12 process ahead of that filing like we did this time.
13 At the very least. And I think we'll probably have
14 more. So it will be vetted through the stakeholder
15 process and the Commission will have the benefit of
16 that process going into this procedure.

17 So, precisely because this is so important, we
18 feel like it is best to have the most current
19 information possible and vetted through a current
20 stakeholder process. Not this one.

21 COMMISSIONER JARRETT: Thank you. I have
22 no further questions.

23 JUDGE WOODRUFF: Commissioner Gunn?

24 COMMISSIONER GUNN: Actually, I have some
25 procedural questions because I'm trying to figure out,

1 I think, what Commissioner Jarrett was getting to.

2 Let me start with this. This is a joint filing of
3 a partial stipulation. I mean, can we do this? I
4 mean, don't we either give an up or a down? I mean,
5 this is kind of a middle where we're partially
6 accepting the report and we're partially not accepting
7 the report, if we were to at this point. Do we really
8 have the ability to do that? Doesn't the chapter say
9 we either say you are in compliance or you're not in
10 compliance, so it's either one or the other?

11 Maybe this is an acceptable middle step, but if we
12 don't resolve the issues then -- and we believe that
13 the resolution of those issues mean non-compliance --
14 then this joint stip really doesn't mean that much.

15 MR. MILLS: If I may? And I don't think
16 there's a whole lot of disagreement from the parties
17 on this. What the partial stipulation was to do was
18 to inform the Commission of the deficiencies that were
19 originally alleged but have since become resolved
20 through negotiation and the process set out in the IRP
21 rules.

22 It wasn't intended for the Commission to say,
23 "Okay, well, let's set this partial stipulation.
24 We're done. Case closed." That was just to identify
25 for the Commission things that were no longer at issue

1 among the parties to the case.

2 MR. DOTTHEIM: And I don't know that
3 there's agreement as to, even if the Commission would
4 find non-compliance, what's the next step or what goes
5 along with the Commission finding non-compliance. I'm
6 trying to remember, and I've probably been involved in
7 most of the Chapter 22 filings in one manner or
8 another, but I can't recall the Commission finding
9 non-compliance in any situation. Now, maybe some of
10 the other parties can recall that having occurred.

11 MR. MILLS: I believe there was a Kansas
12 City Power and Light Company case in the mid to late
13 90's in which the Commission found the plan to be in
14 non-compliance.

15 And in that situation the Commission's response --
16 and I'm not sure that anybody strenuously disagreed
17 with it -- was to say go away, come back in
18 three years and do it right next time.

19 And in that situation that probably was okay.
20 There wasn't a major base load investment looming on
21 the horizon. There wasn't a \$95 million DSM program
22 looming on the horizon. It was more or less not a
23 whole lot of really significant decisions that were
24 going to take place in that three-year interval.

25 MR. DOTTHEIM: And I think that's generally

1 been the philosophy, that what this chapter is
2 involved with, and what the Commission is engaged, in
3 is looking at the process so if there is a problem
4 that it will be addressed. Hopefully the parties will
5 come to some agreement that whatever problems exist
6 there is some resolution as to how it will be
7 addressed the next time.

8 Now, the next time has never been anything as
9 momentous as a possible 1600 megawatt nuclear unit.
10 The most momentous next time has been the 600 megawatt
11 Iatan 2. But before we ever got to that there was a
12 KCPL regulatory plan.

13 So in many respects what is before the Commission
14 is to try to sort out, if there is non-compliance,
15 what's the next step. And I think that's why Public
16 Counsel's petition that was filed yesterday is so
17 important and why the company's assertion as to what
18 are the powers or the limit of the powers of the
19 Commission.

20 I think possibly the company, AmerenUE, would say
21 the Commission's powers are limited to Chapter 22
22 regarding the utility's construction of facilities,
23 generating facilities, transmission facilities. The
24 Staff would argue otherwise.

25 The Staff can cite to you cases. I can cite to

1 you cases now. I can cite to you cases, you know,
2 pleadings, if you'd like. There aren't many, but
3 there are some cases. In the construction of Iatan 1
4 the Commission granted St. Joseph Light and Power,
5 which was a partial owner, interim rate relief on the
6 basis that St. Joseph Light and Power would divest
7 itself of approximately 60 megawatts of the amount of
8 megawatts that it owned of that unit. And St. Joseph
9 Light and Power did.

10 There aren't many cases for AmerenUE. Back in
11 1979 the Commission created a docket, EO-8057,
12 capacity expansion docket, to look at Calloway 1 and
13 Calloway 2. There are some who thought that
14 AmerenUE -- that Union Electric Company was looking to
15 the Commission to order Union Electric to cancel
16 Calloway 2. The Commission held hearings in EO-8757
17 and didn't issue an order for several years. Union
18 Electric had to cancel Calloway 2 on its own.

19 But, I mean, I can provide you with those cases,
20 other parties can, too, but I think that's where this
21 is all going, is if the Commission finds
22 non-compliance, what next?

23 And in particular, what next with AmerenUE, which
24 is in need, arguably, of a base load unit and maybe a
25 nuclear unit. But in today's economic conditions,

1 what's going to happen to demand?

2 COMMISSIONER GUNN: Here's what I'm
3 struggling with. Two things. The first is, what is
4 the purpose of this process?

5 And Mr. Mills, you mentioned and said, what's the
6 point of this process if we don't have the ability to
7 come up with remedies for perceived deficiencies.

8 And it may be a flawed process. I mean, the way
9 that it's written I question whether our role under
10 the current rules is to get into the could it have
11 been better or could it have been done worse as much
12 as it is that the process was followed. And that may
13 be a very kind of flawed issue.

14 I don't mean to bring this down to, you know, my
15 level, but it kind of reminds me of the movie Office
16 Space where one of the waitresses was chided for
17 wearing the minimal amount of flair on her uniform.
18 And it was the minimum amount, but they wanted her to
19 do more than the minimum. But if she was comfortable
20 with the minimum, that was okay, too.

21 It seems to me, is that what we're arguing about
22 here? Is what we are arguing about is that the plan
23 could have been done better and could have taken more
24 things into account that we may have all liked to see?
25 And that may very well be true, but does that mean

1 that it's in non-compliance? Or does compliance mean
2 that they have done the exact minimum that they were
3 required to do but that's all that they really -- from
4 our perspective -- that's all that we can decide, is
5 whether or not they have done the bare minimum?

6 And once they've reached that bare minimum
7 threshold, do we get to decide -- do we get to argue
8 about the margins? Do we get to decide about the
9 timing? Do we get to decide that they should have
10 taken into account five other factors than the minimum
11 five they already did?

12 That's what I'm trying to figure out here. And
13 I'm not sure that that's entirely clear.

14 MR. MILLS: And I'm not sure, but Mr. Kind
15 is chomping at the bit.

16 MR. KIND: I'd like to just sort of maybe
17 compare it to what happened in the KCPL case to
18 provide a concrete example of a finding the Commission
19 made in the past or a determination they made.

20 They determined in that case that basically KCPL
21 had not followed the process set out in the rule
22 because KCPL did not choose the alternative resource
23 plan from amongst the various plans that minimized the
24 cost of the plan, that minimized the long run revenue
25 requirements.

1 And in the Commission's order, as we state in our
2 last pleading we made in this case, the Commission
3 told KCPL, quote, "In particular, KCPL must strictly
4 follow 4 CSR 240 22.010(2)B and 22.010(2)C."

5 22.010(2)B is pick a plan that minimizes PVRR.
6 And OPC, in that case, argued that KCPL just openly
7 flouted the rule and did not pick their plan that
8 minimized PVRR. And it wasn't that I was involved in
9 that case. It wasn't any complex analysis that needed
10 to be done. You had the comparisons of the various
11 plans and the cost over a 20-year time horizon. They
12 did not choose the least cost plan.

13 Now, in this case, let me relate that to just one
14 of OPC's deficiencies about the company not taking
15 into account their credit metrics when they evaluated
16 what the true cost of a plan was. If you don't take
17 into account the fact that your credit metrics have
18 put you to the point where you are not -- don't have
19 good credit quality, your cost of debt is going to
20 increase. And if you don't do your modeling to
21 actually adjust your cost of debt, you don't know the
22 PVRR associated with that plan.

23 And so, if you don't have a realistic estimate
24 from your modeling of the PVRR associated with that
25 plan because you didn't model it right, you can't have

1 complied with this part of the rule and picked an
2 alternative plan that minimized PVR.

3 COMMISSIONER GUNN: Maybe that's not the
4 best example, because, I mean, you're really talking
5 about a snapshot there. And as much modeling as you
6 do, you certainly may not have been able to anticipate
7 what's happened in the last ten days in the credit
8 market.

9 MR. KIND: No, it has nothing to do with
10 that. It has to do with they were required to
11 calculate the financial ratios associated with each of
12 the plans. And when you look at the financial ratios
13 that are associated with acquiring a 1600 megawatt
14 nuclear plant, nobody is going to loan you money.

15 And I mean, Mr. Voss made the same observation
16 after the filing of the plan. I think he probably --
17 I don't think it was some insight that came to him all
18 of a sudden after he saw the plan. It should be
19 obvious to people in senior management. So it has
20 nothing to do with the recent credit crisis.

21 COMMISSIONER GUNN: But if the company
22 hasn't made the determination that plant is going to
23 be built -- because of whatever factor, they haven't
24 made that decision yet -- then why should they, in
25 this plan, do modeling taking that plant into account?

1 Or why is that required for compliance?

2 I understand why it's a good idea. I absolutely
3 understand. And I think you are absolutely right.
4 And your point is well taken that you want to do these
5 things as early as possible. But why does failure to
6 do that equal non-compliance rather than they just
7 should have done it?

8 MR. MILLS: To put this in the context of
9 the "flair" question, there's not enough flair there.
10 You have to know what a particular option really costs
11 in order to be able to compare it to other options,
12 otherwise it's a meaningless process.

13 If you put in real cost for DSM and artificially
14 low cost for supply-side, what you end up with is
15 going to be slanted toward the supply-side. You have
16 to be able to analyze them accurately to be able to
17 compare them. Because if you don't compare them
18 accurately, you are not going to get the right mix.

19 It's called resource planning for a reason,
20 because you have to compare supply-side and
21 demand-side on an equivalent basis. And if you
22 discount inappropriately the financing costs of
23 building supply-side, then it looks like it's a lot
24 cheaper than it may actually turn out to be. And if
25 that's the case, then your whole planning process is

1 flawed.

2 COMMISSIONER GUNN: I'm not convinced that
3 this process isn't flawed and that in reality this
4 isn't a meaningless process. Because it's not
5 designed to take some of these things into account.
6 It's designed to force a company to do some minimal
7 amount of planning. But there's no real -- as has
8 been pointed out -- there's no real enforcement
9 mechanism. It's really just pushing things off.

10 And what we've seen in the past with the these
11 plans -- which were suspended, for, what, six, eight
12 years? For a while. And what typically happens with
13 these plans, and we've said in ours, we'll just deal
14 with it in the next plan.

15 I mean, things just get pushed off and pushed off,
16 and that, on the surface of it, means compliance. And
17 so I don't disagree with your point, but I'm wondering
18 whether that's the process that we're stuck with and
19 that whether or not it raises to the level of what
20 we'd love to see but it's just not within our power to
21 make it any better until we rewrite the rule.

22 MS. TATRO: Can I please jump in here since
23 I'm representing the company? And although
24 Mr. Dottheim was very nice to give his opinion of what
25 he thought the company's position was --

1 Your first question that kind of initially brought
2 this up was whether or not the Commission can approve
3 the partial stipulation and agreement. And I want to
4 make sure you are very comfortable that, absolutely,
5 that you can.

6 If you look at 4 CSR 240-22.080, Section 8, it
7 talks about the parties -- if they have
8 deficiencies -- work together, see if they can come up
9 with a joint agreement. If there's not a full
10 agreement, then they have to 45 days later to make
11 another filing and that joint filing has to set out
12 the areas by which agreement cannot be reached.

13 So, clearly, it contemplates some issues might be
14 resolved and some issues might remain unresolved.

15 Section 9 says, if full agreement can't be
16 reached, then 60 days from the date in which those
17 reports were submitted the utility and other parties
18 can file comments and then the Commission decides
19 whether or not it's going to issue an order.

20 And then, going on to the next section, it talks
21 about what the Commission -- Section 13 talks about
22 the Commission issuing an order which contains
23 findings that the utilities filing, pursuant to the
24 rule, either does or does not demonstrate compliance.

25 So those items under 8 where the parties reached

1 an agreement and it's on a plan to remedy the
2 identified deficiencies. So I think when you read
3 through that section of the rule it clearly
4 contemplates that it's possible some things get
5 resolved and some things don't. So I hope that you
6 are comfortable that you can approve that.

7 Now, onto the other big issue that's been
8 discussed. Of course, Mr. Kind cites the KCPL case
9 where the Commission did find a deficiency. And I
10 think, if you look in our pleading, there's a couple
11 places where we said, you know what? We didn't do it.
12 So there's some areas we fully expect the Commission
13 will say this is a deficiency.

14 So what does happen next? Well, the rules don't
15 contain anything that says go back and do it again and
16 let Staff and the other parties look at it. It
17 doesn't contemplate anything further past you doing --
18 issuing that order that says either it is or isn't in
19 compliance.

20 Your powers don't stop there because -- I mean,
21 what's the ultimate stip that this Commission has? We
22 don't put anything into rates. We don't have anything
23 through the revenue requirements that you all don't
24 believe was prudent and was a good thing to do.

