

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

EVIDENTIARY HEARING

In the Matter of the Petition of
Union Electric Company d/b/a
Ameren Missouri for a Financing
Order Authorizing the Issue of File No. EF-2024-0021
Securitized Utility Tariff Bonds
for Energy Transition Costs
related to Rush Island Energy
Center

MONDAY, APRIL 15, 2024
9:00 a.m.

Governor Office Building
200 Madison Street
Jefferson City, MO 65101
and WebEx

VOLUME 3

JOHN CLARK, Presiding
SENIOR REGULATORY LAW JUDGE

KAYLA HANN, Chair
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GLEN KOLKMEYER (via WebEx),
Commissioners

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1 * * * * *

2 (Starting time of the hearing: 9:00 a.m.)

3 * * * * *

4 JUDGE CLARK: Okay. Good morning. It is
5 now nine o'clock so let's go on the record.

6 Today is April 15th of 2024 and the
7 current time is nine a.m. This proceeding before the
8 Missouri Public Service Commission today is being
9 held in Room 310 of the Governor Office Building
10 which is the Commission's headquarters.

11 The Commission has set aside this time
12 today for an evidentiary hearing in In the Matter of
13 the Petition of Union Electric Company doing business
14 as Ameren Missouri for a Financing Order Authorizing
15 the Issuance of Securitized Utility Tariff Bonds for
16 Energy Transition Costs related to Rush Island Energy
17 Center. And that is File Number EF-2024-021.

18 My name's John Clark, I'm the regulatory
19 law judge who is presiding over this hearing today.
20 The Missouri Public Service Commission is composed of
21 five commissioners. Our current chairman is Chair
22 Kayla Hahn. We also have commissioners Maida
23 Coleman, Commissioner Jason Holsman, Commissioner
24 Glen Kolkmeier and we just had a new commissioner
25 appointed and I don't, off the top of my head, know

1 what his name is.

2 MR. KEEVIL: John Mitchell.

3 JUDGE CLARK: John Mitchell, Mr. Keevil is
4 telling me. So we have a new commissioner that I
5 have not met yet. The commissioners -- I saw Chair
6 Hahn this morning. The other commissioners will
7 either come and go as they please or join by WebEx.

8 COMMISSIONER HOLSMAN: I'm here, Judge,
9 Commissioner Holsman, and I'm on my way in.

10 JUDGE CLARK: Thank you very much,
11 Commissioner Holsman. And Commissioner Holsman, as
12 you heard, is on the way into the building, but is
13 currently joining us online.

14 At this time I'm go to ask counsel for the
15 parties to enter their appearance for the record
16 starting with Ameren Missouri.

17 MS. TATRO: Wendy Tatro, 1901 Choteau
18 Avenue, St. Louis, Missouri, 63103.

19 MR. LOWERY: And your Honor, Jim Lowery,
20 also for Ameren Missouri, I entered my appearance on
21 Friday.

22 JUDGE CLARK: Ms. Tatro, Mr. Lowery, thank
23 you very much. And just so everybody is aware, while
24 this was slated to be the first day of the hearing,
25 we did take one witness out of order on the 12th of

1 April and that is what Mr. Lowery's referring to.

2 For the Staff of the Commission.

3 MR. KEEVIL: Yes. Yes, Judge, appearing
4 on behalf of the Staff of the Commission, Jeff
5 Keevil, Nicole Mers, and Travis Pringle. Our address
6 is Governor Office Building, Suite 800, 200 Madison
7 Street, P.O. Box 360, Jefferson City, Missouri,
8 65102.

9 JUDGE CLARK: Thank you, Mr. Keevil. On
10 behalf of the Office of the Public Counsel.

11 MR. WILLIAMS: Thank you. Nathan
12 Williams, Chief Deputy Public Counsel appearing on
13 behalf of the Office of the Public Counsel and the
14 Public. Our address is Governor Office Building,
15 Suit 650, 200 Madison Street, P.O. Box 2230,
16 Jefferson City, Missouri, 65102.

17 JUDGE CLARK: Thank you, Mr. Williams. On
18 behalf of Midwest Energy Consumer's Group or MECG.

19 MR. OPITZ: Good morning, your Honor. Tim
20 Opitz on behalf of MECG.

21 JUDGE CLARK: Thank you, Mr. Opitz. On
22 behalf of Missouri Industrial Energy Consumers.

23 MS. PLESCIA: Diana Plescia on behalf of
24 MIEC.

25 JUDGE CLARK: Thank you, Ms. Plescia. On

1 behalf of -- well, Natural Resources defense counsel
2 has asked to be excused from proceedings and that was
3 granted. On behalf of AARP.

4 MR. COFFMAN: Good morning, your Honor.
5 I'm John B. Coffman, I'm appearing on behalf of AARP
6 as well as the Consumers Council of Missouri.

7 JUDGE CLARK: And thank you, Mr. Coffman.
8 And Sierra Club had also requested to be excused from
9 today's proceedings and that was granted.

10 Now, I want to briefly discuss preliminary
11 matters. As the first preliminary matter today it's
12 my understanding from Mr. Lowery that there were
13 witnesses that were inadvertently left off Issue 3;
14 is that correct?

15 MR. LOWERY: That's correct, your Honor,
16 Issue 3A.

17 JUDGE CLARK: And what witnesses are
18 those, sir?

19 MR. LOWERY: That's Mr. Reed who we would
20 suggest go after Mr. Moore on behalf of the Company.
21 The other witness is Mr. Michels who also appears on
22 3B. Mr. Michels' testimony doesn't really deal with
23 the substances of the NSR permitting issues per se
24 and the suggestion that I had made was he takes the
25 witness stand first on 3B maybe for efficiency that

1 we just have him come up on that issue and any
2 questions that would hang over on the harm issue from
3 3A could just be asked then just to make the hearing
4 a little more efficient.

5 JUDGE CLARK: Okay. Let me ask. Were the
6 other parties -- at what point did they come to be
7 aware that there were witnesses inadvertently left
8 off?

9 MR. LOWERY: It was last week when we had
10 email correspondence among the counsel about this
11 topic.

12 JUDGE CLARK: Was that on Friday?

13 MR. LOWERY: I think it was before Friday
14 but I can't swear. I believe it was either Wednesday
15 or Thursday we had correspondence about it.

16 JUDGE CLARK: Okay. Are there any
17 objections to adding these extra witnesses?

18 MR. WILLIAMS: Judge, certainly not. And
19 it was clear to Public Counsel from the time of the
20 filing of the testimony or thereabouts that Mr. Reed
21 would be testifying on this topic.

22 MR. KEEVIL: Judge, I just have -- may I
23 inquire of Mr. Lowery regarding this issue?

24 JUDGE CLARK: You may. Is your microphone
25 on?

1 MR. KEEVIL: Yes. But I'm not sitting
2 close enough to it for it to work. You know me, I'm
3 very soft spoken and quiet. Jim, on Michels, are you
4 moving him off one issue into other issue? What was
5 the thing about he doesn't testify on this issue?

6 MR. LOWERY: I'm not moving him off.
7 There's a sub issue on 3A that says if there was any
8 imprudence, was there any harm, and then 3B really
9 gets into was there any harm on the retirement versus
10 retrofit decision. He doesn't really have any
11 testimony on 3A about, you know, should we answer NSR
12 permit, all of the technical issues. I just thought
13 it might be more efficient to just have him take the
14 witness stand once. It can be done twice but I just
15 thought it might be more efficient.

16 And then questions about harm related to
17 any hypothetical -- from our perspective,
18 hypothetical imprudence can be asked all together at
19 that time. That was just a suggestion.

20 JUDGE CLARK: I have no problem with that.
21 Are there any objections from Counsel? I hear none.

22 MR. LOWERY: Just for completeness, Judge,
23 OPC also has a witness that needs to be added to an
24 issue, that's Ms. Chaben (phonetic) on Issue 9. And
25 I, like Mr. Williams, knew probably from the

1 beginning that she should be on Issue 9 but we just
2 didn't get it done when we were doing the word
3 processing essentially.

4 JUDGE CLARK: And Mr. Williams, is that
5 after Majors or is that in a different order in that
6 issue?

7 MR. WILLIAMS: I believe after Majors.

8 JUDGE CLARK: Okay. Thank you. As
9 another matter, MIEC's attorney emailed and requested
10 that MIEC be permitted to make its opening statement
11 as a mini opening when Issue 17 is heard because that
12 is MIECs only issue this case. Are there any
13 objections to that? Okay. Then we'll do that at
14 that time.

15 MR. LOWERY: Judge, I don't know if this
16 might still be on your list but just to bring it up.
17 I had emailed you and the other parties and we had
18 correspondence with the other parties about this
19 probably mid last week about Issue 15, the DOE loan
20 issue last week.

21 JUDGE CLARK: That is on my list to get
22 to --

23 MR. LOWERY: Okay. Sorry.

24 JUDGE CLARK: -- in regard to Ameren
25 Missouri.

1 MR. LOWERY: Jumped the gun on you.

2 JUDGE CLARK: No, no, no, no. That is
3 fine. I mean, I do not claim to be perfect in any
4 way, shape, or form. So if I forgot something please
5 bring it to my attention. But that is on my list of
6 things to deal with.

7 Now Mr. Coffman, you had a preliminary
8 matter you wanted to bring up as well.

9 MR. COFFMAN: None other than just that I
10 may need to leave the proceeding at certain points.
11 I may not have an interest in some of the issues as
12 the week progresses and wondered if there was -- if
13 your Honor would desire me to make a motion to be
14 excused or otherwise I'm willing just to accept the
15 fact that if I'm not here I'm waiving cross or any
16 rights I have for not being here at any point during
17 the week.

18 JUDGE CLARK: And that is fine with me. I
19 know that the -- your interests are somewhat more
20 limited from the larger. So if you wish to be
21 excused for any portion of this, you may be. If you
22 are not here then I am -- you will of course waive
23 your right to ask questions in regard to that.

24 MR. COFFMAN: Understood.

25 JUDGE CLARK: All right.

1 MR. COFFMAN: Thank you very much. And
2 Mr. Linhares, you had a similar request, I believe,
3 on behalf of Renew Missouri.

4 MR. LINHARES: Thank you, Judge. I would
5 make the same question as counsel for Consumers
6 Council. I had planned to make an opening today and
7 be absent for the rest of the hearing if it's
8 permitted.

9 JUDGE CLARK: Okay. Is that for Consumers
10 Council or for Renew or for both?

11 MR. LINHARES: That's on behalf of Renew
12 Missouri.

13 JUDGE CLARK: Not on Consumers Council?

14 MR. LINHARES: No. I was just making
15 reference to the fact Mr. Coffman --

16 JUDGE CLARK: Oh, I follow. I'm sorry. I
17 momentarily got confused. That will be granted under
18 the same circumstances.

19 MR. LINHARES: Thank you.

20 JUDGE CLARK: And then finally I -- well,
21 let's go ahead, since I've got Renew up, and address
22 the Department of Energy Loan issue, which I believe
23 is a Renew specific issue. And Mr. Linhares, --

24 MR. LINHARES: Yes.

25 JUDGE CLARK: -- I had a difficult time

1 understanding from that. There was nothing about the
2 way it was worded it just -- it's my understanding
3 that the parties have agreed to waive cross on Mr.
4 Owens; is that correct?

5 MR. LINHARES: Well, I believe some, most
6 of the parties have. There's a couple of parties
7 that have not weighed in there, at least to my
8 knowledge. And there were a couple of other
9 witnesses, Murray and Robinett, that were also in
10 that camp on that issue. I believe it's just Issue
11 15.

12 JUDGE CLARK: Uh-huh. Is there anybody
13 who wants to address that?

14 MR. LOWERY: I mean, any party that had
15 testimony in the issue did in fact affirmatively
16 indicate amongst counsel that none of us had any
17 questions and cross could be waived. And I believe
18 that under Mr. Linhares's position statement they
19 raised the issue. They basically said, look, based
20 on what we now know we don't recommend any further
21 that you even pursue the DOE option. So there really
22 isn't an issue I don't think anymore but certainly
23 the parties don't have cross. And so we thought --
24 we thought let's just -- we can skip the issue and,
25 you know, save a little hearing time. We have 21

1 issues and we're probably going to need it.

2 MR. WILLIAMS: Judge, Nathan Williams for
3 Public Counsel.

4 JUDGE CLARK: Go ahead, Mr. Williams.

5 MR. WILLIAMS: Our position was that we
6 would waive cross if the Commission has no questions.
7 We view that it would just stand on the pre-filed
8 testimony unless the Commissioner has questions of
9 these witnesses about this issue.

10 JUDGE CLARK: I don't believe there are
11 any questions contemplated at this time. Are there
12 any parties who are unwilling to waive cross as to
13 the issues for Issue 15 which again the issue is
14 should Ameren Missouri issue securitized utilitarian
15 bonds to the U.S. Department of Energy under the
16 Energy Infrastructure Reinvestment Program or issue
17 the bonds in the customary matter to public
18 investors. So is there anybody who is not waiving
19 cross on that? Obviously under the conditions you
20 indicated. All right. I see no one.

21 And that brings me to the second portion
22 which Mr. Lowery had mentioned. Is this still a live
23 issue for Renew Missouri. Are you asking to stand on
24 the testimony or is this an issue that's being
25 withdrawn? And the reason I'm asking is because the

1 email I received it was difficult for me to
2 understand in that regard.

3 MR. LINHARES: I'm happy to clarify my
4 position here, Judge, and the Company or anyone else
5 can weigh in. I plan to address this issue in my
6 opening to add some clarification to this issue. I
7 think it can be an issue for consideration when we're
8 dealing with securitization in the future, in future
9 cases. We do not intend to press this issue here in
10 this case but I do want to address it at least in my
11 opening and entertain any questions at that time.
12 But we do not have any cross around this issue and no
13 further issue to press there.

14 JUDGE CLARK: Okay. And I can certainly
15 understand wanting to keep it for future
16 securitizations. Is it something you want the
17 Commission to consider in this case? I mean, if it's
18 a live issue it's a live issue.

19 MR. LINHARES: I believe we should keep it
20 as a live issue and I'll have a recommendation around
21 it.

22 JUDGE CLARK: Okay. So it will be a live
23 issue that basically stands on the pre-filed
24 testimony?

25 MR. LINHARES: Yes, correct.

1 JUDGE CLARK: Okay. Thank you.

2 There were some motions to strike back and
3 forth that were done before this hearing. It is my
4 intent to take those motions with the case. Are
5 there any other preliminary matters that need to be
6 addressed by the Commission at this time?

7 MR. WILLIAMS: Judge, I do have a
8 question, given what you said about the motions to
9 strike because there was sur-surrebuttal associated
10 with one or more of those motions.

11 JUDGE CLARK: That is correct.

12 MR. WILLIAMS: So your intention is not to
13 rule on the admissibility of the sur-surrebuttal until
14 the end of the case? I'm unclear.

15 JUDGE CLARK: I am going to allow the
16 parties to talk about the things in the testimony
17 that is being questioned but that is going to be
18 subject to the objections that have been filed. So
19 ultimately if that testimony is struck it is struck.
20 And I know that may seem like a rather unusual way of
21 doing it but that is the way we're going to be doing
22 it for this.

23 MR. WILLIAMS: Okay. I just find it a
24 little awkward on cross-examination of
25 sur-surrebuttal.

1 JUDGE CLARK: I understand. We're just
2 going to have deal with these bumps in the road as we
3 approach them.

4 MR. LOWERY: Well, Judge, if I might.
5 Honestly I thought this is probably what you would do
6 so I didn't find it unusual. But I think what you're
7 saying is the testimony can be offered, it's going to
8 be maybe provisionally accepted subject to ultimate
9 ruling on the motions to strike and on the objections
10 and if you were to sustain the objections to the
11 sur-surrebuttal then it actually wouldn't come in at
12 the end of the day, if you sustain the motions to
13 strike that testimony will be stricken and those
14 items actually would inform the basis of any
15 Commission decision but in the interim we're going to
16 have testimony and full cross-examination on those
17 issues; is that correct?

18 JUDGE CLARK: That is correct. And you
19 used the term that I generally like to use, I did not
20 use it here, which is provisionally admit and that's
21 because some parties sometimes take issue with that.
22 But that is correct.

23 MR. LOWERY: Okay. I just wanted to make
24 sure I understood. Thank you for that clarification.
25 I had one other -- I don't know -- this is really a

1 motion but I guess I just wanted to advise the
2 Commission of what I intended to. There will be some
3 exhibits in cross-examination that are not part of
4 the record that we will mark and show the witness and
5 lay whatever proper foundation, you know, kill a lot
6 of trees and have the copies for everybody. There
7 may be others where the exhibit is a schedule of
8 somebody's testimony or otherwise in. I did not make
9 copies of those, I didn't intend to kill any trees on
10 those because they should be available to the
11 commissioners and yourselves through EFIS; is that
12 okay?

13 JUDGE CLARK: That is absolutely correct.
14 And that is kind of the direction that we've been
15 shifting is if these things have already been filed
16 in the case and just have not been admitted or
17 addressed then, yes.

18 MR. LOWERY: Thank you.

19 JUDGE CLARK: Are there any other
20 preliminary matters that need to be taken up at this
21 time?

22 MR. KEEVIL: Judge, I don't know that you
23 need to take it up at this point but I just want to
24 raise it in case. I believe Friday Ms. Mers
25 requested that official notice be taken of the

1 transcript that has been filed in the record in
2 several places but not as an exhibit and not as
3 evidence and I was wondering -- I was just going to
4 say, when she said take official notice, I don't
5 think Staff would have an objection if you want to
6 take it as -- you know, if you want a hardcopy of it
7 or something. But since it's already in the record,
8 that was basically why we sent the official notice of
9 it. I was wondering if you were going rule on that
10 today or hold that for the hearing on the exhibit --
11 excuse me, Issue 3 or 5 or whatever issue that
12 prudence issue is?

13 JUDGE CLARK: I'm honestly not sure. I am
14 unsure -- you were talking about the District Court
15 transcript, correct?

16 MR. KEEVIL: Yeah. I believe it was the
17 transcript of the hearing on March 28th that the
18 Judge ordered Ameren to file with the PSC.

19 JUDGE CLARK: I'm going to defer on that
20 for the moment. I am not sure of a mechanism by
21 which the Commission could take official notice of a
22 transcript that is not ours, that is another court.
23 It has been filed in the case but I don't believe
24 it's -- it's not part of the record certainly in that
25 it hasn't been admitted. So I've been kind of

1 struggling with that.

2 MR. WILLIAMS: Judge, Public Counsel has
3 no objection to its admission.

4 MR. KEEVIL: I think it's certainly
5 admissible, Judge, whether you want to call it
6 official --

7 JUDGE CLARK: Well, admissible and taking
8 notice are two different things.

9 MR. KEEVIL: I was going to say, if that's
10 your hang up don't let that be your hang up. We'll
11 go -- however way you want to admit it we'll be fine
12 with it. We just want it admitted as part of the
13 evidentiary record.

14 JUDGE CLARK: Okay. Well, then I would
15 prefer it be offered at some point.

16 All right. Are there any other
17 preliminary matters that the Commission needs to take
18 up at this time? And thank you for reminding me of
19 that, Mr. Keevil, that had slipped my memory
20 momentarily.

21 All right. I'm going to issue two
22 reminders right now. One is if you have a cell
23 phone, please be sure it is on silent or vibrate so
24 it doesn't disturb these proceedings. And the second
25 one is there's a fair amount of confidential

1 information and I expect some of it to come up almost
2 every day of the hearing. I am not going to be aware
3 of what all that is. The attorneys will have a
4 better awareness of me and the witnesses will have a
5 better awareness of what that is than I do. So if we
6 look like we need to go in-camera to address
7 something or we're approaching an area where it's
8 beginning to look like we might, if somebody could
9 bring that to my attention then we can address that
10 and proceed in-camera, okay?

11 MR. WILLIAMS: Judge, if I might. In that
12 vein, it's come to my attention that Ameren Missouri
13 apparently filed some materials that it had -- were
14 part of a federal court proceeding that had been
15 marked confidential in that proceeding but are not
16 confidential in this one. And I believe Staff has
17 marked some of its testimony as being -- I believe
18 probably schedules and maybe testimony too as
19 confidential thinking that it was confidential
20 because it was marked confidential in the federal
21 court proceeding but Ameren Missouri is not treating
22 it as confidential in this proceeding. I just want
23 to bring that to the Commission's attention.

24 JUDGE CLARK: Okay. When that evidence
25 comes up, why don't we address that then.

1 Now, as I indicated before, we took one
2 issue out of order on the 12th and we had some mini
3 openings that were given in regard to that. But
4 today is the first day of the full hearing and the
5 parties have requested to do kind of an overall
6 opening statement is my understanding. And with that
7 in mind I'm going to go ahead and proceed with
8 opening statements. And I believe the first opening
9 statement is from Ameren Missouri.

10 OPENING STATEMENT

11 MR. LOWERY: Good morning and may it
12 please the Commission. My name is Jim Lowery and
13 along with my colleagues Wendy Tatro and Nash Long I
14 will be representing Ameren Missouri in this
15 securitization docket related to the Rush Island
16 plant.

17 Before discussing the issues and evidence,
18 some of them at least, I'm not going to hit all of
19 them, I want to briefly touch on the securitization
20 statute and a couple of the provisions that apply
21 specifically to this case. The General Assembly
22 enacted the securitization statute Section 393.1700
23 in 2001. The statute was enacted to expressly
24 provide to the securitization of costs associated
25 with either a retired or a to be retired electric

1 generating plant. Asbury was a retired plant when
2 you decided that plant, Rush Island is a to be
3 retired plant to be retired by October of this year.

4 As also contemplated by the statute there
5 are three buckets of cost at issue in a case like
6 this. The first bucket is energy transition costs,
7 that's generally the largest bucket, it holds the
8 unappreciated investment in Rush Island for example.
9 Second is up front financing cost. And the third are
10 ongoing financing costs. What falls within each of
11 these buckets is defined with some specificity by the
12 statute. Only the first two buckets actually affect
13 the principal amount of the bonds that the Company's
14 asking you to issue.

15 As between the Staff and the Company there
16 is, in relative terms, not much daylight between the
17 amounts that are recommended to include in the
18 principal to the bonds. The Company recommends 514.9
19 million, the Staff recommends 497.5 million, about 17
20 million less. And that difference arises from three
21 issues. Issue 4B on the issues list, Issue 13 on the
22 issues list, and the last one Issue 9 is apart about
23 four million dollars. And on that one there's not a
24 dispute about whether those costs should ultimately
25 be recovered, the question is should they be included

1 in the principal amount of the bonds in this case or
2 just be recovered in a rate case. So about 17
3 million out of around 500 million. So pretty close
4 from Staff and Company perspective on that.

5 OPC, by taking a variety of positions,
6 argues variously that less than 325 million should be
7 securitized or alternatively that none should be
8 securitized at all. OPC's none at all should be
9 securitized position, if taken to its logical
10 extension would mean that the General Assembly
11 completely wasted its time in 2001 enacting a
12 securitization statute to apply to retired generating
13 plants because no utility could ever meet the
14 requirements of the statute. Such a result would
15 violate basic principals of statutory interpretation.
16 To conclude that the General Assembly wasted its time
17 when it enacted the statute would lead to
18 unreasonable, absurd, and illogical results and I
19 think that alone lays bear the fallacy of OPC's
20 position on this.

21 Now, as discussed when the hearings began
22 virtually on Friday there is another matter of
23 controversy in the case, that is relating to Ameren
24 Missouri's NSR permitting decisions 15 or 20 years
25 ago and arising from claims that have been made

1 around its 2021 decision to retire the plant instead
2 of retrofitting it with hundreds of millions of
3 dollars and perhaps a billion dollars of pollution
4 control equipment, in other words scrubbers. I
5 submit to you that the totality of the record in this
6 case will demonstrate that Ameren Missouri acted
7 prudently when it made its NSR permitting decisions,
8 that it acted im -- it acted prudently, pardon me,
9 when it made its decision to retire the plant instead
10 of retrofitting the plant and that it -- in both
11 cases its decisions have been in the best interest of
12 its customers.

13 Now, as for the NSR permitting issues.
14 It's no secret that in August 2021 the Company lost a
15 lengthy battle with the US EPA over whether the
16 Company should have sought NSR permits for certain
17 boiler component replacement projects done during
18 maintenance outages at Rush Island in 2007 and 2010.
19 I'll admit discussion of the technical aspects of the
20 NSR permitting, you heard quite a bit about that
21 Friday, you're certainly going to hear more about it
22 I'm sure later today or tomorrow.

23 But I want to say now a few things about
24 the evidence in this case which I think is largely
25 undisputed and that I would contend overwhelming

1 shows a few things. First that Ameren Missouri, its
2 then Illinois affiliates, and the industry as a whole
3 prior to and at the time of the 2007 and 2010 outages
4 routinely undertook the same kind of boiler component
5 replacement projects and they did so without first
6 obtaining NSR permits, that's the context at the
7 time.

8 Second, that none of the projects changed
9 the unit's maximum hourly rate of emissions at
10 maximum load. In other words, did not increase
11 potential emissions.

12 Third, that the Missouri Department of
13 Natural Resources and the experts advising Ameren
14 Missouri at the time on NSR matters all believed that
15 under the Missouri state implementation plan, which
16 is MDNR's regulation governing NSR permitting
17 approved by the EPA and that governs the permitting,
18 that because of the undisputed fact that potential
19 emission would not increase an NSR permit was not
20 needed regardless of any other aspect of the rules.
21 That alone would have exempted the projects.

22 And the evidence shows that when the
23 federal court later ruled that Ameren Missouri and
24 MDNR and the experts were all wrong about the law the
25 court relied on facts, data, and case law that arose

1 after the Rush Island projects were done meaning
2 necessarily that the court relied on hindsight which
3 we all know as a fundamental premise cannot be a part
4 of a prudence depreciation.

5 And last but certainly not least, the
6 evidence shows that while the federal court found
7 that the Company was, quote, "unreasonable," end
8 quote, for not concluding that the project's increase
9 in unit availability would thus increase actual
10 emission the Court never found in anyway that the
11 Company's interpretation of the NSR requirements with
12 respect to potential emissions or with respect to the
13 question of routine maintenance and repair, RMRR for
14 short, were unreasonable.

15 And remember, as discussed in the hearing
16 on Friday, an NSR permit is not required if either
17 there won't be an increase in potential emissions or
18 the projects were routine or they won't result in an
19 actual emissions increase. If the Company's
20 understanding of the law back then was reasonable on
21 any one of those three points, even if the Company
22 turned out to be wrong, and it did, the Court said
23 the Company was wrong, then its decisions not to
24 obtain permits were reasonable. And since the
25 district court did not find or even consider the

1 question of whether the Company's understandings
2 were, knowing what it should or should have known at
3 the time, wrong it didn't decide the prudence
4 question. Keep in mind that even on the actual
5 emissions question what the district court found when
6 it was talking about the Company's unreasonableness
7 on that question was that the Company's actual
8 calculations of annual emissions were unreasonable.
9 Those calculations were performed after the fact in
10 response to the NOB not before the projects were
11 conducted.

12 And the Court found that the Commission's
13 -- excuse me, the Company's calculations were
14 unreasonable because the Court found that those
15 calculations did not comport with the tests the Court
16 adopted seven to ten years later in terms of how the
17 calculations had to be done. In short, the district
18 court had to decide and did decide the only question
19 that was before it was the Company right or wrong
20 about the law and decided -- when it decided it
21 didn't need permits.

22 If the Company was wrong, and it was, it
23 doesn't matter how unreas -- it doesn't matter how
24 reasonable the Company was ten years earlier, the NSR
25 requirements are a strict liability set of

1 requirements. The Company was wrong it's liable
2 under the NSR provisions of the Clean Air Act but
3 that says nothing about whether it was reasonable to
4 hold the understandings it did at the time which is
5 the question for this Commission.

6 So yes, the district court used the word
7 unreasonableness in one sentence of the remedy order
8 with respect to one aspect of the NSR exceptions,
9 actual emissions. OPC and Staff want you to abdicate
10 your responsibility to independently decide the
11 reasonableness of the Company's actions based on that
12 one word in that one sentence which even as to the
13 actual emissions question doesn't settle the issue
14 and it certainly doesn't settle the issue on the
15 potential emissions and on the RMRR question.

16 Now, to decide the prudence questions that
17 only you can decide, you must apply long-standing
18 principals governing prudence just like you did in
19 the Asbury case. And if I could put up on the screen
20 -- I don't know if you can see that very well. But
21 this is an excerpt from your Asbury decision. And
22 it's basically your statement of what the prudence
23 standard is that you -- I hesitate to say you adopted
24 in the case because it's really just a summary of
25 what the standard has been I think for decades. But

1 I think it is a good statement of it.

2 Under the standard how things turned out
3 doesn't matter. Under the standard what we may know
4 in hindsight doesn't matter and you can't consider it
5 in making a prudence determination. Under the
6 standard you must ask what did the utility know or
7 what was reasonably knowable by the utility at the
8 time. Under the standard the utility's decision
9 making did not have to be perfect and as you summed
10 up the requirements if the decision making was within
11 the bounds there's range of reasonable behavior, it's
12 not a point estimate system. If it was within the
13 bounds of what a reasonable decision maker would have
14 done at the time then the decisions are prudent under
15 the applicable standard.

16 Now, in outlining the prudence standard
17 that I just talked about, you cited some case law as
18 well. And you can't see it very well but it's at the
19 bottom of the quote. That case law does confirm and
20 validate the prudence standard that you used but it
21 also discusses about another aspect that flows if
22 imprudence were found and that is the question of
23 even if the imprudence is found is there a remedy for
24 that, should there be a remedy. And what the
25 standard says is, what the law says is if there's no

1 harm to customers there is no remedy. And I want to
2 talk about that a little bit now.

3 Until rebuttal testimony was filed in this
4 case, while others, I guess maybe only Staff, had
5 made noise about prudence in other cases, and I'm
6 referring primarily to the Rush Island investigatory
7 docket the Staff asked you to open in the Company's
8 last rate case, especially around the NSR permits
9 issue. No party had actually put a stake in the
10 ground and claimed that the Company had acted
11 imprudently in anyway on those issues. And the
12 evidence will also show that no party had uttered a
13 peep about the well-publicized and well-known
14 decision the Company made in late 2021 to retire the
15 plant instead of to scrub the plant.

16 That changed when rebuttal testimony was
17 filed in this case just a few weeks ago. At that
18 point OPC was urging the Commission to permanently
19 force a \$34 million write-off based on claimed
20 imprudence on those issues and Staff was firing shots
21 across the Company's bow about harm to customers
22 arising from at least one and perhaps both of those
23 decisions. And Staff's testimony arguably is a
24 little inconsistent on this but if you look at Mr.
25 Major's testimony what Mr. Majors says is the Company

1 was per se imprudent because they were found to
2 violate the law. Now that's not the law I would
3 contend but that's what the Staff's position was.
4 But the evidence shows that even if hypothetically
5 there was some imprudence, and I certainly don't
6 concede that there was. But hypothetically if there
7 was, the evidence shows that there is no harm to
8 customers.

9 Probably can't see that very well either
10 but it's on Page 26 of Mr. Michels' surrebuttal
11 testimony and it's Table 3 from Page 26. What that
12 table is showing you that is even if hypothetically
13 the retirement versus retrofit decision was imprudent
14 any such imprudence didn't harm customers. If you
15 take just -- and that's shown by the 24 positive data
16 points on the chart. The 24 positive data points
17 represent lower net present value of revenue
18 requirement not higher net present value revenue
19 retirement. And if you take just two of them, if one
20 assumes the base, I will call it the middle estimated
21 costs, for what scrubbers had cost instead of close
22 the plant and assumes the loss of the NSR case and
23 then applies the probability weighted values of
24 carbon the other planning assumptions what the
25 analysis tells you is that the Company's decision to

1 retire the plant and not retrofit it lowers revenue
2 requirements in that case by 1.452 billion dollars on
3 a net present value revenue requirement basis. And
4 even if you assume the lowest estimated scrubber
5 costs that are in the record that figure is still
6 \$1.147 billion.

7 I also want to point out that these
8 figures do account for planned additional supply site
9 generation that the Company intends to install and
10 ask the Commission for permission to install to cover
11 capacity that would have existed if Rush Island
12 wasn't retired, and these figures also account for
13 the transmission upgrades that are needed to make
14 sure that the transmission system is reliable in the
15 absence of Rush Island.

16 Now, what about the NSR permitting
17 decisions? Mr. Michels didn't provide a table for
18 this one but what his testimony shows that if again
19 you assume hypothetically that the Company was
20 imprudent when it didn't get the permits back then
21 and it should have got the permits and scrubbed the
22 plant back at that time, even -- if that's so, what
23 the testimony shows is that the Company not getting
24 the permits and not scrubbing the plant at that time
25 on an NPV of revenue requirement basis actually has

1 reduced customer revenue requirements by between 531
2 million and \$770 million.

3 And if, let's say, the Company decided to
4 get the permits and scrub the plant and so it was
5 going to stay open, as the record reflect there are
6 two different pending EPA regulations, the good
7 neighbor rule, which I think deals primarily with
8 mercury and emissions that travel from one state to
9 another, I apologize but I don't know the details
10 real well, and then there's a greenhouse gas rule
11 that's been proposed as well. And if the Company had
12 made a different decision and the plant was going to
13 stay open there is a real risk that we may have to --
14 might have had to invest even more money on pollution
15 control equipment and if we had to do that the
16 reduced revenue requirement based on the decision we
17 did make is reduced by more than 1.1 billion on a net
18 present value basis.

19 As simply and as succinctly as I can put
20 it, the Company has been making decisions all along
21 that it believed to be in customers best interest not
22 to incur unnecessary costs and risks of building
23 scrubbers at Rush Island and as it turned out from an
24 economic standpoint the customer -- the Company was
25 100 percent right. Customer revenue requirements

1 have been, are, and will be lower because of both of
2 the decisions that the Company's made over the last
3 15 years or so.

4 Before I wrap up, I'd like to touch on
5 just two of the other 21 issues in the case, I'm not
6 going to touch on all 21 or we would be here
7 obviously all morning. Starting with the Company's
8 planning.