25 So if there's deficiencies, if you tell us I don't

1 like the way you analyze this, I think your analysis
2 is incorrect, insufficient, should have been based on
3 something different, doesn't comply with the rule,
4 then it's our burden, our responsibility, to either, I
5 guess, convince you later that you were wrong or to
6 redo that analysis or to make sure before we invest
7 any money that we are quite confident that we can
8 prove to you we were prudent. And if we aren't, you
9 are going to disallow that cost. We are talking about
10 a nuclear plant here, of course we're going to attempt
11 to get it right.

12 So I kind of disagree with the characterization
13 that these rules are meaningless. What they do is
14 they give you insight to our planning process every
15 three years at the furthest. Right? Because if we
16 have to change our plan, we have to come back in.

17 So you get insight. You get to say, this is not
18 what the rule is telling you to do; this is. You have
19 that kind of insight. You have that kind of input.
20 You get to issue that order. And then we have to
21 apply that.

22 So perhaps it's kind of more of a two-step process
23 in terms of customers aren't ever going to pay that
24 rate until it's put into rate base, but obviously you
25 retain that power.

1 COMMISSIONER GUNN: I don't necessarily
2 look at this process as just kind of a helpful
3 exercise in order to see where we were on a rate case.

4 MR. KIDWELL: Commissioner Gunn, neither do
5 we. Let me just speak on behalf of at least AmerenUE
6 senior management --

7 JUDGE WOODRUFF: I'm sorry, we've got
8 somebody on the phone talking here. What's going on?

9 MR. KIDWELL: Commissioner, from our
10 perspective, the first thing that the integrated
11 resource planning rules do, and maybe one of the most
12 important, is say this is a set of criteria you are
13 going to use for long-term resource planning, and it's
14 very detailed. So our decision making is different
15 because of the existence of these rules. That's first
16 and foremost.

17 And then, I think, secondly, the feedback that we
18 get, both from stakeholders during the stakeholder
19 process and from you in any orders or findings that
20 come out of these hearings, are very important. They
21 give us guidance as to how to continuously improve a
22 very important process in our business, and they do it
23 in a way that, in my mind at least, does a great job
24 of balancing management autonomy with oversight.

25 I'd like to read, just for a moment, from the

1 order of rulemaking. And this was in our pleading as
2 well.

3 "When the IRP rules were adopted the Commission
4 noted that it was weary of assuming, either directly
5 or in a de facto fashion, the management prerogatives
6 and responsibilities associated with strategic
7 decision making, preferring to allow utility
8 management the flexibility to make both overall
9 strategic planning decisions and more routine
10 management decisions in a relatively unencumbered
11 framework."

12 So it seems to me that what you have before you is
13 balancing the public interest with what exactly is a
14 relatively unencumbered framework.

15 One other thing to think about. You talked about
16 it being a bare minimum. I don't think that there's
17 any place in the rules that I know of that would
18 require a company to have 13 months of consultations
19 with stakeholders, 30 separate meetings, 40 separate
20 workshops, ahead of filing one of these plans. And
21 so, you know, there was a lot more than bare minimum.

22 COMMISSIONER GUNN: And I certainly didn't
23 mean to imply that. I'm merely taking into account
24 what the disputes are here and trying to really figure
25 out what's going on. Are these really deficiencies,

1 or are they disagreements over to the extent of how
2 something could be done better?

3 I mean, I think, to Mr. Kind's point, talking that
4 you have flexibility to do certain things, and he
5 seemed to indicate, and I don't necessarily think that
6 he's wrong, that you have the ability to go beyond
7 what's contained in the rules and kind of do a very
8 comprehensive planning.

9 And that certainly is the case when we are talking
10 about potentially constructing a very large generating
11 facility. And I think all those things are taken into
12 account. But what I'm trying to figure out is -- and,
13 again, I'm not trying to cast a spurge on anybody, I'm
14 just trying to figure this out, because I think it's a
15 little bit -- it's unclear as to where is the line, I
16 mean, where we come from legitimate deficiencies where
17 there is non-compliance and where there is compliance
18 but maybe not enough compliance by the folks. And
19 that is a line that may remain gray for a very long
20 time until we do that.

21 And the section that you read, you know, it almost
22 appears that a deficiency is a deficiency if Staff or
23 Public Counsel decides it's a deficiency. And it
24 gives them, you know, the ability to bring up things
25 that, if they declare that it's a deficiency and --

1 because it doesn't appear to give up the power to
2 determine whether it is a deficiency or not. It says
3 whether you guys bring it up that there's a
4 deficiency, and you can't work it out, then it's a
5 deficiency and we go to hearing, I mean, so we have a
6 hearing procedural schedule on it.

7 So, again, it comes from this collaborative that
8 you guys have put together to try to figure this stuff
9 out, and I'm just not convinced it's the best way to
10 run an organization.

11 MR. KIDWELL: All I can tell you is that
12 if, early in process, as we go through any resource
13 plan, this one and certainly the next one, if
14 potential deficiencies are identified by any party
15 during the process, we'll do our best to address those
16 even before we file something in front of you so that
17 you don't have to make that determination.

18 The second thing that we would do and that we've
19 tried to do in this plan is to, through the
20 stipulation process, resolve as many that are left
21 over after the filing as we possibly can.

22 And then I think you're are going to probably be
23 left with a few that you are going to need to
24 determine.

25 Again, I think, at least in my mind, it's

1 balancing what is in the public interest with what's a
2 relatively unencumbered framework. I think that's
3 kind of what it comes down to.

4 JUDGE WOODRUFF: Mr. Dottheim, you looked a
5 couple times like you were going for the microphone.

6 MR. DOTTHEIM: Well, I think I've
7 mentioned, and the Commissioner's are well aware, that
8 it's been the intent of many to revisit Chapter 22.
9 So what we're talking about as the various provisions
10 of Chapter 22 may change in the near future.

11 COMMISSIONER GUNN: Well, I think, with the
12 rise of issues about energy efficiency and potential
13 carbon restrictions, and all that other stuff, we may
14 want to take a look at it in collaboration with
15 everybody to try and figure out a better process.

16 You know, everything that people say here is
17 absolutely 100 percent valid and things we have to
18 talk about it. It's just very unclear to me as to
19 whether they rise to the level of non-compliance or
20 whether it's just not as far as everyone would like
21 them to be.

22 And to the company's point about timing, is that
23 their planning doesn't stop, is, I think, a valid one,
24 that there are incidents that might happen every day
25 which might change circumstances. And so, by

1 definition, as soon as the plan is filed it's in some
2 ways outdated, because you might already have a change
3 of circumstances. It's essentially a snapshot of
4 where you are, and you're going to be looking to
5 update it. From the moment you file it you are
6 looking to update it and I think everybody is kind of
7 looking to improve it and move forward.

8 So I'm not going to waste any more time, and I
9 apologize if ranted or asked silly questions, but I
10 appreciate everybody's answers. They've been helpful.

11 MR. DOTTHEIM: Also, some things that maybe
12 are being attempted at the moment to be addressed by
13 Chapter 22 are best addressed in another forum or by
14 another avenue.

15 And, again, I'm sorry to mention -- because it's
16 repetitious -- the petition filed by the Office of the
17 Public Counsel yesterday. There may be other vehicles
18 that might be appropriate or the Commission decide
19 inappropriate.

20 COMMISSIONER GUNN: I've only gotten to
21 Chapter 2, so it's going to take me a while to get to
22 Chapter 22.

23 MR. MILLS: And for the record, I did not
24 ask Mr. Dottheim to plug my petition.

25 MR. KIND: There's been some discussion

1 about, you know, the rule and plans that are filed to
2 comply with the rule representing a snapshot in time.
3 And, in fact, Ms. Tatro mentioned how there's a
4 requirement for them to advise the Commission if they
5 have chosen a different plan other than their
6 preferred plan.

7 And the rule actually is set up to be continuous
8 in between the filings on three-year intervals. Part
9 of their filing is, here's the process that we've set
10 in place. Following that we'll do, subsequent to this
11 filing for monitoring critical uncertain factors,
12 things that might cause us to choose a different
13 preferred plan than the one that we chose in our
14 filing.

15 But we have this really fundamental flaw here in
16 this filing where the company seems to be claiming
17 that they did not choose one of the alternative
18 resource plans which they have analyzed as a preferred
19 plan. None of the plans.

20 They did analysis to determine that the new 1600
21 aggressive low no-wind plan was the best plan. And
22 then on Page 57 of their .070 filing, where under the
23 requirement, which states, "The utility shall select a
24 preferred plan from amongst the alternative plans that
25 have been analyzed pursuant to the requirements of 4

1 CSR 240-22.060 in Sections 1 through 5 of this rule,"
2 they do not identify any of the preferred plans that
3 they analyzed pursuant to those sections.

4 So, what that does is, it means then that it makes
5 this provision -- if the Commission were to allow
6 that, to permit that to occur, it will make this
7 provision in .080(10) completely meaningless from that
8 provision that provides that if the Commission
9 determines that circumstances have changed the
10 preferred plan is no longer appropriate -- and then
11 I'll skip a few words, and then it says, you know,
12 they need to notify the Commission.

13 Well, in this case, their plan that they have got
14 here on Pages 57 and 58 is so lacking in specifics,
15 and it is not a specific plan that they had actually
16 analyzed pursuant to .060 and .070, it's not the plan
17 that the Staff identifies in their report as UE's
18 preferred plan, so if they deviate from this plan,
19 which is the preferred plan, the nuke 1600 plan,
20 there's no requirement to even advise the Commission
21 of that.

22 And the only other thing I just wanted to mention,
23 and I appreciate your indulgence, is that in terms of
24 the timing coming up on future filings, UE currently
25 has their next IRP filing due in April of 2011.

1 In their COLA application to NRC they stated that
2 their plan for beginning construction of Calloway 2 is
3 that that start date for construction is April 2012.
4 That is 12-months after their filing.

5 Well, I think this Commission needs to take into
6 account that the company, if they are actually to
7 begin construction in April 2012 as they have advised
8 the NRC in their COLA filing, they're going to have to
9 make the decision to move forward well in advance of
10 that April 2012 date.

11 JUDGE WOODRUFF: If I can interrupt for a
12 moment. We've been going for almost two hours and we
13 need to take a break. We'll take a ten-minute break
14 and come back at 4:05.

15 (A short recess was then taken.)

16 JUDGE WOODRUFF: We're back from break, and
17 Commissioner Gunn had some more questions.

18 COMMISSIONER GUNN: I actually just have
19 one more quick question.

20 Based on the rule, I think this proceeding has
21 been helpful, but my question is, is it really
22 appropriate? I mean, should what we really be doing
23 is letting you guys figure out the rest of this, and
24 then if you don't figure it out, we have a hearing, an
25 evidentiary hearing? Now, that begs the question a

1 little bit, if we find a deficiency, what happens?

2 But is this proceeding premature based on the
3 rule, or do we still have the time to bring you guys
4 back to the table and figure out the rest of these
5 deficiencies, A, and, B, is there any possibility that
6 that is going to be helpful?

7 We can waive that rule, obviously, and have a
8 hearing, and maybe I don't know exactly what hearing
9 we would conduct, but --

10 MR. KIDWELL: Commissioner, in AmerenUE's
11 view, I think in our pleadings we said that we don't
12 think there are any facts really in dispute. We think
13 the record could stand as it is and that really what's
14 in front of the Commission is to determine whether
15 there are any deficiencies or not. So I think our
16 position is that after this on-the-record, with no
17 facts in dispute --

18 COMMISSIONER GUNN: We just decide.

19 MR. KIDWELL: -- you can go ahead and
20 decide.

21 JUDGE WOODRUFF: Mr. Conrad, do you want to
22 be recognized?

23 MR. CONRAD: Yes. I've been silent for a
24 long time, and it's a great burden. I found it useful
25 over the years sometimes to go back to what the law

1 is, and in this case it is Chapter 22 -- which I hold
2 in my hand -- that is the law.

3 The process, Commissioner Gunn, that you are
4 having to wrestle with, and I have some sympathy for
5 you, having been involved in this type of process
6 going back a number of years before it was codified by
7 rule, it is somewhat confusing.

8 But I believe one of the counsel earlier made
9 reference to Subparagraph 13 of 240-22.080, which it
10 might be helpful to you to take a gander at because it
11 says that the Commission will issue an order which
12 contains findings that the electric utility's filing
13 pursuant to this rule either does or does not
14 demonstrate compliance with the requirements of this
15 chapter and -- that's a conjunctive not a
16 disjunctive -- and that the utility's resource
17 acquisition strategy either does or does not meet the
18 requirements stated in 4 CSR 240-22.010(2), A through
19 C.

20 So we go back to 240-22.010(2), A through C. And
21 2, at least, refers you back to what Mr. Mills has
22 pointed out, that is the fundamental objective -- I
23 read -- of the resource planning process of an
24 electric utility shall be to provide the public with
25 energy services that are safe, reliable and sufficient

1 at just and reasonable rates in a manner that serves
2 the public interest.

3 This objective requires that the utility shall --
4 and then A, B and C are listed.

5 And the third conjunctive -- in that Paragraph 13
6 that I started to read -- we have seemingly ruled out,
7 because it goes on to say, "and which addresses any
8 utility requests pursuant to Subsection 2 for
9 authorization or reauthorization of non-traditional
10 accounting procedures for demand-side resource costs."

11 Now, the problem that you have isn't dealing with
12 a non-unanimous partial stipulation, which the
13 Commission can, pursuant to its rules, approve, but it
14 doesn't dispose of the issues in 22.010 (2), A through
15 C, and that's where you get to the hearing.