9 Staff's testimony indicates, or at least
10 it implies, that there was a lack of planning for a
11 possible loss of the NSR case and speculates that had
12 the Company planned earlier or differently and
13 somehow the, quote, current situation the Company is
14 in -- what they mean by that is the Company is going
15 to be tight or somewhat short on winter capacity in
16 the near term, that that current system Staff says
17 might not exist. They say it might not exist, they
18 don't say it would not exist. To put a blunt point
19 on the issue, the evidence will show that Staff's
20 planning related claims are completely unsupported.

21 The evidence will show that first in the
22 2020 IRP the Company did plan for exactly what
23 happened, Company planned for an NSR loss, the
24 Company assumed the plant would retire in 2024 at
25 that time, the Company examined what its capacity

1 needs would be if that happened, and what the
2 planning showed is the Company would not need
3 additional dispatchable resources even with Rush
4 Island gone in 2020 -- after 2024 until the early
5 2040s. Staff didn't criticize the planning, Staff
6 didn't criticize the conclusions at all.

7 In its 2007 and 2014 IRPs the Company
8 similarly also specifically examined scenarios where
9 Rush Island were to retire in 2024, which is what's
10 happening, specifically considered if that happened
11 would we need additional dispatchable capacity. The
12 answer was no, we wouldn't need additional capacity
13 until the late 2030s or the early 2040s. And keep in
14 mind that Rush Island was expected, for planning
15 purposes, to live to 2039 at the time. Again, Staff
16 didn't claim at the time the Company didn't consider
17 the right planning, Staff didn't take issue with the
18 conclusions that the Company reached at all.

19 Staff also seems to criticize the Company
20 about NSR loss planning around the transmission
21 upgrade, but that criticism too falls flat. Ameren
22 Missouri has, since as far back as 2011, consistently
23 accounted for the potential to need to make
24 transmission rates to the system if Rush Island
25 retires.

1 Once again, not once over that entire -- I
2 guess it would be 13 year period that I'm talking
3 about, did Staff once express a concern about either
4 the planning that was done, or planning that wasn't
5 done at all, nor did Staff, but it does now, suggest
6 that the Company should have performed transmission
7 upgrades at an earlier point in time -- they're being
8 performed right now -- but at an earlier point in
9 time when Staff, I would contend, speculates that the
10 upgrades might have cost less.

11 In effect what Staff is saying is,
12 Company, if you'd plan differently you might have
13 thrown in the towel on the Rush Island litigation a
14 few years ago, you might have closed the plant sooner
15 because you have to close the plant, you have to
16 announce that you're closing the plant in order to
17 actually do the upgrades. You might have done the
18 upgrade sooner and we've had all this inflation in
19 the last few years and it might cost less money,
20 that's the basic position that they're taking. The
21 problem with that position is that that would have
22 been a very bad decision for customers. Rush Island,
23 when it was operating normally, produced fairly
24 significant positive margins for the Company and for
25 -- actually for customers. Basically all those

1 margins would end up flowing back to customers when
2 you have fairly frequent rate classes and you have a
3 fuel adjustment clause.

4 The evidence in this case shows that
5 closing the plant earlier and doing the transmission
6 upgrades earlier, even if theoretically it might have
7 been cheaper -- and we don't concede that it would
8 have. But even if it would have been, that the
9 savings that might have existed are about seven times
10 less than the loss margins that the customers would
11 have experienced had we done that. Staff's
12 supposition frankly would have been a very bad idea
13 for customers.

14 And that brings me to a discussion of
15 Staff's related hold harmless proposal in this case
16 which is related to the transmission upgrade issues.
17 Mr. -- Ms. Mers mentioned this at least two if not
18 three times on Friday. With all due respect, the
19 Commission has absolutely no authority in this case
20 to issue what would amount to a prejudgment of how
21 investments not in rates today should be handled in a
22 future rate case. These transmission investments
23 aren't among the costs that are sought to be
24 securitized, they have nothing do this case, they
25 aren't in rates today. When the projects are done

1 and we have a rate case then like all rate based
2 investments they'll be at issue in a future rate case
3 and that's when the Commission can consider whatever
4 argument Staff wants to make. But the Commission
5 can't prejudge it, make an advisory decision about
6 that in this case now.

7 One more issue I want to touch on before I
8 wrap up. Many of you on the Commission, Chair Hahn
9 perhaps not unless you've been reading old cases and
10 you might have, are well aware that the confusion and
11 con -- of the confusion and controversy that
12 surrounded the determination of the net present value
13 of tax benefits in the Liberty securitization case.
14 And I know Judge Clark remembers this because he
15 lived it I'm sure. And I'm sure that you remember
16 that a lot of that -- that figuring out the NPV of
17 tax benefits in the securitization case turns on how
18 you deal with accumulated deferred income taxes,
19 ADIT.

20 In that case the Commission made a
21 decision on how ADIT should be handled, it was
22 appealed, and the Western District did affirm that
23 decision. That led to a different treatment of ADIT
24 in that case that both the Staff and the Company are
25 recommending you follow in this case and it also lead

1 to a further complication, that is the need to
2 account for future income tax liabilities in ongoing
3 financing costs over the entire term of the Liberty
4 bond.

5 The evidence in this case however, the
6 record in this case is different than the record in
7 Liberty. And based on that different record the
8 Commission should find that the net present value of
9 tax benefits is as recommended by Company witness
10 Lansford and confirmed by Staff witness Majors.
11 Doing so will completely keep customers whole. It
12 will keep the Company whole too but it will keep
13 customers whole as well and it will obviate the
14 administratively complex need to deal with future
15 income taxes through ongoing financing costs over the
16 entire term of the bonds.

17 In closing, I submit to you that when you
18 consider the record evidence in this case you will
19 first conclude that the sums the Company seeks to
20 securitize should be securitized. Second, you will
21 conclude that the Company's consistently made prudent
22 decisions in the best interest of its customers. And
23 this is true even though some of those decisions as a
24 matter of law the district court said were incorrect.
25 And you will conclude that customers were not harmed

1 by those decisions and in fact their revenue
2 requirements are lower given the decisions the
3 Company has made.

4 Thank you for your time and patience this
5 morning. If there are questions I'll try to answer
6 them and if I can't answer them you can probably ask
7 them of our witnesses.

8 JUDGE CLARK: Thank you, Mr. Lowery. Just
9 for the record, I want to note -- I've already noted
10 that Commissioner Holsman is attending this hearing
11 via WebEx. It's my understanding that Commissioner
12 Kolkmeier is here as well and we have Chair Hahn in
13 person. Are there any Commissioner questions at this
14 time for Mr. Lowery?

15 CHAIR HAHN: Thank you, Judge. Good
16 morning, Mr. Lowery.

17 MR. LOWERY: Good morning.

18 CHAIR HAHN: I'm going to back to Friday,
19 if you don't mind. We spent a lot of time discussing
20 the prudence of the decision to not pursue NSR. And
21 the Judge asked you if, you know, you thought legally
22 that the Commission had to make a determination on
23 the prudence of not taking an NSR. And what I think
24 your response was is that the Commission had to make
25 a determination because of a \$34 million disallowance

1 that OPC had suggested. Am I recalling that
2 correctly?

3 MR. LOWERY: You are. I think that you
4 either have to determine that OPC's adjustment is not
5 supported in a way that you just disregard it. I
6 mean, essentially it's wrong, it's not supported, and
7 therefore it's no longer an issue. And then I think
8 probably you could not decide the underlying NSR
9 prudence issue because -- and this all -- I'm hedging
10 only because Staff's position's been a little opaque
11 about what they're asking for in this case and
12 particularly this transmission upgrade, hold harmless
13 argument, you know, it all gets tied up into these
14 prudence questions also. But if you agree with me
15 that you can't rule on this hold harmless argument in
16 this case, it's not appropriate for a securitization
17 case and if you were to agree with the Company that
18 you find OPC's analysis lacking then perhaps you
19 wouldn't have to decide the underlying case. But if
20 those are live issues since they're based on --
21 they're premised on a claim that we were imprudent,
22 you're going to have to deal with the underlying
23 claim in order to conclude that, you know, we
24 shouldn't suffer, for example, a \$34 million
25 permanent disallowance.

1 CHAIR HAHN: Yeah. I can ask OPC in a
2 moment. But what I thought I recalled them saying on
3 their position was they think there should be a
4 \$34 million disallowance but they were not sure if
5 there would be enough evidence in the case to make
6 that prudence determination. So I can ask them,
7 recall that again later.

8 MR. LOWERY: That might be an instance
9 where Mr. Williams and I somewhat -- might somewhat
10 be aligned, that might be the case.

11 CHAIR HAHN: Which does get me to why
12 Ameren had a witness file direct testimony on that
13 specific issue if it was only in response to a
14 disallowance that hadn't been recommended yet?

15 MR. LOWERY: Well, I think I can explain
16 that because I agree we probably wouldn't have
17 normally done that. So let me give you a little bit
18 of history, all of which happened before you were on
19 the Commission.

20 After we made the decision to retire the
21 plant Staff almost immediately asked the Commission
22 to open an investigatory docket and made some
23 recommendations one of which is that we should
24 basically put on sworn testimony about why we were
25 prudent. We didn't object to that recommendation but

1 what we said to the Commission was we're about to
2 file a rate case and so it probably makes most sense
3 for us to put on that evidence in that rate case.
4 And we did so a couple months later, two, three
5 months later.

6 And then -- and so it appeared to us at
7 that time that Staff was absolutely taking issue with
8 the prudence of those decisions. And we get into the
9 case, we have testimony back and forth and then Staff
10 says, you know what -- and I'm characterizing it, Mr.
11 Keevil might say my characterization's unfair. But
12 our --

13 MR. KEEVIL: I have no doubt Mr. Keevil
14 would say that.

15 MR. LOWERY: Our interpretation of what
16 was happening at the time is Staff then says, you
17 know what, Commission, you don't need to decide the
18 prudence issues in this case, the time to decide
19 those is in the securitization case that the Company
20 is going to file. Because everybody knew we -- the
21 testimony I think reflected we would seek to
22 securitize the Rush Island costs. So from our
23 perspective Staff is telling us in that case we're
24 going to take on these issues in your securitization
25 case.

1 The testimony of -- a lot of the testimony
2 we filed on direct in this case frankly is just very
3 similar to the testimony we filed in that rate case.
4 I'm sure we elaborated and refined it in some
5 respects but it's very similar. And so having
6 essentially Staff give us the word, so to speak,
7 we're going to take these issues up in the
8 securitization case we thought it just wouldn't make
9 any sense to sort of act like the elephant's not in
10 the room so to speak and not file the testimony on
11 direct, so that's why we did it. We wouldn't have
12 had to but we thought we should.

13 CHAIR HAHN: Okay. Thank you for the
14 clarification. So I'm going to ask another
15 clarification question. In your opinion, what do you
16 think the Commission has to decide in this particular
17 case as it relates to prudence and securitizing bonds
18 for Rush Island?

19 MR. LOWERY: With the caveats I gave
20 before, you might not have to decide the underlying
21 NSR permitting issue. Again, if you find the
22 evidence insufficient, you agree there's no authority
23 on the hold harmless to make that so you wouldn't
24 have to decide that. But you have to decide that the
25 Company's decision to retire instead of retrofit was

1 -- you know, that that's what led to the retirement.
2 That's the last decision that led to the retirement.
3 You need to find that that was a prudent decision.

4 CHAIR HAHN: Thank you. One other
5 question. You talked -- you mentioned this morning
6 capacity issues. Who would be the relevant witness
7 for the Commission to ask regarding capacity --
8 potential capacity projection?

9 MR. LOWERY: Matt Michels.

10 CHAIR HAHN: Thank you.

11 MR. LOWERY: He knows way more about it
12 than I do. Any other questions I can answer,
13 Commissioners Holsman or Kolkmeyer or Judge?

14 COMMISSIONER HOLSMAN: No questions at
15 this time, Judge, thank you.

16 COMMISSIONER KOLKMEYER: No questions,
17 Judge, thank you.

18 JUDGE CLARK: Thank you, Commissioners
19 Holsman and Kolkmeyer. I do have a few questions for
20 you. I'll try not to be repetitive.

21 MR. LOWERY: That's okay.

22 JUDGE CLARK: Let's start with you had
23 said at the very beginning of your opening that if
24 you followed Public Counsel's recommendation to not
25 securitize as opposed to, I believe you said, a

1 reduced amount of 325 million, you didn't really
2 explain why -- why securitization couldn't occur
3 there. Now, I do remember, from Murray's testimony,
4 that there was something about that in regards to
5 carrying costs. Is carrying cost the only issue
6 there that would make it --

7 MR. LOWERY: No.

8 JUDGE CLARK: I guess what I'm getting at
9 is what would -- what about OPC's position would
10 render the statute ineffective?

11 MR. LOWERY: OPC's position, as I
12 understand it, is that traditional financing and
13 recovery means that you would amortize the balance of
14 the plan -- the Commission always and every time
15 would amortize and recover the undepreciated balance
16 of the plan through base rates but there would be no
17 financing costs associated with that at all. And if
18 that's the case it is impossible to show NPV benefits
19 of securitization.

20 That is not how you ruled in Liberty,
21 that's not the approach, that's not the method that
22 was taken, the method that you sanctioned. But if
23 OPC's right about that it's impossible to meet the
24 NPV benefits, you know, requirements of the statute.
25 And if that's the case then there wasn't any point in

1 having a statute that allowed securitization of
2 undepreciated costs in generating plants because you
3 could never use it. That's the basis.

4 JUDGE CLARK: Thank you. The parties seem
5 to use the words terminate and retirement
6 interchangeably and I noticed that the district court
7 decision used the term terminate. Is there a
8 difference there, are those actually interchangeable?

9 MR. LOWERY: I don't know what terminate
10 means, to be honest with you. I hope we haven't used
11 that term.

12 JUDGE CLARK: Terminate operations.

13 MR. LOWERY: Okay. I don't think there's
14 a difference, not for this purpose.

15 JUDGE CLARK: Okay. Which witnesses
16 should I ask about Ameren's proposed financing order?

17 MR. LOWERY: You should ask Darryl Sagel
18 and you should ask Katrina Niehaus and they are both
19 appearing today.

20 JUDGE CLARK: Thank you. Now, I remember
21 reading in testimony there's some discussion on
22 trackers but there's no -- there's been no
23 stipulation of the agreement filed in this case. Was
24 there any further discussion of trackers in this
25 case?

1 MR. LOWERY: I've got to admit you've
2 caught me flatfooted. I'm not really sure what
3 you're talking about. That maybe was our witnesses
4 but I'm not sure -- oh. Oh. My apologies. Now I do
5 remember. Mitch Lansford does discuss -- I mean,
6 it's deferral mechanism, tracker. I mean, basically
7 when Rush Island retires and stops operations if we
8 haven't had a -- if we haven't concluded a rate case
9 by then -- and since it's already April and a rate
10 case takes 11 months and it's going to retire in
11 October that seems almost a certainty, right.

12 We proposed, for the benefit of customers,
13 that we take the revenue requirement associated with
14 Rush Island that's in our base rates today, that's
15 impacting our rates today and that we defer those
16 amounts to a regulatory liability so that we can give
17 them back to customers when our rates are reset.
18 Otherwise we would get -- and I'm just going to use a
19 round figure here. Otherwise we would get the
20 \$500 million for retiring Rush Island. Say we issue
21 the bonds this fall, we get that money and the O&M
22 associated with the plant would stop because it's not
23 operating, right. But our rates would still reflect
24 both that return on and of the investment that's in
25 rates and the O&M. I mean, really we would sort of

1 be double -- I believe we would be double dipping at
2 that point. It would be unfair to customers. And so
3 that's -- I think that's what you're referring to as
4 a tracker, I believe.

5 JUDGE CLARK: But there's no agreement at
6 this time between the parties in regard to a tracker?

7 MR. LOWERY: I don't think anybody
8 rebutted it at all. I guess -- I'll go out on a limb
9 and say I think there is agreement that there should
10 be a tracker. If there's -- what I don't know for
11 sure is if the parties are completely aligned on
12 exactly what the amount should be. That may not be
13 completely resolved. But the concept that we should
14 defer to a regulatory liability these amounts,
15 whatever the right amount is, I don't think there's
16 any dispute about that.

17 JUDGE CLARK: Well, I think --

18 MR. LOWERY: Unless I'm missing something.
19 Sorry.

20 JUDGE CLARK: Well, there's the deferral
21 mechanism and then there's the -- is there -- was
22 there any discussion of a tracker to track how much
23 was actually spent for energy transition costs?

24 MR. LOWERY: Oh, oh. Okay. That's -- I'm
25 sorry if I got off on the completely wrong issue.

1 The statute requires, Judge, that estimated costs
2 that are included in the principal amounts of the
3 bonds not just energy transition costs but upfront
4 financing costs those are both effect -- the statute
5 requires that differences between the amount included
6 in the bonds, to the extent they're estimated, and
7 some of these are estimated, requires that in a
8 future rate case those differences be reconciled and
9 we would either collect a little bit more money or we
10 would give back money if it's different. So if
11 that's what you're talking about, yes. And I don't
12 think there's any disagreement whatsoever about the
13 fact that the statute requires that. Maybe if you're
14 talking about a disagreement, OPC in particular, I
15 think Staff only on one issue, some of the issues
16 that we contend should be included in energy
17 transition costs in the principal amount of the
18 bonds. OPC says we're not saying you shouldn't
19 recover them but we don't think they ought to be in
20 the principal of the bonds, we think they ought to
21 just be handled in a rate case as if there was no
22 securitization. So there is a dispute about some of
23 those items.

24 But to the extent that you include an
25 estimated item in the principal amount of the bonds,

1 I think everybody agrees that in a future rate case
2 we need to reconcile actuals to different -- to
3 estimates at that time. I think everybody agrees
4 with that.

5 CHAIR HAHN: Thank you for clarifying it
6 on the trackers. It was -- you're right, the second
7 time.

8 MR. LOWERY: Okay.

9 CHAIR HAHN: The difference in actual
10 costs versus approved costs. So you're right. I
11 miss -- if you said there's agreement generally on
12 the principal amongst the parties I think that's what
13 the Judge was getting at.

14 MR. LOWERY: Okay.

15 CHAIR HAHN: We spent a lot of time
16 talking about NSR and the prudence of that. What we
17 haven't spent a lot of time on yet, and I assume that
18 we will, is the 2021 decision to -- prudence decision
19 to either retrofit or retire the plant. I'm assuming
20 then witness Michels might be the person to --

21 MR. LOWERY: For us, yes. That's right.

22 CHAIR HAHN: All right. And -- well, we
23 can discuss that then. Thank you.

24 MR. LOWERY: Uh-huh.

25 JUDGE CLARK: Thank you, Commissioner. I

1 just got one last thing I want to kind of clear up
2 with you. Now this \$34 million you were discussing
3 as a disallowance, is that Staff's or OPC's?

4 MR. LOWERY: OPC.

5 JUDGE CLARK: Okay. That's what I was
6 thinking.

7 MR. LOWERY: Mr. Seaver.

8 JUDGE CLARK: Now, you've thrown out that
9 number and that number's related to another
10 confidential number. Is that number still
11 confidential? 'Cause I believe when you're talking
12 about that you're talking about amounts above a
13 certain amount; is that correct?

14 MR. LOWERY: Well, that's the transmission
15 upgrade issue and that number is still confidential.

16 JUDGE CLARK: Okay.

17 MR. LOWERY: But I don't -- I don't recall
18 there being a confidentiality issue relating to the
19 34 million. But the transmission issue Staff
20 recommends, and I won't use figures, Staff recommends
21 -- that basically says, look, when you did the 2021
22 analysis you had a base amount of transmission
23 upgrade costs that you assumed, it was X, and it
24 looks like the actual upgrade costs are going to be X
25 plus Y. It's Y that's -- well, it's the total, the

1 actual total that's confidential because we're going
2 to do other transmission upgrades, we don't have a
3 contractor that might bid to have an idea of what
4 those costs are, right, that's why it's confidential.
5 So that's the issue there. So that actual cost of
6 the transmission upgrade numbers is still
7 confidential.

8 JUDGE CLARK: Okay. And you went kind of
9 where I wanted to go with the transmission upgrades.
10 When you're talking about the transmission upgrades,
11 I guess, as you said, there's an assumed amount and
12 then there's a potential overrun of that amount,
13 correct?

14 MR. LOWERY: I wouldn't characterize it as
15 an overrun. But we actually -- when we analyze it we
16 had a range. But I wouldn't --

17 JUDGE CLARK: It might exceed the range,
18 correct?

19 MR. LOWERY: It exceeds that base planning
20 assumption that was -- I agree.

21 JUDGE CLARK: And there were a variety of
22 reasons offered for that, I think. I think one of
23 the reasons was conflating or confusing the
24 dismantling of the plant with the transmission
25 upgrades that are occurring at the same spot where

1 there may be materials, I believe toilets were
2 discussed.

3 MR. LOWERY: That's on the materials and
4 supplies issue what you're thinking of.

5 JUDGE CLARK: All right. Then let's get
6 me off of that and go back to this. How -- I don't
7 understand how it's an advisory opinion if you're
8 saying this amount of costs we believe is going to be
9 known but we could overrun it here. How is it an
10 advisory opinion for the Commission to say that
11 amounts that aren't at this time knowable will be
12 addressed in the next rate case?

13 MR. LOWERY: Oh, that's not, that's
14 certainly not. That's not what Staff is asking you
15 to do. Staff is asking you to I guess impose some
16 kind of condition on your financing order which I
17 don't think the securitization statute even gives you
18 the authority to do that unlike the CCN statute for
19 example that specifically gives you authority to
20 condition your CCN order. Staff is asking you to
21 condition the financing order on an order that says
22 the Company assumed the upgrades were going to cost
23 X, if they cost a dollar over X when a rate case
24 happens later you cannot give them a dollar over X.
25 You're -- you will not, in a rate case, give them

1 what they actually cost even if it was prudent, even
2 if there's a good reason, et cetera. That's what
3 Staff's asking you to do. They're asking you to
4 prejudge a rate case issue on costs that aren't even
5 in rates yet and that aren't at issue in this case.
6 Maybe prejudgment is a better word than an advisory
7 opinion.

8 JUDGE CLARK: Okay. I understand what you
9 said there and I thank you for delineating that
10 difference for me. I do see in the statute where it
11 says that no later than 215 days after the date the
12 petition's filed Commission shall issue a financing
13 order approving the petition on order approving the
14 petition subject to conditions or rejecting the
15 petition. And it doesn't seem to lay out any
16 limitation on the conditions.

17 MR. LOWERY: Well, I would suggest that
18 when you're deciding what rate base should or should
19 not be included putting aside that statute. You have
20 to consider all relevant factors, you have to come to
21 just and reasonable rates. And if you're prejudging
22 a particular expense before you even get to the rate
23 case I don't see -- and when you get to the rate case
24 you don't consider it, right, because you're not
25 considering that factor 'cause you already prejudged

1 it then you're not considering all relevant factors.
2 So I don't think you can impose that kind of
3 condition even if the statute may allow you to impose
4 certain conditions that are germane to the
5 securitization itself.

6 JUDGE CLARK: But you didn't -- just to
7 clarify. You didn't see any issue with what I
8 proposed, correct? In terms of you believe the
9 Commission could say, well, this part's known, we'll
10 do this and we'll address this in a rate case.

11 MR. LOWERY: Absolutely not. I think
12 that's actually what you should say on the issue.

13 JUDGE CLARK: Okay.

14 MR. LOWERY: It's not an issue with this
15 case, we'll deal with that in a rate case, that is
16 what you should say.

17 JUDGE CLARK: Those are all the questions
18 I have at this time.

19 MR. LOWERY: Thank you. Or did you have
20 another one?

21 JUDGE CLARK: I do not. Thank you.

22 MR. LOWERY: Thank you.

23 JUDGE CLARK: Next opening is from Staff
24 of the Commission.

25 OPENING STATEMENT

1 MR. KEEVIL: Judge, if I could beg your
2 indulgence, given my walking condition, I would
3 prefer to just sit here and deliver this. I don't
4 plan to take nearly as long as Mr. Lowery did unless
5 we're -- in response to questions from the Bench.

6 JUDGE CLARK: You're welcome to conduct
7 your opening from where you're seated. I do know
8 that you're -- that the microphone has a hard time
9 picking you -- I can hear you, everybody else can
10 hear you but I know that you're not picking up as
11 well into the stream when you don't speak directly
12 into the microphone.

13 MR. KEEVIL: All right. Let me try to get
14 a little closer.

15 Good morning, may it please the Commission
16 and RLJ. As you know, my name is Jeff Keevil and I
17 am one of the attorneys representing Commission Staff
18 in this proceeding along with Nicole Mers and Travis
19 Pringle.

20 When I last appeared before this
21 Commission in a securitization utility tariff bond
22 case it was only the second time the Commission had
23 conducted such a hearing and the previous hearing had
24 actually been a consolidation of two cases I believe.
25 And I also believe the other case was on appeal or

1 was just on the verge of appeal. In other words, the
2 Commission had very little in the way of experience
3 with cases such as this securitization case and no
4 real court sanctioned roadmap to follow. Now even
5 though this is only the third, to my knowledge,
6 securitized utility tariff bond hearing in Missouri
7 the Commission has worked its way through both of
8 those prior cases and hearings and both of which were
9 upheld on appeal and both of which have worked their
10 way through the post financing order, slash, issuance
11 advice letter process. In other words, the
12 Commission has experience with these cases.

13 You will recall that the financing
14 statute, Section 393.1700 RsMO requires that the
15 financing order contain certain matters. You will
16 also see from the list of issues and position
17 statements that many of the issues in this case,
18 although have a securitized financing impact, are
19 very similar to the types of standard rate case
20 issues which the Commission has lots of experience.
21 Now that's not to say those issues are not important
22 just that they should not be viewed as super unique
23 in some way since they are being raised in a
24 securitization case.

25 The list of issues set forth 21 issues,

1 many of which contain subparts. In the interest of
2 time, I'm not going to laboriously go through each of
3 these 21 issues. Opening statements by attorneys do
4 not constitute evidence anyway. However, I will just
5 point out a few issues which I believe may warrant
6 your particular attention.

7 You already heard one witness in this case
8 last Friday on the prudence issue, Issue Number 3.
9 Closely related to that issue are Issues 4 and 5.
10 And these numbers that I'm referring to are as they
11 are listed on the list of issues. I believe these
12 issues warrant particular attention. Mr. Lowery
13 spent his -- virtually his entire opening statement
14 addressing those issues and -- even though quite a
15 bit of time was spent on Friday addressing them.

16 Also Issues 1 and 2 involving net present
17 value benefits and the post financing order process
18 and procedure. Those are issues that I believe you
19 should pay particular attention to. And I should
20 probably mention that many of the other issues that
21 -- I'm not specifically pointing out here this
22 morning may touch upon prudence or touch upon net
23 present value. And as I mentioned earlier, I did not
24 mean to imply that those other issues are not
25 important. However, in many ways they are more

1 similar to standard rate case issues.

2 Another group of issues to which I would
3 draw your attention are Issues 16, 17, and 20 which
4 you could think of as -- if in relation to a more
5 standard rate case, you could think of those as your
6 rate design and tariff issues.

7 Now, you heard Mr. Lowery talk almost
8 exclusively about the present -- the prudence and
9 related Issues 4 and 5. And suffice it to say that
10 Staff has significant disagreement with what you
11 heard him say. However I have to apologize not being
12 as versed in those issues as I would like to be and
13 would -- whatever I say please take with a grain of
14 salt and be prepared to ask Staff's prudence --
15 witnesses questions on those issues.

16 Now, you will hear testimony from several
17 witnesses representing several parties in this case,
18 some of whom testify on multiple issues. I would
19 refer you to Staff's filed statement of positions and
20 encourage you to ask questions of the Staff witnesses
21 when they take the stand of various issues. And I
22 could attempt to make a bad -- a poor attempt at
23 responding to questions if you have any, be glad to
24 address them. As I said, I don't plan to go on
25 forever so I'm going to leave it at that for now and

1 more will be addressed, I'm sure, during the specific
2 issue mini openings. Thank you.

3 JUDGE CLARK: Thank you, Mr. Keevil. Are
4 there any questions from the Commission? I have one
5 for you, Mr. Keevil.

6 As Mr. Lowery had pointed out, there's
7 about \$17 million difference between Staff's position
8 currently and the Company's. And while to me that's
9 a phenomenal amount of money in the world of utility
10 regulation, as I believe Mr. Lowery pointed out,
11 that's just enough to see daylight through. One of
12 the, you know -- and you pointed out, Mr. Lowery
13 spent a lot of his time for Ameren on the NSR -- or
14 the New Source Review prudence issue as has been put
15 out that a lot of parties are interested in. I guess
16 my question at this time is it appears that there's
17 still at least remedy proceedings going on in the
18 district court. So with that in mind, if there is
19 harm I'm wondering how it is quantified at this point
20 such that the Commission should be considering it in
21 this case. So can you kind of give me your overview
22 on that as to why we should be, if it hasn't been
23 quantified?

24 MR. KEEVIL: Well, I think that oftentimes
25 that harm element of the prudence standard or

1 prudence evaluation gets lumped -- if you noticed on
2 that slide Mr. -- not slide. But overhead Mr. Lowery
3 had up there that talked about prudence, the
4 associated case -- or whatever case that was he was
5 projecting for us talked about the prudence and then
6 the harm. Said you can have prudence -- or excuse
7 me, imprudence but then you have to also have harm.
8 And so -- and in fact, if you look at the statute
9 here that we're dealing with, 393.1700, the
10 definition of energy transition cost itself requires
11 that it -- let me just read the first part of it
12 here.

13 It says, pre -- A -- 7A, pretax costs,
14 with respect to a retired or abandoned or to be
15 retired or an abandoned electric generating facility
16 that is the subject of a petition for a financing
17 order filed under this section, or such early
18 retirement or abandoned is deemed reasonable and
19 prudent by the Commission through a final order
20 issued by the Commission include but are not limited
21 to and then it goes on with several examples of cost.

22 I think the problem that you have in this
23 situation is that in order to securitize them the
24 costs need to have been reasonable in the first
25 place. And I agree with you that we do not know the

1 full extent of the harm to which rate payers will be
2 exposed due to Ameren's decision making in regard to
3 the decisions it's made here. So I think you need to
4 address -- you can find that they acted imprudently
5 without deciding the harm -- the amount of the harm.
6 And that's basically what Staff's -- I'm probably
7 doing a poor job of paraphrasing it but I would
8 encourage you to ask Ms. Eubanks when she takes the
9 stand. But that's basically a part of -- a big part
10 of her recommendation to I don't want to say push
11 them off to the rate case but to defer them to the
12 following rate cases because the harm element will be
13 hopefully better known at that time.

14 Does any of that make any sense at all?

15 JUDGE CLARK: It did. And it is
16 essentially what I'm getting at too is -- you
17 actually cited the section of the statute and I'm
18 looking at that and I'm trying to figure out how
19 narrow or how expansive that is. And it appears
20 that, at least given the reading you just gave of it,
21 that where such early retirement or abandonment as
22 deemed reasonable and prudent by the Commission it
23 appears that Staff is deeming as part of that
24 retirement decision the decision to seek the -- or
25 the choice to not seek the New Source Review

1 permitting; is that correct.

2 MR. KEEVIL: Yes. In fact, Judge, if you
3 go back and look -- there were numerous, numerous
4 decisions that Ameren made, going all the way back to
5 the early 2000s basically up until just recently,
6 that have -- well, actually they're still going on,
7 as you pointed out, the remedy phase is still going
8 on. Any one of which of those decisions they could
9 have been prudent or imprudent on.

10 Personally -- I'm not speaking for Staff
11 right now. Personally speaking just for me, I think
12 they got several of them wrong, they got several of
13 them right. I mean, it was a series of decisions and
14 actions that they took on the basis of those
15 decisions. The full extent to which the harm we
16 don't know yet, as you just pointed out, because the
17 Court could impose -- I'm not sure what the proper
18 terminology is, I'm going to call them fines or
19 penalties beyond the rate making -- or beyond the
20 costs of retiring or putting scrubbers up. The Court
21 could just fine them basically, probably the wrong
22 term again.

23 And I think that's one of the reasons that
24 the Court -- you know, I mentioned earlier during the
25 pre -- preliminary matter portion of this hearing,

1 we've asked that the Commission take official notice
2 and it doesn't -- again, doesn't matter to me whether
3 you take official notice or just receive it as an
4 exhibit in the record. But somehow or another you
5 need to get that transcript from the Court's remedy
6 hearing into the record because, I mean, I think it
7 indicates the extent to which the Court believes that
8 what Ameren is telling the Court and what Ameren is
9 telling this Commission do not sync. It's an ongoing
10 pattern or problem that we've experienced since 2000
11 -- early 2000s.

12 JUDGE CLARK: And I'm trying -- I'm
13 wanting to listen to all of the arguments of the
14 parties, I'm just trying to figure out how we get
15 there because I'm looking at this and I can certainly
16 -- I agree with you on any given day any utility
17 plant is -- any utility and decisions regarding any
18 utility plant are going to be along a scale with a
19 perfect decision at the top and a terribly imprudent
20 decision at the bottom and at any given day that
21 these decisions are going to run up and down that
22 scale to a degree with very -- you know, with a very
23 low likelihood of extremely imprudent decisions and a
24 very low likelihood of absolutely perfect decisions.
25 But are those all retirement decisions.

1 And that's kind of where I'm thinking
2 because where it says where such early retirement or
3 abandoned is deemed reasonable and prudent and it
4 doesn't really talk about other decisions and so I'm
5 having a hard time getting at -- and by way of
6 example, and I'm not meaning to pick on Ameren for
7 this but it's just the one that comes to mind. If
8 you're talking about something like Taum Sauk where
9 all of a sudden everything washes down the
10 mountainside, you know, there may have been a lot of
11 decisions that took you down the road to get there
12 but then you have the decision as to whether to
13 rebuild or to retire. And that seems to be -- at
14 least the way I'm looking at the statute, that seems
15 to be what's being looked on. Now I certainly think
16 obviously there's reasonable arguments to be made for
17 why it should be more expansive than that and I want
18 to hear those arguments.