16 It's relatively clear to me that there is a
17 fundamental dispute about some of the facts as to what
18 has been covered and what has not been covered in this
19 plan. And at least where I went to law school, which
20 was up the road a piece, the way we resolved disputes
21 about facts was we had a hearing and we swore witness
22 and we put them on and, importantly, we subjected them
23 to cross-examination.

24 COMMISSIONER GUNN: To be clear, my
25 question was more about Paragraph 10 which has some

1 interim steps before Paragraph 13 which says that
2 reports are issued, time periods are passed, then we
3 determine that there's no -- that there's a dispute
4 and then there's another coming together of the
5 parties and then 60 days pass and then we decide
6 whether we're going to have a hearing, if any.

7 "The Commission will issue an order which
8 indicates on which items, if any, a hearing will be
9 held and which establishes a procedural schedule."

10 So my question wasn't about the ultimate result.
11 My question is about whether that 60-day process, that
12 45 to 60-day process had been completed. And if they
13 haven't been completed, is this proceeding premature?
14 And if that time period has been done, then really
15 don't we decide whether -- shouldn't we just be
16 deciding whether we are going to have a hearing on
17 those issues?

18 MR. CONRAD: I think it's nine that you're
19 referring to rather than ten, but be that as it may,
20 "the Commission will issue an order which indicates on
21 what items, if any, a hearing will be held and which
22 establishes a procedural schedule."

23 And just by the way, 11(B) says the Commission
24 will not waive or grant a variance from this chapter
25 in total.

1 So it kind of strikes me that if you just brush
2 aside the differences, then you have, in fact, waived
3 or granted variance from the chapter in total.

4 And if you come back to 13 --

5 COMMISSIONER GUNN: Mr. Conrad, let me
6 simplify this. I don't need to know anymore, just
7 answer one simple question. Has the 60-day period
8 passed?

9 MR. CONRAD: Yes.

10 COMMISSIONER GUNN: So we have the ability
11 to decide whether to hold a hearing, if any, on the
12 dispute?

13 MR. CONRAD: Well, you have the
14 obligation --

15 COMMISSIONER GUNN: Thank you, Mr. Conrad,
16 I appreciate it. I don't have any more questions.

17 MR. CONRAD: Well, I appreciate that, but
18 the Commission is challenged to issue an order that
19 contains findings, and those findings have to be
20 based, under our constitution, on something. And it
21 strikes me that that's kind of where you are right
22 now, you have to decide --

23 JUDGE WOODRUFF: Thank you, Mr. Conrad.

24 COMMISSIONER DAVIS: Mr. Conrad, would you
25 agree that what AmerenUE has placed -- their plan

1 filing, is that evidence?

2 MR. CONRAD: No.

3 COMMISSIONER DAVIS: Because they haven't
4 sworn in and haven't submitted it?

5 MR. CONRAD: Well, it's not -- it's filed,
6 but it's like other evidence that is simply filed in
7 EFIS.

8 COMMISSIONER DAVIS: Okay. It's filed in
9 EFIS. And I'll let Mr. Mills respond to this, too.
10 Can we -- I mean, obviously we've got the plan. On
11 its face we can look at that document; correct?

12 MR. CONRAD: Well, yes, you can. I mean,
13 you can look at it, because you obviously have.

14 COMMISSIONER DAVIS: Okay. And we have got
15 the benefit of Mr. Mills' pleading and the pleadings
16 of Sierra Club and DNR that say said document is
17 deficient.

18 MR. CONRAD: But those are themselves not
19 evidence either.

20 COMMISSIONER DAVIS: No, but you could,
21 theoretically, based on those arguments, say -- look
22 at the document and say this pleading is deficient,
23 couldn't we?

24 MR. CONRAD: Well, the utility might
25 quarrel about that. I'm not sure that we would. But

1 I think you still have the problem that you have in 13
2 about you have to issue findings. And it's a binary
3 choice; yes/no, it's deficient; yes/no, it meets the
4 .010(2) A through C.

5 JUDGE WOODRUFF: If I can jump in here and
6 ask an even more fundamental question. Is this a
7 contested case?

8 MR. CONRAD: That's an interesting
9 question.

10 JUDGE WOODRUFF: I thought so.

11 MR. CONRAD: I have asked that question
12 before. It seems to be regarded as such because we
13 have invoked in several proceedings the ex parte rules
14 indeed in this record which would obviously have no
15 application if it were not.

16 It's not the classic type where -- I think the
17 classic definition in 536 is where a hearing is
18 required by law. Well, it seems to me that if you
19 filter your way through this process, if you had a
20 complete stipulated settlement, Judge, you might not
21 be. But where you have a dispute on disputed facts,
22 whether something has been done or something hasn't
23 been done, and you filter your way through this
24 process, in .080 it says you end up with a situation
25 where a hearing is required by law.

1 Because how else do you do findings? On what do
2 you do findings other than evidence unless everybody
3 is in the room and saying don't sweat it, you know,
4 we're all willing to sign away those requirements.

5 So I think it's a tough -- that's a tough
6 question. It's not the classic contested case like
7 somebody's license is getting revoked as a doctor or
8 an embalmer or something where there is a requirement
9 of a hearing.

10 But after you filter your way through this
11 process, in particular, facts here where there has not
12 been an agreement on the totality of the case, then I
13 think you end up dropping down to the idea that a
14 hearing is required.

15 JUDGE WOODRUFF: Does anybody else want to
16 be heard on that?

17 MS. TATRO: If you look at the filing that
18 we made on September 12th in this case, and you turn
19 to Pages 25 through -- well, 25 and 26, we address
20 this very issue.

21 The definition of what a contested case is, is
22 very clear, and that is where the law requires a
23 hearing to be held. And the law doesn't require a
24 hearing to be held here.

25 You can have facts in dispute. The courts have

1 held you can have disagreement, you can have dispute,
2 and it doesn't make it a contested case. And that's
3 cited in the footnote, the rather extensive footnote
4 that I put on Page 26.

5 So we don't think a hearing is required here. We
6 also don't think there are any facts in dispute. We
7 didn't do the credit analysis that OPC wants us to do.
8 Is that a deficiency? That's your decision.

9 So I'm not exactly certain what facts would even
10 be in dispute that you would want to bring out in the
11 hearing. Everyone that talked to you today has been
12 under oath so there's no reason that we have to go
13 forth and schedule anything further.

14 And, of course, this pleading has been out there
15 since the 12th, no one has filed anything in response
16 to that. And I point out, the Commission issued an
17 order asking parties to set forth what facts would be
18 disputed, and none of them set forth any fact that
19 would be disputed.

20 MR. MILLS: I disagree with that. There's
21 a couple of them. One, that fact that certain people
22 were sworn today does not really imbue this with
23 contested case procedures. I don't think we have been
24 offered the opportunity to cross-examine anyone.

25 And two, we filed a response timely according to

1 the Commission's order in which we alleged a number of
2 facts that are in dispute.

3 MS. TATRO: If I may? What they've alleged
4 is whether or not a deficiency exists, and that's your
5 determination, that's not a fact in dispute. And we
6 filed a response to that as well.

7 MR. CONRAD: Well, Your Honor, with respect
8 to counsel, that's kind of how lawsuits go. One guy
9 says you ran the red light and hit me and caused me
10 damage, and the other guy says no, I didn't, the light
11 was green.

12 MS. TATRO: All that's left is for the
13 Commission determination.

14 JUDGE WOODRUFF: I think we've dealt with
15 that at this point. I'll turn it back over to the
16 Chairman if you have any questions.

17 CHAIRMAN DAVIS: Commissioner Gunn, did you
18 have any more questions?

19 COMMISSIONER GUNN: No, I'm done, thank
20 you. Thanks, everybody, for bearing with me.

21 JUDGE WOODRUFF: I'll turn it over to
22 Commissioner Clayton.

23 COMMISSIONER CLAYTON: Thank you, Judge.

24 I almost can't let -- frankly, it's kind of
25 exiting in here. If you can make these things

1 exciting.

2 Regardless of if we go to an evidentiary hearing
3 or not, we make a decision whether there's a
4 deficiency or not, what is the relief? What happens?
5 If you make a finding of deficiency, let's say we
6 agree with Public Counsel, then what happens? Do they
7 have to go back, start over? Tell me what level of
8 relief and what rights do each of the parties have
9 depending on our decision.

10 MR. MILLS: In Chapter 22 there really
11 isn't anything that tells you about what happens next
12 if you find deficiency. So I think you have to turn
13 to other sources of your authority to figure out what
14 to do next.

15 COMMISSIONER CLAYTON: All right. Is it a
16 violation -- let's say we find a deficiency, does that
17 mean it's a violation of a Commission rule that would
18 then lead to penalties or something like that?

19 MR. MILLS: I hadn't thought about that.

20 COMMISSIONER CLAYTON: I'm not looking for
21 that, but is there a substantive right beyond just an
22 up or down issue here?

23 MR. MILLS: I think, depending on the
24 nature of the deficiency and the nature of the harm
25 that may flow from that deficiency, the Commission

1 should tailor the remedies it imposes based on that
2 analysis.

3 I don't think you should necessarily say that the
4 right answer for deficiency is that you authorize
5 general counsel to go to circuit court and try to get
6 penalties. Penalties, almost by definition, are not
7 remedies.

8 I hadn't even thought about that, and, in fact, I
9 wouldn't even recommend that as a remedy in this case.

10 COMMISSIONER CLAYTON: I understand. I
11 just raised that as an example.

12 If not penalties, if penalties is not an issue in
13 this, then what other relief could there be? Sending
14 them back, then incurring additional expense time?

15 MR. MILLS: Certainly, depending on the
16 circumstances, it may be appropriate to say, here are
17 three or four deficiencies, if you make another filing
18 in three years, don't do that again, do it better.

19 And the Commission -- as we talked about earlier,
20 the Commission did that in the KCPL case and nobody
21 really disagreed that that was an inappropriate remedy
22 in those circumstances.

23 But as I said earlier, I don't think that's the
24 appropriate remedy here.

25 COMMISSIONER CLAYTON: Mr. Dottheim, do

1 have a comment on that? If we find a deficiency,
2 regardless of whether we go to evidentiary hearing or
3 we just make it based on the filings before us, what
4 happens?

5 MR. DOTTHEIM: Well, I think there are a
6 number of possibilities. I think you could order the
7 company to redo the analysis addressing the
8 deficiency, or you could -- and do it within a near
9 term time frame, and that's what I meant by redo, or
10 you could order the company in its next Chapter 22
11 filing to remedy the deficiency. You could --

12 COMMISSIONER CLAYTON: So, go back to the
13 drawing board is first choice. Second choice would be
14 shame on you, do it, fix it the next time.

15 MR. DOTTHEIM: Or you might even do
16 something like have the company file on a more
17 expedited basis than three years. Originally the
18 three-year time frame --

19 COMMISSIONER CLAYTON: Require a new IRP
20 filing?

21 MR. DOTTHEIM: Yes, on a more expedited
22 basis.

23 The three-year time frame came up -- it wasn't
24 anything magical, it was we had five electric
25 utilities, and I can't seem to recall anything other

1 than we thought staggering the filings by seven months
2 for each of the utilities would give the Staff and the
3 stakeholders an opportunity to process the filings.
4 And then, with five companies filing, staggered by
5 seven months, gave us 35 months. It placed us
6 basically on a three-year cycle.

7 Now, of course, we don't have five utilities. We
8 don't have five distinct utilities anymore.

9 So you could order an expedited filing. In fact,
10 some companies have agreed previously to expedited.

11 COMMISSIONER CLAYTON: Okay. We've got
12 that. Any other options? That's three. Do you think
13 penalties are an option? Could that come from this?
14 I mean, I'm not trying to advocate --

15 MR. DOTTHEIM: No, I would think that that
16 would be a possibility in an egregious situation.

17 COMMISSIONER CLAYTON: Okay. Anything
18 else? Any other options from here?

19 MR. DOTTHEIM: Yes. And I'm sorry to --
20 there's always, depending upon the situation, there's
21 something totally different, such as -- and I'll give
22 another plug to Mr. Mills' filing, but his petition to
23 open an investigation yesterday may be a means of
24 addressing deficiencies.

25 COMMISSIONER CLAYTON: Can I ask what is

1 the title of the OPC filing that everybody is
2 apparently aware of?

3 MR. DOTTHEIM: Public Counsel's petition to
4 open a case.

5 It's captioned: In the Matter of Public Counsel's
6 Petition to Open a Case to Investigate AmerenUE's Plan
7 to Construct and Finance a Second Unit at the Calloway
8 Nuclear Plant Site. And it's been docketed Case No.
9 OE-2009-0126.

10 The Commission could come up with a totally
11 separate case number for an investigation or some
12 separate proceeding.

13 COMMISSIONER CLAYTON: Is that filed as a
14 contested case or not?

15 MR. MILLS: It's filed as an EO case rather
16 than an EW case. I think it's really up to the
17 Commission to decide whether it's contested or
18 non-contested. And it was my intent that it would be
19 the type of case in which the Commission could,
20 perhaps, if it comes to that, order the parties to do
21 something. So it may be best to treat it as a
22 contested case.

23 COMMISSIONER CLAYTON: That was a helpful
24 answer.

25 MR. MILLS: My notion is that it should be

1 a contested case.

2 COMMISSIONER CLAYTON: That's all I asked
3 you, is if you intend it to be contested.

4 MR. DOTTHEIM: And the Staff would suggest
5 that it should be a contested case.

6 MS. TATRO: And AmerenUE would state we
7 barely looked at the thing so we're not taking any
8 position, and I don't want anyone to think that our
9 silence is acquiescence.

10 MR. DOTTHEIM: And I would note that Henry
11 Robertson is here today, who in the past has
12 represented a couple of clients in the EO-2005-0329
13 KCPL regulatory plan case that went up on appeal,
14 representing Sierra Club and the concerned citizens of
15 Platte County that took great issue with that case
16 when it started off as an EW case. And the Staff
17 would certainly suggest or recommend to the Commission
18 that there not be an EW case.

19 And I don't know if Mr. Robertson would want to
20 address that in any manner.

21 MR. ROBERTSON: Thanks a lot, Steve. I'm a
22 little rusty on this whole contested case business,
23 but perhaps this is sui generis.

24 COMMISSIONER DAVIS: Can I jump in here
25 just for a second?

1 COMMISSIONER CLAYTON: As soon as somebody
2 tells me what that means.

3 COMMISSIONER DAVIS: I don't know exactly
4 what it means, but I have some sui generis questions
5 for Mr. Robertson. I appreciate your indulgence here.

6 Mr. Robertson, is it fair to say that Sierra
7 Club's position is that there shouldn't be anymore
8 nuclear power plants built in Missouri or anywhere
9 else?

10 THE WITNESS: Yes. Coal plants, too.

11 CHAIRMAN DAVIS: So, let me ask you this,
12 Mr. Robertson. Like, how many hours of rolling
13 blackouts should consumers in this state be willing to
14 tolerate for your plan?

15 MR. ROBERTSON: One of the issues we are
16 raising here is we are contesting the adequacy of
17 AmerenUE's efficiency of DSM efforts. Efficiency
18 costs three cents per kilowatt hour. There is your
19 lowest PVR. Ameren says they can't do efficiency to
20 the extent that would obviate the need for new base
21 load, and my clients disagree.

22 CHAIRMAN DAVIS: Okay. And you recall your
23 law firm's participation in the last KCPL experimental
24 regulatory plan docket, do you not?

25 MR. ROBERTSON: I was not personally

1 present as the PSC level.

2 CHAIRMAN DAVIS: Do you recall that one of
3 your witnesses in that case had a cease and desist
4 order in the State of Kansas for selling unregistered
5 securities?

6 MR. ROBERTSON: Yes.

7 CHAIRMAN DAVIS: If we ever get to that
8 point of having some more evidentiary hearings, are
9 you going to put on some more credible evidence than
10 you did in the last case, Mr. Robertson?

11 MR. ROBERTSON: I certainly hope we will do
12 better than Troy Hellman.

13 CHAIRMAN DAVIS: I certainly hope so, too.
14 You should be embarrassed by your performance in that
15 last case. I mean, this -- I'm open, if you've got a
16 better alternative, put it out there. But that was a
17 joke, and it was an abomination.

18 I'm sorry, Commissioner Clayton, you can go ahead
19 now.

20 COMMISSIONER CLAYTON: I forgot my last
21 question. Does anyone remember my last question?

22 MR. MILLS: I'm not sure if this was your
23 last one, but one of them was about -- were you still
24 asking about remedies?

25 COMMISSIONER CLAYTON: I think I got a list

1 from Mr. Dottheim.

2 MR. MILLS: I'd like to add to that, if I
3 may.

4 COMMISSIONER CLAYTON: Go ahead.

5 MR. MILLS: For example, one of the things
6 that we assert is a deficiency is that UE did not pick
7 it's preferred plan from among the alternates that it
8 analyzed. You could order UE to turn around tomorrow
9 and say here's your list, the rules require you to
10 pick one; pick one.

11 That's not something that has to take six months
12 or a year. It's simple. The rules require you to
13 pick one, tell us which one it is. So for that
14 specific deficiency, that's a very clean, tailored
15 remedy that is well within your power.

16 MS. WOODS: If I might weigh in? The only
17 thing I would add is that the rules do ask the parties
18 who are alleging that there are deficiencies to also
19 propose a remedy for the deficiency identified, and
20 you could certainly, I would think, look to those
21 proposed remedies when you were making your decision.

22 COMMISSIONER CLAYTON: I want to give
23 Ameren a chance. And I do want any other party that
24 wants a piece of this to jump in. Go ahead.

25 MS. TATRO: Well, there's two issues that I

1 would like to address. The first is, what can you do
2 if there is a deficiency? And then the second one is
3 this new allegation of a deficiency that OPC raised
4 twice now, and I want to address that one first, if
5 you will indulge me, and that is whether or not we
6 picked a preferred plan.

7 And I believe that we did pick a preferred plan.
8 It is clearly laid out in our filing, which has been
9 there since April. It's the same one that the Staff
10 identified in their filing that OPC quoted earlier.

11 If that plan shows that the construction of
12 Calloway 2 long-term might be the cheapest option,
13 what we did, when we put those on the preferred plan,
14 is we said it needed to be an immediate need for
15 energy efficiency. We're doing that. So it needs to
16 be more emphasis on renewables. We're doing that. It
17 says there's going to be a need for a base load plant,
18 which we continue to evaluate. As OPC points out,
19 maybe Meramec doesn't have to be retired. Let's get
20 that right. We're doing that. And we are preserving
21 the option to have that second Calloway plant if
22 that's what works out to be best.

23 Does this Commission really want AmerenUE to say,
24 here and now, we are building Calloway 2? It's
25 premature. That would be imprudent. The preferred

1 plan says that's what it looks like right now, but it
2 could change. And that's all that our plan is
3 attempting to address whenever we are going forward.

4 I think this is really a semantics difference
5 between what OPC is saying and what we're saying.
6 We're pointing to the same plan as what would happen
7 going forward. We are just saying we're not going to
8 commit to this \$9 billion project until we know that
9 that's absolutely what has to happen.

10 And we need to do more analysis and look at more
11 things, and that's why it's a continuing process and
12 we'll back in three years, or sooner, if necessary,
13 because we have made the commitment that we will do
14 that. And we will be back to provide that information
15 that will continue the stakeholder process.

16 Plus, I'm not even sure, really, this is the
17 appropriate time to be bringing up a new deficiency
18 when nothing's changed in our position since we filed
19 it back in April.

20 COMMISSIONER CLAYTON: Can we get to the
21 remedies, too, the five things Mr. Dottheim discussed,
22 or any other relief aside from a hearing? And I'm
23 trying to get an idea of the substantive rights that
24 any party would possibly have after we make our
25 decision.

1 MS. TATRO: The IRP rules are very
2 self-contained. They are incredibly descriptive.
3 They say exactly what happens in this process, when,
4 and how many days. They don't rely just on the
5 general Commission rules on how to do things.

6 And it says the Commission issues an order that
7 says we either complied or we didn't comply with the
8 rules. And that's what you do.

9 Now, that means, when we come back in three years,
10 or before that, whatever it works out to be, we are
11 expected, we understand, we've been told, that's how
12 you want it done and that's what we are to do. So the
13 remedy is that we are supposed to correct that.

14 Now, I don't think that means that you say you
15 have nine months to redo that. I think, if that's a
16 remedy that was intended when the rules went into
17 effect, it would be there. I mean, the rules are
18 incredibly detailed. Why would it leave out something
19 so important?

20 And I think the reason it doesn't do that,
21 Commissioner Clayton, is because it's not like that is
22 the end of the story. Right? As we have discussed
23 before, any decision you make will eventually need to
24 be put into the rates, and that can't happen if you
25 find that we haven't been prudent because we didn't

1 analyze something that should have been analyzed. I
2 don't think the two processes are completely distinct.

3 COMMISSIONER CLAYTON: I'm just asking
4 if -- assume with me, just for a second. Let's say
5 the Commission finds a deficiency in Chapter 22.
6 Regardless of hearing -- I don't want to get
7 distracted by that. What you are saying is that
8 basically the only option we have is to tell you to do
9 it properly next time? That the deficiency we think
10 exists in your filing needs to be fixed the next time,
11 is that what you are telling me, that's it, that's all
12 we can do?

13 MS. TATRO: I think what you do is you say
14 this is deficient and it becomes our obligation to get
15 it right.

16 COMMISSIONER CLAYTON: In the next IRP?

17 MS. TATRO: Yes. Absolutely.

18 COMMISSIONER CLAYTON: So if you don't get
19 it right in the next IRP, what happens?

20 MS. TATRO: Well, the next IRP, as Office
21 of the Public Counsel pointed out, is pretty important
22 because it might have a decision for a base load
23 plant.

24 Obviously, there's a lot more risk for us if we
25 don't get it right the next time around because that

1 goes directly to us not being prudent when we decided
2 to construct a base load plant or not to construct a
3 base load plant.

4 So, in the IRP case you would be doing the same
5 thing. Deficient; comply, not comply. But the impact
6 of that and the importance of that are important when
7 it comes to rate case.

8 And I think this is perfectly consistent with what
9 Missouri law said. The courts have held time and time
10 again that the Commission doesn't manage the company.
11 The company is responsible for making management
12 decisions and we are responsible for explaining them
13 to you, demonstrating that they were prudent
14 decisions, and you determine whether or not you agree
15 with that. It's kind of a big circle, and it all
16 works that way.

17 COMMISSIONER CLAYTON: Anyone else?

18 Mr. Conrad, do you want in on this?

19 MR. CONRAD: I'm tempted to try to define
20 sui generis.

21 The problem, I think, with what counsel is
22 suggesting, is what Mr. Mills has put his finger on,
23 and that is this unfortunately is not an ordinary
24 case. And what counsel for Ameren is seeming to
25 suggest is that we would go on through a process and

1 have our backs to the wall, and the Commission with
2 us, about making some shortcut decision in the next
3 case.

4 But by then we may be so far down this road that
5 we may be up against the situation where the
6 Commission is in the situation of deciding whether
7 it's going to not bail out Lehman Brothers and bail
8 out AIG. And the cost of not approving it becomes so
9 monumental that your hands almost are tied. And that
10 is why, I guess, in our view, it is so important that
11 we really try to get it right.

12 I've heard counsel and Mr. Kidwell say we really,
13 really, really want to get it right. We want to get
14 it right, too. We are on the other end of the process
15 and would be paying the rates, so we are very
16 interested in getting it right.

17 Now, as far as a remedy, I think I'm probably
18 going to astonish counsel for the utility in this, but
19 you do not, I think, throw out the baby with the bath
20 water. There is a lot of good work that has been done
21 in this case that should not be just pushed aside.
22 So, to me, from our perspective, the idea of just
23 saying start over again, ought, frankly, not to be
24 seriously thought about.

25 There are some areas that need to be addressed.

1 Addressing those areas may roll into some other
2 things, but a whole universe of work has been done
3 here in building up studies and so on that need not be
4 cast aside. And that's why, perhaps -- and I'll put
5 my two cents in -- that we would think that Public
6 Counsel's suggestion of this spinoff case, however you
7 want to call it, may have considerable merit in that
8 it would provide an encapsulation of those issues and
9 a mechanism to address those outside of this somewhat
10 nondescript sui generis process that would hopefully
11 allow the utility the comfort of having the work that
12 has been done, the good work that has been done, to be
13 accepted on that basis.

14 COMMISSIONER CLAYTON: Well, now I'm going
15 to start with you in this. You are asking for an
16 evidentiary hearing on these deficiencies, and right
17 now you are alleging that there are deficiencies, so
18 what relief are you requesting?

19 MR. CONRAD: Well, it would seem to me that
20 the first thing you need to do is go back to that
21 Paragraph 13 that I was working our way through. If
22 you've got a three part conjunctive test, you've got
23 two things. You've got to decide binary, yes/no
24 deficiencies. Yes/no, the plan complies with
25 .010(2) --

1 COMMISSIONER CLAYTON: Okay. I understand.
2 Assuming that we side with you and we find a
3 deficiency, then what?

4 MR. CONRAD: Then you focus -- and perhaps
5 Mr. Mills' case offers an opportunity to do it. You
6 could do it in this docket, I guess, or this case, I'm
7 told, and put some short string on it and say fix
8 these things.

9 COMMISSIONER CLAYTON: Would we need --
10 considering that this case is out there, do we need to
11 proceed to an evidentiary hearing under your line of
12 reasoning, I mean, are we going to get to those issues
13 regardless of how we move forward with an evidentiary
14 hearing?

15 MR. CONRAD: Yeah, I think that's perhaps
16 the point Mr. Mills had in offering that suggestion at
17 the time that he did is to give the Commission that
18 alternative. I mean, I can't speak for him.

19 COMMISSIONER CLAYTON: Do you disagree with
20 what he just said?

21 MR. MILLS: No, not entirely. I certainly
22 think that an evidentiary hearing in this case is
23 warranted and should go forward, but I think the case
24 that I asked you to open yesterday offers an
25 alternative path.

1 COMMISSIONER CLAYTON: You don't think we
2 need to do both?

3 MR. MILLS: I do.

4 COMMISSIONER CLAYTON: Is that an efficient
5 use of resources to do both?

6 MR. MILLS: There are narrow questions in
7 this case and there are broader questions in that
8 case, and yeah, I do think -- I don't think it would
9 be inefficient.

10 I can't stress enough just how threatening the
11 idea of a \$9 billion investment is to Missouri rate
12 payers. It may be the right thing to do, and it may
13 be in the long run the best thing to do, but if we
14 don't take every opportunity to look at it every which
15 way from Sunday we are doing the public a great
16 disservice.