19 MR. KEEVIL: Part of -- on that point,
20 Judge, I think. Again, I would refer you to Ms.
21 Eubanks and Ms. Mers. But part of Staff's concern I
22 believe is that if you wind up making whatever
23 decision you make we don't want to -- in the next
24 rate case or whenever we don't want it to come back
25 and say, yeah, you heard Mr. Lowery this morning say,

1 well, they didn't complain about this in 2014, well,
2 they didn't complain about this in 2007.

3 We don't want them to come back in the
4 rate case, or whenever, and say, well, you decided
5 it, Commission, in the securitization case that we
6 weren't -- we were not subject to any disallowance
7 and that we was prudent enough to securitize so
8 therefore you decided this and Staff can't bring this
9 up now. That's part of are -- we hear -- and not
10 just from Ameren, we hear that from all utilities.
11 Well, you didn't bring this up, you know, 18 years
12 ago when you had an opportunity to do so even though
13 you didn't know as much about it and we're in a part
14 of the litigation in federal court and on and on and
15 on, you had an opportunity to raise it, you didn't,
16 you lost it. We don't want to run into that again.

17 JUDGE CLARK: So -- go ahead, Chairman.

18 CHAIR HAHN: Thank you. I think, you
19 know, from the prior opening statement and the
20 discussion on Friday and Staff's pre-filed position
21 statements, Staff didn't have a position on the
22 prudence or reasonableness of the NSR permitting
23 other than to preserve it for a future rate case.
24 The statute only requires us to look at the
25 retirement or abandonment of the plant and its

1 prudency and reasonableness in 2021. If it was
2 prudent and reasonable to retire it to issue
3 securitized utility tariff bonds to retire -- if that
4 decision was reasonable then -- and prudent then we
5 could retire it. That's the decision I think we're
6 largely focusing on today. I do think it is a
7 broader scope to talk about, you know, NSR
8 permitting, harm that we're not totally sure about
9 still being assessed by the federal courts.

10 So at least Staff bringing it up might be
11 a great way to preserve it again like you're
12 preserving NSR permitting for that future rate case
13 so we have all of that information to look at at one
14 time because the decision before us, to me it seems
15 fairly narrow.

16 MR. KEEVIL: I'm going to have to defer
17 that because that's actually -- to -- like, as I said
18 earlier, either Ms. Eubanks or Ms. Mers because I
19 haven't been as closely involved in that issue as I
20 wish I would have been up to this point.

21 CHAIR HAHN: Thank you.

22 JUDGE CLARK: Thank you. Are there any
23 further Commission questions? I hear none. Thank
24 you, Mr. Keevil.

25 MIEC was next and my understanding is that

1 they have, and I have granted, that they want do a
2 mini opening on Issue 17 when that comes up, correct?

3 MS. PLESCIA: Your Honor, I would like to
4 do that still but I would just like to make a brief
5 statement to put our issue into context, if I could,
6 without getting into detail.

7 JUDGE CLARK: That would be fine. Please
8 go ahead.

9 MS. PLESCIA: Sure.

10 JUDGE CLARK: MIEC.

11 OPENING STATEMENT

12 MS. PLESCIA: Sure. Thank you, Judge
13 Clark and Chair Hahn and Commissioners. The reason
14 the MIEC has narrowed this to one issue is that MIEC
15 supports Ameren's proposal to do the securitization,
16 we think that's a cost effective decision, it makes
17 sense. There's really one issue that's outstanding
18 but it's of great material importance to the large
19 employers that are included in the MIEC and that is
20 that Staff has proposed that the securitized costs be
21 allocated to customer on kilowatt hour energy basis.
22 This is a very dramatic decision in terms of what
23 that would do to industrial rates not only in this
24 case but in future securitization cases which we
25 fully expect will occur.

1 The evidence that we have will show that
2 this case is distinguishable from the two other cases
3 for Liberty and Evergy regarding this issue. It will
4 show how this proposal by Staff really departs
5 completely from the way that rates have been set for
6 Ameren and rates should be set and that it would
7 cause discrimination against large customers and
8 would not be a reasonable or fair method. And we
9 will present that evidence on Thursday or if the
10 issue comes up sooner whenever it comes up. Thank
11 you.

12 JUDGE CLARK: Thank you. And to clarify,
13 I misspoke there, that's Issue 16 not 17.

14 MS. PLESCIA: My apologies, Issue 16.

15 JUDGE CLARK: Any Commission questions for
16 MIEC? I have no questions. Thank you.

17 Any opening statement from the Sierra
18 Club? I excused them, didn't I?

19 MR. LOWERY: Yes.

20 JUDGE CLARK: Any opening statement from
21 Natural Resources defense counsel? Hearing none. I
22 believe I also excused them actually. AARP?

23 MR. COFFMAN: Yes.

24 OPENING STATEMENT

25 MR. COFFMAN: Good morning, your Honor,

1 Judge Hahn. May it please the Commission, I'm John
2 Coffman. This is an opening -- just a brief
3 overview, opening statement on behalf of AARP and the
4 Consumers Council of Missouri. And I would just like
5 to start by reminding the Commission that the Public
6 Service Commission's guiding star, a guiding star as
7 the court's say is the protection of the public. And
8 there are a few things about the framework of the
9 securitization statute that have been vexing.

10 And I think we're all struggling with how
11 you address prudence and reasonableness in this case
12 and part of it is because the securitization statute
13 sets up a system whereby the Commission can approve
14 this surcharge and it's basically locked in, the
15 Commission loses control over what happens over the
16 next few years, it's locked in and consumers are
17 going to pay whatever the Commission says they have
18 to pay if they do approve this. And we cannot trust,
19 as we normally do, the Commission's ability to come
20 in and protect the public if something is then
21 discovered later, if circumstances change and for
22 instance if harm then becomes very apparent whereas
23 it's kind of unclear right now. So that's why I
24 think this is a very important moment and one that
25 the Commission should take very seriously.

1 And whereas I take sort of the flip side
2 of the -- that Ameren Missouri does in this case of
3 the particular statute. And our opinion is if rate
4 payers are not going to be better off than they would
5 be with traditional rate making we don't see the
6 purpose of the statute. The statute was sold as a
7 way to treat consumers better if they're in a
8 situation such as this where a coal plant is going to
9 be shut down. And it's important to understand the
10 framework in Missouri and for a utility plant, an
11 electric utility plant in Missouri if it's not being
12 used and useful, if it's not serving customers, if
13 it's not fully operational then the utility is not
14 entitled to return on that plant. And that would be
15 the -- you know, the traditional rate making method.

16 So with -- you know, absent securitization
17 all that the utility would be allowed is to take the
18 remaining balance, depreciation, and recover it
19 through an amortization with no return on that
20 unamortized balance. So if in fact as Public Counsel
21 testimony has proven that -- or shows that even if
22 the Commission has allowed Ameren to recover a debt
23 return of a little over four percent on the asset
24 securitization would be more costly than established
25 rate making principals in Missouri. And so in that

1 case we think that the Commission should be approving
2 securitization only if it can be shown that rate
3 payers are going to be better off with
4 securitization.

5 And in this particular case there are a
6 number -- numerous issues as to the prudence and
7 reasonableness of the utility's actions that led up
8 to this particular case. And your Honor, to
9 analogize to the Taum Sauk situation, you know, there
10 you had something I don't think anyone argued was
11 prudent at all. But the question about whether to
12 rebuild that Taum Sauk, and the Commission wrestled
13 with this, would not have been in front of the
14 Commission but for the imprudent actions that came
15 before it. So I think you have to look at the
16 prudence and reasonableness of decisions that led up
17 to that -- this decision to shut down the coal plant
18 as well as projecting forward what that may be.

19 The issue of whether harm is necessary for
20 prudence, I think you have to look at. And I am -- I
21 think guidance can be found in the Capital City Water
22 cases, there were two of them in particular in the
23 1990s that looked at prudence and reasonableness
24 separately involving a contract with Public Water --
25 Public Water Supply District found that a contract

1 was at one point prudent but then in another case
2 imprudent and depending on the facts of each
3 particular rate case that that water company had the
4 disallowance was allowed or not. In one case an
5 imprudent contract resulted in no allowance and in
6 another case a contract that had been prudent was not
7 reasonable. And this is the kind of ongoing
8 regulation, ongoing oversight that we expect the
9 Commission to do. But in this particular case when
10 you're looking at securitization and locking in a
11 decision for a long period of time where the
12 Commission won't be able to go back in and reconsider
13 its decision I think you have to look at it in a
14 broader context.

15 All I'm saying today is that I hope that
16 you look at this decision and realize that if the
17 public is going to be protected and the public is
18 going to be treated fairly that all those
19 considerations have to be made in this case because
20 if the public is going to be protected it's only the
21 Commission that's going to be able to do it. So we
22 are adopting the position of the Public Counsel in
23 this case and asking that you not approve
24 securitization in this particular case. Any
25 questions?

1 JUDGE CLARK: Commissioner.

2 CHAIR HAHN: Thank you, Mr. Coffman.

3 MR. COFFMAN: Yes.

4 CHAIR HAHN: For clarification, you said
5 the Commission needs to take the decisions, for
6 example, of, you know -- you didn't use these exact
7 words but prudence of, you know, the past decisions
8 to how we got here into account. What if -- what if
9 it's not known? You know, we've heard harm several
10 times.

11 MR. COFFMAN: Right.

12 CHAIR HAHN: Unknown.

13 MR. COFFMAN: Right.

14 CHAIR HAHN: So are you -- if these things
15 are unknown that you're suggesting that we take into
16 account, would you disagree then with Staff's
17 position or how do you feel about Staff's position to
18 preserve those for future cases -- rate cases?

19 MR. COFFMAN: Well, I would say there is
20 an initial prudence -- reasonableness and prudence
21 determination the Commission makes to whether the
22 utility even has access to the securitization remedy,
23 right. And the utility does bear the burden of proof
24 even though under the law other parties need to raise
25 the issue, there needs to be a serious question

1 raised, and those issues have been raised. Or at
2 least the issues that have been raised in this case.
3 I think you have to put the burden on the utility to
4 prove those. And it is tricky because we don't know.
5 We don't even know what the bonds will be yet when
6 you make the determination. But I would just say
7 that you have to look at the burden of proof and the
8 burden of proof is on the utility and if you don't
9 know I think you have to err on the side of
10 consumers.

11 CHAIR HAHN: Thank you.

12 JUDGE CLARK: Any other Commission
13 questions? I have no questions. Thank you very
14 much, Mr. Coffman.

15 MR. COFFMAN: I don't envy your decision,
16 it's complicated.

17 CHAIR HAHN: I guess I'm just wrestling
18 with what you said last, you know, have to err on the
19 side of consumers. And in this case I don't know
20 what that means because I can see that analysis, you
21 know, of cost of scrubbers and retrofitting versus
22 cost of retirement. And so I'm struggling to
23 understand your position of what's best for consumers
24 so I'm --

25 MR. COFFMAN: Yeah. You're forced to be

1 in a position where you have to estimate a
2 hypothetical situation in the future.

3 CHAIR HAHN: Thank you.

4 MR. COFFMAN: I don't think there's any
5 way around that. Thank you.

6 JUDGE CLARK: Thank you, AARP and Consumer
7 Council of Missouri. Any opening from Midwest Energy
8 Consumers Group?

9 OPENING STATEMENT

10 MR. OPITZ: Good morning and may it please
11 the Commission. My name is Tim Opitz on behalf of
12 Midwest Energy Consumers Group. And just very
13 briefly I want to touch on the allocation of revenue
14 requirement which was mentioned by MIEC's counsel and
15 briefly by the Staff. So our position is that the
16 allocation should be based on the nature of the costs
17 that are being securitized and here these costs are
18 related to a fixed plan. And so in my view and in
19 the view of MECG this would be, in a normal rate
20 case, recovered differently than through a straight
21 kilowatt hour charge.

22 So I think drawing that distinction
23 between this securitization case and prior
24 securitization case recovery mechanisms that have
25 been approved is an important distinction to point

1 out. And MECG supports the proposed method that is
2 contained within Morris Brubaker's testimony, I
3 believe he's got rebuttal and surrebuttal. And my
4 understanding is that the Company witness Mr. Wills
5 in his surrebuttal testimony says this is an
6 acceptable alternative and I think the opponent,
7 who's taking the position, is the Commission Staff
8 which is advocating for the kilowatt hour charge
9 that's been approved related to primarily the Storm
10 Uri securitizations.

11 So with that I would ask the Commission to
12 adopt the allocation proposal contained within the
13 testimony of Morris Brubaker. Happy to answer your
14 questions.

15 JUDGE CLARK: Any questions from the
16 Commission? And this -- am I wrong, is this
17 primarily a demand allocation?

18 MR. OPITZ: That's being proposed --

19 JUDGE CLARK: Yes.

20 MR. OPITZ: -- by Mr. Brubaker? So Mr.
21 Brubaker's proposal is a specific percentage
22 adjustment that's based on I believe the combination
23 of the customer demand and energy charges. I think
24 it's Page 10 of his rebuttal testimony that talks
25 about those details. And what the Staff is proposing

1 is that it would be a voltage adjusted kilowatt hour
2 charge. So that would be energy charge. It's MECG's
3 view that a production plant wouldn't be, in a normal
4 rate case, recovered through a kilowatt hour charge.

5 JUDGE CLARK: Okay. Thank you.

6 MR. OPITZ: Thank you.

7 JUDGE CLARK: Renew Missouri.

8 OPENING STATEMENT

9 MR. LINHARES: Thanks, Judge, and may it
10 please the Commission. My name's Andrew Linhares,
11 I'm representing Renew Missouri Advocates in this
12 case and I'm here to support the Company's
13 application to facilitate the retirement of Rush
14 Island using securitization as enabled by 393.1700.
15 In addition I want to clarify -- I want to bring some
16 clarity to our position in this case with respect to
17 what we discussed earlier, the energy infrastructure
18 reinvestment program through federal DOE.

19 Our primary interest in this case is to
20 ensure that Missouri's securitization framework
21 continues to be used in a way that allows
22 reimbursement of antiquated and expensive fossil fuel
23 generation and to invest in new cheaper, cleaner
24 generation. In the coming decades we are going to
25 need to confront the reality that our utilities have

1 many coal and gas plants on their books that are
2 either in non-attainment of emissions requirements or
3 they require upgrades that are too costly to justify
4 or they are too costly to continue to run when
5 compared to new generation or perhaps all of these
6 together. The Commission will need every tool in its
7 toolbox in order to deal with this coming energy
8 transmission and the securitization framework is an
9 essential tool.

10 This is the second major case before the
11 Commission considering a securitization application.
12 In the Asbury case the Commission determined that
13 about 80 million in energy transmission costs could
14 be financed using securitized bonds and that recovery
15 of such costs was just and reasonable and that the
16 decision to retire the plant was reasonable and
17 prudent and in the public interest. The appellate
18 court later upheld this decision. This case
19 obviously involves more stakes, it involves more
20 money, but at bottom it presents the Commission with
21 the same task which is to determine whether customers
22 will be better off if an antiquated expensive power
23 plant is allowed to retire and its remaining debt
24 financed through securitized bonds.

25 So I also want to address this EIR issue.

1 Renew Missouri submitted one piece of testimony in
2 this case, the rebuttal testimony of Mr. James Owen.
3 Mr. Owen introduced the concept of using the federal
4 Energy Infrastructure Reinvestment Program as an
5 alternative way to finance the retirement of Rush
6 Island. The EIR program's created as part of 2022
7 Inflation Reduction Act, or the EIRA, it's
8 administered through federal DOE and it's been
9 allocated five billion to guarantee loans for
10 projects to replace old energy infrastructure with
11 renewables, batteries, other new infrastructure.

12 The DOE's LPO, or Loan Programs Office,
13 has stated that the program can accommodate financing
14 structures including securitizations provided that
15 certain reinvestment requirements are met. Mr. Owen
16 relied on an analysis from the Rocky Mountain
17 Institute that explained how ER -- EIR funds would
18 take the place of the bond market in a normal
19 securitization proceeding and Rocky Mountain
20 Institute's analysis showed that using EIR funds to
21 retire Rush Island and reinvest in new generation
22 would save rate payers over \$400 million at the end
23 of the day.

24 And Renew Missouri shared this proposal
25 with the Company and with all the other parties in

1 the case and to the Company's credit they gave full
2 consideration to this proposal however Ameren
3 Missouri did return an answer to us after they
4 analyzed it themselves. They came to the conclusion
5 that application of EIR program funds in this
6 particular case would not end up benefitting rate
7 payers. And the reason is, as the Company explained,
8 there's a limit functionally to the amount of EIR
9 funds that the Company can use between now and 2026
10 when the program runs out.

11 It appears Ameren has enough planned
12 renewable generation projects that it is better to
13 use those limited funds for that purpose rather than
14 for the securitization purpose for which there is
15 already this state funding mechanism. As Mr. Darryl
16 Sagel stated in his surrebuttal, the DOE will not
17 incrementally fund both the securitized costs and the
18 cost of eligible renewable energy projects to which
19 the proceeds of the bonds are required to be
20 allocated. Funding securitization costs via a DOE
21 loan program means we effectively forgo the ability
22 to finance investments we will be making using all
23 available sources of lower cost debt.

24 I hope I've explained that clearly enough.
25 There is a -- functionally there's a limit in funds.

1 If those funds are all put to new renewable
2 generation then the Company is free to use the state
3 securitization process to retire the project which
4 would not be -- you'd have to make a tough decision
5 there. And we have no reason to doubt the contention
6 of the Company there and we appreciate their
7 consideration of the proposal. However, I do just
8 want to note that we stand behind the Rocky Mountain
9 Institute's general analysis and framework that they
10 came up with about how to use EIR funds to enable
11 securitization. And in certain narrow circumstances
12 it definitely should be considered over the next
13 couple years, between now and 2026, for other
14 utilities that come in with a securitization
15 application. So I do want to leave the Commission
16 with that impression that we should be considering
17 this program in the future for future applications.

18 Renew Missouri takes no position on many
19 of the other issues in this case with respect to
20 disallowances or the Company's previous decisions
21 around Rush Island with the exception that we do see
22 Ameren's decision not to retrofit the plant as a
23 reasonable and prudent one.

24 And we do -- I do -- I suppose I have
25 concerns that failing to approve this application in

1 this case or over scrutinizing the utility's past
2 decisions or stacking up disallowances may have the
3 effect of dissuading utilities from seeking timely
4 applications for securitization in the future. We
5 believe utilities should have a clear expectation and
6 confidence around the securitization process to
7 encourage old plant closures and investment in new
8 generation that will benefit rate payers and the
9 grid. So with that I'm happy to conclude and take
10 any questions around that EIR issue or any other of
11 our positions in this case.

12 JUDGE CLARK: Any Commission questions? I
13 don't really have a question, I just want to ask,
14 just to be sure I've got this right. Because when I
15 read your position statement essentially and I was
16 going over it it seemed like the position of Renew
17 Missouri was use this program for this as long as it
18 doesn't displace dollars that would be used for
19 renewables elsewhere; is that correct?

20 MR. LINHARES: I think that's correct,
21 Judge. I think it is -- at the end of the day is a
22 function of how many -- how much money is available
23 through the EIR program and what you could
24 potentially use it on. So I don't disagree with the
25 framework that we proposed generally in Mr. Owen's

1 testimony or the analysis that the Rocky Mountain
2 Institute performed even with respect to Ameren
3 Missouri but it's just simply a question of how much
4 funding through DOE could Ameren Missouri qualify for
5 and theoretically get and how many projects do they
6 have planned to use that for. And obviously if
7 there's a limit there you want to put it all towards
8 new generation because you still have the
9 securitization framework at the state level to use
10 for retirement. So in this case, I do think the
11 Company's explanation there is correct. Is that
12 clear? I'm happy to restate that.

13 JUDGE CLARK: It does. I'm going to
14 restate your position again --

15 MR. LINHARES: Yeah.

16 JUDGE CLARK: -- not in regard to that.
17 So Renew's position now is this is an option we like
18 and we think this option would be good in certain
19 securitization cases but Ameren -- but maybe not this
20 case?

21 MR. LINHARES: That's correct, yeah. I
22 think you've stated it just fine, yes.

23 JUDGE CLARK: Okay. Thank you very much.

24 MR. LINHARES: Thank you.

25 JUDGE CLARK: And I believe my last party

1 is the Office of the Public Counsel.

2 OPENING STATEMENT

3 MR. WILLIAMS: Thank you, Judge. May it
4 please --

5 JUDGE CLARK: If you're participating via
6 the WebEx you may want to mute yourself. We're
7 picking you up here in the courtroom.

8 MR. WILLIAMS: May it please the
9 Commission, Nathan Williams appearing on behalf of
10 the Office of the Public Counsel and the public in
11 general.

12 There's been quite a bit of focus on the
13 statutory requirement of reasonableness and prudence
14 in the decision to retire the plant. It's Public
15 Counsel's position that that should not be construed
16 narrowly and the prudence is an ongoing activity,
17 it's not just a point in time decision. And what
18 occurred back in 2007 and 2010 bears on the prudence
19 because it affected the position that the utility put
20 itself in at the time it made the decision to retire
21 Rush Island in December of 2021.

22 Basically there were -- it had different
23 options. It chose one apparently, either
24 intentionally unknowingly or -- what I mean is it
25 didn't seek an EPA determination that it did not need

1 to comply with the Clean Air Act in terms of
2 emissions whenever it made the major improvements
3 that it made to Unit 1 in 2007 and the major
4 improvements that it made to Unit 2 in 2010.

5 There were, as I see it, at least three
6 different things that could have been done at that
7 point in time and I don't know that all of them would
8 have been prudent. One was to do what Ameren
9 Missouri did do which was to make the improvements
10 and take their chances on EPA enforcement action.
11 Another one was to have made those improvements and
12 also added scrubbers to the plant. And the third one
13 was to engage in what the EPA considered to be
14 routine maintenance, repairs, and replacements, which
15 would not have triggered the prevention of
16 significant deterioration under the New Source Rule.

17 So that's our position about prudence for
18 getting access to the securitization statute. We're
19 not saying that Ameren Missouri should not have any
20 opportunity to recover costs, it always has those
21 opportunities to seek them in a general rate case,
22 and it's our view that securitization should be at
23 least, if not more beneficial than -- in terms of
24 cost impacts what would occur during a general rate
25 case. If you're using weighted average cost of

1 capital as your touchstone for -- versus the bond
2 rate as your touchstone we believe that's not --
3 that's going to give you phantom savings. We believe
4 the Commission has sufficient discretion in a rate
5 case that there might be a circumstance where it
6 would use something greater than the utility's
7 imbedded cost of long term debt -- or cost of debt or
8 perhaps even weighted average cost of capital, but
9 this is not that case.

10 And our basis for saying that it --
11 securitization has to be beneficial to customers as
12 opposed to traditional rate making is
13 Section 391.1700.2, Sub 3, Sub C, B which requires
14 that a financing order find that imposition and
15 collection of a securitized utility tariff charge are
16 just and reasonable and in the public interest and
17 are expected to provide quantifiable net present
18 value benefits to customers as compared to recovery
19 of the components of securitized utility tariff costs
20 that would have been incurred absent the issuance of
21 securitized utility tariff bonds.

22 Now as to the amount that's securitized,
23 Public Counsel is not suggesting that there need not
24 be a showing of harm if a prudency disallowance is
25 being made to those costs. We agree that would be

1 the case just as you would do it in a rate case.

2 JUDGE CLARK: Can you say that again? I
3 didn't really understand that.

4 MR. WILLIAMS: We're agreeing that there
5 must be a showing of harm in order to do a
6 disallowance, a financial disallowance to the amounts
7 that are allowed to be securitized.

8 JUDGE CLARK: Thank you.

9 MR. WILLIAMS: We're not agreeing there
10 needs to be a showing of harm in order to -- it's on
11 the utility -- the utility has the burden of showing
12 the prudence and that does not include anything to do
13 with harm in terms of access to the securitization
14 route.

15 Remember the incentive for the utility for
16 securitization in this case is about a half billion
17 dollars in cash up front. And it's locked in,
18 they're going to be charging us for 15 years if
19 Ameren Missouri gets what it's asking for here. In a
20 rate case there will be a series of rate cases and
21 the Commission would consider all of the factors that
22 it's looking at whenever it's deciding securitization
23 in the context of rate cases would just be factors it
24 would consider for making its determination of just
25 and reasonable rates.

1 Now, those are the -- I think the two
2 biggest issues. There's also of course the
3 accumulated deferred income tax. It's our position
4 the courts have found that the statute, whenever it
5 talks about tax benefits, is talking about that
6 accumulated deferred income tax balance and then what
7 the Commission did in the Liberty securitization case
8 is the appropriate way to handle accumulated deferred
9 income taxes in this case as well. Which of course
10 is in contrast to what Staff and Ameren Missouri is
11 advocating in this case. We don't believe their
12 claimed distinction is significant enough to warrant
13 any kind of a different result.

14 We do have a number of proposed -- I guess
15 I'll use the word disallowances, reductions to the
16 amount that Ameren Missouri has sought. Some of
17 those are based on the uncertainty of them currently
18 and if they were addressed in a rate case they would
19 be more certain and also we would anticipate that the
20 Commission would allow -- the amount that the
21 Commission would allow would be lower than what it
22 would allow -- than it would be under securitization
23 because it's an up front cost. Basically the bond
24 rate would be higher than what we expect carrying
25 costs would be for an amortization of those costs in

1 a future rate case.

2 Normally what the Commission does is if
3 there's some amount it want to -- it wants to flow to
4 the utility over time it's -- takes that amount,
5 spreads over a term of years, does an amortization to
6 come out with an annual amount and then sometimes it
7 will allow carrying cost, sometimes it will not. But
8 I've never seen carrying costs that were at the
9 weighted average cost of capital. David Murray's our
10 witness who addresses that.

11 We also take issue with some other issue
12 -- matters that we don't view to be just tied to the
13 retirement of the plant, for example the water
14 monitoring and treatment that's ongoing currently and
15 it will -- it's necessary to go on past the
16 retirement of the plant but it's currently being
17 done. It's not something new that is triggered by
18 the retirement of the plant.

19 Also Public Counsel witness John Robinett
20 has net book values at different points in time
21 including December of 2021 when Ameren Missouri says
22 it made the decision to retire Rush Island. And the
23 value -- net book value at that point in time, I
24 believe it was about \$27 million lower than the
25 projected net book value at the time of the

1 retirement if it occurs in September, October of this
2 year, roughly 27 million. Kind of question why the
3 utility spent \$27 million on a plant after it elected
4 to retire it.

5 You were asking some things about the
6 federal court litigation. My understanding is that
7 the remedy is directed towards and it's equitable,
8 the fact that the plant exceeded the permissible
9 emissions for a long period of time. And the
10 original remedy order was to require Labadie to treat
11 its emissions to compensate comparable to the excess
12 emissions that Rush Island did over the past decade
13 or so, 10 to 15 years. Court of Appeals said that
14 was not permissible so the parties are now trying to
15 come up with another remedy. But I believe it's
16 directed at something to do with compensating for
17 emissions and at least at this stage it's inequitable
18 relief as opposed to financial relief. I don't know
19 if it'll come down to financial relief or not or how
20 that will actually play out. But that's my
21 understanding of where the federal court is at this
22 point. I'd be happy to try to answer any questions.

23 JUDGE CLARK: Any Commission questions?
24 Chair Hahn.

25 CHAIR HAHN: Good morning. I was trying

1 to recall from Friday. So I do just want to be clear
2 from the position statements. OPC doesn't have a
3 position on whether or not it is reasonable and
4 prudent to retire -- for Ameren to retire or abandon
5 the plant as they decided in 2021; is that right?

6 MR. WILLIAMS: Not at this point in time
7 we do not. We think it depends on the evidence in
8 the case.

9 CHAIR HAHN: Okay. And then the one
10 position that you've certified on prudence and
11 reasonableness is about NSR but you said you're not
12 -- and I wanted to recap this to make sure that I
13 have it in my mind correct. Is that there's not --
14 potentially not enough evidence in the record or in
15 this case to make this determination; is that
16 correct, from what you said on Friday?

17 MR. WILLIAMS: Yes.

18 CHAIR HAHN: Okay. Also regarding
19 prudence, Issue 3B states that OPC would estimate the
20 harm to customers of -- as 34 million. How is that
21 amount estimated or will you have a witness that can
22 talk about that?

23 MR. WILLIAMS: Jordan Seaver is our
24 witness on that matter.

25 CHAIR HAHN: Thank you.

1 JUDGE CLARK: Are there any other
2 Commission questions? I hear none. I have one
3 question and just because as you said it it struck me
4 and I kind of wanted to know what the difference was.
5 You said sometimes the Commission in a rate case --
6 and I'm assuming you were talking about plant
7 retirement. That sometimes the Commission allows
8 carrying costs and sometimes it does not; is that
9 correct?

10 MR. WILLIAMS: Yes. But I wasn't limiting
11 it to plant retirement. There are many times where
12 there's some large costs and because rates are
13 ongoing there's a spread over time. In fact, it's
14 been about ten years ago I think Staff started
15 tracking all of those regulatory amor -- liabilities
16 and regulatory assets and then each rate case will
17 reset them. I know there's been one for OPEBS and
18 pensions for as long as I've been doing this which is
19 over 20 years, so. For example.

20 JUDGE CLARK: Okay. Well, given that it
21 doesn't just include plant retirement but as you said
22 larger costs. Is there a defining characteristic
23 that you have noticed where the Commission determines
24 that carrying costs should or should not attach?

25 MR. WILLIAMS: Commission discretion is

1 the best I can give with it. I mean, a lot of times
2 -- I think sometimes when it's a larger amount the
3 Commission's more inclined to allow some kind of
4 carrying cost because of the amount of time it takes
5 -- for example in this case, if there was an
6 amortization for the net plant balance for Rush
7 Island starting from the date it's retired -- let's
8 assume it's retired in October of this year,
9 October 15th. It would start -- I would expect the
10 Staff would treat it as an amortization starting from
11 that point in time because it's no longer used and
12 useful, it should not remain in rate base. And
13 typically since a plant life's 15 years, which is the
14 number we've been using in this case, you take that
15 plant balance, so if it's \$500 million, spread it
16 over 15 years and then if you want to say because
17 it's going to take 15 years for the utility to
18 recover that amount through the rates we're going to
19 allow some carrying costs for that.

20 JUDGE CLARK: Thank you.

21 MR. WILLIAMS: Kind of like an accounting
22 authority order except it's done in the context of a
23 rate case and actually has rate impacts.

24 JUDGE CLARK: All right. Thank you.

25 MR. WILLIAMS: Anything else?

1 JUDGE CLARK: I have no further questions.

2 Thank you.

3 MR. WILLIAMS: Thank you.

4 JUDGE CLARK: All right. That is our last
5 opening and we ran a little further beyond when I
6 intended to take a break. Sorry. Mr. Lowery, you
7 look like you want to say something.

8 MR. LOWERY: I was just wondering if maybe
9 I could clear -- you asked some questions of Mr.
10 Keevil that were a little different than the
11 questions, I think both you and the Chair did, about
12 this issue of what do we need to decide. And
13 something occurred to me that I think might help
14 crystalize it in your mind. And I think I can in
15 just a minute, if you'd like to hear it, try to
16 crystalize that for you. I mean, really we've been
17 talking about a legal issue, a lot of these
18 questions, and I think -- I don't think anybody's
19 really hit the nail on the head yet and I think maybe
20 I can help you with that.

21 JUDGE CLARK: Mr. Keevil, I see you
22 shaking your head. Do you have an objection?

23 MR. KEEVIL: Yeah, I think I do, Judge.
24 Because I -- just once again Ameren attempting just
25 to get the final bite at the apple. I've never heard

1 of responding opening statements in Commission
2 proceedings. I mean, once again Ameren is using the
3 process to benefit itself and taking advantage of
4 everything and then some that's offered to them. I
5 mean, I don't know what he's going to say. He might
6 say something I like, he might not say something I
7 like. Chances are he will say something I don't like
8 but, you know, he might get lucky and get something
9 that I like. But it's just improper and they
10 shouldn't be allowed to do things like this, Judge.

11 MR. LOWERY: Judge, if I may. I'm not
12 going to respond to what Mr. Keevil said or didn't
13 say, I'm responding to questions that you asked them
14 that you didn't ask me that were different questions.
15 And I think it would be helpful to the Commission and
16 my arguments are either -- you either find them to be
17 right or compelling or you don't. They're not
18 evidence. So it's up to you but I think I could
19 probably clear something up.

20 MR. KEEVIL: Judge, I would think if you
21 had wanted to ask Mr. Lowery those questions you were
22 fully capable and able to do so when he was up there
23 rather than letting Mr. Lowery choose which questions
24 he now gets to respond to.

25 JUDGE CLARK: I'm going to agree. I'm

1 going to agree that each party had an opportunity to
2 make their opening and the questions they got from
3 the Commission and myself are the questions they got.
4 There will be plenty of opportunities later for Mr.
5 Lowery to clarify these points with his witness and
6 through his witnesses. So I agree with you, Mr.
7 Keevil, and it's not appropriate in this instance.

8 MR. KEEVIL: Thank you, your Honor.

9 JUDGE CLARK: As long as I've got you
10 talking however, there was a question I did forget to
11 ask you and just a very brief one which is which
12 witness do I need to ask about Staff's proposed
13 finance order? Who would be -- who would be the
14 witness that I would ask questions about that?

15 MR. KEEVIL: Depends on what you mean by
16 about the proposed finance order because there's
17 different provisions in the finance order. Some of
18 them talk about the finance team process, some of
19 them talk about the -- you know, lots of things in
20 that finance order. So it depends.

21 JUDGE CLARK: Who drafted the finance
22 order?

23 MR. KEEVIL: An attorney.

24 JUDGE CLARK: Okay. So if I wanted to ask
25 questions about provisions of the order, not subjects

1 of the order but provisions of the order who would I
2 ask those to?

3 MR. KEEVIL: Again, it depends. I mean,
4 because some people would know certain things about
5 it and other people -- it would be the people whose
6 issue I guess is implicated by whatever it is you're
7 asking.

8 JUDGE CLARK: Okay. The -- hold on just a
9 second. You said an attorney drafted it. Is it a
10 single attorney that drafted it?