17 COMMISSIONER CLAYTON: It all depends on
18 what number you put next to that nine billion. If
19 it's 700 billion, it's not so much.

20 DNR, what are you asking for?

21 MS. WOODS: We have asked for an
22 evidentiary hearing. I, too, have a concern with
23 Mr. Conrad over the requirement in Subsection 13 for
24 findings. And I'm not sure how, under administrative
25 law, you can produce findings without having some form

1 of an evidentiary hearing.

2 COMMISSIONER CLAYTON: Mr. Robertson, do
3 you have a position or any comments?

4 MR. ROBERTSON: Well, we're asking for a
5 hearing in belief that not all these deficiencies can
6 wait until the next filing. If Calloway 2, the
7 boiler's fired up, that train is about to leave the
8 station on some of these issues and I think cannot
9 wait for another two to three years and another IRP
10 filing.

11 I think the very fact that the Commission can
12 issue an order of non-compliance implies that you can
13 do something other than simply wait for the next IRP
14 filing to roll around.

15 COMMISSIONER CLAYTON: Mr. Dottheim, Staff?

16 MR. DOTTHEIM: I think there are concerns
17 about proceeding forward and finding deficiency
18 without some hearing.

19 COMMISSIONER CLAYTON: How about moving
20 forward and not finding deficiency?

21 MR. DOTTHEIM: Well, that is the position
22 that the Staff has taken, as I indicated at the very
23 start of these proceedings, based upon the presently
24 existing rules as the Staff reads them, and the Staff
25 finds them to be very narrowly constructed.

1 And I think we have indicated that we do have
2 other concerns that have been raised by the pleading
3 filed by Public Counsel yesterday. But, again, in the
4 context of Chapter 22, the deficiencies that we
5 identified in the concerns that we raised, AmerenUE
6 addressed those deficiencies and concerns.

7 MR. MILLS: Can I add one quick addendum to
8 that?

9 The rules themselves can't, by definition, confirm
10 upon the Commission any authority. They only reflect
11 the ability that the Commission already has and
12 prescribes the way in which utilities submit
13 themselves to that authority.

14 So the notion that the rule itself doesn't contain
15 remedies and somehow implies that the Commission
16 doesn't have remedies just doesn't make any sense.
17 The Commission created those rules out of authority it
18 already had from other sources. It still has all that
19 other authority.

20 MR. DOTTHEIM: I also indicated that the
21 Staff is looking forward to the opportunity to revise
22 the rules as previously been discussed on any number
23 of occasions. That is, Chapter 22.

24 COMMISSIONER CLAYTON: And Ameren, I'll
25 give you the last word.

1 MR. KIDWELL: Commissioner, I think I'll
2 speak for AmerenUE senior management. I have to
3 respectfully disagree with Mr. Mills. I think that
4 these proceedings were initially identified and really
5 structured to be a continuous planning process and to
6 take snapshots in time for that planning process.

7 For the parties in this case to say that a case is
8 going to land on them with six months to decide it
9 after we spent 13 months with them ahead of time is,
10 frankly, disappointing. I haven't heard much about
11 that process today except a little what I would call
12 faint praise.

13 We take that very seriously. So we don't have any
14 intention of dropping on the stakeholders in this
15 process a filing that they haven't been a party to
16 helping us put together. We've demonstrated that in
17 this filing. So we think it is more prudent -- and I
18 said earlier that, precisely because we consider this
19 decision to be so important, we want to use current
20 information when we make it, and we want to work on
21 the stakeholders to do that in the next process.

22 We frankly think that spending any more time on
23 this particular docket is a waste of time.

24 COMMISSIONER CLAYTON: Let me follow --
25 hang on just a second.

1 Aside from how the rule is set up and the
2 different bits of whether we are talking contested or
3 not contested or what type of relief, for all this
4 discussion -- which ought to be good for CLE
5 credits -- in terms of big picture, good government,
6 full disclosure, full due process, I think it seems we
7 have honestly different positions here. I think the
8 parties disagree about whether there's factual
9 disputes. But, I mean, we had some disagreements here
10 on small parts -- not small, but parts of a very large
11 filing.

12 What is the downside with having an evidentiary
13 hearing?

14 MR. KIDWELL: The only downside from our
15 perspective, I think, would be the resources used.
16 And again, it's our position that there are no facts
17 that are in dispute and that the Commission needs to
18 determine whether there are deficiencies. It's up to
19 you to decide whether you need an evidentiary hearing
20 to determine deficiencies. And we will respect the
21 process that you put in place after this, but it is
22 our opinion that you have enough facts in front of you
23 to make those determinations and that we can move on.

24 COMMISSIONER CLAYTON: I only have one more
25 question that I want to ask the group and then I'll

1 stop. Before I do that, I want to know -- I didn't
2 get all the presentation.

3 Is that handed out in written form, Judge? Is
4 that something that I can get?

5 MR. MILLS: It was attached to the notice
6 setting up this portion of this proceeding.

7 MR. DOTTHEIM: Mr. Clayton, if you would
8 like to stay, I'm sure Mr. Kidwell would give the
9 presentation over again for you if you would like to
10 sit through it.

11 MR. KIDWELL: Sad thing is, you're right.

12 COMMISSIONER CLAYTON: I was going to say I
13 was waiting to the end. I was going to go through it,
14 but everyone just kind of stuck around, and I don't
15 want you to have to repeat it.

16 But this is the question I ask. If the Commission
17 were to go down the road of an evidentiary hearing to
18 deal with these deficiencies, what do the parties
19 estimate in terms of time and resources to do that?
20 Are we talking a day, a week, a month?

21 MR. MILLS: Certainly not a month, probably
22 not a day. I would say two days, possibly
23 two-and-a-half, three.

24 MR. DOTTHEIM: I think your question goes
25 to not just the hearing time, you are probably asking

1 the parties as to, you know, is anyone suggesting
2 filing testimony. I mean, what type of procedure are
3 the parties that are asserting deficiency are
4 suggesting would be needed at this time in addition to
5 hearing room time, again, as far as testimony,
6 prehearing briefs, post-hearing briefs, what are the
7 parties that are suggesting hearings, that have
8 identified deficiencies, what's the full scope of what
9 they are proposing?

10 JUDGE WOODRUFF: And there's also the
11 question of coordinating this with the rate case.

12 MS. TATRO: With rebuttal testimony due in
13 seven days.

14 COMMISSIONER CLAYTON: That's your
15 obligation?

16 MS. TATRO: Well, everyone. And the
17 rebuttal thereafter, and -- well, you know how it
18 goes.

19 COMMISSIONER CLAYTON: Do you all have any
20 comment on that procedure?

21 MR. MILLS: Commissioner, we would be happy
22 to proceed either with pre-file testimony or without.
23 Different Commissioners have different preferences. I
24 can do it either way. I would be happy to please the
25 Commission on that.

1 COMMISSIONER CLAYTON: Anyone else?

2 MS. WOODS: I think, as far as due process
3 is concerned, you need parties to testify, parties to
4 have the opportunity to cross-examine and to produce
5 evidence, and it doesn't make any never mind to us
6 whether you have to pre-file testimony or you have
7 everybody come in and present it directly.

8 MR. CONRAD: Concur.

9 COMMISSIONER CLAYTON: Thank you.

10 JUDGE WOODRUFF: Anything else from any of
11 the other Commissioners?

12 COMMISSIONER MURRAY: I just had to ask,
13 assuming we go through all this process of an
14 evidentiary hearing, what are we going to gain? What
15 is the outcome? I don't see that it's a wise use of
16 anyone's time and energy and other resources. What's
17 to be gained?

18 MR. MILLS: Well, I think, from our
19 perspective, it gives us perhaps two things, an
20 additional chance to convince you what the
21 deficiencies are, how significant they are, the
22 possible detriments from allowing them to just ride
23 over, and what the best remedies will be.
24 I think all of those things will be best flushed
25 out in an evidentiary hearing, and I think having the

1 Commissioners address them now may save a lot of time
2 and agony later.

3 COMMISSIONER MURRAY: Okay. And suppose
4 one of the remedies is that they didn't declare a
5 preferred plan so they declare that plan A is the
6 preferred plan. What does that get you? How is
7 anyone better off?

8 MR. MILLS: For one thing, it let's us know
9 whether or not they're really, at this point, is a
10 nuclear power plant that they are talking about, if it
11 really is just a placeholder. And I think, depending
12 on how serious that is, it let's us know where we are
13 going from here.

14 COMMISSIONER MURRAY: They have explained
15 all the ramifications of that and the fact that it is
16 impossible to know at this point whether they will
17 actually go ahead with that plant. So even if they
18 declare that is the preferred plan, how does it make a
19 difference?

20 MR. MILLS: It makes a difference because,
21 for one, I don't think we're ever going to get there
22 until we figure out what the cost of that plant is. I
23 don't think that's just a yes or no decision that they
24 just say, yeah, we're going to do the nuke plant.
25 Well, then we have to say, what's it really cost? You

1 can't stop there and say, well, okay, now it's all
2 good because we know what the nuclear plan is. Then
3 we have to get into questions of how are you going to
4 finance it.

5 The reason they are now saying they can avoid
6 addressing questions of financing and overall costs is
7 because they haven't made the decision yet. So it's
8 sort of big circle. And my biggest driver here is to
9 get these discussions going now so we have time to
10 address them adequately.

11 COMMISSIONER MURRAY: So you are -- in this
12 process you want a complete cost study of going
13 forward with the nuclear plant, means of financing,
14 everything in this proceeding --

15 MR. MILLS: I think if they are going to
16 include it as part of their preferred plan we have to
17 have a better analysis of what it costs.

18 COMMISSIONER MURRAY: And how do you
19 propose to get a better analysis without the facts
20 being determinable at this point in time?

21 MR. MILLS: Well, we can, for example,
22 inquire of their witnesses how they plan to borrow
23 money when their coverage ratios are so weak that no
24 one will lend it to them. Although, the way the plan
25 is set up now, that's an assumption that's built into

1 it.

2 COMMISSIONER MURRAY: All right. Then
3 assume that we approve this -- or not that we approve
4 it but we say it complies or it doesn't comply. We
5 can either say parts of it comply, parts of it don't,
6 this process is over until the next analysis begins.

7 At the time that any recovery would be sought for
8 going forward with a nuclear plant, if and when they
9 do that, we have to go through a complete prudency
10 review -- not a review, but we have to go through a
11 complete analysis at that time before anything is
12 recovered in rates.

13 So I don't -- I mean, I'm just -- I'm really
14 trying -- struggling with the idea of what benefit
15 would be gained from making that declaration at this
16 point and laying out all the costs that would occur if
17 that plan were pursued.

18 MR. MILLS: And again, I think we need to
19 start getting at this stuff quickly here. If you put
20 off until an 11-month rate case the entire analysis of
21 whether this was the proper decision to make,
22 three years before the decision was made or six years
23 before or seven years before, if you are waiting until
24 the entire plant is done to put it in rate case,
25 that's an incredibly difficult analysis to do in the

1 context of an overall rate case, and it's an
2 incredibly hard thing, as Mr. Conrad points out, for
3 somebody to challenge to say, you know, they've done
4 it, they are \$11 billion on the hook, they shouldn't
5 have done it but now they have.

6 And for the Commission to come at that point and
7 say you're right, they shouldn't have done it, we're
8 going to bankrupt them. We don't know what's going to
9 happen to their customers, we don't know how their
10 lights are going to turn on tomorrow, but we're going
11 to bankrupt them, and here we go.

12 I mean, I think putting it off into a rate case
13 because you can is really not a very long view of the
14 process.

15 COMMISSIONER MURRAY: I'm going to ask for
16 company response as to when this would be -- these
17 other issues would be dealt with, and it's my
18 understanding that you are not waiting until a rate
19 case with the next integrated resource plan going
20 forward, that we are going to see more as things
21 become more definite prior to any filing of a rate
22 case in which you would seek recovery. Now, is that
23 accurate or not?

24 MS. TATRO: I would agree with that
25 statement. I mean, absolutely, we have already

1 committed to you that we will be filing again prior to
2 making a concrete decision on whether or not to
3 construct this base load plant.

4 And we've also committed that there's a lot of
5 analysis that we want to do going forward to make sure
6 that decision is the right thing.

7 All the risk here is on UE. Right? The risk --
8 if we make a bad decision, then it doesn't get put
9 into rates. The risk sets with us.

10 Now, unless this Commission wants to give
11 pre-approval to the preferred plan, which they've
12 never done in the past, and I don't think was the
13 intent of rule, then that's the way the balance has
14 shaken out over time.

15 The rate case becomes important because that's
16 when this Commission can allow or disallow some costs.
17 And, of course, they have disallowed costs in the
18 past.

19 In addition, I think that Mr. Kidwell is about to
20 grab the mike away from me because he wants to address
21 an issue that I think there's some incorrect analysis
22 being stated.

23 MR. KIDWELL: Just a couple of things.
24 First of all, the characterization that somehow maybe
25 we're just guessing about capacity cost right now for

1 an entity that sat in stakeholder meetings with us for
2 several months is kind of unbelievable.

3 We got the best analysis we possibly could from
4 third party sources, we dealt with it under
5 uncertainty. It was an uncertain variable in our
6 analysis. We looked at it under several different
7 scenarios in the future. And that's exactly the kind
8 of analysis we feel like will need to be done again
9 with updated information prior to making a decision
10 about this plant.

11 From our point of view, that is much better done
12 within the context of the next entire resource
13 planning process. And let me say very clearly what
14 that means. That means a lot of time up front with
15 stakeholders, assuming we want to do it again, to try
16 to understand what our plan is about. Again, we spent
17 13 months doing that with people ahead of time, and so
18 we would intend to do that again.

19 And looking at things like capital cost -- as a
20 matter of fact, if there are key things that
21 stakeholders would like to make sure we have plenty of
22 time to deal with in the next plan, we will be happy
23 to front load that process and deal with those up
24 front. But we, again, feel like it needs to be closer
25 in time to the decision making point, at least as we

1 see it today.

2 And I'll reiterate our commitment that we would
3 put a plan in front of the Commission 180 days ahead
4 of needing to make a firm decision on construction.
5 But that also implies not just that six months but it
6 implies at least another at least year, year-plus, of
7 time with stakeholders.

8 MS. TATRO: And Commissioner Murray, to
9 respond specifically to the three reasons that
10 Mr. Mills offered of what he expected to gain out of
11 the hearing.

12 He said an additional chance to convince you.
13 Okay. That's not a reason to have a hearing. He said
14 a discussion of remedies. Which is certainly not a
15 factual issue but more of a legal question. So if the
16 Commission requires further assistance on that, I
17 suppose that is something we don't have to have a
18 factual hearing about but that the parties could brief
19 or otherwise provide the Commission with.

20 And the third thing he said, that they want
21 discussions going so we have time to address this, we
22 don't disagree with that. In fact, we've been saying
23 that's what we want to do going forward. It is not
24 necessary to order us to go back and redo certain
25 analysis today that we're going to have to turn around

1 and do again in the next IRP because who knows what
2 the financial market is going shake out, we don't know
3 what carbon credits are going to be. That's why you
4 have uncertainties and that's why you continually
5 plan.

6 So I don't think any of those three reasons are
7 reasons that you should have a hearing. In fact, his
8 very concern is one that we share and believe we are
9 addressing.

10 COMMISSIONER MURRAY: I'm sure that
11 Mr. Kind and OPC has already had an opportunity. I'm
12 going to give the other parties, if they want, an
13 opportunity to respond.

14 MS. WOODS: If I might? And if it hasn't
15 been said, let me say it on behalf of the Department
16 of Natural Resources. We appreciated the stakeholder
17 process. We agree with Ameren that it was very
18 beneficial. We learned a lot. We hope Ameren learned
19 a lot.

20 But I don't want to leave this on-the-record
21 presentation without also saying that, until we saw
22 the full IRP filing, we could not do a comprehensive
23 review of what Ameren's plan is.

24 Also, that planning process is, as Ameren has
25 mentioned several times, Ameren's to do. So there

1 were times during the stakeholder process where Ameren
2 presented information to us, there may have been
3 disagreements between the parties, but ultimately
4 Ameren is the one who put together that plan.

5 I also think that part of what we could get out of
6 an evidentiary hearing is a better planning process.
7 And that better planning process is critical not just
8 to the Commission, not just to the stakeholders, but
9 to the company in going forward and making any sort of
10 base load decision.

11 MR. CONRAD: Just one thing. In the usual
12 case, if you are talking about buying a postage meter
13 and then throwing that out as being imprudent, I would
14 agree with counsel that the utilities probably are on
15 the risk there.

16 On a project of this magnitude it is an absolutely
17 incorrect statement to say that the utility is the
18 only party that is on the risk. The rate payers,
19 indeed the entire State of Missouri, its economy, is
20 on the risk if this is not done right.

21 COMMISSIONER MURRAY: Anybody else?

22 Okay. Mr. Kind, OPC can have one more
23 opportunity.

24 MR. KIND: Thank you, Commissioner.

25 Well, Mr. Kidwell has raised the stakeholder

1 process several times, and I am in agreement with him
2 that it was a valuable process, and I want to
3 compliment you guys on most of the ways in which you
4 ran the stakeholder process, that it was, I think,
5 beneficial to everyone.

6 Unfortunately, I think things got a little bit
7 tight towards the end of the process, as things tend
8 to happen on large projects, and probably the
9 stakeholder process didn't work for all the final
10 pieces as well as for the earlier pieces.

11 But I have to just say that he's made a couple
12 points that somehow the Commission will have
13 sufficient time with just this six-month review
14 process following this filing of a plan because of the
15 anticipation or expectation that we will have this
16 really good productive stakeholder process in a manner
17 of the way it was done in the last stakeholder
18 process. And my response to that is just, I've got to
19 be realistic.

20 I put a lot of commitment into attending nearly
21 every one of those stakeholder meetings, and I felt it
22 was worthwhile. We set up that process because of
23 major deficiencies in their prior IRP filing, a lot of
24 which were in the DSM area where we had the largest
25 electric utility doing virtually nothing in the area

1 of DSM. And I just thought it had to be a priority
2 for our office to try and turn that around.

3 But the time and resources that we dedicated to
4 that process is not sustainable unless the staff of
5 our office is to increase dramatically. It's not
6 something we can do in every IRP filing for every
7 utility in Missouri. I wish we could. I enjoy doing
8 that kind of work a heck of a lot. It's a lot more
9 fun than rate cases and what I've talked to Steve
10 before about being the sort of meat and potatoes
11 issues that have to be our first priority.

12 But I just appreciate you giving me a moment to
13 say that to rely on that as sort of a substitute for
14 having sufficient time after the filing, I'm just
15 not -- I don't think it can happen quite as well
16 probably next time around because of the cycle of rate
17 cases that we are in currently and other filings that
18 are just occurring at regular intervals these days.

19 COMMISSIONER MURRAY: Mr. Dottheim?

20 MS. MANTLE: We would like to also add that
21 six months -- having only six months to respond and to
22 get you any information that you may need to have to
23 decide upon a deficiency in this plan the next filing
24 is pretty unrealistic in our viewpoint. Of course, we
25 don't know what our caseload is going to be like at

1 that time or what your caseload is going to be like at
2 that time. And this is a big decision. It is
3 important that we do review the next one extremely
4 well whether it happens in the next three-year filing
5 or whenever you decide it needs to happen. But we
6 don't believe six months is an adequate time for us to
7 give you a good report.

8 JUDGE WOODRUFF: Chairman Davis, you had
9 some questions?

10 CHAIRMAN DAVIS: Mr. Mills, going back to
11 something that you said earlier, is it fair to say
12 that your concerns are of a more global nature than
13 just with what's in the plan?

14 MR. MILLS: Well, they are both. I have
15 concerns about what's in the plan. We have some
16 unresolved deficiencies. But we also have some much
17 bigger picture concerns.

18 CHAIRMAN DAVIS: Is it what's actually in
19 the plan or what's not flushed out in the plan?

20 MR. MILLS: That's probably a better way to
21 say it.

22 CHAIRMAN DAVIS: It's what absent from the
23 plan and the other kind of global issues that really
24 aren't addressed?

25 MR. MILLS: That's correct.

1 CHAIRMAN DAVIS: And is it fair to say that
2 you would characterize Ameren's approach in this
3 matter as a legalistic approach of trying to dot the
4 I's and cross the T's as opposed to --

5 MR. MILLS: I think that's their approach
6 overall to the IRP planning process as it is embodied
7 in the Commission's rules. So, yes.

8 CHAIRMAN DAVIS: Let me get over here to
9 Mr. Kidwell.

10 Mr. Kidwell, I'm going to go out on a limb here,
11 and I'm just going to make a statement, and I'd like
12 you to respond to it.

13 My impression is that obviously you people are
14 concerned about the deficiencies alleged here -- that
15 they have alleged with regard to your plan. But even
16 more so, I think the larger concern is what Ameren is
17 not discussing with them.

18 And the fact is that everybody from Ameren is
19 marching on the legislature saying repeal the CWIP
20 law, and maybe they are not saying it here but
21 certainly, you know, I think one could read between
22 the lines and say that, you know, that it's their
23 ultimate concern that you are not discussing any of
24 those related issues, you are just, you know, over
25 there, you know, running your show, trying to do the

1 legislative process and get the law changed and then,
2 you know, bam, the doors mystically will open for you.

3 Now, I'd like you to respond to that.

4 MR. KIDWELL: Commissioner, I think that
5 there are honest deficiencies here as part of the
6 process that some of the parties, you know, believe
7 are there, but I would also agree with you that that
8 subtext is part of why we are even having this
9 discussion today.

10 CHAIRMAN DAVIS: Anybody else want to
11 respond to that?

12 MR. CONRAD: Mr. Chairman, I mentioned
13 earlier that Mr. Johnstone needed to be here to kick
14 me. He would like to add a two-cent piece here.

15 JUDGE WOODRUFF: Let me swear you in.

16 DONALD JOHNSTONE,
17 Of lawful age, being first duly sworn by the
18 Notary Public, testified as follows:

19 THE WITNESS: My name is Donald Johnstone,
20 and I'm a consultant for Noranda Aluminum.

21 In this plan the revenue requirements assume
22 traditional rate-making. They produce financial
23 metrics that are not consistent with a healthy
24 utility.

25 Ameren has stated publicly that they will not

1 build this plant if there is no equipment. So what we
2 have here is a plan that is completely inconsistent
3 with reality as we know it today. And I think that
4 cuts a little bit deeper than posturing.

5 The revenue requirements are not consistent with
6 CWIP. They have said they will not build this plant
7 without CWIP.

8 CHAIRMAN DAVIS: Mr. Johnstone, can I ask
9 you a follow-up question to that?

10 THE WITNESS: Certainly.

11 CHAIRMAN DAVIS: Is there a carbon law on
12 the books right now, cap and trade?

13 THE WITNESS: No, sir.

14 CHAIRMAN DAVIS: But we are doing some
15 economic modeling based on the assumption that there
16 will be some cap and trade costs in there, are we not?

17 THE WITNESS: Yes, sir. And likewise,
18 there should be such modeling with respect to CWIP.
19 That would be my point, sir.

20 CHAIRMAN DAVIS: Okay. So that is
21 ultimately what you are saying?

22 THE WITNESS: That's one of the
23 possibilities, or the regulatory plan that you have
24 heard about. But what's in there does not reflect
25 reality, and that's a fundamental deficiency in the

1 plan.

2 CHAIRMAN DAVIS: Because there's no
3 physiological way possible that a company with a seven
4 billion dollar market cap could go out and cash flow a
5 potentially eight or nine billion dollar construction
6 project. Is that a fair statement?

7 THE WITNESS: I don't see how it could be
8 done.

9 CHAIRMAN DAVIS: Does anyone else want to
10 add anything to that?

11 MR. MILLS: Just that we agree with it.

12 CHAIRMAN DAVIS: Mr. Kind, going back to
13 something that you talked about earlier. You talk
14 about least cost alternatives. We hear that term
15 bantered around a lot around this Commission. And my
16 question to you is, what are the fundamental
17 assumptions, you know, for determining a least cost
18 alternative? I mean, what's the time frame? Should
19 we be looking at a year, five years, ten years,
20 30 years, 40 years? Should we be looking at all the
21 contingencies? Do you want to expound on that?

22 MR. KIND: A little bit, and you can tell
23 me if --

24 I mean, the rule prescribes a 20-year plan on the
25 horizon for these alternative resource plans that are

1 analyzed. And in terms of how you come up with what
2 the costs are in the plans that are analyzed, you use
3 the model that represents how the utility system will
4 actually operate and you need to use reasonable inputs
5 to get reasonable outputs.

6 Of course, reasonable inputs would include things
7 like what you mentioned, the prospect of a carbon tax
8 or cap and trade. And that was done. The company, I
9 won't say -- we didn't weigh in on how reasonable
10 their assessment was of the level of the carbon tax,
11 but they certainly made assumptions that there would
12 be a significant carbon tax in the modeling that they
13 did, and we think that was the right thing to do.
14 Whether it was, you know, exactly right, we'll
15 probably know a lot more maybe in a year from now.

16 But just as -- and I think this is the point
17 Mr. Johnstone was making, was just as we should use
18 the best information we have on what we really expect
19 the cost to be for CO2 emissions, we should use the
20 best information we have on what these costs will be
21 of financing the debt, the models included.

22 What's your debt going to cost you? Is it going
23 to be 5 percent, 7 percent? What's your capital
24 structure going to be? You put all those assumptions
25 into the model.

1 They assumed no increase in their cost of debt as
2 their financial metrics went into the toilet, frankly,
3 and that's just not the way things happen in the real
4 world. And we think that they knew that they couldn't
5 get debt at that cost.

6 And we think -- again, I think what I was talking
7 about earlier was I would agree with what Mr. Kidwell
8 or Mr. Arora brought up, that the IRP rule says you
9 have to do modeling consistent with Missouri law.
10 That's fine. But there is more than one approach
11 permitted under Missouri law.

12 And KCPL obviously explored an alternative
13 approach to financing a large base load investment
14 that permitted them to move forward without huge
15 increases in their cost of debt. It did mean that
16 they had to have a rate-making mechanism that provided
17 for additional cash flow to go on top of the revenue
18 requirement that would have been granted, you know,
19 absent the adder for meeting the financial metrics.
20 But that too could be modeled.

21 And we just think that's a very important area
22 that was totally ignored in the modeling, and it was,
23 you know -- it was apparent to everyone. I think it
24 was apparent to, evidently, Ameren senior management
25 that they made comments. In fact, even prior to this

1 plan being filed on February 5th there was a
2 conference call with investment analysts that Mr. Voss
3 had in January proceeding that February 5th filing
4 where he told investment analysts that we're not going
5 forward with a nuclear plant unless we get CWIP.