11 MR. KEEVIL: No.

12 JUDGE CLARK: That answers my question
13 sufficiently. Thank you, Mr. Keevil.

14 MR. KEEVIL: Okay.

15 JUDGE CLARK: All right. I am sorry.

16 MR. KEEVIL: Judge, you may notice there's
17 some places in there where I put this particular
18 provision and there's a note to the Commission
19 because of the way in which the order came --
20 proposed order came about there's a note in there
21 that in the event of a conflict between Staff's
22 testimony or brief or whatever, other evidence and
23 that order then the -- what is stated in the Staff's
24 testimony or evidence should control over whatever's
25 stated in that order.

1 JUDGE CLARK: Okay. Thank you for that
2 clarification. I intended to take a recess around
3 10:30 but I wanted to get through openings. Openings
4 ran a little bit long. Why don't we take about a 15
5 minute recess now. And it's 11:07 and I would like
6 to get -- I would like to try and get at least a
7 witness out of the way before we break for lunch. Is
8 that agreeable to everyone?

9 MR. KEEVIL: Can I ask a question because
10 of some of the footnotes in the issue list? How do
11 you plan to take the issues and the witnesses, are
12 you taking like 1A, all the witnesses; 1B, all the
13 witnesses or are you going to take like 1 and 2
14 together, you know, what --

15 JUDGE CLARK: I understand your question
16 exactly. I've been pondering that myself. What
17 you're asking is do I want to have the same witness
18 up for 1A, have that witness sit down, get up for 1B,
19 get up for 1C. Unless there's an objection it would
20 be my preference to have a witness for an issue up
21 once whether it be 1A, B, C, D, E or so on and just
22 address them that way and only change witnesses with
23 numbers.

24 MR. KEEVIL: That makes sense to me. I
25 just was curious.

1 JUDGE CLARK: Are there any objections to
2 the Commission handling it that way? I believe that
3 would be more expedient. And I believe we're fairly
4 cramped for time anyway. All right. It's now 11:09.
5 I'll round it to 11:10. We don't we come back at
6 11:25. We are off the record and we are in recess.

7 (At this point in the proceedings, a short
8 recess was taken.)

9 JUDGE CLARK: Okay. All right. Let's go
10 on the record. This is going to be a fairly packed
11 day. I would like to go ahead and proceed with the
12 witnesses for Issue 1. As I've indicated, I believe
13 Lansford is going to be the first witness for Ameren.
14 As I've said before, when Mr. Keevil asked me about
15 it, what I would like to do is do witnesses by number
16 and not letter. So I don't -- if I got a witness up,
17 let's just assume that witness is up there for the
18 question and all its various subparts.

19 MIEC has requested to be excluded from the
20 remainder of today's hearing. I will grant that
21 request. So MIEC is excused from the remainder of
22 today's hearing. I'd like to get through at least
23 one witness before we take a lunch break. Because
24 we've got so much I'm probably going to stick
25 primarily to about 10 minute breaks moving forward

1 and for lunch I'm thinking we'll probably only do
2 30 minutes at least till I get a handle on how long
3 -- how tight the schedule is running. So with that
4 in mind, Ameren, go ahead and call your witness.

5 MS. TATRO: Are we doing opening
6 statements?

7 JUDGE CLARK: Are we doing mini openings?

8 MS. TATRO: Uh-huh.

9 JUDGE CLARK: If you'd like to. That
10 would be fine.

11 MS. TATRO: I know it slows us down,
12 but...

13 JUDGE CLARK: Okay. We will do mini
14 openings.

15 MS. TATRO: Okay.

16 MR. KEEVIL: What?

17 MS. TATRO: I just thought I heard -- I
18 was just asking if you were okay.

19 MR. KEEVIL: Oh. Yeah.

20 MS. TATRO: Okay.

21 JUDGE CLARK: Well, let me ask real quick.
22 Have the parties contemplated mini openings for each?
23 'Cause it seemed like Friday that's what was
24 contemplated.

25 MS. TATRO: That's what I thought too.

1 JUDGE CLARK: Well, I'm asking what the
2 other parties thought as well.

3 MS. TATRO: Okay.

4 MR. WILLIAMS: That's my understanding
5 although often there's not a mini right after the
6 main for the first issue but I don't object.

7 MR. OPITZ: Your Honor, my understanding
8 was the parties would have the opportunity for a mini
9 opening if they so chose.

10 JUDGE CLARK: All right. Then that's what
11 we will do.

12 MS. TATRO: Thank you.

13 OPENING STATEMENT

14 MS. TATRO: I'll try not to take long, I
15 know we need to keep moving. So good morning. My
16 name is Wendy Tatro, I am representing Ameren
17 Missouri. And we're starting our issues off here,
18 Issue 1 I think of it as kind of containing two
19 different aspects although there's multiple
20 questions. You have the question of is
21 securitization in the public interest and expect to
22 provide quantifiable net present value benefits to
23 customers as compared to traditional financing and
24 recovery of those costs. I see that is as A, E, F,
25 and G. And then the second area is questions around

1 how the bond process works with the designated Staff
2 representative and financial adviser and I see that
3 as 1B, C, and D. If that helps how we're thinking
4 about it.

5 So starting with the first -- and I would
6 point out that you've answered this question back in
7 the Liberty case who also securitized remaining costs
8 of a retired plant. So theirs was already retired,
9 ours is to be retired. And in that order this
10 Commission said for traditional method of rate making
11 would occur through a general rate case and would
12 entail amortization of costs to be recovered over a
13 period of years with the Company being allowed to
14 recover its carrying costs during the period of
15 amortization. And that amount is the amount that's
16 appropriate to compare to cost of the securitized
17 utility tariff bonds. And Mr. Lansford has done that
18 comparison. The final numbers can be found in his
19 schedule MJL-S, for surrebuttal, 4. The results of
20 that calculation is that the customer pay
21 \$125 million less over 15 years, the net present
22 value of which is \$78 million less by using the
23 securitization instead of using traditional financing
24 and recovery.

25 Now, the Office of Public Counsel defines

1 traditional financing differently, he defines it to
2 include no carrying costs, no return, and that means
3 no other method of financing that includes a return
4 could compete. And that's why, as Mr. Lowery talked
5 about in his opening, it means that the
6 securitization statute could never be used because it
7 could never meet that burden. And as a former
8 legislature, as commissioners, as attorneys in the
9 room we know that that violates the basic principal
10 of statutory construction and that is to avoid and
11 observe result. The statute should be read in a way
12 that allows the statute to make sense and to be used.
13 Otherwise you'd have to conclude that the General
14 Assembly wasted its time in passing this statute
15 because on its face it's absurd, illogical, and
16 unreasonable. So that lays bear the fallacy of the
17 OPC argument.

18 Now, in surrebuttal Mr. Murray pivots a
19 little bit and includes an argument that even if you
20 look at it slightly differently in a rising interest
21 rate environment, which is where we are today, you
22 still couldn't meet this standard. Probably not as
23 bad as his rebuttal position but again it renders the
24 statute useless. Now, I contend, it is still an
25 observed result and should not be accepted.

1 The second topic that we'll be talking
2 about today is the bond process and interactions with
3 your -- with the Commission's staff representative
4 and financial adviser and the role they play post
5 financing order. The statute sets out on that --
6 sets out very clearly what that is and that is
7 393.1700.2, parens 3, parens, little H. It says you
8 appoint a Staff member as a representative, you hire
9 a financial adviser to advise the representative, the
10 representative is to provide input to Ameren Missouri
11 and to collaborate with Ameren Missouri on all facets
12 of the process undertaken by Ameren Missouri to place
13 the securitized utility tariff bonds to market so
14 that the representative can provide the Commission
15 with an opinion on the reasonableness of pricing
16 terms and conditions on an expedited basis. The
17 other thing the statute says is that the
18 representative cannot direct Ameren Missouri on how
19 to place the bonds.

20 Now, the issue for you to decide is the
21 language that should be used in the financing order
22 that you're going to issue. It's Ameren Missouri's
23 position that your order needs to use the language of
24 the statute and not use language that implies
25 authority that isn't granted by the statute. So

1 specifically for 1B if you look at Ameren Missouri's
2 proposed financial order which was attached to our
3 application in this case engagement with the
4 financial team begins when there's a final and
5 unappealable order. Staff wants it to begin earlier.
6 I think Ameren Missouri is generally okay with making
7 that change as long as it's not a requirement that
8 any particular meetings have to occur during the time
9 of an appeal if there is one. But maybe something
10 will be needed, we don't mind bringing the financing
11 team on, that makes sense.

12 1C is the issue of the phrase right to
13 review which Mr. Davis uses in his testimony and is
14 in Staff's proposed financing order multiple times.
15 I don't know what review means. Is it something more
16 or less than the right to provide input and the right
17 to collaborate? If it's more then it goes beyond the
18 statutory authority, if it means the same then why do
19 we need it because the statute says what it says. So
20 I think that's important to figure out and define and
21 why it's always safest of course to stick with the
22 statutory language.

23 Finally I will note that Mr. Davis uses
24 the phrase lowest cost as the standard for what's
25 being securitized but -- and I will take it that this

1 was a passing reference but the language of the
2 statute is actually a bit different. It says lowest
3 securitized tariff charges consistent with market
4 conditions at the time the bonds are priced and
5 consistent with the financing order. So it's lowest
6 price at the -- lowest cost to customers at the time
7 that the bond -- the circumstances that exist when
8 the bond is issued. We're not trying to beat the
9 timing here.

10 The financial order submitted by Staff has
11 a few other concerns and we'll deal with those in
12 cross-examination. But that is the end of my opening
13 statement. Thank you. Now we'll call Mitch Lansford
14 to the stand.

15 JUDGE CLARK: Thank you. Mr. Lansford,
16 please come up to take the stand. Would you raise
17 your right hand to be sworn.

18 * * * * *

19 MITCHELL J. LANSFORD,
20 The witness, having been first duly sworn
21 upon his oath, testified as follows:

22 * * * * *

23 JUDGE CLARK: Please be seated. Ameren,
24 please go ahead.

25 EXAMINATION CONDUCTED

1 By: MS. TATRO

2 Q. Good morning. Can you state your
3 name and employer for the Commission?

4 A. **Mitch Lansford and Ameren Services**
5 **Company.**

6 Q. And are you the same Mitch Lansford
7 who pre-filed direct, surrebuttal, and
8 sur-surrebuttal in this case?

9 A. **Yes, I am.**

10 MS. TATRO: Judge, can I ask a question,
11 clarifying question. Do you want me to offer all of
12 his testimony or wait to -- 'cause he -- let me try
13 that again. He testifies on multiple topics. Do we
14 want to wait and add it to the record after he's been
15 on the stand for all the multiple issues? I just
16 don't know whether to offer it now or offer it later.

17 MR. KEEVIL: Judge, to the extent that it
18 helps at all, I think that's a valid question on Ms.
19 Tatro's part. The -- several of the witnesses, Mr.
20 Lansford and Mr. Michels, Mr. Majors for Staff, have
21 lots of issues and I would certainly -- I cannot not
22 object to -- I would object to the admission of his
23 entire testimony at this time because the -- I'm not
24 versed in a lot of his issues. So we -- I think each
25 of the people who, you know, are familiar with that

1 issue needs to be present when his entire testimony
2 is received into the record. So I think her
3 suggestion that you wait until he's testified on
4 everything that he testifies on to receive it into
5 the record.

6 MS. TATRO: So just to be clear, the last
7 time he testifies we would move the entire -- all of
8 his testimony into the record?

9 JUDGE CLARK: That makes sense to me. I
10 mean, usually we've done it at the time the witness
11 initially takes the stand but I think there's good
12 reasons to do it differently. So I actually -- I
13 think that's probably the way to do it.

14 MR. WILLIAMS: Judge, I'd add for Public
15 Counsel an objection to admitting the sur-surrebuttal
16 because of the pending ruling on the Ameren Missouri
17 motion.

18 JUDGE CLARK: And anytime anybody offers
19 something and it's pointed out to me like you just
20 did, if it's provisional subject to objections in
21 this case, subject to the filings that were made
22 that's fine. So we will address it that way. Go
23 ahead.

24 MS. TATRO: All right. So I won't offer
25 it.

1 BY: MS. TATRO

2 Q. But I would like to ask you, Mr.
3 Lansford, if you have any corrections or additions to
4 make to your testimony?

5 A. I do have a couple of corrections.

6 Q. Okay. Go ahead.

7 A. In my surrebuttal testimony on Page 1
8 I used an older template, my position and title
9 changed recently. So on Lines 6 and 7 that should be
10 replaced and -- deleted and replaced by I'm employed
11 by Ameren Services Company as Director of Financial
12 Reporting and Regulatory Accounting. And then one
13 other spot in my sur-surrebuttal, Page 6, Mr. Murray
14 corrected some of his schedules which resulted in
15 necessary corrections to my testimony here. And
16 they're just -- they're short.

17 I'm on Line 8, reference to Mr. Murray's
18 Schedule DSM-S-2 should be changed to DS -- DM-S-4.
19 And then on Line 10 the figure 70 million should be
20 changed to 59 million. And then on Line 12 the
21 figure 6 million should be changed to 17 million.
22 Those are the corrections I have.

23 MS. TATRO: Okay. I will tender the
24 witness for cross.

25 JUDGE CLARK: Okay. First

1 cross-examination of an Ameren Missouri is by Renew
2 Missouri and they are not currently here.

3 MECG?

4 MR. OPITZ: No cross, your Honor.

5 JUDGE CLARK: MIEC is excused for today.
6 I will add them to my... AARP is excused. Staff?

7 MR. KEEVIL: No questions on this issue,
8 Judge.

9 JUDGE CLARK: And is that on Issue 1 or
10 any of the 1 issues?

11 MR. KEEVIL: One.

12 JUDGE CLARK: Just 1, not the subs?

13 MR. KEEVIL: Issue 1, I meant. I'm sorry.

14 JUDGE CLARK: Everything. Any
15 cross-examination from the Office of the Public
16 Counsel?

17 MR. WILLIAMS: Not at this time. Thank
18 you.

19 JUDGE CLARK: Any questions from the
20 Commission?

21 CHAIR HAHN: Yes. Thank you, Judge.

22 EXAMINATION CONDUCTED

23 BY: CHAIR HAHN

24 Q. Good morning.

25 A. **Good morning.**

1 Q. I'm going to ask you a little bit
2 about interest rates and your experience. In Mr.
3 Murray's surrebuttal he suggested a 4.05 percent
4 interest rate for traditional rate making for the net
5 present value calculation and he -- which he stated
6 was Ameren Missouri's imbedded cost of debt as of
7 December of last year. Do you know what is the
8 oldest and most recent debt issuance included -- that
9 included this imbedded cost of debt?

10 A. What the rate would be?

11 Q. Uh-huh.

12 A. I do not know off the top of my head.
13 I pointed out and I do know, you know, that that
14 4.05 percent, you know, imbedded cost of debt is the
15 accumulation of issuance as that occurred over the
16 course of 30 years and approximately 20 different
17 issuances. But I'm not sure what that most recent
18 issuance is. I can actually tell you, Chair Hahn,
19 that Mr. Sagel who will be testifying later today
20 likely does know that answer.

21 Q. Okay. Thank you. Included in
22 Ameren's proposed financing order is for bonds to be
23 issued in multiple series and tranches. How -- I do
24 have some experience from bond issuances in multiple
25 series and tranches from my last life. But -- how

1 would multiple series impact the bond issuance
2 process?

3 **A. I'm sorry, Chair Hahn, that's a**
4 **little bit outside of the scope of what I'm, you**
5 **know, an expert on. And either Ameren Missouri**
6 **witness Katrina Niehaus or Darryl Sagel would be**
7 **better to address that question.**

8 Q. Thank you.

9 CHAIR HAHN: No further questions, Judge.
10 Thank you.

11 JUDGE CLARK: Thank you, Chair. Just a
12 moment, please. Thank you. Apologize for the delay.
13 Are there any other Commission questions at this
14 time? I hear none.

15 EXAMINATION CONDUCTED

16 BY: JUDGE CLARK

17 Q. The filings of your work papers and
18 supporting schedules and your direct and surrebuttal
19 testimony indicates that there were some corrections
20 to the direct testimony schedules made in the
21 surrebuttal work papers. Would you identify those
22 changes, please?

23 **A. Those changes are changes in amounts.**
24 **Apologies, bear with me here. So specifically as we**
25 **look at energy transition costs that's where I made a**

1 couple changes here. And I'll describe them. One
2 change was our estimation or our projection of the
3 capital costs that would need to be incurred from a
4 historical date through the retirement of the plant,
5 we revised that estimation as we were working through
6 discovery with the parties, reduced that down and
7 that had an effect of reducing net plant and service
8 on Line 3 of Schedule D1 in my testimony from
9 \$475 million down to \$473 million on Line 3 of my S1
10 Schedule in surrebutal. So that's one change,
11 reduction in the amount of additional capital costs
12 we were expecting to need to incur to keep the plant
13 safely operating.

14 That effect of change -- you know, of
15 reducing the net plant balance has a minor effect on
16 accumulated deferred income taxes. So keeping with
17 the same schedules, D1, Line 7, that -- the
18 49,798,000 on Line 7 from Schedule D1 reduced down
19 slightly to \$49,634,000 on Schedule S1.

20 And then one final change. In my direct
21 testimony we had two separate line items, one for
22 asset retirement obligation Ash bonds on Line 10 and
23 one -- and a line item on Line 11 water treatment and
24 monitoring and those were separate amounts. Again,
25 through the discovery process we learned that we had

1 better estimates of those amounts. And really what
2 we were doing is talking about the same thing. So in
3 my surrebuttal testimony we collapsed that into a
4 single line item accounted for as asset retirement
5 obligations for the Ash bond and that revised amount,
6 reduced from 2.6 million at 4.6 million on direct,
7 the summation of that, to \$4.7 million in surrebuttal
8 on. S1.

9 Q. So should any -- should any
10 references or any questions about your direct
11 testimony work papers, should those instead be
12 directed to your surrebuttal schedule work papers for
13 at least S5 through S8?

14 A. Yes, that would be appropriate.

15 Q. Now, in your surrebuttal testimony
16 Schedule MJL-D8, Line 12, the weighted average cost
17 of capital of 6.88 percent is applied to both columns
18 B and C. Now, applying the same discount rate to
19 calculate the net present value of the total payments
20 under securitization and the amortization scenarios,
21 that doesn't change whether there's a benefit or not,
22 does it?

23 A. That's correct.

24 Q. It just changes the magnitude of that
25 benefit; is that correct?

1 **A. Well, let me clarify if you would,**
2 **Judge Clark. You're talking about Line 12 which is**
3 **the weighted average cost of capital that's being**
4 **applied as the discount rate. And are you asking**
5 **that if you change that discount rate to a different**
6 **number would it change the benefits?**

7 **Q. Essentially, yes.**

8 **A. It would change the quantification of**
9 **those benefits. It wouldn't change whether there is**
10 **or is not a benefit.**

11 **Q. Which is ultimately what I was**
12 **getting to. Do you know what the annual estimated**
13 **income tax amount is?**

14 **A. The annual estimated income tax -- in**
15 **what context is that, Judge Clark?**

16 **Q. I have misread my question. Hold on.**
17 **Okay. I'm sorry. So essentially the selection of**
18 **the discount rate is not as important to the net**
19 **present value in terms of there being one, correct?**

20 **A. I would agree with that.**

21 **Q. Okay. In the same schedule can you**
22 **explain how Line 5, incremental taxes, were**
23 **calculated for Column C?**

24 **A. I can. When you're looking at Row 4,**
25 **the carrying costs, the financing costs and focused**

1 on Column C, like you mentioned, the traditional
2 financing and recovery scenario, that 6.88 percent
3 weighted average cost of capital includes an equity
4 component and a return on equity. And that equity
5 component, that return on equity would result in, you
6 know, income for the Company, taxable income for the
7 Company, and a tax burden which is what necessitates
8 incremental income taxes, the authorization of a
9 return on equity as part of Line 4 there.

10 Q. Why is the total from -- and I'm
11 looking at cells. And I'm assuming that corresponds
12 to Cell Block 15 on your work paper, correct?

13 A. Judge Clark, I do have a computer
14 that I could bring up and look at the executable
15 version otherwise I don't have cell references in
16 front of me. Would that be okay?

17 Q. That would be absolutely acceptable
18 to me.

19 MS. TATRO: May I approach?

20 JUDGE CLARK: Please.

21 MR. WILLIAMS: Judge.

22 JUDGE CLARK: Yes.

23 MR. WILLIAMS: I can see from here there's
24 something on the monitor at the witness stand. I
25 don't know -- on the screen. I don't know what it

1 is.

2 VIDEO TECHNICIAN: It's the presentation
3 from earlier.

4 JUDGE CLARK: Thank you, Brian.

5 **THE WITNESS: I have that pulled up.**

6 **BY: JUDGE CLARK**

7 Q. Okay. And what we just talked about
8 in regard to Line 5 and incremental taxes calculated
9 that corresponds to Cell 15, F15 on your work papers,
10 correct?

11 **A. That's correct.**

12 Q. Why is the total from Cell F12
13 multiplied by .01862?

14 **A. That's to reverse out the debt
15 component of the weighted average cost of capital.
16 So isolate the incremental income taxes to just the
17 equity component.**

18 Q. And are the incremental taxes the
19 result of the bond principal being recovered in
20 revenues?

21 **A. The incremental taxes are a result of
22 recovery of the financing costs, the carrying costs,
23 and this traditional financing recovery scenario
24 that's represented by Column C here.**

25 Q. Okay. So more than just the

1 principal?

2 **A. That's correct.**

3 Q. Why is it only appropriate to include
4 incremental income taxes in Column C, amortization?

5 **A. If comparing to Column -- you know,
6 Column C to Column B, Column C includes financing
7 costs through means of traditional financing and
8 recovery, that includes that equity component. It's
9 that equity component that contributes to taxable
10 income and necessitates income tax costs. A debt
11 only scenario, which is what we're evaluating, Column
12 B, you know, has no contribution to taxable income
13 and therefore no need for incremental income taxes.
14 The interest expense, you know, coming from the debt
15 is a deduction on your tax return.**

16 Q. Now, do you have your Schedule MJL-S8
17 in front of you?

18 **A. I do.**

19 Q. Okay. Line 5 description is carrying
20 costs. And this is the interest rate to be applied
21 to the total on Line 3 and monthly payments over
22 50 years. Except Column C also includes the
23 incremental income taxes; is that correct?

24 **A. I think you said Line 5 includes the
25 carrying cost but it's Line 4. But otherwise, yes.**

1 Q. Oh, thank you. Now, in that same
2 schedule, say in Cells D17 and F17 show the Excel
3 formula to calculate what's described as monthly
4 payments; is that correct?

5 **A. That is correct.**

6 Q. And a lot of these are just to kind
7 of clarify so that I can --

8 **A. Sure, absolutely.**

9 Q. And D27 and F27 calculates the net
10 present value of an investment based on the discount
11 rate in a series of future payments. And here that's
12 15 years times 12 or 180 payments; is that correct?

13 **A. That is correct.**

14 Q. In Line 25 the income -- in this --
15 I'm sorry, this is a different schedule. MJL-S7.

16 **A. Okay. I'm pulling that up. I'm
17 there.**

18 Q. And what I'm trying to do is trying
19 to clarify amounts in your surrebuttal schedule. The
20 income tax qualified here on Line 25 in Column B is
21 only related to the capital sub account and not the
22 income tax on the bond principal, right?

23 **A. That's correct. The capital sub
24 account only.**

25 Q. Now, on the Empire -- are you

1 familiar with the Empire securitization case? To an
2 extent?

3 **A. To an extent.**

4 Q. Okay. If this is beyond you, let me
5 know. Empire included income tax as an ongoing
6 financing cost in the final issuance advice letter
7 that was submitted to the Commission. Will Ameren or
8 the special purpose entity be required to pay similar
9 income taxes?

10 **A. It depends on how the Commission**
11 **orders as it relates to another issue I think we have**
12 **reserved for Wednesday around accumulated deferred**
13 **income taxes. But it could.**

14 Q. If the Commission were to decide --
15 and are you familiar with how the -- and I'll just
16 call it ADIT. Are you familiar with how the ADIT was
17 resolved in Empire?

18 **A. I'm fairly familiar.**

19 Q. Okay. If it was resolved the same
20 way would Empire -- or would Ameren be required to
21 pay those taxes?

22 **A. Yes. We would have incremental**
23 **income taxes to add to the ongoing financing costs**
24 **here.**

25 Q. Okay. Do you know the estimated

1 value of that amount?

2 A. I've quantified that. It's
3 approximately \$3.7 million on an annual basis over
4 the 15 year period.

5 Q. Did you include those estimated --
6 I'm sorry. Were those income taxes included in your
7 estimated and ongoing financing costs and ultimately
8 the net present value calculation for the
9 securitization scenario?

10 A. The -- my Schedule SE reflects out
11 the Company and Staff's position as it relates to
12 ADIT which does not require any sort of incremental
13 ongoing financing costs therefore, you know, it does
14 -- you know, therefore those incremental income tax
15 costs as ongoing financing costs are not reflected.

16 Q. Okay. So just to clarify. You
17 didn't look at the scenario where the Commission
18 might determine ADIT the same way as Empire, correct?

19 A. I don't have any testimony, you know,
20 on that. You'll get roughly the same net present
21 value. You know, it's similar to your question as it
22 relates to the discount rate. You could change the
23 discount rate and you could change the NPV of
24 benefits, you know, slightly but you won't get a
25 different decision or different conclusion whether

1 there are or are not net present value benefits. If
2 you pivoted to the Empire method, I'll call it, for
3 ADIT and income tax's ongoing financing cost, you'll
4 similarly not change your conclusion, you won't get a
5 different conclusion whether there are or are not net
6 present value benefits.

7 Q. Okay. So even if you did the tax
8 calculation the way Empire -- the way the Commission
9 ordered Empire to handle ADIT you would still have a
10 net present value?

11 A. That's correct.

12 Q. Thank you.

13 MR. KEEVIL: Judge, could I ask -- did
14 you -- when you stated that last follow up, did you
15 mean the net present value benefit?

16 JUDGE CLARK: Yes.

17 MR. KEEVIL: Okay.

18 JUDGE CLARK: Bear with me just a moment.

19 BY: JUDGE CLARK

20 Q. What happens if Rush Island -- what
21 if Rush Island doesn't retire on October 15th, what
22 changes then?

23 A. Well, a lot of the costs that we have
24 here as energy transition costs and which ultimately
25 impact the net present value of benefits calculation

1 here, you know, could change, would change, you know,
2 slightly. But -- maybe I'm not getting to the
3 right --

4 Q. No. No, I think you are.

5 A. -- answers to your question.

6 Q. I think maybe I haven't been as
7 clear. Let's say the Commission grants
8 securitization and let's say that the plant doesn't
9 close on October 15th, for whatever reason MISO
10 petitions the Court, you know, whatever, it stays
11 open, has Ameren looked at that scenario?

12 A. That would be sort of outside of my
13 scope unfortunately, Judge Clark.

14 Q. No. Nothing unfortunate about it.
15 If I'm asking a question that doesn't apply to you,
16 that's the correct answer.

17 A. I'm trying to think if I could point
18 you to the right witness to answer that question.
19 And I'm honestly not sure who might answer that
20 question.

21 Q. And this -- you may not be able to
22 answer this question either but I'm also going to ask
23 it also for the benefit of your attorney. No, I'm
24 going to hold on that one. Those are all the
25 questions I have.

1 JUDGE CLARK: Any re-cross?

2 MR. WILLIAMS: I do, if no one else does.

3 JUDGE CLARK: Hold on. I'm just going to
4 kind of go through my list. MEG?

5 MR. OPITZ: No, thank you, your Honor.

6 JUDGE CLARK: Staff?

7 MR. KEEVIL: No thank you.

8 JUDGE CLARK: Mr. Williams, it is your
9 turn.

10 MR. WILLIAMS: Thank you. It looks like
11 it's afternoon now.

12 EXAMINATION CONDUCTED

13 BY: MR. WILLIAMS

14 Q. Good afternoon, Mr. Lansford.

15 **A. Good afternoon.**

16 Q. You remember the questions you got
17 from Judge Clark about ADIT and you talked about the
18 -- you calculated a \$3.7 million per year income tax
19 impact if the Commission treated securitization --
20 the ADIT the same as it did in the Liberty case, do
21 you recall that?

22 **A. I do.**

23 Q. When you did that \$3.7 million per
24 year income tax impact, did you give any credit
25 beyond -- well, let's back up. How much is the

1 balance anticipated to be for ADIT as of October 15th
2 of 2024?

3 **A. Approximately \$136 million. That**
4 **reflects the total balance of ADIT including excess**
5 **deferred income taxes, which is often, you know --**
6 **which is one component of ADIT.**

7 Q. Thank you. That's what I was looking
8 for. And if you follow the Liberty approach, what
9 would be the net present value of ADIT for purposes
10 of the offset to the -- what would otherwise be the
11 securitization amount?

12 **A. The Liberty approach, as I understand**
13 **it, would result in approximately 87, \$88 million**
14 **offset to energy transition cost. I think that's --**
15 **I think that's Mr. Riley's position in this case.**

16 Q. And what's the difference between 136
17 million and the 87 million in terms of dollars?

18 **A. It's \$49 million which is the offset**
19 **that the Company recommends energy transition costs**
20 **in this case.**

21 Q. And that \$49 million, is that dollars
22 that Ameren Missouri anticipates would -- the benefit
23 of which would flow to customers?

24 **A. The benefit of the \$49 million would**
25 **flow to customers as a reduction of energy transition**

1 **costs in this case.**

2 Q. Under the Liberty scenario of
3 calculating ADIT?

4 **A. I'm sorry, I'm not following that**
5 **question. Can you please restate?**

6 Q. Well, if I -- I'm trying to
7 understand if your answer was predicated on Ameren
8 Missouri's approach or if it's predicated on the
9 Liberty approach. 'Cause the net present value is
10 the 87 million but the difference between the 136
11 million and the 87 million is 49 million which is
12 going to be an amount that Ameren Missouri will be
13 retaining currently, correct?

14 **A. Could you restate that question,**
15 **please?**

16 Q. Okay. The total ADIT balance as of
17 October 15th is 136 million, anticipated to be,
18 correct?

19 **A. That's correct.**

20 Q. Under the Liberty approach 87 million
21 of that would be used as an offset to the amount
22 that's securitized, correct?

23 **A. That's correct.**

24 Q. And the 49 million would still be on
25 Ameren Missouri's books, would it not?

1 **A. The entire -- the entirety of the**
2 **\$136 million deferred tax liability will be on**
3 **Ameren's books regardless of any offset to energy**
4 **transition costs as part of this case.**

5 **Q. Well, if the plant's retired why**
6 **would it show up -- why would ADIT for Rush Island**
7 **show up on Ameren Missouri's books post retirement?**

8 **A. Because we owe those tax liabilities**
9 **to the taxing authority in future periods. You must**
10 **retain that balance on your books until you satisfy**
11 **the obligation.**

12 **Q. Do you have any IRS authority for**
13 **your position?**

14 **A. No. Yeah, I don't think I -- the IRS**
15 **would be the authority for that -- you know,**
16 **necessarily for that. We're talking about financial**
17 **accounting, you know, financial accounting books and**
18 **records. So it is, you know, in conformity with GAP.**
19 **I don't have a citation for you on that.**

20 **Q. Whenever you're calculating the**
21 **income tax impact at \$3.7 million per year, did you**
22 **take into account the 49 million at all?**

23 **A. Absolutely.**

24 **Q. And how did you do that?**

25 **A. If you were going to go with the**

1 Liberty approach, which is -- you know, I'll simplify
2 it to that, you know, as I understand it reduce
3 energy transition costs by 87 or \$88 million that's
4 instead of -- instead of reducing energy transition
5 costs by 49 million, the difference between the 87 or
6 \$87 million and \$49 million is 30 -- approximately
7 \$38 million. And that's the exact stream of -- you
8 know, of costs, of future obligations that you'd have
9 to solve for if you were developing and distributing
10 the income tax related ongoing financing costs that
11 would be necessary to calculate. So you're trying to
12 produce -- so that calculation, the \$3.7 million on
13 annual basis over 15 years produces a net present
14 value of the difference -- of 37 or \$38 million, the
15 difference between OPC's position and the Company and
16 Staff's position as it relates to offsets to ADIT in
17 this case.

18 Q. Does it include any carrying costs?

19 A. It does not.

20 Q. But under the statute ADIT would not
21 be an offset against rate base, correct?

22 A. If you're asking whether in the next
23 general rate proceeding, sort of outside of the
24 securitization case, whether ADIT relating to Rush
25 Island would offset in that proceeding it's my

1 **understanding the statute calls for that to be**
2 **excluded for rate base offset going forward.**

3 Q. And then Judge Clark asked you some
4 questions about what if Rush Island didn't close on
5 October 15th of 2024, what kind of impact it would
6 have, you recall those?

7 **A. I do.**

8 Q. Didn't Ameren Missouri do a --
9 essentially a comparison between September 1 and
10 October 15th in its direct case?

11 **A. Both our direct case and our**
12 **surrebuttal case. But I'm not aware of any analysis**
13 **that goes beyond October 5th like Judge Clark was**
14 **contemplating.**

15 Q. But you can look at a month and a
16 half of impact between September 1st and October 15th
17 to get a sense of the magnitude of the impact?

18 **A. I believe that would be appropriate.**

19 MR. WILLIAMS: No further questions at
20 this time. Thank you.

21 JUDGE CLARK: Any re-direct?

22 MS. TATRO: Yes. Thank you.

23 EXAMINATION CONDUCTED

24 BY: MS. TATRO

25 Q. So Mr. Lansford, I want go back to

1 this idea of Rush Island not closing on October 15th
2 that you talked about both with the Judge and Mr.
3 Williams. Do you remember those conversations?

4 **A. I do.**

5 Q. First of all, what is your
6 understanding of whether there's any like -- real
7 likelihood of Rush Island operating beyond
8 October 15th?

9 **A. I'm not aware of any likelihood of**
10 **that occurring. You know, I thought we were ordered**
11 **to close it no later than October 15th. But again,**
12 **you know, that's my understanding.**

13 Q. And who would place that order?

14 **A. That order came from Judge Sippel in**
15 **the NSR case as far as I'm aware.**

16 Q. So presuming for a moment, let's say
17 Rush Island stayed open for another month, I think
18 the scenario that the Judge said was, you know,
19 perhaps MISO says we need them and petitions the
20 Judge and he agrees. So let's assume that happened.
21 How does -- is there a process in the securitization
22 that would reconcile the difference?

23 **A. Absolutely. Any difference between**
24 **actual cost and estimated costs are required per the**
25 **statute to be reconciled in those future general rate**

1 proceedings to make sure the customers ultimately
2 just pay the exact actual cost if that occurs.

3 Q. And when you -- when I use the word
4 reconcile do you understand that to mean giving back
5 to customers?

6 A. Yes. Either recovering from or
7 giving back, you know, both ways. I think -- you
8 know, I think the statute contemplates getting the
9 numbers correct.

10 Q. I don't have any further questions.
11 Thank you.

12 JUDGE CLARK: Thank you. Thank you, Mr.
13 Lansford. You can step down.

14 **THE WITNESS: Thank you.**

15 MS. TATRO: Judge, may I ask a question?
16 I know we were planning on going to lunch, I know
17 everybody wants to go to lunch. Ms. Niehaus has a
18 flight this evening so I was curious, if there
19 weren't very many questions, could we put her on so
20 that she can head back to St. Louis to catch her
21 flight?

22 JUDGE CLARK: Are there any objections to
23 going ahead and putting on witness Niehaus prior to
24 taking a lunch break or is everybody just wanting a
25 lunch break now?

1 MR. WILLIAMS: I don't anticipate
2 extensive examination.

3 JUDGE CLARK: Mr. Keevil, do you have an
4 extensive examination for Ms. Niehaus?

5 MR. KEEVIL: No. Not extensive.

6 JUDGE CLARK: Okay. Let's go ahead and
7 take the next witness.

8 MS. TATRO: Thank you. Ameren Missouri
9 calls Katrina Niehaus.

10 JUDGE CLARK: Would you raise your right
11 hand to be sworn.

12 * * * * *

13 KATRINA NIEHAUS,

14 The witness, having been first duly sworn
15 upon her oath, testified as follows:

16 * * * * *

17 JUDGE CLARK: Please be seated. Ameren.

18 EXAMINATION CONDUCTED

19 BY: MS. TATRO

20 Q. Good afternoon. Can you please state
21 your name and place of employment for the Commission?

22 A. **Katrina Niehaus and Goldman Sachs.**

23 Q. And are you the same Katrina Niehaus
24 that filed direct testimony in this case?

25 A. **I am.**

1 Q. Do you have any corrections or
2 additions to make to your testimony?

3 **A. I do not.**

4 Q. And if I were to ask you the
5 questions that are contained in your written
6 testimony, would your answers be substantially
7 similar?

8 **A. They would.**

9 MS. TATRO: I move -- I don't know what
10 this exhibit number is, probably 2 -- 4. Sorry.
11 Exhibit 4 into the record and tender the witness for
12 cross-examination.

13 JUDGE CLARK: Any objections to admitting
14 Exhibit 4 onto the hearing record? I hear and see
15 none. Exhibit 4 is admitted onto the hearing record.
16 Please proceed. All right. Any cross-examination
17 from -- well, Renew Missouri's not here. MECG?

18 MR. OPITZ: No, thank you, your Honor.

19 JUDGE CLARK: Any cross-examination from
20 the Commission Staff?

21 MR. KEEVIL: Very briefly, Judge.

22 EXAMINATION CONDUCTED

23 BY: MR. KEEVIL

24 Q. Good afternoon, Ms. Niehaus. Have
25 you had an opportunity or did you -- I know you had

1 an opportunity. Did you review the --

2 MR. KEEVIL: Well, let me ask a stupid
3 question here, Judge. Is she up here on just Point 1
4 -- Issue 1 or is she also up here on Issue 2?

5 JUDGE CLARK: On Issue 2? Hold on.

6 MR. KEEVIL: I believe she was listed as
7 an Ameren witness on Issue 2. But I don't know what
8 you've --

9 JUDGE CLARK: Are you going to be calling
10 Ms. Niehaus for Issue 2?

11 MR. KEEVIL: Am I? I'm not.

12 JUDGE CLARK: No, not -- no, not you. I'm
13 asking Ameren.

14 MS. TATRO: She is listed on Issue 2,
15 so...

16 JUDGE CLARK: If we're -- if we're trying
17 to catch a flight.

18 MS. TATRO: Yeah.

19 MR. KEEVIL: Right. That's why --

20 MS. TATRO: Our people -- yeah. That's
21 good. I apologize for not mentioning that when I
22 made my request. So are people able to do their
23 cross-examination on Issue 2 of her now or not?

24 MR. WILLIAMS: I have no objection with
25 that.

1 JUDGE CLARK: Does MECG have any
2 objection?

3 MR. OPITZ: No objection.

4 JUDGE CLARK: And no other parties are
5 here right now. So we will go ahead and take up both
6 Issue 1 and 2 with Ms. Niehaus for expediency sake.

7 MS. TATRO: Thank you very much. And
8 thank you for catching that, Jeff.

9 MR. KEEVIL: Yeah. No problem.

10 EXAMINATION CONDUCTED

11 BY: MR. KEEVIL

12 Q. Ms. Niehaus, back to my question I
13 was going to ask. Did you read the list of issues in
14 this case?

15 **A. Do you have a copy that I can review?**

16 Q. Actually what I have here is Public
17 Counsel's statement of position.

18 MS. TATRO: Do you have a copy for me?

19 MR. KEEVIL: No. That was my only copy.
20 Sorry.

21 **THE WITNESS: Do you want to share it with**
22 **me? Can you ask your questions without it?**

23 MR. KEEVIL: Well, --

24 **THE WITNESS: Okay.**

25 MR. KEEVIL: I actually -- I need it back

1 before we ask --

2 MR. LOWERY: Is this OPC's position
3 statement?

4 MR. KEEVIL: Yeah.

5 **THE WITNESS: Is there a particular**
6 **position you'd like me to focus on for the purpose of**
7 **the question?**

8 **BY: MR. KEEVIL**

9 Q. No. No. I was just wondering if
10 you've seen these before. Have you read these?

11 **A. I have not.**

12 Q. Okay. Well, then if you haven't it's
13 a good thing I it gave to you because you're going to
14 have to be able to --

15 MS. TATRO: Do you need your copy back?

16 MR. KEEVIL: Yeah. It would be nice.

17 MS. TATRO: May I approach?

18 JUDGE CLARK: Please.

19 MR. KEEVIL: Oh, I can read it off this
20 computer, Wendy. That's --

21 MS. TATRO: Well, she's already got it.

22 **THE WITNESS: All right.**

23 MR. KEEVIL: All right. Thanks.

24 **BY: MR. KEEVIL**

25 Q. Ms. Niehaus, one of the questions

1 here under 2A1 says, should the issuance advice
2 letter include a comparable securities pricing
3 analysis as recommended by OPC witness Murray. Have
4 you read Mr. Murray's testimony regarding the
5 issuance advice letter and whether it should include
6 a comparable securities pricing analysis?

7 **A. It would be relatively unusual to**
8 **include such an analysis given there are not a**
9 **significant number of comparable securities for the**
10 **purpose of comparing utility securitizations or rate**
11 **reduction bonds to other securities in the market and**
12 **so it is not something that would be done as part of**
13 **the issuance advice letter in general for these types**
14 **of transactions.**

15 Q. Okay. 2B, issue states, should the
16 certification letters provided by the underwriters
17 and Staff's financial adviser be redacted rather than
18 classified as confidential in their entirety. Do you
19 have a -- first of all let me ask you, the
20 underwriter certification letters should they be
21 classified as confidential in their entirety. Are
22 you familiar with that?

23 **A. I am.**

24 Q. And why is -- why are they classified
25 as confidential in their entirety?

1 A. As far as I'm aware all underwriter
2 certifications have been classified as confidential.
3 They are provided to Ameren who is the underwriter's
4 client in this case and are made available for their
5 use. The certifications contain things like
6 confidential sort of trade secrets process as far as
7 how bonds are marketed and other information that an
8 underwriter would be unlikely to want to share with
9 the market more broadly. It's their secret sauce for
10 how they do deals and that is part of why you would
11 hire Goldman Sachs as opposed to another bank for
12 example.

13 Additionally, from a liability
14 perspective, in general I believe most underwriters
15 would require that the certification be held
16 confidential and, you know, without holding it
17 confidential you may even have certain underwriters
18 who are unable to participate in a transaction
19 because of the additional liability you'd be asking
20 them to take on.

21 Q. So do you believe requiring Public
22 Counsel's -- or adopting, I should say, Public
23 Counsel's recommendation would reduce the number of
24 responses that a utility company would receive in
25 response to solicitation for underwriters in future

1 securitization proceedings?

2 A. It may. It would be a deviation from
3 market standard and I suspect would require careful
4 analysis by all of the underwriters and potentially
5 additional costs to compensate them for the
6 additional liability they would be taking.

7 Q. Okay. Let me -- excuse me. I'm
8 going to skip C and go to 2D which asks should --
9 excuse me, should the Commission order Ameren
10 Missouri to provide the issuance advice letter and
11 supporting work papers to other interested parties at
12 the same time it provides information to Staff's
13 finance team. Do you have an opinion on that?

14 A. What other parties are you
15 referencing?

16 Q. Well, I'm assuming it would be --
17 first let's limit it to parties to this case.

18 A. You know, I think the way that the
19 process has run in Missouri is the market standard
20 and deviating from that would require an analysis by
21 Ameren and underwriters and other participants. I'm
22 not clear on what is trying to be achieved through
23 this and so maybe if you can give me some guidance on
24 what other parties and what direction you're going
25 and I can be more helpful.

1 Q. These aren't my positions or issues
2 so I'm not exactly sure myself.

3 A. Okay.

4 Q. But did I hear you say that what has
5 been done in the Empire and the Liberty -- excuse me,
6 Empire is Liberty. The Empire and the Evergy cases
7 in Missouri is consistent with industry practice?

8 A. I was not involved in Evergy, I was
9 only involved in Empire so I can only speak to that.

10 Q. Okay.

11 A. And Empire was in line with other
12 transactions I've worked on in the market.

13 Q. Okay. What other states have you
14 worked transactions?

15 A. So quite a long list. Starting from
16 west to east, Hawaii, California, --

17 Q. Let me -- can I just ask how many
18 instead of --

19 A. I have it somewhere in my testimony.
20 It would be a -- I would have to go back in and look.
21 But we are one of the primary underwriters of these
22 transactions and have been involved in quite a number
23 of states, Hawaii, California, Florida, Texas, New
24 Hampshire, Missouri, Michigan, South Carolina,
25 Kentucky. Probably I'm missing a few.

1 Q. Okay. Did you read Mr. Murray's
2 surrebuttal testimony in the section specifically on
3 post financing order process and procedure?

4 A. I would have to refresh on that, I
5 don't recall what it says.

6 Q. Okay. I think that's all I have,
7 Judge. Thank you.

8 JUDGE CLARK: Any cross-examination from
9 Office of the Public Counsel?

10 MR. WILLIAMS: Yes. Thank you.

11 EXAMINATION CONDUCTED

12 BY: MR. WILLIAMS

13 Q. Good afternoon, Ms. Niehaus.

14 A. Hi.

15 Q. You were involved in the Liberty
16 securitization transaction in Missouri, correct?

17 A. I was, sir.

18 Q. Do you know what bond yields were
19 achieved for that transaction?

20 A. The shorter class priced at 90 basis
21 points over treasury. I'd have to look at the exact
22 bond yield, I'd need to pull some papers from my
23 files. And the longer tranche with an 11 year
24 weighted average life priced at 95 over.

25 Q. And were you the person who certified

1 that those yields were the lowest possible cost?

2 A. At the time of issuance, yes.

3 Q. How did you determine they were the
4 lowest possible cost?

5 A. So it's an extended process. First,
6 it's about confirming that we've gone out to the
7 broadest possible mark so that's ABS investors,
8 corporate investors and municipal bond investors.
9 It's a combination of looking at subscription levels
10 in the bonds, so how many orders do we get in, what
11 feedback are we getting as part of those orders or
12 that bidding process from the market, understanding
13 how that book is kind of composed and come together.

14 Certain investors may have minimum yield
15 targets or have indicated that they have minimum
16 spread requirements as part of their -- as part of
17 their order. Their order sizes may change and
18 fluctuate depending on what the ultimate pricing
19 level is. We then also compare the pricing levels to
20 other types of securities. None are perfect but it
21 is everything from municipal bonds to corporate bonds
22 to ABS securities. And we also then look at
23 secondary market trading levels. And as you look at
24 all of that, so how the process was run as well as
25 how the transaction has come together in the context

1 of market, we're able to make the certification.

2 Q. And I think you may have done it but
3 I just want to confirm. You mentioned that you get
4 market feedback. Did you explain what market
5 feedback you were referring to in your answer?

6 A. So market feedback will come in with
7 records from investors. That feedback may be
8 something like my order is good at 90 basis points
9 over the reference treasury rate. I drop out at 85.
10 Sometimes we get that kind of feedback, sometimes we
11 do not. Investors may share different amounts of
12 information. It's a little bit like you putting an
13 offer in to buy a house, right. It is a competitive
14 process and depending on how competitive it is they
15 may share different information to try to be helpful
16 or assure that they get allocations of the bonds.

17 Q. Does Goldman Sachs intend to provide
18 its certification letter in this case as confidential
19 in its entirety?

20 A. Yes. That would be the market
21 standard.

22 Q. Why is everything in such a letter
23 confidential?

24 A. So as I explained before, the letter
25 is written for the benefit of Ameren who is the

1 client of the underwriters. The information that
2 provided -- is provided in there includes in certain
3 cases trade secrets around process, how we run our
4 process, what we look at as comp -- as sort of
5 comparative investment opportunities. And, you know,
6 if I -- all of that information were to be made
7 public other banks who are peers and competitors of
8 mine would be able to say I've reviewed all of the
9 certifications and I understand how these deals work
10 and so therefore I should be a part of the next
11 transaction.

12 Additionally, the information needs to be
13 reviewed in its entirety to really understand how the
14 deal came together and so redacting is challenging
15 because, you know, I think you have to get the full
16 picture of the complexity of the transaction in the
17 market at the time of issuance. And then third, by
18 making this public you're exposing your underwriters
19 to additional potential liability and in general, you
20 know, there would need to be compensation in some way
21 through additional indemnifications or additional
22 payment for that additional liability which would,
23 you know, theoretically drive up the price of the
24 transaction. And then additionally you're deviating
25 from market standard so certain banks, their legal

1 departments may not even allow them to participate if
2 the certification were to be made public.

3 Q. Couldn't portion -- those portions of
4 the certification letter that are considered to be
5 trade secret or otherwise disclosing process
6 information I guess be redacted and the remainder of
7 the letter made public?

8 A. I think reviewing the letter without
9 understanding the entire process is not useful,
10 right. You'd need to understand the entirety of the
11 process that was undertaken and then again you are
12 asking the underwriters to be exposed to additional
13 liability which would deviate from what I am aware to
14 be market standard. And usually there are costs with
15 deviations for market standard.

16 Q. So a letter that just showed that
17 Goldman Sachs had done a certification letter on the
18 Rush Island transaction bond issuances would be such
19 a deviation it would cause problems even if the
20 confidential -- or trade secret I'll call it
21 information was redacted?

22 A. As you think about providing the
23 letter in general one of the facets of -- or one of
24 the pillars that we rely on is you've adhered to
25 market standards and you're attempting to achieve the

1 lowest cost by running a process in the most
2 efficient way, right. Adding additional -- or
3 changing from 25 plus years of market standard for
4 providing these certifications would likely incur
5 additional legal costs as you have to have additional
6 review. It may, as I mentioned, put certain
7 underwriters in a position where they are unable to
8 participate and, you know, in general it would be a
9 deviation from the market standard.

10 Q. Who sets the market standard?

11 A. Twenty-five years of history.

12 Q. And how long has Goldman Sachs been
13 involved in creating net market standard?

14 A. I have been involved in all of the
15 transactions Goldman has been a part of for the last
16 19 years, I joined the firm in September of 2005.
17 Prior to that I believe -- I would have to go back
18 and check but I believe Goldman's first participation
19 was in the late '90s with the California transactions
20 in the market.

21 Q. So pretty much back to the beginning
22 of the market?

23 A. Yes. I am not aware of any deal that
24 has deviated from this standard.

25 Q. No further questions at this time.

1 Thank you.

2 JUDGE CLARK: Are there any Commission
3 questions?

4 CHAIR HAHN: Judge.

5 EXAMINATION CONDUCTED

6 BY: CHAIR HAHN

7 Q. Thank you, Ms. Niehaus. Earlier I'd
8 asked a question of Mr. Lansford and I think you
9 might be the more appropriate person to ask. Can you
10 talk about the benefits of offering either multiple
11 series or multiple tranches? It looks like you had
12 perhaps suggested a single series with two tranches.
13 Can you talk about why the rationale behind that?

14 A. Sure. So for these transactions, the
15 idea is that you want to create classes or tranches
16 of debt that are most attractive to the market and
17 are going to result into -- to the lowest cost for
18 rate payers depending upon the shape of the yield
19 curve, investor sentiment and different investor
20 types, so banks versus insurance companies versus
21 asset managers. You want to cut up the cash flows
22 that you -- so that you're able to produce bonds that
23 are most relevant based on the market conditions at
24 the time of issuance.

25 So we do know that as part of the

1 financing order you will set what the last payment
2 date is and we will know what the shape of the bond
3 cash flows need to be, where we cut the bonds and,
4 you know, whether we do a shorter class and a longer
5 class, one longer class, three, you know, sort of
6 medium -- you know, three medium sized classes. That
7 would all be dependent on market demand at the time
8 and where we think we're going to be able to get the
9 most traction with investors and reach the broadest
10 type of investors.

11 So for example at the moment corporate
12 style bond investors prefer longer duration or longer
13 maturity bonds and so we have suggested a longer
14 class that would appeal to those corporate style
15 investors. If something were to change in the market
16 and corporate investors were not to be as interested
17 in these types of securities we may choose to do a
18 single class or we may choose some other structure
19 that is sort of -- and I'm saying we may but you know
20 sort of the underwriters may. And, you know, that is
21 sort of the regular process for how these bonds are
22 issued. Whether it's a single class or multiple
23 classes it would not change the timeline for the
24 bonds to be issued.

25 Q. That's really -- that's really

1 helpful. Thank you. Does that multiple series or
2 multiple tranches, does that impact the cost to the
3 Company for issuance or is it a flat fee, how does
4 that general structure work?

5 **A. So in general underwriters are paid**
6 **-- it is generally 40 basis points on the total size**
7 **of the transaction. So whether it is one class or**
8 **three classes or four classes underwriters are not**
9 **paid any different or compensated any differently.**

10 Q. That's very helpful. Thank you.

11 JUDGE CLARK: Are there any other
12 Commission questions? I hear none. I've got a few
13 questions and I'm going to bounce around a bit.

14 **THE WITNESS: I'll do my best to follow**
15 **you.**

16 **EXAMINATION CONDUCTED**

17 **BY: JUDGE CLARK**

18 Q. Thank you. I'm going to start with
19 what's most forefront in my head in regard to Mr.
20 Williams' cross-examination. Would it be fair to say
21 that based upon your answers that changing from what
22 is market to standard for the certification letter
23 will either or both narrow the pool of available
24 underwriters and increase the costs of underwriting?

25 **A. I think that is a fair statement. At**

1 the very least it would require, in my experience,
2 significant legal review which requires significant
3 lawyer costs, sorry to the lawyers in the room, as
4 they bill by the hour and you're doing something that
5 deviates from the market standard. And you are also
6 asking underwriters to take additional liability that
7 will require a reevaluation by underwriters as to
8 whether that is liability they are willing to take
9 and that may result in underwriters falling out of
10 competitive process.

11 Q. Now, as you indicated, you've been
12 involved in both so far the Asbury securitization as
13 well as now the Rush Island securitization case.
14 What do you see as the major differences in
15 securitization between these two retirements?

16 A. So I think size of transaction is
17 probably the most notable. This will be a slightly
18 larger transaction which will -- which may allow us
19 to have more flexibility on a single class versus
20 multiple classes for the issuance as we look to
21 create bonds with liquidity in each class that make
22 the most sense for investors. And, you know, I think
23 that is really the big difference. The nice thing
24 about this transaction is the investor universe will
25 be used to seeing Missouri transactions, they will

1 understand the Missouri Commission and their process,
2 and they will understand the strength of the
3 legislative process in Missouri. And so to some
4 extent that makes the marketing of the second or
5 third transaction a little bit easier because you're
6 not breaking new ground.

7 Q. What are the impacts of multiple
8 series on the up front costs outside of the
9 underwriter's fees?

10 A. There should be no impact. Aside
11 from achieving the lowest cost by creating bonds that
12 are most favorable from an investor's perspective.

13 Q. Now, you had an opportunity to listen
14 to Ameren's mini opening, correct?

15 A. Uh-huh. Yes, sir.

16 Q. And in that there was some talk about
17 the right to review and Staff finance team
18 participation. And I know that you have nothing to
19 do with any of that. However, certainly it is of
20 concern given the -- you've done a few of these now
21 and the cases have varied. And certainly it's a
22 concern that if Staff and their finance team cannot
23 be involved until an order is final and unappealable
24 a lot of that is in the control of a lot -- that puts
25 a lot of control of how much involvement the finance

1 team has in the hands of the utility depending on how
2 proactively the utility engages with the SEC.

3 So in other words, one difference that I
4 noted between the Evergy and the Empire
5 securitizations is when the SF-1 was filed and
6 whereas it appears that Liberty waited a while to
7 file the SF-1 until the they had a better idea what
8 was going to happen in the order it looks like Evergy
9 went out and almost immediately when the order was
10 issued filed the SFL-1. Do you have an inkling of if
11 the Commission were to approve securitization when
12 Ameren would start engaging the SEC in this?

13 **A. I haven't discussed that with Ameren.**

14 Q. How are current market conditions
15 different from when Liberty securitized Asbury?

16 **A. Up until last week I would say the**
17 **market felt very strong. For the last few weeks**
18 **market has felt better than at the point in time when**
19 **Liberty brought their deal. We have obviously had**
20 **some relatively significant geopolitical noise over**
21 **the weekend and we are heading into an election cycle**
22 **so whether the strength of the market that we saw**
23 **last week and the week before continues on, that will**
24 **be a little bit dependent upon how things resolve**
25 **themselves on a global level and, you know, sort of**

1 noise around the U.S. election and many other factors
2 that are outside of all of our control.

3 Q. So would it be correct to say you
4 don't know?

5 A. If I knew I wouldn't be sitting here,
6 I'd be on the beach in Hawaii somewhere.

7 Q. Now, you heard me ask -- I'm assuming
8 you heard me ask about what -- asked Mr. Lansford
9 what if it closes after October 15th, correct?

10 A. (Witness nods head.)

11 Q. Is it unusual for securitized utility
12 tariff bonds -- and you may not know the answer or
13 may just not come up. Is it unusual for a plant to
14 not close prior to the issuance of securitized bonds
15 or is it a requirement that it does?

16 A. The use of proceeds from
17 securitization is vast and really covers a wide range
18 of needs for a utility and the rate payers in their
19 service territory. There are deals where financings
20 are done before the money is spent and there are
21 deals where only after the money is sent -- spent or
22 amounts are final is the securitization done, it
23 really varies depending upon the will of the
24 particular Commission and the situation at hand.

25 Q. Have you been involved in a

1 securitization where bonds were issued prior to the
2 closure of a facility?

3 A. Not that I can recall with regards to
4 closing a plant. But I have been involved in
5 securitization where the securitization is issued
6 before the money -- before the project that has been
7 identified is fully complete or money may be used for
8 expenses in the future around storm hardening or in
9 Hawaii there was a green bank effectively that was
10 set up for renewable energy projects that had not
11 been undertaken yet. So it really can vary depending
12 upon the specifics and the jurisdiction.

13 Q. Thank you, Ms. Niehaus. I have no
14 further questions.

15 JUDGE CLARK: Mr. Williams, you
16 were weighing in?

17 MR. WILLIAMS: I do have one.

18 MR. KEEVIL: I've got a couple, Judge.
19 And I think Mr. Williams probably should go last.

20 MR. WILLIAMS: You're right.

21 MR. KEEVIL: Does that matter?

22 MR. WILLIAMS: I'm fine with that.

23 MR. KEEVIL: You okay?

24 JUDGE CLARK: Go ahead, Staff.

25 MR. WILLIAMS: Might ask mine.

1 EXAMINATION CONDUCTED

2 BY: MR. KEEVIL

3 Q. Ms. Niehaus, Chair Hahn was asking
4 you about multiple series of tranches. First of all,
5 can you tell me what -- what's the difference between
6 a series and a tranche?

7 A. They are often used interchangeably.

8 Q. Okay.

9 A. We also sometimes call them classes.

10 Q. With a series you can call it class?

11 A. A class, a series, a tranche.

12 Q. A tranche.

13 A. There's various names for a
14 particular grouping of cash flows.

15 Q. Okay. Is Ameren, in this particular
16 instance, requesting authority for a specific number
17 of issues -- excuse me, a specific number of series
18 and/or a specific number of tranches or is Ameren
19 requesting authority for say one or more -- multiple
20 series or multiple tranches for one or more series --
21 what exactly is the request?

22 A. I am not in a position to speak to
23 what Ameren is requesting. But in general the way
24 this works is there is an approval to issue under one
25 or more class or tranche. And the number of classes

1 or tranches will be determined at the time of
2 issuance based on market demand to achieve the lowest
3 charge possible for customers.

4 Q. Okay. So whether they wind up going
5 with one or more is generally part of the structuring
6 -- decision making process?

7 A. That is correct.

8 Q. Okay. Judge Clark was asking you
9 some questions about the finance team. And I believe
10 you said you had nothing to do with the finance -- or
11 he thought you had nothing to do with the finance
12 team. I remember sitting in some finance team
13 meetings in which you were attendant. So I mean, you
14 do have some participation in the finance team
15 process, do you not?

16 A. To the extent you're hired as
17 underwriter you are generally a part of the process
18 with your utility client and so you would -- a bank
19 would work with their client to converse with the
20 members of the finance team around transaction
21 structure, process, market dynamics, et cetera.

22 Q. And when you say a member of the bank
23 or a bank, when you say bank you mean underwriter?

24 A. Underwriter, yes.

25 Q. All right. Nothing further.

1 MR. KEEVIL: Thanks, Judge.

2 JUDGE CLARK: I have one quick question
3 and then you may -- and then Mr. Williams, I'll let
4 you.

5 MR. WILLIAMS: Might spur another one from
6 him.

7 JUDGE CLARK: It might.

8 EXAMINATION CONDUCTED

9 BY: JUDGE CLARK

10 Q. Would multiple tranches, series,
11 classes cause -- require multiple issuance advice
12 letters?

13 **A. No. It's a single issuance advice**
14 **letter that encompasses the transaction as a whole.**

15 JUDGE CLARK: Thank you. Mr. Keevil, does
16 that?

17 MR. KEEVIL: No, that sprung no questions
18 from me.

19 JUDGE CLARK: Go ahead, Mr. Williams.

20 MR. WILLIAMS: Thank you.

21 EXAMINATION CONDUCTED

22 BY: MR. WILLIAMS

23 Q. When you were testifying in response
24 to questions from Judge Clark you reiterated the
25 certification letter disclosure would add liability

1 for underwriters. I'd like to explore that just a
2 little bit. If protected information such as trade
3 secrets were not disclosed in the certification
4 letter that was made publicly available, would it
5 still add underwriter liability?

6 A. Well, I'm not a lawyer so we probably
7 should be speaking to a lawyer about the specifics of
8 underwriter liability. But in general, my point of
9 view is that by redacting information the issuance
10 advice -- or the certification may be misleading
11 without reviewing it in its totality. And so it
12 doesn't really add much or give, you know, sort of --
13 it would be highly unusual and it is potentially even
14 misleading if you're providing it in part and not in
15 whole.

16 Q. No further questions. Thank you.

17 JUDGE CLARK: And MECG, I didn't ask if
18 you have any re-cross?

19 MR. OPITZ: No thank you, your Honor.

20 JUDGE CLARK: Any re-direct from Ameren?

21 MS. TATRO: Yes. Thank you.

22 EXAMINATION CONDUCTED

23 BY: MS. TATRO

24 Q. Ms. Niehaus, you were asked a couple
25 questions, some from the Judge, about if you were

1 involved in any cases where bonds were being issued
2 for a plant that hadn't yet closed. Do you remember
3 those conversations, --

4 **A. I do.**

5 Q. -- those questions? Do you know if
6 Missouri statute allows for bonds if the plant is not
7 yet retired?

8 **A. I believe it does but I would have to
9 go back and review.**

10 Q. Okay. Fair enough. In your opinion,
11 the fact that Rush Island hadn't actually closed,
12 does that complicate or cause problems with your
13 marketing with the bonds and if so what would that
14 be?

15 **A. I don't expect it would cause any
16 problems. We have the legislation which is final and
17 the financing order that is irrevocable and
18 non-bypassable, non-appealable, and those two
19 components together being finalized are really what
20 investors rely on. And so, you know, whether the
21 plant has closed or is about to close, as long as the
22 issuance amount cannot change and there's no ability
23 to revoke or adjust the charge it should be okay.**

24 Q. And are you familiar with the utility
25 bond process that happened in Michigan?

1 A. I am. I guess which one? I have
2 been involved in one of them and not involved in the
3 more recent one.

4 Q. Are you -- have you been involved in
5 the one where the plant was not yet closed?

6 A. I think that was the more recent CMS
7 deal; is that correct? I was not.

8 Q. Are you familiar with it?

9 A. Generally, yes. But I was not a part
10 of the process so I wouldn't have details on
11 marketing.

12 Q. Okay. Thank you. I have no further
13 questions.

14 JUDGE CLARK: Thank you, Ms. Niehaus. You
15 may step down.

16 MR. WILLIAMS: You want her excused?

17 MS. TATRO: Well, I assume she is excused
18 since she's done testifying.

19 JUDGE CLARK: Are there any objections to
20 excusing Ms. Niehaus? Hearing no objection, Ms.
21 Niehaus, you're excused. Thank you for your time
22 today.

23 **THE WITNESS: Thank you.**

24 MS. TATRO: And thank you to my colleagues
25 for letting her go and I know we extended lunch.

1 JUDGE CLARK: Well, it is now about 12:47.
2 I would like to take about a 30 minute lunch break so
3 if we can all be back here right around 1:17 that
4 would be great.

5 MR. OPITZ: Your Honor, on behalf of MECG
6 -- this is Tim Opitz back here -- I'd ask to be
7 excused for the remainder of today's hearing, if
8 that's okay with your Honor.

9 JUDGE CLARK: I will grant that request.

10 MR. OPITZ: Thank you.

11 JUDGE CLARK: Thank you, Mr. Opitz. We
12 will go off the record.

13 (At this point in the proceedings, an off
14 the record discussion was held.)

15 JUDGE CLARK: It is 1:21 and we are back
16 on the record. And we had left off, we had just
17 finished with Ameren witness Niehaus. At that time
18 Mr. Keevil indicated off the record that he was going
19 to be making a motion on the record.

20 MR. KEEVIL: Yes, Judge. It's nothing
21 controversial but my consultants are in from out of
22 state and have a seven o'clock flight out of St.
23 Louis. So I didn't know if we need to take them out
24 of order or if, you know, the cross on Mr. Sagel's
25 going to be so short that's not a problem or

1 whatever. But I'd like to make sure that my
2 consultants are able to make a seven o'clock St.
3 Louis flight.

4 JUDGE CLARK: Okay. Are there any
5 objections to deviating -- right now the way I have
6 it I have Sagel up next followed by Murray, Majors,
7 and Davis. And we're talking about Davis, correct?

8 MR. KEEVIL: Correct.

9 JUDGE CLARK: No other witnesses other
10 than Davis?

11 MR. KEEVIL: Correct.

12 JUDGE CLARK: Okay. And Davis is only
13 necessary for Issues 1 and 2, correct?

14 MR. KEEVIL: Correct.

15 JUDGE CLARK: So it would be very similar
16 to Niehaus, it would just be taking Staff's financial
17 adviser out of order for those issues?

18 MR. KEEVIL: Yes.

19 JUDGE CLARK: Is there any opposition to
20 going ahead and doing that?

21 MS. TATRO: None, your Honor.

22 MR. WILLIAMS: No.

23 JUDGE CLARK: Okay. I've heard -- I hear
24 no objections so we'll do that. At this time Staff,
25 would you like to call --

1 MR. KEEVIL: Yes, your Honor. Mr. Davis.
2 We call Mark Davis to the witness stand. If he's
3 here.

4 **THE WITNESS: Yeah.**

5 MR. KEEVIL: Those 30 minutes lunches
6 don't give those out of town consultants much time to
7 find a place to eat lunch.

8 JUDGE CLARK: I apologize and I wish we
9 didn't have to do that. But we are on a very, very
10 packed schedule so I already anticipate that we're
11 probably going to be here past 5:30 tonight.

12 So Mr. Davis, would you raise your right
13 hand and be sworn.

14 * * * * *

15 MARK S.A. DAVIS,

16 The witness, having been first duly sworn
17 upon his oath, testified as follows:

18 * * * * *

19 JUDGE CLARK: Okay. Staff, your witness.

20 MR. KEEVIL: Thank you, your Honor.

21 EXAMINATION CONDUCTED

22 BY: MR. KEEVIL

23 Q. Would you please state your name and
24 spell it for the record, sir?

25 **A. Mark S.A. Davis, M-A-R-K, S., A.,**

1 **Davis, D-A-V-I-S.**

2 Q. Are you the same Mark Davis who
3 caused to be filed in this case the surrebuttal
4 testimony of Mark Davis?

5 **A. Yes.**

6 Q. By whom do -- where do you work, sir?

7 **A. Ducera Partners.**

8 Q. And what's your position at Ducera?

9 **A. I'm a partner.**

10 Q. I don't know if you're aware -- you
11 probably -- I haven't told you so you probably don't
12 know this. Your pre-filed testimony has been marked
13 as Exhibit -- Exhibit 112, 112. And did you have
14 both public and confidential versions of your
15 testimony?

16 **A. Yes.**

17 Q. Okay. And so they've been marked 112
18 and 112C. Do you have any additions or corrections
19 you need to make to those pieces of testimony?