6 So it seems like that's something you should be
7 taking into account in your resource planning;
8 otherwise, it's really just dotting the I's and
9 crossing the T's trying to get a plan that complies
10 but doesn't really serve the fundamental purpose of
11 the resource planning rule.

12 CHAIRMAN DAVIS: So you are saying, in
13 keeping with the spirit of the resource planning rule,
14 then they should have been more up front in their
15 filing about, you know, if they get the desired CWIP
16 changes to the law they are seeking, you know, then
17 give us some sort of ballpark estimate on what you
18 think this is all going to cost us.

19 MR. KIND: I think that's one of the -- if
20 the company had made a decision that they wanted to
21 emphasize that approach to financing, that's what they
22 should have looked at in their analysis. If they had
23 a different view of things, as KCPL did when they
24 built the base load plant, that we want to work
25 together with stakeholders and see if we can work out

1 some alternative arrangements, and they should have
2 said, okay, we think maybe we'll get this type of
3 arrangement that KCPL had, or maybe they have some
4 other ideas for some other arrangements just as they
5 had this idea for CWIP. And they could have analyzed
6 that.

7 I was really struck by the statement in the COLA
8 filing where they gave their cost estimate to the
9 Nuclear Regulatory Commission about what the cost of
10 Calloway 2 would be and they said this cost is based
11 on us getting the law changed in Missouri with respect
12 to CWIP.

13 And I'm paraphrasing here, but they said we want
14 to work with the Missouri Legislature and the citizens
15 of Missouri to get this accomplished.

16 And it seems to me, if people -- if you have a
17 utility that wants to work with the public to get
18 something like that accomplished, that's an issue that
19 should arise at the Public Service Commission.

20 CHAIRMAN DAVIS: It is true that it is
21 perfectly within their rights to seek an alternative
22 remedy and that is to go to the Missouri General
23 Assembly and seek to change the law; correct?

24 MR. KIND: Certainly.

25 CHAIRMAN DAVIS: And you and anyone else

1 can lobby those legislators just like they can?

2 MR. KIND: In my spare time, yes.

3 CHAIRMAN DAVIS: In your spare time. So
4 you don't have a shareholder funded budget to buy
5 things with; is that correct? Mr. Mills doesn't give
6 you an expense account for those purposes? He's
7 shaking his head no.

8 MR. KIND: No. I haven't been over
9 speaking with the legislature since there was an
10 initiative to try and deregulate the electric industry
11 in Missouri, and that's getting to be pretty far in
12 the past.

13 CHAIRMAN DAVIS: But you won that one,
14 didn't you?

15 MR. KIND: I wouldn't say single-handedly,
16 but we certainly got engaged. And along with some
17 allies that I probably don't even want to admit to,
18 like Enron, yeah, we turned that back.

19 CHAIRMAN DAVIS: Mr. Kidwell, do you have
20 any further responses?

21 MR. KIDWELL: I really don't. I think we
22 have covered it at this point.

23 CHAIRMAN DAVIS: Mr. Kind, is it fair to
24 say that even if we order Ameren to come in and say
25 tell us what you think this plant is going to cost,

1 tell us what you think it's going to mean to
2 residential, commercial and industrial rate payers,
3 that whatever question we ask them is still going to
4 call for a lot of speculation, and at best all we're
5 going to get is a rough estimate because no one's
6 built a nuclear plant in 25 years, no one really knows
7 what the new one is going to cost. Is that fair to
8 say?

9 MR. KIND: There will be a lot of
10 speculation, but that speculation gets more and more
11 informed over time. There's events that have taken
12 place in the last six months that have helped people
13 refine those capital cost estimates for nuclear plants
14 and helped people refine them specifically for the
15 type of nuclear plant that Ameren proposes to build.

16 You can look at the construction delays that have
17 taken place with the EPRs in England and France and
18 the cost overruns that they are experiencing there.

19 You can look at the Florida Power and Light filing
20 that they made for the Florida Commission detailing
21 their cost of building nuclear plants that really have
22 taken the cost assessment several steps beyond what UE
23 did in this filing, and for good reason. They are
24 seeking pre-approval down there. But there is ongoing
25 work.

1 CHAIRMAN DAVIS: Is it fair to say, though,
2 that these cost estimates are going to be a working
3 project until the bitter end when and if a plant is
4 ever built and, quote, used and useful?

5 MR. KIND: There will always be a lot of
6 uncertainty and that uncertainty has to be taken into
7 account in picking a preferred plan. Which is
8 something that is permitted by the IRP rules. It says
9 minimize PVRR subject to risk and other important
10 considerations.

11 CHAIRMAN DAVIS: There was some discussion
12 about the Meramec coal plant.

13 MR. KIND: That's correct.

14 CHAIRMAN DAVIS: Do you really think it's
15 prudent to make a decision to, you know, shut down a
16 coal plant before we know that a nuclear plant will
17 ever be online to replace it?

18 MR. KIND: No, I don't believe so. I think
19 what's important is to do the in-depth analysis of the
20 economics of retiring that plant, the risks of
21 continuing to operate it, and to take that into
22 account.

23 I mean, you really have to -- I think that, from
24 what I can tell, Ameren has the sense of -- similar to
25 what I have, which is that they need to get really a

1 definitive sense of how much longer they want to
2 operate that plant before they make a decision on a
3 nuclear plant. It's just got to be done.

4 And one of the things that's involved there is
5 that they've got tradeoffs involved. If they are a
6 first mover, they can take advantage of some of these
7 production tax credits, they can take advantage of
8 some loan guarantees.

9 But you give up some things by being a first
10 mover. You've got higher uncertainties as to what
11 your capital costs are going to be.

12 If they would chose to keep the Meramec plant on
13 for an extra five, ten years, it can lower those
14 uncertainties a lot. They can give up some of those
15 first mover advantages in the form of subsidies, but
16 they're going to be lowering the risk of construction
17 delays because there will have been more plants
18 constructed by that time.

19 They'll be lowering the risk of what's load growth
20 really going to be. At this point in time, the way
21 our economy is going, there's probably got to be a
22 serious reassessment of load forecast. But we're not
23 really going to know much about that for a year or
24 two. And maybe we aren't going to know much about
25 that for four or five years. Do you want to make a

1 decision, you know -- there's just trade-offs.

2 Again, while you've got a big risk there on what
3 load growth is going to be, just because of economic
4 growth and because of the effectiveness of DSM
5 programs, are you better off with the optionality of
6 just letting Meramec run for a little while longer and
7 the trade-off of the risks of doing that, keeping the
8 plant running longer and putting more money into it
9 versus pulling the trigger now?

10 There's a whole lot of these sorts of issues that
11 we really didn't get into in this IRP filing. And a
12 part of the reason we didn't get into them is because
13 the Meramec retirement study wasn't done.

14 And another reason we couldn't get into them is
15 that they are just beginning large scale DSM program
16 rollout, and we just don't know what the results of
17 that are going to be and what that means for future
18 capacity needs.

19 MR. KIDWELL: It seems that, as the day
20 goes on -- I'm sure Mr. Kind would not agree -- but it
21 seems like he may be coming around to our point of
22 view, that these things need -- there's a lot of
23 interaction between these things, and it may be more
24 appropriate to deal with them in a structured manner
25 closer to the time frame that we might actually need

1 to make a decision and subject to working with the
2 stakeholders.

3 A couple things that haven't been mentioned at
4 all, that we really could not deal with over any time
5 frame, you know, the next six to 12 months. Number
6 one is carbon regulation.

7 We will simply not know. We might know a little
8 bit more about that, but I think from what I'm hearing
9 it's likely that the Congress will delay that a little
10 bit longer because of the economic situation. And
11 that really is a fundamental --

12 CHAIRMAN DAVIS: Mr. Kidwell, you don't
13 subscribe to that theory that carbon regulation is
14 going to create jobs and spur the economy?

15 MR. KIDWELL: I would think that it will
16 create jobs in some places and it will destroy a lot
17 in others. And on that, I think it will destroy as
18 opposed to create, yes.

19 So that's number one. So clarity around carbon is
20 simply not going to happen in a time frame that the
21 Commission could think about any remediation here
22 before we actually start working on the next resource
23 plan. That's point number one.

24 Point number two. Ownership structure. We have
25 talked here about whether 100 percent or 75 percent or

1 50 percent is right for AmerenUE. And then who
2 actually are we thinking about potentially partnering
3 with here? We have no idea today.

4 So, again, those sorts of things could be much
5 better dealt with if we let, say, 18 months go under
6 the bridge and we address all these things again with
7 the next IRP.

8 Just like everything else, it really needs to be
9 looked at systematically. And that's really what the
10 resource planning rules allow us to do is look at it
11 systematically and simultaneously, or as close as we
12 can.

13 CHAIRMAN DAVIS: Okay. So, you're just
14 saying punt it all to 2011?

15 MR. KIDWELL: No, punt it to -- let me
16 think about this.

17 CHAIRMAN DAVIS: Well, punt it to focus
18 groups or to roundtable discussions which will then be
19 in some filing to occur in 2011?

20 MR. KIDWELL: Yes, that's right. But those
21 are way more than focus groups. I think the way I'd
22 say it right now, we are committed to April of 2011,
23 so for sure we are not going to wait to start talking
24 to the stakeholders until -- well, we'd be doing that
25 in first quarter of 2010 the way I see it right now.

1 CHAIRMAN DAVIS: I already asked
2 Mr. Robertson, but I'll go ahead and ask you,
3 Mr. Mills and Mr. Kind and Mr. Conrad. If you were
4 king for a day, what would you like to see from Ameren
5 on the nuclear front, or should they even be built?
6 What should they be doing, what should they not be
7 doing?

8 MR. MILLS: Well, let me sort of put it in
9 the context of some of the issues we had over
10 discovery in this case.

11 They should be fighting to give me information not
12 fighting to keep information from me. To begin with,
13 because we need to have more information to analyze
14 what these things are going to cost.

15 At this point we really don't have a realistic
16 well-thought-out goal or plan to finance a nuclear
17 plant. I mean, as far as I can tell, what UE's plan
18 is going to turn out to be is repeal the statute, come
19 to the Commission for 15, 17, 18, 19, 20 percent
20 returns during construction and go on their merry way.

21 But I don't really know what the accurate cost of
22 that is going to be because we haven't really gotten
23 into that.

24 So if I were king for a day, I'd start by asking
25 for much, much more and much, much better information

1 then what we have gotten so far.

2 CHAIRMAN DAVIS: Just to follow that up, do
3 you think they are withholding information, or is it a
4 question of whether or not they should be
5 manufacturing, like, scenarios in response to
6 questions that you have?

7 MR. MILLS: Some of the objections we got I
8 believe were that they had information but they didn't
9 believe it was relevant and didn't want to provide it
10 in the context of the case.

11 I don't believe it was a question of manufacturing
12 information. Although, yeah, going forward, we do
13 want a lot of that, too. We're going to want a lot of
14 analysis done that we don't have the capability to do
15 sui generis but that UE does and that we can take
16 advantage of.

17 CHAIRMAN DAVIS: Mr. Kind, did you have
18 anything to add?

19 MR. KIND: Well, yeah, in particular, one
20 of the things we asked them for within the last couple
21 months was just please give us a copy of your analysis
22 of what it costs to build this plant assuming that the
23 CWIP statute changes.

24 Well, they filed a cost estimate with the NRC
25 which assumes the CWIP statute changes yet they refuse

1 to provide us that analysis.

2 So I think Mr. Mills' point is just, the more we
3 can get a dialogue going and exchange information and
4 get a lot of people together that can exchange ideas
5 and brainstorm and come up with solutions for
6 addressing these things, the better off we'll be.

7 Because it's important to all of us to have
8 resources that we can rely on for reliable electric
9 service. Everybody wants that. We all have that
10 shared goal.

11 And to us, it just makes sense to let's get the
12 information out there, let's see where we've got
13 differences about the analysis. For instance, we
14 filed analysis with the Commission yesterday which
15 demonstrates from our perspective that even with CWIP
16 it's not enough to maintain the financial metrics, and
17 as Lewis alluded to, you are going to have to bump up
18 their returns well above the kind of returns you've
19 been giving recently -- I mean, way, way above -- in
20 order for them to --

21 CHAIRMAN DAVIS: You mean further than FERC
22 does?

23 MR. KIND: Even above that outrageous --
24 yeah.

25 So it's just let's get the dialogue going, as

1 Ameren implied, with something they wanted to do in
2 their filing with the NRC.

3 MS. TATRO: You know, I must interject for
4 just a moment.

5 Because we object to a data request doesn't mean
6 we do anything wrong. It requested information that
7 wasn't germane to the question before you all, and
8 that is whether or not the filing complied with the
9 rules.

10 They also asked things like, "Give us your CWIP
11 legislative strategy," and, "What are you planning to
12 do?" It had nothing to do with this case. They
13 didn't file a motion to compel; they obviously
14 accepted our analysis, or they have to this point.

15 So it doesn't mean we have hidden anything. It
16 means it's not relevant to this question. That's the
17 objection and that's the reason it was made. That's
18 all.

19 CHAIRMAN DAVIS: Did you cite them to -- I
20 don't know if this statute applies to corporations or
21 not, but did you cite them to that statute that -- I
22 believe there's a statute on the books that prohibits
23 government interference with individual communications
24 with legislators. Did you cite them to that statute?

25 MS. TATRO: Gee, I didn't think of that.

1 CHAIRMAN DAVIS: I think there's one.

2 Mr. Conrad, we haven't heard from you and
3 Mr. Johnstone yet. Did you have anything to add on if
4 you were king for a day?