20 **A. No.**

21 Q. If I were to ask you the questions
22 contained in Exhibits 112 through 112C, would your
23 answers be the same today as they are contained in
24 that testimony?

25 **A. Yes.**

1 Q. And are those answers true and
2 correct to the best of your information, knowledge,
3 and belief?

4 **A. Yes.**

5 MR. KEEVIL: Judge, with that, I would --
6 since this is Mr. Davis's only day here, I would
7 offer Exhibits 112 and 112C.

8 JUDGE CLARK: Any objection to admitting
9 Exhibit 112 onto the hearing record? I hear and see
10 no objections. Exhibit 112, the surrebuttal
11 testimony of Mark Davis, public and confidential, is
12 admitted onto the hearing record.

13 MR. KEEVIL: Thank you, your Honor. With
14 that I would tender Mr. Davis for cross-examination
15 on Issues 1 and 2 on the Exhibit -- on the issues
16 list.

17 JUDGE CLARK: Okay. Of the parties we
18 have remaining here I guess by default it is Public
19 Counsel's cross-examination.

20 MR. WILLIAMS: Thank you, Judge.

21 EXAMINATION CONDUCTED

22 BY: MR. WILLIAMS

23 Q. Good afternoon, Mr. Davis.

24 **A. Good afternoon.**

25 Q. Are you responsible for filing a

1 certification letter after the bonds were priced if
2 the Commission authorized Ameren Missouri to
3 securitize Rush Island energy transition cost and
4 Ameren Missouri goes forward?

5 **A. No.**

6 Q. Are you required to file a
7 certification letter in conjunction with Ameren
8 Missouri issuing securitized bonds for Rush Island if
9 it goes forward with doing that?

10 **A. No.**

11 Q. Are you required to confirm that the
12 structuring, marketing, and pricing of any
13 securitized utility tariff bond that issues as a
14 result of this case is consistent with market
15 conditions?

16 **A. Maybe to cut through it. Our -- the**
17 **contract that Ducera has with Staff has an option in**
18 **there for Staff to request a letter from Ducera**
19 **related to obtaining the lowest cost issuance based**
20 **on market conditions at that point in time, I believe**
21 **that's what you're trying to get at.**

22 Q. So it's optional, it's only if Staff
23 requests it?

24 **A. I believe that's correct.**

25 Q. If you were to issue such a letter --

1 to do such a letter in response to a Staff request to
2 do so, would that be your independent opinion?

3 **A. Yes.**

4 Q. And would that be a qualified or
5 unqualified opinion?

6 **A. So the letter would contain various**
7 **assumptions and information relied upon such as if**
8 **facts provided by the utility, the underwriters, and**
9 **other parties is part of it. So certain assumptions**
10 **would go into ultimately delivering the statements**
11 **required under the contract. The conclusion of those**
12 **statements would not be materially qualified.**

13 Q. So in rendering your opinion then you
14 are permitted to rely on third party information
15 without verifying that information; is that not
16 correct?

17 **A. That's my understanding and I'm not a**
18 **lawyer. But certain information that goes into**
19 **providing that letter or information provided by the**
20 **utility would need to be relied upon to practically**
21 **deliver any type of letter on the timeframe that's**
22 **contemplated within the contract.**

23 Q. What do you do -- let's say you go
24 forward and do the certification about the pricing of
25 the securitized utility tariff bond in the lowest --

1 is the lowest charge consistent with market
2 conditions. What would you look at for purposes of
3 rendering that opinion?

4 A. So it would be pretty involved. The
5 -- I would say to start the process is incredibly
6 important, making sure that the issuer has gone
7 through a, you know, thorough and complete process
8 prior to issuing the bond. So going through, you
9 know, from the start the underwriter selection
10 process and making sure that it receives views of all
11 of Wall Street on the best way to structure market
12 and price the bonds. Making sure that the overall
13 marketing process is sufficient in terms of obtaining
14 Triple A credit ratings from an appropriate number of
15 rating agencies, making sure that the investor
16 presentations are complete, that are put together for
17 investors, making sure that the marketing process
18 involves adequate time for investors to do their work
19 and submit orders, making sure that the pricing and
20 structure are analyzed in a way that obtains what's
21 anticipated to result in the lowest all in cost and
22 attract the broadest universe of low cost investors
23 and then making sure the pricing process itself is
24 the underwriter's market, the bonds, and titan
25 pricing -- tight pricing as much as possible based on

1 **the circumstances at that point in time.**

2 Q. You were involved in the Liberty
3 securitization and the Evergy West securitization in
4 Missouri, correct?

5 **A. That's correct.**

6 Q. Was there information in conjunction
7 with those securitizations that you did not
8 independently verify but relied upon?

9 **A. I'm sure there was. I couldn't tell**
10 **you offhand what the particular items are but I'm**
11 **sure that would be an important element of being able**
12 **to deliver the letter that is requested.**

13 Q. Can you identify the nature of the
14 information?

15 **A. I think it was information provided**
16 **by the Company and underwriters probably amongst**
17 **others, I'm sure some written, some verbal.**

18 Q. Did you review information that was
19 in the issuance of advice letters in those cases?

20 **A. Yes.**

21 Q. Did you review anything in the
22 issuance advice letter other than the bond pricing?

23 **A. Yes. I reviewed the issuance advice**
24 **letter in its entirety.**

25 Q. Did you review the calculations of

1 the quantifiable net present value benefits of
2 securitization as identified in the issuance advice
3 letters?

4 **A. Yes. We received the issuance advice**
5 **letter, including the NPV calculations and reviewed**
6 **those with Staff.**

7 Q. Did you find any errors in those
8 calculations?

9 **A. I don't recall.**

10 Q. In those cases, did Ducera file its
11 certification letters as confidential in their
12 entirety?

13 MR. KEEVIL: I'm going to object to that.
14 Ducera didn't file anything in that case as far as I
15 remember. Staff filed things, Ducera didn't file
16 things.

17 MR. WILLIAMS: Ducera's Staff's witness.

18 JUDGE CLARK: All the same, if they didn't
19 file anything it negates the question. Is there a
20 way you can ask the question differently?

21 BY: MR. WILLIAMS

22 Q. Did Ducera request that its
23 certification letter in those case be treated as
24 confidential in its entirety?

25 **A. Yes, I believe we did.**

1 Q. Why?

2 A. A lot of the information contained in
3 those letters as, you know, you I think recently
4 heard from the underwriter's counsel -- or
5 underwriters, very similar to what you heard from
6 them, a lot of the information contained in those
7 letters are proprietary trade secret information,
8 it's -- you know, I think it is effectively the
9 secret sauce of the process that we go through and
10 something that others could seek to replicate if they
11 were to work through that type of process. In terms
12 of the degree of information that was included in
13 those letters and the confidential nature of all of
14 the information within those letters I do think it's
15 important that information not be taken out of
16 context when reviewing the letter.

17 JUDGE CLARK: I'm picking up a little
18 feedback. If you're participating via WebEx, would
19 you please mute yourself. It sounds like some road
20 noise.

21 BY: MR. WILLIAMS

22 Q. What's your understanding of the
23 purpose of the Ducera certification letters?

24 A. My understanding of HB734 was it was
25 to provide specific information to Staff -- to the

1 Staff designated rep or effectively to our clients to
2 provide them work product that they could then use as
3 part of their review and the obligation that Staff
4 had to provide a direct letter from Staff to the
5 Commission providing transparency through the
6 process.

7 Q. And can you -- if you can, can you
8 tell the nature of the secret sauce that would be
9 revealed in that letter without disclosing what the
10 secret sauce is?

11 A. I think that's a difficult question.
12 The process, everything that we go through is part of
13 the issuance review process with Staff, the items
14 that we, you know, look at and review as part of that
15 process could form a roadmap, you know, effectively
16 for competitors to come in and try to replicate the
17 process that we work through to provide that for
18 other parties to show up and replicate what -- you
19 know, our business.

20 Q. I think your answer is that you're
21 saying that you cannot?

22 A. I intended to provide what I could
23 get at if it was helpful at all for you.

24 Q. Do you know what the bond yields were
25 for the Evergy securitization bonds?

1 **A. Not the exact yield offhand.**

2 Q. Do you know approximately what they
3 were?

4 **A. Approximately five percent.**

5 Q. And did Ducera certify that those --
6 that approximately five percent, whatever it actually
7 is, was the lowest possible cost?

8 **A. I believe our certification -- you're**
9 **getting into confidential information related to**
10 **another proceeding. I don't know if that's -- what's**
11 **public in that regard.**

12 Q. I'm just asking whether you certified
13 in that case that the yields that were in those bonds
14 were lowest possible cost or not?

15 **A. I believe the letter that we provided**
16 **was filed confidentially.**

17 Q. Can you tell me why it would be
18 confidential as to whether or not Ducera certified
19 that the actual bond yields were the lowest possible
20 cost?

21 **A. Offhand I'm not certain what**
22 **information is confidential, what information is --**
23 **needs to be in-camera and what information can be**
24 **disclosed with another utility. And so given the**
25 **nature of that I'm reluctant to directly share that**

1 **unless I hear otherwise from Counsel.**

2 MR. WILLIAMS: Judge, would you direct him
3 to respond? I don't believe he's going to be
4 disclosing any confidential information, I'm just
5 asking him whether or not he did that certification
6 in those cases or not.

7 JUDGE CLARK: I understand. Let me
8 inquire of Staff a little bit because this is -- I
9 don't want to cross any bounds and Staff technically
10 is the client and my understanding is you have a
11 fiduciary duty to the client; is that correct?

12 **THE WITNESS: That's correct.**

13 JUDGE CLARK: So it would be Staff's
14 determination in my thought as to whether they could
15 release that. Although I do believe that is a job of
16 -- you know, I do believe that's kind of the purpose
17 for which they're retained.

18 MR. KEEVIL: I don't -- first of all,
19 Judge, I don't think what Mr. Davis' firm provides to
20 Staff is a certification, I believe it's an opinion
21 letter of some sort, would be classified as an
22 opinion. I do know under the statute his firm is not
23 required to file anything with the Commission, it's
24 -- you in fact were the judge on both of those that
25 ordered Staff to turn around and order -- or not

1 order, but to request Mr. Davis's firm allow Staff to
2 file that letter confidentially.

3 So yeah, I mean -- that's the whole -- I
4 don't -- personally, I don't see the point of Public
5 Counsel's entire issue too here where they want --
6 saying they don't like the way Staff and Ducera
7 interact or they want to be part of that interaction
8 without being statutorily authorized to be part of
9 that action or directed to be part of that action --
10 or interaction, I should say. Yeah. Everything that
11 Ducera provides to us we consider -- I consider to be
12 like an attorney/client sort of communication
13 between, you know, Staff and us and Ducera. And so
14 when you got into the process of ordering us to then
15 turn that over to the Commission that caused a little
16 bit of heartburn itself.

17 But since it was the Commission by whom I
18 am employed I decided to go ahead -- better part of
19 valor would be to go ahead and file the thing. But
20 in order to do that I had to get per -- there are
21 contractual provisions running back and forth between
22 us and Ducera and frankly between the Commission and
23 Ducera because I think technically the contract was
24 with the Commission, with Ducera. And part of the
25 letter even is -- I think is in the contract -- that

1 the -- only the client of Ducera, which in this case
2 would be Staff, would be authorized to rely upon --
3 in any manner or form, to rely upon that letter.

4 So yeah, I mean, I consider Mr. Davis's
5 letter to be like an attorney/client communication
6 between his firm and us as -- me as to whatever you
7 want to call it. So yeah, I have a problem with this
8 entire -- I don't think these are valid issues, I
9 don't think it should even be on the -- if you paid
10 attention to Mr. Williams' cross-examination he's
11 been crossing on the Liberty case and the Evergy
12 case, hasn't asked a stinking question yet about the
13 Ameren case. That's what we're here for. We're not
14 here for them to air their angry laundry about the
15 previous cases that are now done. So yeah, I mean,
16 this entire issue is problematic for us.

17 JUDGE CLARK: And with that, what specific
18 issue are you referring to, Issue 2, --

19 MR. KEEVIL: Yes.

20 JUDGE CLARK: -- in its entirety?

21 MR. KEEVIL: Yes.

22 JUDGE CLARK: Because I certainly think --
23 it appeared to me when I was looking through this
24 that at least part of it, if not the thrust of Public
25 Counsel's was to ascertain essentially since these

1 are -- since costs, including the costs of Mr. Davis,
2 are costs that are going to be included in the
3 securitization that he was going to be asking
4 questions that were in relation to that cost. Is
5 that what we're talking about?

6 MR. KEEVIL: No.

7 JUDGE CLARK: What are you talking about?

8 MR. KEEVIL: We're talking about the
9 advice that Staff receives from their consultant
10 regarding their professional expert analysis of the
11 utilities and their under -- utilities underwriter's
12 actions in structuring, marketing, placing, selling
13 the bonds and whether those actions, in the expert
14 opinion of Mr. Davis and his firm, was those actions
15 by the other parties meet certain industry standards
16 and whether, by virtue of all of that, then the bonds
17 meet the applicable standard.

18 JUDGE CLARK: Okay. Where are you going
19 with this?

20 MR. WILLIAMS: Staff has used -- Staff has
21 used Mr. Davis in the past which establishes some of
22 what he has done and/or anticipating he's going to do
23 something similar in this case which is not -- we
24 haven't reached that stage in this proceeding. So
25 that's the purpose of asking some of the background

1 information. And we're not asserting anything's been
2 done improperly but we're looking to see what has
3 been done for understanding what to anticipate will
4 be done and the cost that's associated with that.

5 JUDGE CLARK: Well, I think -- and that's
6 fine. And I'm going to let you ask questions but at
7 least in regard to where you are now and asking about
8 this letter I believe you've hit a wall. And I'm
9 going to -- there are -- Mr. Keevil, I'm assuming
10 you're objecting to him answering?

11 MR. KEEVIL: Yes. I'm objecting to this
12 entire line of questioning, in fact.

13 JUDGE CLARK: Well, dealing with this
14 specific question in regard to the letter I'm going
15 to sustain the objection.

16 MR. WILLIAMS: Thank you.

17 BY: MR. WILLIAMS

18 Q. How will Ducera analyze the
19 reasonableness of -- let me back up. Assuming Staff
20 requests Ducera to do it, how will Ducera establish
21 that Ameren Missouri's securitization transaction
22 will achieve the lowest possible cost?

23 MR. KEEVIL: Judge, again I'm going to
24 object. And this one's a little different. As Mr.
25 Davis mentioned, the entire process that these

1 financial analysts from Wall Street and beyond go
2 through involve certain information that they
3 consider proprietary. That's what he's just asking,
4 says what are you going to do proprietary to be able
5 to turn around and tell your client, Staff, what your
6 analysis is.

7 So, you know, he can't -- he can, he just
8 did. But he should not be allowed to be delving into
9 proprietary, confidential procedures of Ducera's
10 period. I mean, it's irrelevant and it -- I mean,
11 what they're really asking about is the contract
12 process that was going -- initiated and gone through
13 back whenever Ducera was retained by Staff for this
14 case. I mean, they -- they don't like the process,
15 they don't like the contract apparently that came out
16 of the process. You know, if they want their own
17 adviser they're free to get their own adviser. But
18 they can't now -- we're bound by the contract that
19 was arrived at between Staff and the Commission and
20 Ducera and he should not be -- OPC should not be
21 allowed to basically try to divulge -- or get into
22 the things of a proprietary nature like this.

23 JUDGE CLARK: Mr. Williams, would you like
24 to respond to the objection?

25 MR. WILLIAMS: I think Public Counsel's

1 entitled to explore what the financial analyst for
2 Staff is doing that Staff relies upon for making
3 recommendations and providing information to the
4 Commission and if it's proprietary and we need to go
5 in-camera we can do that. I don't intend to delve
6 too much deeper into this topic.

7 JUDGE CLARK: Why is it relevant?

8 MR. WILLIAMS: Basically to -- some
9 assurance, quality assurance that the Staff and the
10 public are getting value for what they're paying for
11 for the financial analyst services.

12 MR. KEEVIL: Again, I don't think this is
13 the proper place for it.

14 JUDGE CLARK: Hold on, Mr. Keevil. Let me
15 think for a minute. I'm going to sustain the
16 objection. I don't think -- I think Staff is
17 perfectly capable of protecting their own interests.
18 And while you've mentioned the general public, I
19 believe that the stuff you're asking about is part of
20 what the consultant has agreed to do for Staff. So
21 I'm going to sustain that objection.

22 MR. WILLIAMS: If I may --

23 JUDGE CLARK: Yes.

24 MR. WILLIAMS: -- offer something? Of
25 course ultimately the public will be paying -- well,

1 the public who's served by Ameren Missouri will be
2 paying for Ducera's services --

3 JUDGE CLARK: Okay.

4 MR. WILLIAMS: -- one way or another.

5 JUDGE CLARK: Thank you. Do you have
6 further questions for this witness?

7 MR. WILLIAMS: Sure.

8 BY: MR. WILLIAMS

9 Q. At what rate are you compensated for
10 your services?

11 MR. KEEVIL: I don't know if that's
12 confidential -- I mean, that can be answered, I
13 believe. But I'm not sure.

14 JUDGE CLARK: I think that's -- I'm sorry?

15 MR. KEEVIL: I'm not sure if it's public,
16 that's my only question.

17 JUDGE CLARK: If we need to go in-camera
18 for that, I'm fine going in-camera for that. But I
19 do believe that that's a question that he should be
20 able answer.

21 MR. WILLIAMS: And I believe it is public
22 if you go out on the State's website about contracts.

23 JUDGE CLARK: Staff, is that correct?

24 MR. KEEVIL: I don't know.

25 JUDGE CLARK: Is this information that's

1 publicly available?

2 MR. KEEVIL: I don't know that
3 information.

4 MR. WILLIAMS: I believe it's already
5 pre-filed as an attachment to Mr. -- one of Mr.
6 Murray's testimonies. It's his surrebuttal
7 testimony, DM-S-8.

8 JUDGE CLARK: And that's a
9 non-confidential schedule?

10 MR. WILLIAMS: Correct.

11 JUDGE CLARK: Is that correct, Mr. Davis?

12 **THE WITNESS: I'll take their word for it.**

13 JUDGE CLARK: Do you want to take a look
14 at it?

15 **THE WITNESS: No. I can -- I know the**
16 **rate.**

17 JUDGE CLARK: Okay. Then you may go ahead
18 and answer the question.

19 **THE WITNESS: It's a monthly rate of**
20 **225,000 per month.**

21 **BY: MR. WILLIAMS**

22 Q. And when did that -- when was the
23 contract executed for that rate?

24 **A. I believe the contract was executed**
25 **the early part of this year, beginning of the year.**

1 Q. Would late January sound correct?

2 **A. I accept that subject to check.**

3 Q. You don't know. But that timeframe
4 at least?

5 **A. That timeframe.**

6 Q. And when did payment start becoming
7 due or when did amounts due accrue under the -- start
8 accruing under the contract?

9 **A. I need to confirm. I don't know**
10 **offhand.**

11 Q. Well, is it a -- what triggers
12 amounts due accruing under the contract, is it
13 execution, is it something else?

14 **A. I don't know the trigger. I would**
15 **need to confirm.**

16 Q. What I really want to know is is it a
17 monthly amount that initiates on execution of the
18 contract or does Ducera have to do something in each
19 month in which it accrues the \$225,000?

20 **A. I would need to check. I don't know.**

21 MR. KEEVIL: Judge, according to Mr.
22 Williams the contract is a schedule attached to an
23 exhibit. So all of those things that Mr. Williams
24 just asked are already there if he'd only read the
25 contract. And if he wants to put it in the record

1 when the proper time comes, if such a time comes,
2 then, you know, it's in the record. Otherwise we're
3 spinning our wheels here.

4 JUDGE CLARK: Is that an objection?

5 MR. KEEVIL: Yes.

6 JUDGE CLARK: Would you care to rephrase
7 it as an objection?

8 MR. KEEVIL: Well, irrelevancy.

9 JUDGE CLARK: Would you like to respond,
10 Mr. Williams?

11 MR. WILLIAMS: I think it's highly
12 relevant what customers are paying for the services
13 they receive.

14 JUDGE CLARK: I don't disagree with you
15 there. But at least the way you were starting to
16 head down it it seemed to be asking him about what it
17 was he does for the contract, which again seems to be
18 getting into exactly the objection I sustained
19 earlier. So if the contract is publicly --

20 MR. WILLIAMS: Well, when I read the
21 contract I wasn't able to discern whether or not it
22 started on execution or if some service had to be
23 provided in each month for which an amount accrued.
24 It wasn't clear to me exactly how the parties to the
25 contract are operating under it. So that was the

1 purpose of my questioning. And in fact, I'm --
2 didn't intend to go any farther with it.

3 MR. KEEVIL: Well, he's answered -- he's
4 answered the question.

5 JUDGE CLARK: Mr. Keevil, give me a
6 second. Sorry.

7 MR. KEEVIL: Sorry.

8 JUDGE CLARK: You keep doing that but I
9 just need -- the hamster can only run so fast.

10 MR. KEEVIL: Well, he's already answered.

11 JUDGE CLARK: Yeah. He's answered that he
12 doesn't know.

13 MR. WILLIAMS: So I'm done.

14 JUDGE CLARK: Well, by your own admission.
15 Do you have any further questions for this witness?

16 MR. WILLIAMS: Not at this time, thank
17 you.

18 JUDGE CLARK: Okay. Mr. Coffman, you have
19 joined us again. Do you have any cross-examination
20 that you would like to add -- or that you would like
21 to do for this witness? You would have been first on
22 the list, I believe.

23 MR. COFFMAN: No, your Honor.

24 JUDGE CLARK: Thank you. This is AARP and
25 Consumer Council of Missouri. Ameren Missouri?

1 MS. TATRO: Yes. Thank you.

2 EXAMINATION CONDUCTED

3 BY: MS. TATRO

4 Q. I'm going to be asking you questions
5 about the statute and also the Staff's proposed
6 financing order. Do you have those with you?

7 **A. I do.**

8 Q. Okay. Great. So I want to start by
9 talking about -- well, first in your surrebuttal, I
10 presume you have a copy with you. On Page 8, Line
11 12. Let me know when you're there.

12 **A. Okay. I'm there.**

13 Q. And do you see at that point it uses
14 the phrase lowest cost standard? I think it's in the
15 header right there.

16 **A. Yes.**

17 Q. And then again on Page 12, Line 11
18 you testify about the goal of obtaining the lowest
19 possible cost for customers, do you see that
20 language?

21 **A. Yes.**

22 Q. And then I'll only go one more. On
23 Page -- hang on, sorry. Still Page 12, Line 14, you
24 have the phrase mandate to achieve the lowest
25 possible cost. Do you see that?

1 **A. Yes.**

2 Q. And you use that phrase lowest cost,
3 or lowest cost standard in other areas of your
4 testimony but I won't go through that. But you would
5 concede that is true, right?

6 **A. Yes.**

7 Q. Is lowest cost language from the
8 statute?

9 **A. I think it's shorthand for the**
10 **language from the statute.**

11 Q. Okay. Let's talk about the statute.
12 Do you have that with you?

13 **A. Yes.**

14 Q. 393.1700, dot 2, 3C, C I think is
15 where you find that language. Tell me when you're
16 there.

17 **A. Do you have a page number, by chance?**

18 Q. I do not. Just a statutory
19 reference, sorry.

20 MR. KEEVIL: Could you give that reference
21 again, Ms. Tatro?

22 MR. LOWERY: 393.

23 MR. KEEVIL: Yeah. I got the 393. What's
24 the --

25 MS. TATRO: Point 2, 3C, C.

1 MR. KEEVIL: 2, 3C, c.

2 MS. TATRO: The C is in parens and then
3 the next C is not.

4 **THE WITNESS: Yes, I'm with you.**

5 **BY: MS. TATRO**

6 Q. Okay. And that -- the language
7 that's actually used in the statute is that lowest
8 securitized utility tariff charges consistent with
9 market conditions at the time. And when it says at
10 the time it's talking about when the bonds are
11 placed, right?

12 **A. Yes, that's my understanding.**

13 Q. So when you use the phrase lowest
14 cost that's actually what you mean?

15 **A. Yes.**

16 Q. 'Cause technically it's a slightly
17 different meaning, don't you think?

18 **A. Yeah. I believe the distinction**
19 **you're making is looking at market conditions at that**
20 **point in time and agree that it should be measured**
21 **based on the market conditions in effect at that**
22 **point in time.**

23 Q. It's not the lowest possible cost at
24 anytime, it's given the conditions that exist?

25 **A. Right. It -- it's based on that**

1 **point in time, that's right.**

2 Q. Okay. Perfect. Thank you. So now
3 if you go back to your testimony and turn to Page 15.
4 At Lines 2 to 4 you use the phrase finance team and
5 you define that. But that's not a phrase used in the
6 statute, is it?

7 A. No. The term finance team I don't
8 believe appears in the statute.

9 Q. Okay. So just to make sure I'm
10 clear. You're using that term to mean individuals
11 set forth in the statute that have a role in
12 providing advice to the Commission, would you agree
13 with that?

14 A. I believe that's the -- what you've
15 described is the basis for formation of a finance
16 team. And reference here to the finance team comes
17 from the draft financing orders that more explicitly
18 call out what the finance team would be.

19 Q. Okay. The statute -- lets -- lets
20 the Commission hire a financial adviser, which is
21 you, correct?

22 A. Commission or Commission Staff,
23 that's right.

24 Q. And you're a member of the finance
25 team?

1 **A. We're an adviser to the finance**
2 **staff.**

3 Q. You're an adviser to the Staff
4 representative that ultimately will provide their
5 opinion to the Commission; is that correct?

6 **A. I may need to take a step back. I**
7 **don't believe that the finance team has been formed**
8 **at this point in time so I think that would be, you**
9 **know, determined ultimately through what goes into**
10 **the financing order.**

11 Q. Fair enough. Would you expect there
12 to be a Staff representative on the financing team?

13 **A. Yes.**

14 Q. Okay. Let's turn back to Page 14,
15 Line 19. You were talking about Ameren Missouri's
16 proposed financing order. Let me know when you're
17 there.

18 **A. I'm there.**

19 Q. So it says the Commission has
20 authority to designate a representative or
21 representatives from the Staff to collaborate with
22 Ameren Missouri. That's in the statute, right?

23 **A. Sorry. I want to make sure. You're**
24 **on Page 14, Line 19?**

25 MR. WILLIAMS: Probably Line 9.

1 BY: MS. TATRO

2 Q. Yes. Line 9.

3 A. Line 9. Okay.

4 MS. TATRO: Thank you, Nathan.

5 THE WITNESS: Yeah. I'm with you now.

6 BY: MS. TATRO

7 Q. All right. And that comes from the
8 statute? Yes?

9 A. I'm reviewing the language here.

10 Q. Okay.

11 A. Give me one second.

12 Q. Sure.

13 A. So this actually comes from the
14 Ameren proposed financing order rather than from the
15 statute. I think the question is addressing what
16 Ameren proposed as part of the financial order.

17 Q. Okay. Exactly. Let's do that again.
18 I'm not -- so Ameren's proposed financing says the
19 Commission has the authority to designate a
20 representative. And you agree that that is from the
21 statute? It's consistent with the statute?

22 A. Consistent with the statute I think
23 better said.

24 Q. Fair. Next Ameren proposed financing
25 order says that neither the designated representative

1 from Staff nor financial officer -- financial
2 advisers, sorry, have the authority to direct how the
3 bonds are placed to market. And that is also
4 consistent with the statute?

5 **A. Correct.**

6 Q. Okay. Then it says that Ameren
7 Missouri proposed financing order says that the Staff
8 representatives and the financial advisers can attend
9 all meetings convened by the utility to address
10 placement of the bond to market. Would you agree
11 that's consistent with the statute?

12 **A. Yes.**

13 Q. Okay. And on Page 15 you list three
14 concerns with Ameren Missouri's proposed financing
15 order process? So if you would turn to Page 15,
16 please.

17 **A. I'm there.**

18 Q. So in the paragraph starting on Line
19 2 you take issue with the word review not being
20 included in the finance order. Now, you agree with
21 me the statute says that the finance -- well, it
22 doesn't say finance team. It says the Staff
23 representative has the right to provide input and the
24 right to collaborate with the utility -- provide
25 input to the utility and collaborate with the

1 utility; is that accurate?

2 **A. Yes. I believe the statute outlines**
3 **certain items and also provides flexibility for the**
4 **Commission to determine other items that it deems**
5 **appropriate that aren't inconsistent with the**
6 **financing order as part of the pre-issuance review**
7 **process.**

8 Q. Okay. Where do you find that
9 flexibility for me? Can you give me a statutory
10 citation?

11 **A. I believe it's 393.23(C)(O).**

12 Q. Include other conditions the
13 Commission considers appropriate?

14 **A. Yes.**

15 Q. So how do you interpret the word
16 conditions?

17 **A. I'm not a lawyer. I'm not**
18 **appropriately qualified to interpret what the statute**
19 **says.**

20 Q. Okay. Can you give me your
21 understanding? Because you just told me that that
22 portion is what you rely upon in order to add
23 additional language. So I just want to make sure I
24 understand what you think it means.

25 **A. That the -- I believe what the**

1 statute is getting at is providing flexibility for
2 the Commission to determine what it deems appropriate
3 as a part of the review process that's undertaken
4 prior to issuance of the bonds.

5 Q. You have a statute in front of you?

6 A. Yes.

7 Q. Can you look at the portion that you
8 just cited to me, do you have that?

9 A. Yes.

10 Q. So the condition right before it
11 says, an outside date which shall not be earlier than
12 a year after the date the financing order is no
13 longer subject to appeal when authority to issue
14 securitized utility tariff bonds granted in such
15 financing order shall expire, right? That's a
16 condition, yes?

17 A. Yes.

18 Q. And what -- and the paragraph before
19 that talks about treatment of ADIT, correct?

20 A. Yes.

21 Q. And the paragraph before that talks
22 about the procedure that allows the electric
23 corporation to earn a return at the cost of capital
24 authorized from time to time. It's talking about how
25 things work, correct?

1 **A. Yes.**

2 Q. Conditions that have to be met?

3 **A. I believe that particular item covers**
4 **conditions that have to be met, that's right.**

5 Q. So how does the language in O modify
6 C, C? In your opinion, as you understand it.

7 **A. Look, I'm not a lawyer to interpret**
8 **that language. C, C indicates that there's findings**
9 **that need to be made, O provides the ability of the**
10 **Commission to impose other conditions that aren't**
11 **inconsistent with the section of the financing order**
12 **as they appear to be related. But again, coming from**
13 **a non-lawyer.**

14 Q. Okay. Fair enough. Let's talk about
15 your use of the word review in your testimony. I
16 think Page 15, Paragraph 2 you take issue with the
17 word review not being included in the finance order,
18 do you see that?

19 **A. Yes.**

20 Q. How is review different than
21 providing input to Ameren Missouri and the right to
22 collaborate with Ameren Missouri?

23 **A. The items may be related. My**
24 **understanding is past financing orders issued by this**
25 **Commission provided for the right to review as part**

1 of the process receiving information, having some
2 obligation of the utility to provide information for
3 the avoidance of doubt of making sure that the
4 finance team has the ability to fulfill its
5 responsibilities of providing input and collaborating
6 would, you know, in a lot of ways require information
7 to be provided directly to the finance team. I
8 believe that's something that the Commission's
9 ordered in past instances.

10 So I think removing that information could
11 be perceived as taking away a right that otherwise,
12 you know, may exist or at least historically was
13 expected to exist. So including that language in
14 this instance I think is helpful to not create any
15 type of expectation that there isn't a right to
16 review information that may be necessary in order to
17 provide input and collaborate.

18 Q. So you think the statute is unclear?

19 A. I think the revision to what's
20 proposed in the financing order creates unnecessary
21 ambiguity.

22 Q. But just to be clear, I just -- I
23 can't decide if this is form over substance or
24 whether you're trying to get something in addition to
25 the right to have input and to collaborate. So you

1 are just saying it's just clarification to make sure
2 that you -- that the Staff representative who's on
3 the financing team has the right to provide input and
4 the right to collaborate with the utility? It's not
5 intended as anything additional?

6 **A. I would say it's also important to**
7 **make sure that information is provided and made**
8 **available to the Staff representative to be able to**
9 **interpret the information and do -- fulfill its**
10 **responsibilities. It would be very difficult in**
11 **order to provide input and collaborate without**
12 **receiving information. But the fact patten of**
13 **changing an approach of something to something the**
14 **Commission's ordered in the past could be perceived**
15 **as changing the responsibility of the utility. And**
16 **for the avoidance of doubt I don't see value in**
17 **changing that past practice.**

18 **Q. So if the Commission order says we**
19 **think you already have the right to access these**
20 **documents through the statutory language and so we're**
21 **not changing the process we're just sticking to**
22 **statutory language would that not solve the problem?**

23 **A. I think it's better to stick with**
24 **what the Commission's ordered in the past and not**
25 **create ambiguity.**

1 Q. Okay. The third condition that you
2 talk about is you want the finance team's
3 responsibilities to commence when the financing order
4 -- I don't know why I'm losing my voice -- when the
5 financing order is issued regardless of when it
6 becomes non-appealable. Do you see that portion?
7 It's probably the next page over.

8 **A. Yes, I see it.**

9 Q. Okay. What work is -- is there work
10 that's required to be done during the time -- let's
11 assume for a moment that there's an appeal. Is there
12 work that's required to be done while that appeal is
13 pending and before you have a final and unappealable
14 order?

15 MR. KEEVIL: Excuse me, Judge. I would
16 object just for vagueness. When she says required,
17 is she talking about required by the Commission,
18 required by the 393.1700, required by some --
19 required by whom?

20 JUDGE CLARK: Ms. Tatro, would you
21 clarify?

22 MS. TATRO: Sure.

23 BY: MS. TATRO

24 Q. Required by the statute.

25 **A. I think it depends when Ameren is**

1 looking to commence its process. If Ameren is
2 looking to commence the SEC review process and draft
3 SF-1's and have those ready to go immediately upon
4 the financing order becoming non-appealable or if
5 they're looking to commence the rating agency process
6 or other lead time -- long lead time items in advance
7 of the financing order becoming non-appealable those
8 types of items are items that are important for the
9 finance team to be involved in. And in the event
10 that they develop without the finance team having the
11 authority to review those items it could create
12 irrevocable activity that the finance team's not able
13 to participate in. So those types of items, in the
14 event that Ameren is looking to commence its post
15 financing order, pre-issuance process before the
16 order becomes non-appealable, having the flexibility
17 in order to do that could be valuable.