5 MR. CONRAD: On this issue or on others?

6 CHAIRMAN DAVIS: It's 5:40, so we better
7 stick to this issue or we could be here awhile.

8 MR. CONRAD: The first thing I'd ask for
9 would be to get the revenue stuff right and to look at
10 the revenues that are resulting from the CWIP case.

11 It's our indication that, even if you put CWIP in,
12 even if the legislation moves forward, that you still
13 have credit metric problems. That that doesn't solve
14 the issue.

15 Given that then, you need to look at what are the
16 other alternatives if the analysis is skewed. Several
17 parts of the plan may need to be looked at again. But
18 that's a nice segue for Mr. Robertson.

19 MR. ROBERTSON: I wasn't asking for a
20 segue. I have nothing to add to all the substantive
21 eloquence that I have heard.

22 CHAIRMAN DAVIS: Does DNR have anything to
23 add on this issue?

24 MS. WOODS: I suppose if I were king for a
25 day on behalf of -- whatever -- on behalf of the

1 Department of Natural Resources, I think our point is
2 that the analysis of the DSM, the energy-efficiency,
3 was flawed, and until you get that right you don't
4 know what the analysis on the supply-side is going to
5 be. You don't know what sort of supply-side resources
6 you are going to need. It's not called integrated
7 resource analysis for nothing.

8 We're not saying that the final result won't be --
9 and I hesitate to say this because of who I'm sitting
10 next to -- says that the final result may be a 1600
11 megawatt nuclear plant. We're not saying that. We're
12 just saying you need to do the analysis right in order
13 to do the planning right in order to make the right
14 decisions for everyone.

15 CHAIRMAN DAVIS: I don't think I have any
16 further questions.

17 COMMISSIONER CLAYTON: How many requests
18 for information, like the items you just mentioned,
19 were objected to and not resolved? From all the
20 parties' perspectives.

21 MR. KIND: I thought you meant from just
22 OPC's perspective.

23 COMMISSIONER CLAYTON: I'm asking you. I'm
24 warning everybody else.

25 MR. KIND: I think we had a series of data

1 requests, that were approximately ten, that went out,
2 and they were all objected to. But they did provide
3 some information despite objections, but their
4 objection had a cutoff date. If it's something that
5 was -- well, some of them, I think, they objected to
6 in their entirety. Others it was a cutoff date that
7 this was for information that relates to some document
8 that we have that was generated subsequent to the date
9 of the IRP filing on February 5th and we're not going
10 to provide it.

11 COMMISSIONER CLAYTON: Would it be
12 possible -- is it appropriate -- to get an idea of the
13 type of information that parties felt --

14 JUDGE WOODRUFF: I can tell you,
15 Commissioner, that we had a discovery conference about
16 that, so I have that information.

17 MR. MILLS: There were a handful, maybe
18 four or five, that we pursued through the process to
19 the point of having a conference call with the judge.
20 If that's helpful.

21 COMMISSIONER CLAYTON: Did you go through
22 these and rule on them?

23 JUDGE WOODRUFF: No, they did not file a
24 motion to compel.

25 MS. TATRO: It was just discussion

1 contemplated by the rules between the two parties and
2 the judge to see if something could be worked out, but
3 there was nothing past that so they are not part of
4 the record anymore.

5 COMMISSIONER CLAYTON: Well, a suggestion
6 that information has not been shared I think raises a
7 concern from my perspective. But I don't know what
8 information is out there and if it's significant. I
9 mean, I'd like to know what types of things are not
10 being answered.

11 MR. KIND: Well, Commissioner, one that I
12 remember just off the top of my head was did you do
13 any sensitivity analysis in terms of the economics of
14 putting in a nuclear plant in 2018, 2020 versus 2022.
15 And amazingly, it was objected to.

16 MR. KIDWELL: If I can provide just a
17 little bit of context. There probably were some
18 things that were objected to. I'll let legal counsel
19 deal with that. This is what was provided over
20 13 months.

21 COMMISSIONER CLAYTON: I understand, Mr.
22 Kidwell, but we're talking about a huge investment
23 that affects a lot of people. And you made a
24 comment -- or somebody made a comment -- about
25 Ameren's the only one at risk associated with such an

1 investment, and I'm sure that's true to some extent
2 but I think there are a lot more people that will be
3 affected.

4 And that may be a lot of information. I'm sure
5 there's a lot more information that would have to be
6 shared before any type of decision would be made. And
7 it just bothers me that we start having these problems
8 in just obtaining information aside from just the
9 plain did you meet the deficiency or not.

10 I mean, this is going to be a huge issue for years
11 to come. It's going to be a huge issue as far as
12 legislative session. I think it's perfectly
13 appropriate that the Chairman brought this up. And it
14 happens all the time where some information is passed
15 on here and something completely different is said
16 across the street, and I don't want to hear about that
17 happening. I don't want to hear about two different
18 stories being told and information is not being handed
19 over to parties in this case. That bothers me and
20 that's why I'm inquiring about what type of
21 information is not being exchanged.

22 MS. TATRO: Commissioner Clayton, I think
23 in this case AmerenUE shared a lot of information. We
24 didn't object to anything Staff asked for. We
25 provided them everything, at least to my knowledge.

1 You can correct me if I'm wrong, but I don't think we
2 objected to anything.

3 The data request that we objected to, we thought
4 went well above and beyond what's supposed to be dealt
5 with in this case. They're asking for our legislative
6 strategy. That has nothing to do with whether or not
7 we have -- that the plan that was filed in April of
8 this year complies with the rules. And, I mean, that
9 is, in fact, the question that has to happen, that you
10 have to answer at the end of day.

11 Now, are there things that we have to do in the
12 IRP alone, mere meeting the requirements of the IRP
13 sufficient to make a decision? We have already said
14 there's more analysis that needs to be done and that
15 we think timing-wise we're on track to do what needs
16 to be done. But I really think, in this case, there
17 was a concerted effort to be very open and to share a
18 lot of information.

19 You will note that we made the filing as public as
20 we possibly could. And I'm not referring to the
21 initial filing in December of 2005 where it was
22 completely HC and we had to go back and redact
23 portions. We revealed much more than we had ever done
24 before. We made a concerted effort to share
25 information and be completely open about what was

1 happening.

2 Now, I would contend that certain parties have
3 tried to abuse that process to go beyond what is at
4 stake in front of us today. And that was my
5 objection. And if they disagreed with that, they
6 could have filed a motion to compel.

7 COMMISSIONER CLAYTON: That I don't
8 understand. I don't understand why a motion to compel
9 wasn't filed. I don't know how long the list is. It
10 raises a red flag to me.

11 And I'm not sure if I'm disagreeing with you or
12 not, but I think CWIP obviously is one financing tool
13 associated with a huge investment. It's part of this
14 whole filing. It is relevant to the discussion and
15 it's going to be used in discussions over in the
16 legislature.

17 I think there's a lot of this mixed all in
18 together. And considering this is a case that -- is
19 it contested, is it not? Is there any relief that's
20 going to come out of it? Aside from that, there are a
21 lot of things that are interconnected here, and I'm
22 not sure if I agree with you on what you're saying in
23 terms of relevance.

24 MS. TATRO: Okay. And if there's a motion
25 to compel, then we'll have that.

1 MR. MILLS: Can we get on the record the
2 number of data requests that Staff asked?

3 JUDGE WOODRUFF: Do you think the
4 Commissioner would want to know that?

5 COMMISSIONER CLAYTON: I'll ask.

6 MS. MANTLE: I don't know, is the honest
7 answer.

8 COMMISSIONER CLAYTON: Any?

9 MS. MANTLE: I believe we did, yes.

10 MS. TATRO: I also would say we probably
11 provided information without a data request many times
12 when someone would call up and say, "How did you get
13 to this information?" So I don't know if that gives
14 you everything. I just don't know.

15 COMMISSIONER MURRAY: I know it's getting
16 really late, but I would like to ask one or two more
17 questions. And this would go to Ameren.

18 Based on what's been argued here today, if, in
19 fact, you did provide a cost analysis to the NRC based
20 on CWIP, why would you not want to provide that cost
21 analysis in this proceeding, and why would you not
22 think it was appropriate to comply with the rule?

23 MS. TATRO: Let me first ask my expert
24 whether or not that's even a true statement, because I
25 didn't prepare that application. I want to make sure

1 we have the facts right. So can I have just a moment?

2 Thank you.

3 Okay. That is indeed accurate. I should know
4 that if Ryan said he found it, that it was accurate.

5 I think the objection that was made, and I believe
6 I'm probably the one who lodged the objection, was
7 because at the time of the filing, April 5th, 2008 --
8 February 5th, 2008 -- and the COLA was filed
9 July 28th, so it was filed, you know, not quite
10 six months later, so that analysis isn't relevant. I
11 mean, if we had done it prior to the IRP, if it was
12 part of the IRP, then we would have presented that
13 information. We said we didn't do that analysis in
14 the IRP, so the question is does that make it a
15 deficiency, not did you do it later.

16 COMMISSIONER MURRAY: But I'm look at the
17 rule, and I'm looking at specifically (8)B --
18 240-22.040(8)B -- which I see as requiring estimated
19 capital costs including engineering, design,
20 construction, testing, start-up and certification of
21 new facilities or major upgrades, refurbishment or
22 rehabilitation of existing facilities.

23 MS. TATRO: I'm so sorry to do this, but I
24 got to the 40 and I lost you.

25 COMMISSIONER MURRAY: It's 22.040, Section

1 (8)B. Which Section 8 begins: Before developing
2 alternative resource plans, etc., utilities shall
3 do -- and then A goes into fuel price for casts, and
4 then B, estimated capital costs.

5 MS. TATRO: Right. And we provided that
6 information in the filing. What we didn't provide in
7 the filing is what we thought that cost would be if
8 the CWIP legislation had been changed -- were changed.
9 That wasn't done for the filing.

10 COMMISSIONER MURRAY: Okay. But you
11 provided the information based on CWIP not changing.

12 MS. TATRO: For this filing we determined
13 what we thought the cost would be if we tried to
14 finance it under existing Missouri law, correct.

15 COMMISSIONER MURRAY: And in that
16 determination -- and I can't find the exact language
17 in the rule -- but you were required to make some
18 analysis regarding the cost. And you feel that you
19 adequately supported, in that analysis, that those
20 costs were reasonable?

21 MS. TATRO: Let me have Mr. Arora talk with
22 you about that. That's really his area. I think the
23 short answer is yes.

24 MR. ARORA: We hired an independent
25 consultant to estimate the cost, the capital cost, of

1 all of the supply-side resource including the nuclear
2 plant. Not only that, in as far as the uncertainty
3 analysis, we actually did an uncertainty analysis
4 beyond those capital costs. And those same costs were
5 used in the IRP and in the COLA. It's just a question
6 of whether they are with CWIP or without CWIP.

7 COMMISSIONER MURRAY: Then I have another
8 question, and then I think I'll stop here.

9 In the rule, on 240-22.040, Subsection 4, the
10 utility shall identify and analyze opportunities for
11 life extension and refurbishment of existing
12 generation plants.

13 And that's my understanding about the alleged
14 deficiencies -- one of the alleged deficiencies
15 here -- is that you did not do that with the Meramec
16 plant; is that correct?

17 MR. ARORA: I'm not sure that's an alleged
18 deficiency. It's something we have committed to doing
19 in the IRP. It's in the process right now.

20 COMMISSIONER MURRAY: But there were
21 parties who said that that should have been done in
22 this.

23 MR. KIDWELL: I believe it was part of the
24 stipulation, wasn't it? You guys can correct me, but
25 either in the stipulation or some time during the

1 discussion we committed to doing the retirement study
2 on Meramec, and I think that resolved that deficiency.
3 Am I remembering right?

4 COMMISSIONER MURRAY: Is anybody still
5 claiming that to be a deficiency?

6 MR. CONRAD: Yes. And Mr. Kidwell did not
7 sign. And we filed a submission to explain to the
8 Commission why we did not sign, and that was one of
9 the things we listed. It is not a retirement study,
10 it is a life extension study that was not done.

11 COMMISSIONER MURRAY: Thank you.

12 JUDGE WOODRUFF: Anything else from the
13 Commissioners?

14 MR. CONRAD: Yes, to go back to
15 Commissioner Clayton's question, my answer is 14.
16 Thirteen of which have been objected to including,
17 "Please identify any differences between the Calloway
18 2 cost estimate included in the IRP and the Calloway 2
19 cost estimate included in the COLA. Please provide a
20 reconciliation."

21 COMMISSIONER CLAYTON: So, 13 of your 14
22 were objected to?

23 MR. CONRAD: That is correct.

24 COMMISSIONER CLAYTON: I don't want to get
25 into strategy, but why hasn't the Commission been

1 asked to resolve those?

2 MR. CONRAD: The objection was dated
3 October 3, and earlier today I made an appointment
4 with Judge for the conference, before this particular
5 issue came up, and it's set for tomorrow, and we'll
6 see where that goes. It basically has arisen out of
7 the COLA file.

8 MS. TATRO: Commissioner Clayton, I will
9 also point out that there were several data requests
10 by DNR, and again, I don't know how many, and I think
11 we objected to one.

12 MS. WOODS: We couldn't even remember if
13 you objected to one.

14 MS. TATRO: Yeah, I'm not sure either.

15 JUDGE WOODRUFF: With that then, we are
16 adjourned. Thank you.

17 (WHEREIN, the recorded portion of the hearing was
18 concluded.)

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19 Notary Public (County of Cole)

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