18 Q. Okay. If Ameren Missouri doesn't
19 start that -- any of that SEC work until after
20 there's a final and unappealable order are there any
21 such irrevocable decisions that you would have a
22 concern about?

23 A. I touched on the rating agency
24 process. The underwriter RFP is oftentimes something
25 that takes place relatively early in the process. So

1 various items that, you know, they're looking to
2 commence or if they're looking to enter into the
3 rating agency engagement letters prior to engaging
4 with them, those types of items are important to make
5 sure are reviewed as part of that post financing
6 order, pre-issuance review process, you know, to name
7 a few.

8 Q. Okay. So you are not, with this
9 recommendation, seeking to force any type of
10 regularly scheduled meeting, you are seeking if
11 Ameren starts work on any of those types of documents
12 with the underwriters you want the finance team to be
13 able to be involved; is that fair?

14 A. Yes. If Ameren's seeking to commence
15 the process and commence items that typically would
16 require the finance team's review, those items should
17 be reviewed in advance of creating irrevocable
18 action -- or taking irrevocable action.

19 Q. Okay. Were you involved in the
20 Everygy securitization?

21 A. Yes.

22 Q. Do you know when the Everygy financing
23 order became final and unappealable?

24 A. Not offhand.

25 Q. Does November of '23 sound right?

1 **A. I'll take that subject to check.**

2 Q. Okay. Do you know when Evergy filed
3 its initial registration statement?

4 **A. Not offhand.**

5 Q. Do you know if it was before or after
6 the order became non-appealable?

7 **A. Not offhand.**

8 Q. Okay. Did you review the initial
9 registration statement that Evergy filed before they
10 filed it?

11 **A. I believe -- I believe I did and
12 Counsel did but I'd need to confirm.**

13 Q. Okay. So do you believe that there
14 was opportunity to provide input and collaborate?

15 **A. Yes. I believe there was the
16 opportunity to do it but it's unclear whether or not
17 there was an explicit obligation of the utility to
18 engage with the finance team and so creating that
19 explicit obligation could be beneficial.**

20 Q. Okay. So you're not alleging that
21 Evergy kept the finance team out of any of its
22 conversations you just want to make it explicit in
23 the order?

24 **A. Correct.**

25 Q. And nothing further? You're not

1 attempting to create some type of process?

2 JUDGE CLARK: Would you define what you
3 mean by create some kind of process, create what?

4 BY: MS. TATRO

5 Q. Let me just ask a different way. I
6 guess the concern that I have as I look at this is I
7 think the Company is willing -- and we said in our
8 opening statement the Company was willing to share
9 this information with you, we didn't have an issue
10 with changing it so that we work with the finance
11 team for work that happens before the order is final
12 and unappealable. What I'm trying to get from you is
13 to ensure that there are -- we're also not looking
14 for make work. So if Ameren hasn't started drafting
15 the SEC registration statement we don't need to have
16 a meeting to say to you we're not doing anything yet;
17 is that fair?

18 A. Right. The intent of this language
19 was to ensure that the process -- the irrevocable
20 action does not take place is at least, you know,
21 with respect to my testimony, what I was trying to
22 get at, not to create incremental standing meetings
23 when there's not a need for them.

24 Q. Okay. Thank you. I want to talk to
25 you a little bit about the issuance advice letter.

1 You're familiar with those?

2 **A. Yes.**

3 Q. And you're familiar with the ones
4 that have been issued here in Missouri for Evergy and
5 Liberty?

6 **A. Yes.**

7 Q. The Office of the Public Counsel
8 suggests that the issuance advice letter should
9 include a comparable securities pricing analysis. Do
10 you know what a comparable securities pricing
11 analysis means?

12 **A. I think it could be interpreted a lot
13 of different ways. But oftentimes we'll look at
14 comparative pricing when going through the issuance
15 process. And I do think it's appropriate to look at
16 comparative pricing when going through an issuance
17 process.**

18 Q. Is it typically part of the issuance
19 advice letter?

20 **A. No. I haven't seen that before.**

21 Q. Would you say that -- you have not
22 seen that before, is that what you just said?

23 **A. Outside of what was provided in
24 Public Counsel's testimony, that's correct.**

25 Q. Okay. OPC's witness also recommends

1 that the certification letter be made public or at
2 least partially public. Were you here when Ameren
3 Missouri witness Katrina Niehaus testified?

4 **A. Yes.**

5 Q. Do you have any reason to disagree
6 with any of the reasons that she gave as to why that
7 letter should not be made public or even partially
8 public?

9 **A. No. I agree with the statement that**
10 **she made that there is risk, although there -- you**
11 **know, it sounds appealing to provide this type of**
12 **information publicly there is risk that it could**
13 **defer participation of underwriters and the process**
14 **could, you know, be additive to the overall cost of**
15 **the process and viewed detrimental to the issue --**
16 **the ultimate issuance of price received through the**
17 **issuance process. I don't disagree with the**
18 **statements that she made.**

19 Q. Thank you. So now I'd like to talk
20 about Staff's proposed financing order which you said
21 you also have a copy of. Were you involved in the
22 drafting of this document?

23 **A. I reviewed and provided comments on**
24 **the materials -- or on the financing order.**

25 Q. Okay. Could you turn to Page 8,

1 please?

2 **A. Okay.**

3 Q. Let me pull my copy. Sorry.

4 Paragraph 16.

5 **A. Okay.**

6 Q. Would you agree with me that there
7 will be incremental income taxes associated with the
8 return?

9 MR. KEEVIL: Paragraph what, Ms. Tatro?

10 MS. TATRO: Sixteen.

11 MR. KEEVIL: Sixteen.

12 MS. TATRO: It just talks about the WAC
13 there.

14 MR. KEEVIL: Oh, the WAC, okay.

15 **THE WITNESS: Sorry, I don't follow your**
16 **question.**

17 **BY: MR. LOWERY**

18 Q. Do you agree with me that there will
19 be incremental income taxes associated with the
20 return that Ameren Missouri earns on the securitized
21 bond?

22 **A. So taxes are better addressed with a**
23 **different Staff witness.**

24 Q. Okay. Now, at the -- all right.

25 Let's go to Page 10. By the way, do you know what

1 Staff witness would be the person to talk to about
2 that?

3 **A. I believe it's Staff witness Majors.**

4 Q. Okay. Page 10, Paragraph 23.

5 **A. Okay.**

6 Q. It has a restriction about the
7 administrative fees not exceeding \$50,000, you see
8 that?

9 **A. Yes.**

10 Q. Do you know if that's per tranche or
11 if that's for the overall financing?

12 **A. I believe that's for the overall
13 financing.**

14 Q. Okay. Page 27.

15 **A. Okay.**

16 Q. Paragraph 14.

17 **A. I'm there.**

18 Q. Can you give me an example of when a
19 non-standard true-up provision would be needed?

20 MR. KEEVIL: I'm going to object, Judge.
21 Mr. Davis has already testified he did not draft
22 this. I have already explained that in the event
23 that there is a conflict between Staff's evidence and
24 testimony on this issue with the provisions in this
25 proposed order that the evidence that's been

1 previously presented shall control.

2 I don't understand why she feels it's
3 necessary -- this is like if I was to inquire of Mr.
4 Sagel as to, you know, Ms. Tatro's motion to do
5 something or another. She's inquiring of a financial
6 witness regarding a legal document that was -- it's
7 not even a document. It's a proposed document, it's
8 not even a document. And there's a provision in
9 there, like I said, that to the extent there's
10 something in here conflicting because it's --
11 whatever it is, it's 72 pages long. There could be a
12 conflict in here between something that some other
13 witness testifies to and what's in here. And now
14 she's --

15 JUDGE CLARK: Mr. Keevil.

16 MR. KEEVIL: Yes.

17 JUDGE CLARK: I believe that it's pretty
18 clear that this is not the Commission's financing
19 order and I believe that it's fairly clear that this
20 is Staff's proposed financing order. I believe the
21 caveats you've laid down about differences between
22 any potential testimony are clear. On the other
23 hand, I also remember having some confusing about
24 what exactly a non-standard true-up provision was in
25 a previous proceeding. I'm going to continue to let

1 Ms. Tatro ask questions about general concepts in
2 there and maybe how those concepts are represented
3 there but I am aware that is not the Commission's
4 order and that this is just a proposed order
5 that's --

6 MR. KEEVIL: Well, Judge, there's -- the
7 true-ups are -- will be covered in a tariff, I
8 assume. So I believe that if a party were to have
9 tariff related questions such as true-up, such
10 questions should be directed towards -- to Staff's
11 tariff witness --

12 JUDGE CLARK: Well, why --

13 MR. KEEVIL: -- which is Mr. Davis.

14 JUDGE CLARK: Hold on. Ms. Tatro, what do
15 you want to know about non-standard true-up
16 provisions?

17 MS. TATRO: I will let non-standard
18 true-up provisions go if that bothers Mr. Keevil.
19 But what I would say is I find the statement that I
20 have a footnote that says if I got any of this wrong
21 you have to go back to Staff testimony is, A, I can't
22 believe we aren't trying to get the proposed order
23 correct; and B, I think that it only causes confusion
24 in the future. And confusion makes the whole bond
25 issuance problem -- process more problematic. So in

1 general I'm trying to gain some clarity around what
2 was intended. Now he -- Mr. Davis may not have
3 drafted this but he said he read it and provided
4 comments, he's familiar with it. So I think I have a
5 right to seek as to what his understanding was when
6 he gave advice back to Staff. That's what I'm trying
7 do.

8 JUDGE CLARK: And I will let you probe
9 into that to a degree.

10 MS. TATRO: Fair enough. Thank you.

11 BY: MS. TATRO

12 Q. I'm going to move on to Page --
13 Paragraph 60, I believe it's on Page 29.

14 **A. Okay.**

15 MR. KEEVIL: Now that's an issue that Mr.
16 Davis can address since it's dealing with finance
17 teams.

18 MS. TATRO: Great. Thank you.

19 MR. KEEVIL: See the difference?

20 JUDGE CLARK: Okay. I'm perfectly
21 agreeable if you all want to address me but there's
22 no reason for you to be addressing each other as
23 attorneys in this room not involving me.

24 MS. TATRO: Thank you, your Honor.

25 BY: MS. TATRO

1 Q. Mr. Davis, in Paragraph 20, about
2 two-thirds of the way down it talks about -- so the
3 designated representatives from Staff and the
4 financial adviser are permitted to attend all
5 meetings, participate in all calls, emails, and other
6 communications relating to the structuring,
7 marketing, pricing, and issuing of the securitized
8 tariff bonds, do you see that?

9 **A. Yes.**

10 Q. What about meetings -- so first of
11 all, the statute has a limitation, does it not? The
12 statute says it's meetings convened by the utility;
13 is that right?

14 **A. I believe the statute explicitly**
15 **calls out meetings convened by the utility but**
16 **doesn't, as we talked about earlier, constrain what**
17 **the Commission can order as part of its financing**
18 **order.**

19 Q. What about conversations between
20 Ameren attorneys and Ameren individuals who are
21 dealing with this bond process that might be
22 privileged, do you think that the Commission has the
23 ability to force Ameren Missouri to reveal privileged
24 conversations?

25 **A. Can you -- the hypothetical is**

1 difficult. Could you give me an example of a type of
2 communication you're referring to?

3 Q. Legal advice about what the statute
4 requires or what the financing order means.

5 A. I don't believe that would tie back
6 to the -- directly the structuring, marketing, and
7 pricing of the issuance, I'm not sure that this would
8 directly implicate that type of communication.

9 Q. If there was a privileged
10 conversation about structuring, marketing, or
11 pricing, would you agree that the privilege should be
12 protected?

13 A. I could see value. And I'd want to
14 think about that more and discuss it more with
15 counsel. But I could see value in maintaining the
16 ability of Ameren to have privileged communications.

17 Q. Might you have privileged
18 communications with the attorney advising the
19 Commission?

20 A. Yes.

21 Q. Would you want to maintain that
22 privilege?

23 A. Yes.

24 Q. Might the underwriter such as Ms.
25 Niehaus have a privileged conversation with a Goldman

1 Sachs attorney?

2 **A. Conceptually I don't disagree with**
3 **that.**

4 Q. Okay. And when you say you don't
5 disagree, I assume you mean you don't disagree it
6 should remain privileged?

7 **A. Right.**

8 Q. Okay. Let's talk a little bit about
9 the marketing, which is one of the items listed there
10 at the end of the sentence. Are you familiar with
11 the marketing process that the underwriters use with
12 these bonds?

13 **A. Yes.**

14 Q. Does the underwriter group take calls
15 from potential investors who ask questions about the
16 bond issuance?

17 **A. Yes.**

18 Q. Is it your understanding that the
19 finance team should be looped into all of those
20 calls?

21 **A. I think there's certain instances**
22 **where it may not be practical to involve the finance**
23 **team in any of those types of inbound calls to the**
24 **broad sales force against a syndicate of**
25 **underwriters. However, I've seen, in past instances,**

1 finance teams be able to work effectively and come up
2 with reasonable protocols on how to receive
3 information that's coming out of those types of
4 discussions to make sure that the finance team can
5 adequately and appropriately take on its
6 responsibilities without hampering or slowing down
7 the all-in process to the extent it's not feasible to
8 be on each of those individual calls.

9 Q. Okay. Great. I like that practical
10 answer. So there was process I believe in the
11 Liberty and Everyg orders where if something like
12 that happened it was reported back to the finance
13 team, there was a conversation that happened because
14 someone called in and gave some type of information.
15 Was that part of the process?

16 A. I don't -- I don't know that I'm able
17 to comment on past processes. But recommending -- or
18 proposing something like that in that instance
19 doesn't sound inappropriate.

20 Q. Okay. I think the problem here is
21 with the word all, right? You think there could be a
22 better descriptor that we could use to ensure that
23 things I have that are informational and would be
24 helpful to the finance teams are provided to them but
25 if Darryl Sagel sends an email does that mean every

1 email has to copy everyone on the finance team?

2 **A.** I could see it being appropriate to
3 early on in the finance team process establish
4 protocols on the way that the utility and
5 underwriters engage with various parties and follow
6 those protocols throughout the process. But I do
7 think that it's important that the Commission
8 authorizes the finance team and gives the finance
9 team the ability to participate in a way that allows
10 it to garner the information that it needs out of the
11 marketing process and make sure that information --
12 information makes its way back to the finance team
13 throughout the process.

14 **Q.** Okay. Great. Same page,
15 Paragraph 61.

16 **A.** Okay.

17 **Q.** So this paragraph talks about -- it
18 says that Ameren Missouri and the lead underwriter
19 provide a written certificate to the Commission and
20 it's supposed to certify four different things, do
21 you see those?

22 **A.** Yes.

23 **Q.** The first is that the bonds comply
24 with the financing order, the second's that the bonds
25 comply with other legal requirements, the third is

1 that issuance of the bonds provides quantifiable net
2 present value benefits, and the fourth is that the
3 bonds result in lowest securitized utility tariff
4 charges consistent with market conditions at the
5 time. Do you see that?

6 **A. Yes.**

7 Q. Is it typical, in your experience,
8 that underwriters certify legal questions?

9 **A. The under -- underwriter scope in my
10 experience typically informs the amount of
11 information that they certify to. So the scope of
12 their involvement informs what makes its way into the
13 certifications.**

14 Q. And if the underwriters have to
15 certify legal questions then inherently they're going
16 to involve their own attorneys to make that decision,
17 correct?

18 **A. Yes.**

19 Q. Do you think that impacts the cost?
20 And I mean cost of the underwriter of course.

21 **A. In isolation, it would certainly
22 impact the legal cost.**

23 Q. In the Evergy or Liberty cases, did
24 the underwriter certify that there was compliance
25 with all legal obligations?

1 **A. I don't recall offhand.**

2 Q. Okay. What about the net present
3 value calculation. Does the underwriter -- is the
4 underwriter the appropriate party, individual to be
5 certifying that the net present value calculation is
6 correct?

7 **A. I think the underwriter's work will**
8 **inform what the issuer puts in their certification**
9 **related to the NPV savings. So the information that**
10 **they're able to provide on the overall cost of the**
11 **financing and securitization elements of the**
12 **financing itself.**

13 Q. But the language in the statute
14 requires them to certify its -- to certify the NPV
15 calculation itself, doesn't it?

16 MR. KEEVIL: Again, Mr. Davis has said
17 he's not a lawyer, the statute speaks for itself. We
18 can all look it up after we get out of here.

19 MS. TATRO: This has nothing to do with
20 the statute. This is --

21 MR. KEEVIL: She just said the statute
22 says, does it not.

23 JUDGE CLARK: Mr. Keevil, I've asked you
24 engage with me, not her.

25 MR. KEEVIL: I said she said.

1 JUDGE CLARK: All right.

2 MS. TATRO: Perhaps --

3 JUDGE CLARK: What's your -- hold on.
4 Everyone stop. Mr. Keevil, what's your objection?

5 MR. KEEVIL: Is that the statute speaks
6 for itself.

7 JUDGE CLARK: Ms. Tatro, would you --
8 would you reinform me what your question was?

9 MS. TATRO: Yes. My question was is it
10 appropriate for the underwriter to certify that the
11 quantifiable net present values benefit.

12 JUDGE CLARK: Mr. Davis, are you an
13 underwriter?

14 **THE WITNESS: No.**

15 JUDGE CLARK: Do you ever act as an
16 underwriter?

17 **THE WITNESS: No.**

18 JUDGE CLARK: Is that a question you can
19 answer?

20 **THE WITNESS: No.**

21 MS. TATRO: May I rephrase the question?

22 JUDGE CLARK: Yes, you may.

23 BY: MS. TATRO

24 Q. In your experience, have you seen an
25 underwriter certify the quantifiable net present

1 value benefit?

2 **A. I'd have to go back and look at**
3 **certifications that we've received. I don't know**
4 **offhand.**

5 Q. Okay. I have no further questions.
6 Thank you.

7 JUDGE CLARK: Are there any questions from
8 Commission? I've just got just a few, few for you,
9 Mr. Davis.

10 EXAMINATION CONDUCTED

11 BY: JUDGE CLARK

12 Q. Now, you've been involved in two
13 Missouri Commission securitization cases, correct?

14 **A. That's right.**

15 Q. Were there any differences in the
16 timing of Staff's involvement in those two cases? Or
17 shall I say the finance teams involved?

18 **A. I believe it was very similar in both**
19 **instances. My recollection is at least one of the**
20 **processes kicked off before the financing order**
21 **became non-appealable prior to appeals coming in.**
22 **But outside of that I think it was very similar in**
23 **terms of the involvement of Staff.**

24 Q. Did the, as you said, little
25 differences between those two impact the finance

1 team's ability to contract and provide impact --
2 input?

3 A. No. I think there was sufficient
4 engagement from the utilities and at least enough --
5 given the nature of the utilities in those instances
6 enough specification in the financing order and
7 willingness to work collaboratively together that the
8 finance team was able to fulfill its obligations
9 through the process with those slight differences.

10 Q. Bear with me with for just a moment. What
11 is different between these two statements as outlined
12 in Issue 1D, the size, selection process,
13 participants, allocation, and economics of the
14 underwriter and any other member of the syndicate
15 group compared to the selection process for the
16 underwriters including with respect to allocation and
17 economics?

18 A. Bear with me one second, I'm just
19 flipping to the issue list. Okay. So the difference
20 between the two is the inclusion of the word size and
21 the word participants that I believe are missing from
22 the proposed financing order that was put out by
23 Ameren relative to the prior financing orders. Size
24 I would think of as the number of underwriters that
25 are participating in the process. So whether or not

1 you have a single lead underwriter or multiple lead
2 underwriters, effectively the number of underwriters
3 that are involved in the process is important.
4 Oftentimes we'll go through and look at relative
5 comps and we'll ask underwriters, as part of the RFP
6 process as everybody's trying to win this business
7 how big of a team do you need in order to get the
8 best execution and achieve the lowest cost on this.
9 So having information -- or having the ability to
10 inform the process based on the appropriate number of
11 underwriters to be involved in the issuance process
12 is helpful and not explicitly outlined in here and a
13 notable change from the prior two financing orders
14 this Commission has approved.

15 The participants would be the individual
16 participants themselves, right. Who participates in
17 the process, who the utility goes out to to receive
18 protocols. So are they going out to a narrow
19 universe of potential banks to get feedback, are they
20 going out, you know, very broad to Wall Street? And
21 we found in many processes that we've been a part of
22 going out to a broad part -- broad portion of the
23 market and asking for feedback around how do we best
24 achieve this structure marketing and pricing of this
25 issuance, what are the different things that you

1 recommend. While each of these banks are competing
2 to win the business getting that information from a
3 broad universe of underwriters is helpful because we
4 can then take that back, as part of the finance team
5 review process and recommendations that are made by
6 the selected underwriters, and compare it, here's
7 what all of Wall Street thought we should do for this
8 particular issue, here's what's recommended by the
9 lead underwriters for the particular issue.

10 And so having the benefit of making sure,
11 you know, we've got a broad group, we've got the
12 right group, and we've gone out to the right
13 institutions that are active in this market and not
14 just institutions where there's a relationship or
15 otherwise where the utility is engaged in the past
16 but going out broadly to the folks that are most
17 active in this market is helpful in garnering
18 information that we can then use through the finance
19 team review process.

20 So those two differences, the number of
21 underwriters and the particular underwriters that
22 participate is what we're trying to get out with that
23 language.

24 Q. So you believe that difference is
25 significant?

1 **A. Yes. I think it's very important to**
2 **make sure that the finance team has the ability to be**
3 **involved in those aspects of the process. It's**
4 **unclear if Ameren was intending to remove those items**
5 **but it's notably different than past financing orders**
6 **and I believe it's important that those similar --**
7 **that those same protections are in place in this**
8 **finance order.**

9 **Q. Thank you. Now, you remember right**
10 **before me Ameren's attorney Ms. Tatro was asking you**
11 **questions, right?**

12 **A. Yes.**

13 **Q. And during one of those questions**
14 **when she asked you, in answer you said I'm still**
15 **reviewing, correct?**

16 **A. Yes.**

17 **Q. And what were you doing then?**

18 **A. Reading the language that I believe**
19 **you were referring to. When I was referencing, I**
20 **believe my testimony, looking for the language that**
21 **she was looking for.**

22 **Q. Do you believe that you could have**
23 **answered her question without reviewing that**
24 **document?**

25 **A. I was looking for context of what she**

1 was asking before answering. So I typically like to
2 have the benefit of the context.

3 Q. Do you believe that you could
4 collaborate in the post financing order process if
5 you did not review all documentation that was not
6 privileged?

7 A. Oh, sorry, Judge. I thought you were
8 referring to something totally different when she
9 asked me to find the language within my testimony.
10 So the review process itself, in terms of making sure
11 that the finance team receives information that it
12 can review as part of finance team review is
13 incredibly important. I don't think that without
14 receiving information that can be reviewed, that the
15 finance team can be fully effective through the
16 process and provide the input and collaboration that,
17 you know, is necessary in order to fulfill the role
18 of the finance team. So receiving information that
19 can be reviewed is important to the overall process.

20 Q. Okay. Do you believe you could
21 collaborate as part of the finance team if you didn't
22 review documentation?

23 A. I think it would be difficult and
24 ineffective.

25 Q. It's been implied that review is

1 inconsistent with the statutory language of 393.1700.

2 Do you believe that reviewing is inconsistent with
3 collaborating?

4 A. No. I think it's entirely consistent
5 with it as a concept. In order to collaborate it's
6 important to have all the information, right, receive
7 information, have all the information that all
8 parties are looking at, being able to review and
9 digest that information, prepare questions and be
10 prepared to engage on any particular topic. So I
11 think the two concepts go very closely hand in hand.
12 I think it's helpful to have it spelled out in the
13 finance team -- finance team process and the finance
14 order that in the finding of facts that the finance
15 team has the ability to do that, to review
16 information, to make sure that it engages
17 appropriately with the utility and has the necessary
18 authority to engage with the utility and receive
19 information because I think it'll make the process
20 more effective. But, you know, I think you could
21 provide input and collaborate, you know, better with
22 more information.

23 Q. Do you believe that using the term
24 review provides any additional rights such as the
25 right to approve or veto anything?

1 **A. I'm sorry, Judge, can you repeat that**
2 **question?**

3 Q. Do you believe that the word review
4 infers any right to do anything such as approve or
5 veto something?

6 **A. No, I don't -- I don't believe using**
7 **the -- having the right to review something implies**
8 **that veto right.**

9 JUDGE CLARK: Any re-cross based upon
10 Commission questions? Or in this case Bench
11 questions.

12 MS. TATRO: No, your Honor.

13 JUDGE CLARK: Any re-direct?

14 MR. KEEVIL: Very quickly.

15 EXAMINATION CONDUCTED

16 BY: MR. KEEVIL

17 Q. Staying on this topic of finance team
18 and -- are you asking the Commission in your
19 testimony to order anything in regard to the duration
20 or duties or operation of the finance team which the
21 Commission did not order in the previous two Missouri
22 financing cases with which you've been involved?

23 **A. The only difference from what the**
24 **Commission authorized in the past to what's proposed**
25 **in the current draft of the financing order is**

1 providing clarity over the finance team's role being
2 able to commence prior to the order becoming
3 non-appealable. Other than that the right to appeal
4 and the underwriter selection process are both
5 identical as proposed here to what was authorized by
6 the Commission in the prior financing orders.

7 Q. If I could briefly turn your
8 attention to the Office of the Public Counsel witness
9 Murray's proposed post financing order process. Mr.
10 Murray, as I understand it, wants virtually
11 everything filed publicly. Is that your
12 understanding? I did say virtually so I'm kind of --
13 let me ask you this way. What is your understanding
14 of Mr. Murray's recommendations regarding the post
15 financing order process?

16 A. My understanding is he's suggesting
17 including incremental information on pricing of
18 certain other issuances in the issuance advice letter
19 and he's seeking certifications and letters delivered
20 from Staff's financial adviser to Staff and from the
21 underwriters to the issuer to be public or filed in
22 some redacted form rather than confidential.

23 Q. Do you have a contract that covers
24 items such as those with Staff or the Commission?

25 A. Yes.

1 Q. And did you have certain -- based on
2 previous experience with Missouri finance cases, did
3 you have certain expectations regarding the
4 confidentiality and privilege of communications
5 pursuant to the contract?

6 **A. Yes.**

7 Q. Do you believe that in midstream or
8 actually rather far down the stream at this point we
9 should be altering the confidentiality and privilege
10 nature of those negotiated for expectations?

11 **A. No.**

12 Q. If the Commission was to agree
13 theoretically with some of what Mr. Murray has
14 proposed, do you believe it should be done in a
15 current proceeding or done in future proceedings? In
16 other words, I mean, after we have a contract we have
17 expectations, we have a track record. If you want to
18 -- if Mr. Murray, and the Commission agrees with Mr.
19 Murray, wants to change the way things are done,
20 change the way the Commission's regulation on
21 confidentiality is interpreted and applied, make
22 changes regarding the contract, the regulation, is
23 that something that you would be -- expect to see
24 done after the fact? I mean, during -- you've
25 already contracted to do this. Is now the time to do

1 it or is -- do it in the future?

2 A. Right. I believe it -- any type of
3 -- one, I don't recommend or propose any type of
4 change, I think it could be detrimental to the
5 process and ultimately the cost of the process. But
6 two, if the Commission were to -- and Commission
7 Staff were to change the approach on this I think
8 it's something that should take place in advance
9 rather than, you know, following -- entering into
10 contracts and being as far as along in the process as
11 we are.

12 Q. Thank you.

13 MR. KEEVIL: No further questions.

14 JUDGE CLARK: Thank you. I've got one
15 real quick. I don't think it will trigger any
16 re-cross or re-direct but I will still leave those
17 options open for people.

18 EXAMINATION CONDUCTED

19 BY: JUDGE CLARK

20 Q. Does your firm typically track the
21 documents it's reviewed during the structuring and
22 marketing and pricing phase?

23 A. I'm digesting the word track. But we
24 certainly keep a close eye on the documents that we
25 receive, we review those -- the documents that we

1 receive. Some information's received in written
2 form, a lot of information is received in verbal form
3 as well. Those could be discussions with the
4 underwriters, discussions with the traders, investor
5 presentations, you know, small group presentations,
6 various engagement with the investor community that,
7 you know, we don't -- it wouldn't be practical,
8 right, during the pricing process to track the detail
9 of those discussions. But we typically monitor the
10 various, you know, work strains that we work through
11 the process to ensure that we're completing an
12 adequate review.

13 JUDGE CLARK: Thank you. Any re-cross
14 based upon that question?

15 MR. WILLIAMS: I think a question or two.

16 JUDGE CLARK: Go ahead, Mr. Williams.

17 EXAMINATION CONDUCTED

18 BY: MR. WILLIAMS

19 Q. Judge Clark just asked you about
20 tracking, I believe information that you receive in
21 various forms. Do you create any kind of an audible
22 -- auditable trail?

23 A. So I want to be careful in terms of
24 the confidential nature of letters that we would
25 provide in certain instances. But in the event that

1 we were providing a letter, one of the things that we
2 would include in those letters would likely be, you
3 know, the type of work streams that we completed as
4 part of the process.

5 Q. Well, I think the point of the
6 tracking would somebody be able to come back,
7 including perhaps you, after the fact and look at
8 what had been reviewed, is that something that can or
9 cannot be done?

10 A. I'd need to come back to you on that.
11 Typically we'll receive various, you know, documents,
12 we'll go through a process, make sure that the
13 various items that are spelled out for us within the
14 financing order are completed as part of the review
15 process. But in terms of individual documents,
16 different drafts of documents, which versions of
17 drafts would have been appropriately received,
18 replacement drafts, that type of information, there's
19 not a tracker, if you will, that goes through and
20 says for each individual document here is the review
21 that took place of those. You know, going through
22 the process we'll go through, you know, step by step
23 each element of the process and so items will get
24 reviewed as part of our overall review process. But
25 in terms of, you know, a specific tracker or document

1 that tracks those that's not something that we could
2 provide.

3 Q. Let me try again. When you say you
4 couldn't provide it, it's not something you can
5 create after the fact, is that what you're saying?

6 A. Sorry. It's not something that
7 exists in the type of form that I believe you're
8 referring to.

9 Q. All I'm getting at is whether or not
10 somebody could -- you have information that somebody
11 could look at what it was that you reviewed in order
12 to render your opinions, do your work after you'd
13 done the work, however that's accomplished? I
14 believe that's what the Judge was after.

15 A. Yeah. And maybe this is responsive
16 in re-direct, maybe it's not. But information that
17 we rely on as part of our work, information that we
18 receive that informs our overall, you know, process
19 and letter that we would deliver to Staff is
20 something that we would enumerate in terms of --
21 there's probably subcategories to that, right, in
22 terms of, you know, different drafts a day. You
23 know, call it an indenture, right, if you received
24 five different drafts, did you just review the final
25 version, did you review, you know, iteration, you

1 know, two and three, those types of items I don't
2 have a particular tracker for, if you will.

3 Q. Thank you.

4 JUDGE CLARK: Thank you. Any further
5 re-cross? Any re-direct?

6 EXAMINATION CONDUCTED

7 BY: MR. KEEVIL

8 Q. Mr. Davis, if you were to be ordered
9 to do that which Mr. Williams and Judge Clark just
10 queried you about, going back, recreating lists of
11 things and tracking what you've previously reviewed,
12 would that have any impact on your cost?

13 A. I don't know that it would impact the
14 overall -- overall cost outside of, you know, to the
15 extent we needed legal review or other third party
16 review of that type of work product. I don't know
17 otherwise that it would be additive to the overall
18 cost.

19 Q. In this -- in the industry in which
20 you work, is there a lot of free time between when
21 you review things and when decisions on them must be
22 made?

23 A. No. The market -- and very good
24 question. The market moves extremely quickly within
25 our space, especially as part of the most dynamic

1 element of this process. Going through the pricing
2 process moves extremely quickly, information and
3 decisions are made with very short periods of time,
4 very short window to digest information. So
5 preparation is important to it but also you receive a
6 lot of information, you know, from the underwriters,
7 from the traders, from information coming out of
8 feedback from investors that need to be reacted to in
9 a very short period of time in order to make sure
10 that reactions occur while investors are still
11 engaged and that there isn't, you know, some
12 unnecessary delay during the pricing process that
13 could adversely impact investor demand and could
14 cause people to lose interest or start to focus on
15 other transactions that may be coming to market at
16 the same time or maybe in market. So engaging
17 quickly is certainly an important element of our
18 process especially as parts of the pricing process.

19 Q. So you wouldn't have time to sit down
20 and make a list of everything you just discussed on
21 the phone with somebody so you could send that to Mr.
22 Williams later on to make sure he got all the
23 information he needs?

24 A. That's right. It would be incredibly
25 impractical. I think it would create a ton of

1 frustration for the underwriters going through the
2 issuance process as well and the investors. And I
3 think in doing that, if we slowed down the process to
4 transcribe each of these discussions that we had with
5 various traders, underwriters, parties involved in
6 the process it could be disruptive to the overall
7 pricing. And, you know, anything that does that,
8 that slows down the process and risks outcome versus
9 result for customers, to log the information, I don't
10 -- I wouldn't recommend as part of a pre-issuance
11 post financing order process.

12 Q. Thank you. No further questions.

13 JUDGE CLARK: May this witness be excused?
14 Have any objections? Hearing none. Thank you for
15 your testimony, Mr. Davis.

16 **THE WITNESS: Thank you.**

17 JUDGE CLARK: And you're excused. Okay.
18 We have now, in the course of this case, taken three
19 witnesses out of order so let's see if we can get
20 back on to our original plan and move forward. So I
21 believe the next witness is Ameren's witness Sagel.

22 MS. TATRO: Yes.

23 JUDGE CLARK: If you would like to call
24 your witness.

25 MS. TATRO: Call Darryl Sagel to the

1 stand.

2 JUDGE CLARK: Mr. Sagel, when your hands
3 are empty would you raise your right hand to be
4 sworn.

5 * * * * *

6 DARRYL T. SAGEL,

7 The witness, having been first duly sworn
8 upon his oath, testified as follows:

9 * * * * *

10 JUDGE CLARK: Thank you. You may be
11 seated. Amen.

12 MS. TATRO: And Mr. Sagel had testimony on
13 the DOE loan issue which we're now not taking up for
14 hearing so I'd go ahead and move that into the
15 record. Is that appropriate?

16 JUDGE CLARK: Are there any objections? I
17 don't -- no. We've got Mr. Sagel up here and we have
18 done enough out of order, I don't see that this is
19 going to be a problem either. So are there any
20 objections to taking Mr. Sagel's testimony onto the
21 record as an exhibit? And do you have an exhibit
22 number for that?

23 MS. TATRO: I believe it's 21.

24 MR. KEEVIL: Did he have separate
25 testimony for that versus what he's on the witness

1 stand for?

2 MS. TATRO: He does not. He does not have
3 testimony on this finance process. We're making him
4 available for Commission questions or I guess --

5 MR. KEEVIL: So he does not have testimony
6 on the issue on which he's on the stand right now?

7 MS. TATRO: Right. We did not have a
8 specific witness on that issue so we said we would
9 make him available so that there was a Company
10 witness that could answer those questions.

11 JUDGE CLARK: I'm a little confused just
12 for the moment. I'm going to back up just for a
13 second.

14 MS. TATRO: Yeah.

15 JUDGE CLARK: When you said to answer
16 Commission questions. I don't believe the Commission
17 had any questions yet. These are witnesses that
18 you're putting on for your issues. So this is an
19 issue. Are you saying there's no testimony on the
20 issue?

21 MS. TATRO: He does not have pre-filed
22 testimony on the issue on the question that we're
23 here today.

24 JUDGE CLARK: Okay. Is he going to
25 offering live direct testimony on that?

1 MS. TATRO: He is not. We are putting him
2 up to be able to answer questions because we -- Ms.
3 Niehaus --

4 JUDGE CLARK: So he's up for cross?

5 MS. TATRO: Yeah, absolutely.

6 JUDGE CLARK: That's all I wanted to
7 clarify. Thank you.

8 MS. TATRO: Trying to be helpful and maybe
9 it was not. I apologize.

10 JUDGE CLARK: No. No. You are being
11 fine, Ms. Tatro. So when I don't understand
12 something I will ask about it.

13 MS. TATRO: Perfect.

14 JUDGE CLARK: So let's get back to my
15 original question which is in regards to -- and it is
16 Exhibit 5, is that what we're looking at?

17 MR. LOWERY: I thought it was 21.

18 MR. WILLIAMS: I see 5.

19 MS. TATRO: Oh, it's 5. Yes. I don't
20 know. Five. It's right. Sorry.

21 JUDGE CLARK: Okay. Exhibit 5 is the
22 surrebuttal testimony of Darryl Sagel. Are there any
23 objections to admitting Ameren's Exhibit 5 onto the
24 hearing record?

25 MR. KEEVIL: I just want to make sure

1 Exhibit 5 has to do with the DOE loan issue only?

2 MS. TATRO: That's correct.

3 MR. KEEVIL: Okay. No objection.

4 MR. WILLIAMS: No objection.

5 JUDGE CLARK: Mr. Coffman?

6 MR. COFFMAN: No objection.

7 JUDGE CLARK: Hearing no objection,
8 Exhibit 5, Darryl Sagel's surrebuttal testimony, is
9 admitted onto the hearing record. And go ahead, Ms.
10 Tatro.

11 MS. TATRO: Well, Mr. Sagel's available
12 for cross on Issue 1.

13 MR. KEEVIL: You brought him in for the
14 Commission. We have -- the parties apparently have
15 no questions for Mr. Sagel.

16 JUDGE CLARK: Well, we're going to find
17 out. All right. Any questions from AARP?

18 MR. COFFMAN: No questions?

19 JUDGE CLARK: And I assume that's the same
20 for Consumer Council, correct?

21 MR. COFFMAN: Correct.

22 JUDGE CLARK: Any cross-examination
23 questions from the Commission Staff?

24 MR. KEEVIL: No.

25 JUDGE CLARK: Any cross-examination from

1 the Office of the Public Counsel?

2 MR. WILLIAMS: Not at this time.

3 JUDGE CLARK: Any Commission questions?

4 CHAIR HAHN: Yes. Thank you, Judge.

5 EXAMINATION CONDUCTED

6 BY: CHAIR HAHN

7 Q. Good afternoon.

8 **A. Afternoon.**

9 Q. Earlier today I incorrectly asked Mr.
10 Lansford a question but I think you might be the most
11 appropriate person given his response. In Mr.
12 Murray's surrebuttal testimony he suggested a
13 4.05 percent interest rate for traditional rate
14 making for the net present value calculation which he
15 stated was Ameren Missouri's imbedded cost of debt as
16 of December 2023. Do you know what is the oldest and
17 most recent debt issuance included in this imbedded
18 cost of debt? You know when were they issued, for
19 example? I'm trying to establish the range --

20 **A. Sure.**

21 Q. -- of interest rates.

22 **A. Yes. Unfortunately I don't know the**
23 **oldest issuance but that would go back decades.**
24 **Because typically we issue Ameren Missouri debt, you**
25 **know, up to 30 years in tenor. I believe there's**

1 roughly 20 securities within that imbedded cost of
2 debt portfolio. The most recent issuance was in
3 March of 2023. That was done at a coupon rate of
4 5.045 percent.

5 I would mention -- this is just, you know,
6 additional information. But since the time that that
7 imbedded cost of debt calculation was performed
8 Ameren Missouri has priced two additional securities
9 in 2024, one in January of 2024, a \$350 million 30
10 year first mortgage bonds at 5.25 percent coupon and
11 in March \$500 million of 10 year first mortgage bonds
12 at 5.20 percent. Those are not included in the
13 imbedded cost of debt calculations that you
14 referenced but it gives you an indication of where
15 current markets are relative to our historical
16 imbedded cost of debt.

17 Q. That was very helpful. Thank you.

18 A. Sure.

19 JUDGE CLARK: Are there any other
20 Commission questions? I hear none. I have no
21 questions for this witness. Are there -- is there
22 any re-cross based upon Commission questions? Any
23 re-direct?

24 MS. TATRO: No re-direct. Thank you.

25 JUDGE CLARK: Is there any reason to not

1 excuse this witness? Mr. Sagel, thank you for your
2 time. You may step down.

3 **THE WITNESS: Thank you.**

4 JUDGE CLARK: Next witness I see is Public
5 Counsel's. Public Counsel, you may call your
6 witness.

7 MR. WILLIAMS: Public Counsel calls David
8 Murray.

9 * * * * *

10 DAVID MURRAY,

11 The witness, having been first duly sworn
12 upon his oath, testified as follows:

13 * * * * *

14 JUDGE CLARK: Please be seated. Go ahead,
15 Public Counsel.

16 EXAMINATION CONDUCTED

17 BY: MR. WILLIAMS

18 Q. Please state your name.

19 **A. My name is David Murray, last name**
20 **spelled M-U-R-R-A-Y.**

21 Q. By whom are you employed and in what
22 capacity?

23 **A. Missouri Office of the Public Counsel**
24 **as a utility regulatory manager.**

25 Q. Mr. Murray, did you prepare testimony

1 that's rebuttal testimony that's been pre-filed in
2 this case and marked -- or will be Exhibit 201?

3 **A. Yes.**

4 Q. And is there a schedule to that
5 testimony DM-R-1?

6 **A. Yes.**

7 Q. Did you also prepare and cause to be
8 pre-filed surrebuttal testimony?

9 **A. Yes.**

10 Q. And that's been marked for
11 identification -- well, that will be marked for
12 identification as Exhibit 202. Are there schedules
13 to that surrebuttal testimony?

14 **A. Yes.**

15 Q. Are those Schedules DM-S-1 to DM-S-3,
16 corrected Schedules DM-S-4 to corrected Schedule
17 DM-S-7 and Schedules DM-S-8 and 9?

18 **A. Yes.**

19 Q. And as a result of those corrections
20 to your schedules to your surrebuttal testimony, have
21 you prepared an errata to your surrebuttal testimony?

22 **A. Yes, I have.**

23 Q. That's been circulated to the parties
24 in the Commission and it will be Exhibit 203.

25 JUDGE CLARK: I'm sorry, could you say

1 that again, please?

2 MR. WILLIAMS: There's an errata sheet
3 that has been circulated to the parties in the
4 Commission that would -- it should be Exhibit 203.
5 So there'll be Exhibit 201 which is David Murray's
6 rebuttal testimony, 202 which is his surrebuttal that
7 includes some corrected schedules, and his errata to
8 his surrebuttal which will be Exhibit 203.

9 BY: MR. WILLIAMS

10 Q. Mr. Murray, would you have any
11 further corrections to what are Exhibits 201, 202,
12 and 203 for them to be your testimony here today?

13 A. No. The errata sheet covers
14 everything.

15 Q. And you'll be up on other issues
16 later in this hearing, will you not?

17 A. Yes.

18 MR. WILLIAMS: So I'll forgo offering his
19 exhibits at this time. And with that, I'll tender
20 Mr. Murray for examination.

21 JUDGE CLARK: Mr. Coffman, is there any
22 cross-examination from AARP or Consumer Council of
23 Missouri?

24 MR. COFFMAN: No questions, your Honor.

25 JUDGE CLARK: Thank you. Any

1 cross-examination from Commission Staff?

2 MR. KEEVIL: Yes. Didn't realize I was up
3 already.

4 JUDGE CLARK: Well, there were a lot of
5 parties here but most of them have very isolated
6 interest and so the vast majority of them were
7 excused.

8 MR. KEEVIL: Since Mr. Williams correctly
9 didn't offer Mr. Williams -- excuse me, I said that
10 backwards. As Mr. Williams correctly didn't offer
11 Mr. Murray's testimony into the record I didn't get a
12 chance to do this. But I would like to voice an
13 objection to Mr. Murray's surrebuttal testimony.
14 When the time comes for you to rule on that I may not
15 be the one that's here so I wanted to put it on -- I
16 wanted to raise the objection now so it can be ruled
17 upon later.

18 I would object to -- from Pages 12 through
19 the end of the testimony -- the section on issuance
20 advice letter and post financing order issues, I
21 believe are, number one, irrelevant to this case as
22 they deal primarily with the Empire case and the
23 Everygy case and they're also constitute improper
24 surrebuttal because they all -- contained therein are
25 new recommendations of Mr. Murray for this case which

1 is -- it could -- it should have been raised earlier
2 in the case. And related to those pages of the
3 testimony would be Exhibits -- or whatever he's
4 calling them -- DM-S-9 -- 8 and DM-S-9.

5 JUDGE CLARK: Now, you had said the
6 issuance advice on Page 12 till the end of his
7 testimony concerning the issuance advice letter and
8 what else?

9 MR. KEEVIL: Well, he -- I'm not saying
10 they actually deal with that. He has that section of
11 testimony titled issuance advice letter and post
12 financing order issues. I just think that whole
13 entire section should be stricken.

14 JUDGE CLARK: And that is separate and
15 apart from Ameren's motion to strike portions?

16 MR. KEEVIL: Right. Right.

17 JUDGE CLARK: So this is -- you're
18 objecting to the admission of it or you're moving to
19 strike those portions?

20 MR. KEEVIL: Either one. Give me either
21 one, I'll take it.

22 JUDGE CLARK: Okay. I'm not going to rule
23 on that now obviously since it's not time for it to
24 come in.

25 MR. WILLIAMS: Judge, I'm unclear as to

1 the basis of the objection.

2 JUDGE CLARK: Well, he's saying that the
3 objection is -- he's basically listed two reasons for
4 the objection. One is he says the information is
5 irrelevant and --

6 MR. KEEVIL: To this case, yes.

7 JUDGE CLARK: To this case. And it
8 appears that his other objection is that it
9 introduces new analysis that is not responsive to
10 matters previously testified to. Is that correct?

11 MR. KEEVIL: I would add in rebuttal to
12 what you just said.

13 JUDGE CLARK: In rebuttal.

14 MR. KEEVIL: Yes.

15 JUDGE CLARK: I've made a note -- and I'll
16 see if I have a highlighter. I've made a note and
17 highlighted it and hopefully that will be enough to
18 remind me in the future when it comes time for --
19 when somebody offers it for admission.

20 MR. WILLIAMS: Thank you.

21 JUDGE CLARK: All right. Go ahead, Mr.
22 Williams.

23 MR. KEEVIL: I'm sorry, may I?

24 JUDGE CLARK: Go ahead, Mr. Keevil.

25 EXAMINATION CONDUCTED

1 BY: MR. KEEVIL

2 Q. Mr. Murray, I have just a few
3 questions. If traditional rate making was intended
4 to be not providing recovery or financing at the
5 historic cost of Ameren debt -- Ameren Missouri debt,
6 sorry, would securitization ever yield a net present
7 value benefit for customers?

8 A. Can you please repeat the question,
9 please?

10 Q. Sure. If traditional rate making was
11 intended to not provide recovery or financing at the
12 historic cost of Ameren debt, would securitization
13 ever yield a net present value benefit for customers?

14 A. If I can summarize what you just said
15 and make sure we're on the same page?

16 Q. Okay.

17 A. Are you asking if traditional rate
18 making recovery was based on the historical cost of
19 debt and it was compared to securitization would it
20 ever result in net present value savings, was that
21 your question?

22 Q. Well, let's go with that one, yeah.

23 A. Okay. It depends on -- I'm having --
24 Mr. Lansford brought this up in his testimony. I
25 think it depends on the interest rate environment,

1 the current interest rate environment compared to
2 what's the historical cost of debt that's on the
3 books. I mean, I can -- just like in the Evergy
4 Missouri West case I think in the traditional rate
5 making scenario the Staff had recommended a
6 5.06 percent cost of debt and at the time the
7 securitization rate was about five percent. So they
8 used a different point in time that caused that
9 imbedded cost debt to be a bit higher. But that --
10 you know, that made it pretty close as to whether or
11 not there would have been net present value savings
12 based on what was decided in Evergy Missouri West
13 order.

14 So in this situation with Ameren Missouri,
15 you know, basically they're almost at the trough. I
16 don't know if they've ever been at -- you know what,
17 I think 3.99 percent was their lowest imbedded cost
18 of debt based on experience of doing the rate cases.
19 So, yeah, obviously they just had an A rated bond
20 issue, Mr. Sagel discussed, of about 5.2 percent.
21 You know, hopefully the securitization cost would be
22 lower than that if it's a Triple A rated bond. I
23 mean, that's one of the reasons why I think this
24 process is important to understand.

25 But yeah, as it is right now, no, I mean,

1 based on the current market condition it would never
2 -- it would not be -- I'm not going to use the term
3 never but at this point it would not result in net
4 present value benefits.

5 Q. You said -- you almost used the term
6 never and then you changed your mind, if I understood
7 you there, and said I'm not going to use the term
8 never but it would not -- so you think it could
9 result --

10 MR. WILLIAMS: Judge, I'm objecting to Mr.
11 Keevil commenting on the evidence.

12 MR. KEEVIL: Okay.

13 JUDGE CLARK: No, no, no.

14 MR. KEEVIL: Go ahead. I'm sorry, Judge.

15 JUDGE CLARK: Okay. What is your
16 question?

17 MR. KEEVIL: I was trying to understand
18 his answer.

19 JUDGE CLARK: Okay. What I heard was that
20 -- what I heard it going along was that you said you
21 almost said never but then you indicated -- what was
22 objectionable?

23 MR. WILLIAMS: He's just repeating -- he's
24 testifying essentially. He's repeating what -- at
25 least his interpretation of what Mr. Murray said.

1 I'm just saying he needs to ask a question instead of
2 commenting on the evidence.

3 JUDGE CLARK: Is there a question in
4 there?

5 MR. KEEVIL: I didn't get to the question
6 because of Mr. Williams but there will be.

7 JUDGE CLARK: Okay. I'm going to let you
8 go on and ask it.

9 MR. KEEVIL: Okay.

10 JUDGE CLARK: So at least for now the
11 objection's overruled.

12 BY: MR. KEEVIL

13 Q. Mr. Murray, what caused you to change
14 your mind there to say not -- you won't say never?

15 A. It wouldn't be never because like I
16 said as Mr. Lansford pointed out --

17 Q. How long would it be?

18 A. I was going to finish. But if
19 interest rates start to decline and say we should
20 have interest rates below -- hopefully like a Triple
21 A cost that's below four percent you would have net
22 present value savings because that cost is lower than
23 the imbedded cost of debt.

24 So if you could get a securitized bond
25 rate that is below four percent if for whatever

1 reason we hit a severe recession and we have to go
2 back down to zero percent interest rates we may have
3 bond costs that were at extreme low levels that we
4 had in 2020 and 2021. So the answer cannot be never
5 because we don't know what the market's going to do.

6 Q. Do you see any secondary impacts
7 occurring if Ameren was ordered to 100 percent debt
8 finance its material costs?

9 A. I believe that's what they're doing
10 with securitization is they're going to be financing
11 it with 100 percent debt.

12 Q. That wasn't the question. Do you --

13 JUDGE CLARK: Mr. Keevil, can you lean
14 into your mic a little more. I'm getting a note that
15 you --

16 BY: MR. KEEVIL

17 Q. That wasn't the question, Mr. Murray.
18 The question was do you see any secondary impacts --
19 let me rephrase that. Does the -- in your opinion,
20 does the overall amount of debt at the utility impact
21 its cost -- impact more than just its cost of
22 financing the items that it is financing at the time
23 or does that impact its entire capital structure?

24 A. I'm sorry. That was multiple
25 questions. You're going to have to break that down

1 for me, please.

2 Q. Does the overall amount of debt at
3 the utility impact only its cost of financing those
4 items that it is financing or does that impact its
5 entire capital structure?

6 A. Each -- I mean, you're constantly
7 managing your capital structure. So if you issue --
8 as Mr. Sagel pointed out, you know, they issued 350
9 million, 500 million bond issuance, so there would be
10 a -- even though I don't agree that Ameren Missouri's
11 capital structure is truly independent. But you know
12 let's just say that they felt like they had to
13 maintain a 50 percent common equity ratio, they would
14 need to balance that. If they wanted to maintain --
15 or if they maintained that they were, you know,
16 focusing on just Ameren Missouri, which I don't agree
17 with and have never truly agreed with.

18 Q. What potential impacts would a
19 securitization such as we're here for today have on
20 Ameren's cost of equity?

21 A. I think it reduces their risk profile
22 of Ameren Missouri.

23 Q. So what impact would that have on the
24 cost of equity in your opinion?

25 A. It would reduce the cost of equity.

1 Q. How would a shift to 100 percent debt
2 financing impact Ameren's operational capabilities?

3 A. They would still be able to raise
4 capital and there may be a debate on how much the
5 cost is but they would be able to raise capital. So
6 to the extent they needed capital for their
7 operational facilities they could still go to market
8 and we could have a debate as to whether or not
9 there's an impact on cost.

10 Q. So you might debate that?

11 A. Oh, we're always debating it in rate
12 of return, aren't we?

13 Q. If we shifted to 100 percent debt
14 financing there would be no equity?

15 A. Well, but you're talking about on
16 Rush Island, that's only one part of the ten billion,
17 eleven billion rate base of Ameren Missouri. I mean,
18 it's small percentage in the whole realm of things.
19 So 100 percent debt financing, I agree with you for
20 the special purpose entity that's going to be about
21 100 debt financing for securitization but it's not
22 100 percent debt financing for Ameren Missouri.

23 Q. But what if you look at Ameren
24 Missouri not just limited to the special purpose
25 entity?

1 A. I'm not recommending 100 percent debt
2 financing so I don't understand why that's relevant.

3 Q. Doesn't really matter what impact you
4 -- would that have?

5 A. It would not have a large impact
6 'cause it's only for 500 million.

7 Q. We're not talking about Rush Island,
8 we're talking about Ameren Missouri.

9 A. Ameren Missouri --

10 Q. 100 percent --

11 A. -- capitalizing 100 percent of its
12 rate base.

13 Q. 100 percent debt.

14 A. Okay.

15 JUDGE CLARK: All right. Don't talk over
16 each other. Take some time, answer the question and
17 let him answer the question.

18 THE WITNESS: First of all, I don't think
19 that would ever happen. But under that hypothetical
20 scenario -- of course the only way it would happen is
21 securitization. But under that hypothetical scenario
22 there, you know, they wouldn't be able to, you know,
23 raise capital at any reasonable cost.

24 BY: MR. KEEVIL

25 Q. If Ameren Missouri were -- yeah,

1 Ameren Missouri's credit rating were to decline, what
2 would be the immediate and long term effects on its
3 borrowing costs and investment capacity?

4 A. If the rating declined sometimes it's
5 -- as I've observed between Ameren Missouri and
6 Ameren Illinois, even though they have different
7 credit ratings sometimes their cost of debt is quite
8 similar. So the market, you know, considers the
9 credit ratings. If the market agrees with the rating
10 agencies that that implies a higher risk profile then
11 that should cause for a higher cost of debt. Now, as
12 far as its ability to raise capital, you're still
13 going to be able to raise capital it's just whether
14 or not it's going to be at a different price.

15 Q. Could you elaborate on the potential
16 long term impacts of altering Ameren's debt to equity
17 ratio through increased debt financing?

18 A. Considering that Ameren Corp.
19 consolidated has about a 40 percent to 45 percent
20 common equity ratio I don't think that treating Rush
21 Island as 100 percent debt is going to have a
22 significant impairment on Ameren Missouri's credit
23 quality.

24 Q. And again, I'm not limiting this to
25 just Rush Island. If you increase -- excuse me. If

1 you alter Ameren's debt to equity ratio through
2 increased debt financing what's the long term impact
3 of that going to be?

4 A. I would appreciate more specifics
5 'cause you're just saying, you know, increase. An
6 increase can be, you know, five percent more debt to
7 capital in the capital structure, it could be ten
8 percent more debt to debt to capital in the capital
9 structure. What I'm indicating is Ameren itself,
10 which is the parent company of Ameren Missouri and
11 Ameren Illinois and Ameren Transmission Company
12 already has a 40 to 45 percent common equity ratio.
13 So what I'm saying is is what -- Ameren Missouri
14 having a debt ratio of 48 percent if it went into the
15 same range that Ameren's in it has a stronger
16 business risk profile so its credit rating -- if it's
17 rated on a standalone basis, you know, it should not
18 be any lower than what Ameren's is right now.

19 Q. Other than what has already been
20 shared publicly, what feedback, if any, have you
21 received from consumer advocacy groups regarding the
22 securitization approach in this case?

23 A. Well, I received -- actually I just
24 got back from SURFA which is Society of Utility
25 Regulatory Financial Analysts and I was there -- I

1 was in Richmond, Virginia on Thursday and Friday and
2 I talked to a gentleman with I think Drexel Hamilton.
3 He's not a consumer advocate but he does
4 securitizations. I've talked to, you know, some
5 other folks that -- with staffs and consumer
6 advocates that -- you know, that are involved in the
7 securitization. I have securitization rate cases in
8 Virginia, Florida, Texas. I'm not sure if I talked
9 to anybody from Louisiana or Oklahoma, I'm not sure
10 that they were there. Other consumer advocates in
11 North Carolina. North Carolina recently had a
12 consumer advocate that hired a financial adviser
13 which by the way they filed their certificate letters
14 redacted in that proceeding so I'm not sure this can
15 be classified as an industry standard. They pushed
16 for that in North Carolina.

17 Q. Who was that financial adviser?

18 A. In North Carolina, I think they had a
19 municipal underwriting -- bond underwriter. Because
20 in some of these states --

21 Q. I didn't ask for the underwriter, I
22 asked for the financial adviser you said --

23 A. That is the financial adviser. That
24 was the financial adviser.

25 Q. Okay. Who filed the issuance advice

1 letter on behalf, was it an underwriter?

2 A. They didn't act as the underwriter in
3 that case, they acted as the financial adviser. A
4 lot of times these financial advisers have roles as
5 underwriters as well that's why you have investment
6 banks that -- actually Ms. Niehaus, who was here
7 earlier, she's a financial adviser right now and then
8 she'll become -- she hopes to become the underwriter
9 if they get the business. So you can serve in
10 multiple roles. But in North Carolina -- that
11 consumer advocate in North Carolina pushed for those
12 certification letters and opinion letters to be filed
13 public and redacted.

14 Q. So you have been in contact with
15 people other than those working within the Missouri
16 Office of the Public Counsel regarding your
17 recommendations in this case?

18 A. I don't know specifically about my
19 recommendations in this case but, yeah, obviously
20 talking to them about the securitization process to
21 get myself better informed about, you know, what's
22 going on in other states and what the best practice
23 is. I mean, obviously you saw it attached to
24 Kentucky, you know, something from the proposed
25 Kentucky order that has a market pricing comparison

1 sheet. So yeah.

2 Q. So what have you told these people
3 about this case?

4 A. What have I -- I told them this is
5 the third securitization case in Missouri and it has
6 to do with closing of a coal plant. And you know,
7 actually I talked about consumer discount rates not
8 just with -- you know not just -- with Steve Kime in
9 Wisconsin, very, very, intelligent person that has a
10 -- you know, publishes a lot of works with various
11 regulatory issues but specifically has addressed
12 consumer discount rates. Yeah, lots. I don't
13 remember everybody.

14 Q. Well, I'm not really asking you about
15 the people you've talked with, I was more interested
16 in what you've disclosed to them regarding this case?

17 A. I didn't disclose anything
18 confidential, if that's what you're trying -- I just
19 discussed the issues of securitization.

20 Q. Well, you've got a lot of testimony
21 about what happened in the -- what was filed in the
22 previous two cases, do you not?

23 A. Yes. That's experience we've
24 gathered in Missouri.

25 Q. Yes is the -- that's the answer?

1 **A. Yes. Yes.**

2 Q. Then what did you tell these outside
3 consultants about your experiences in those previous
4 cases?

5 **A. I don't think I discussed anything**
6 **about those previous cases.**

7 Q. Didn't discuss anything?

8 **A. I mean, --**

9 Q. Okay.

10 **A. They can look in EFIS.**

11 Q. Can you provide detailed insights
12 into the structuring of securitization utility tariff
13 bonds?

14 **A. No, that's not my area of expertise.**

15 Q. Okay. So do you know -- and if you
16 don't just say you don't. How do the terms and
17 conditions compare to those terms and conditions of
18 traditional bonds issued by Ameren or Ameren
19 Missouri?

20 **A. Well, yeah, that's -- like I said,**
21 **that's -- definitely we just had recent Ameren**
22 **Missouri first mortgage bond issuances at, you know,**
23 **5.2 percent, you know, ten year bond, oh, I think the**
24 **weighted average of life is going to be right around**
25 **that in this securitization case. So, you know, if**

1 Triple A bonds are going to result in lower costs as
2 to securitization processes, you know, hopes to
3 achieve then hopefully that bond price should be a
4 little bit lower than the 5.2 percent of Ameren
5 Missouri's current bonds.

6 Q. What are these safeguards in place to
7 protect Ameren and its customers in the event of
8 market volatility or unexpected financial downturn?

9 A. I have no idea what context you're
10 talking about. I don't know.

11 Q. That's all I think I have, Judge.

12 JUDGE CLARK: Ameren Missouri?

13 MS. TATRO: Your Honor, I just want to
14 clarify, we are only on Issue -- we've bounced around
15 so much. We're only on Issue 1 here, correct?

16 JUDGE CLARK: That is correct.

17 MS. TATRO: I have no questions, thank
18 you.

19 JUDGE CLARK: Any questions from the
20 Commission? Go ahead, Chair Hahn.

21 CHAIR HAHN: No questions from me, Judge.

22 JUDGE CLARK: Thank you. I've got a few
23 questions -- well, let me ask. Are there any other
24 Commission questions?

25 MR. HOLSMAN: No questions.

1 JUDGE CLARK: And I apologize. I think
2 the Chair has some questions on Issue 2 which I just
3 indicated to Ms. Tatro we're not taking up at this
4 point.

5 EXAMINATION CONDUCTED

6 BY: JUDGE CLARK

7 Q. Now, in your surrebutal you suggested
8 a 4.05 percent interest rate for traditional rate
9 making for the net present value calculation; is that
10 correct?

11 A. Yes.

12 Q. And you also mentioned that Ameren
13 Missouri's imbedded cost of debt as of December 2023
14 was also 4.05 percent; is that correct?

15 A. Yes. And let me -- can I clarify?
16 That is the rate that I suggest or recommend that
17 would be used as the allowed return for the 15 years
18 of amortization. That is not the discount rate I'm
19 recommending for purposes of discounting those cash
20 flows.

21 Q. All right. Do you know -- I mean, we
22 just heard a little bit of discussion of what's
23 involved in -- do you know what loans are included in
24 the imbedded debt?

25 A. There's quite a few bond issuances.

1 I think, you know -- yes, Mr. Sagel probably
2 accurately summarized that it could -- usually the
3 longest bond maturities you have are 30 years. So it
4 could go back as, you know, the late '90s. Sorry.

5 Q. No, no. I interrupted you. Please,
6 go ahead.

7 A. So it could be anywhere from the late
8 '90s to, you know, the past decade. I mean, excuse
9 me, I'll recall -- I recall during the financial
10 crisis that Ameren Missouri issued a bond at
11 8.45 percent, that one has always been burned in my
12 mind because it was a very unfortunate situation to
13 have to issue a bond at that high of a cost at the
14 time. But anyway, so there are other bonds, yes,
15 that have various costs. So it's basically a
16 portfolio of bonds.

17 Q. So it's a fairly wide range?

18 A. Yes.

19 Q. Okay. Do you think it's appropriate
20 to compare the long term debt rate that includes
21 loans that were issued during times when there was a
22 much lower interest rate with a proposed 5.6 bond
23 rate that is based on a higher interest rate period?

24 A. That wasn't my intent. My intent was
25 to, you know, recognize the capital that is currently

1 on Ameren Missouri's balance sheet. So I wasn't
2 trying to compare it to the securitized bond rate I
3 was just looking at the cost of capital components
4 that would go into traditional rate making.
5 Obviously, you know, there is an opinion that it
6 should be the full common equity and long term debt
7 of weighted average cost of capital, I prefer to call
8 it weighted average rate of return because I believe
9 the cost of equity's lower than what's authorized.
10 But anyway, bottom line is that's the debt that is on
11 the books that finances assets that's on Ameren
12 Missouri's balance sheet. You can't use a current
13 interest rate, it would have no -- until -- if
14 securitization is approved then it has a relation to
15 those assets.

16 Q. If Ameren went up for long term debt
17 at the same time as the securitization bonds, do you
18 think Ameren would get a lower or a higher interest
19 rate than a Triple A bond securitization?

20 A. The estimated rate that Mr. Davis put
21 in his -- he provided the most updated information on
22 an estimate was 5.33 percent for a securitized bond
23 rate. Ameren Missouri, at the end of March, just
24 issued bonds at 5.2 percent. So this -- you know,
25 this is again something that hasn't been discussed in

1 I don't think anybody's testimony or in detail but
2 there are some issues that I'll call, you know,
3 systemic within the securitized bond issuance space,
4 I guess is what the Wall Street folks like to call
5 it, space is -- Bloomberg had reclassified the
6 utility rate payer backed bonds to asset backed
7 security for purposes of indexing, they did that in
8 August of 2022. And ever since that -- ever since
9 that occurred the spreads over treasuries and spreads
10 over actually secondary Triple A bond yields at
11 Microsoft and Johnson and Johnson, the spreads over
12 those types of bonds have increased -- have widened
13 since this occurred.

14 And so it's not a problem specific to
15 Missouri, it's a problem with, you know, the
16 financial, you know, players. Bloomberg I believe,
17 and other indexing services, are not necessarily
18 regulated by the SEC as to how it has to be done. So
19 that -- before 2020 the spreads to treasuries and the
20 spreads to other Triple A's much tighter. And so
21 that's a problem that seems to be -- I don't -- like
22 I said, that's not something that I consider to be an
23 issue that's specific to any problems in Missouri,
24 it's a -- it's an industry issue.

25 Q. Thank you. Would you explain why you

1 believe that no carrying costs will be permitted by
2 the Commission if Rush Island's retirements were
3 instead securitized or amortized in a rate case?

4 A. I'm just -- I'm relying on past
5 Commission established law that says if it's not used
6 and useful then a return is not allowed. I mean,
7 that's -- I think I said I used the order from
8 Liberty where that was discussed to some extent. And
9 of my awareness of other situations where when a
10 plant is reclassified or, you know, rebooked as a
11 regulatory asset a lot of times those assets are just
12 amortized with no allowed return whether it's debt or
13 equity.

14 Q. Were the ongoing annual financing
15 costs for Empire or Liberty, however you want to say
16 it, higher in part due to both the fact that you had
17 two cases in one, both the plant retirement and the
18 winter storm Uri being securitized?

19 A. I don't know -- no, I don't know if
20 it was due to that. I mean, I do know that obviously
21 the ongoing financing costs were about two million
22 higher because income taxes were included in the
23 financing cost for Empire and Liberty -- or excuse
24 me, for Liberty.

25 Q. And I think you're getting to the

1 core of my question. Is that why you think those
2 were higher?

3 A. Oh, there's no doubt that's why the
4 effective cost -- when I say -- not the bond yield,
5 not the coupon, the effective cost. So what I did
6 was I did a determination of what the, you know,
7 payments would be for -- based on the bond
8 amortization and the ongoing financing costs which
9 included the 2. -- I'm approximating, 2.1 million of
10 income taxes that were included in the ongoing
11 financing charge and that increased the effective
12 cost of that bond to seven percent. But that's not
13 -- you know, it was around five percent I believe for
14 the yield on the bonds, the straight yield.

15 Q. Those are all the questions I have.

16 JUDGE CLARK: Any re-cross based upon
17 Commission Bench questions? Staff?

18 MR. KEEVIL: No Judge, thank you.

19 JUDGE CLARK: Ameren.

20 MS. TATRO: I just have one question.

21 EXAMINATION CONDUCTED

22 BY: MS. TATRO

23 Q. You mentioned -- in reference to
24 Judge Clark's question you started talking about
25 Bloomberg?

1 **A. Yes.**

2 Q. And their kind of reclassification
3 they went through and you said spreads -- unit of
4 spreads were widening after. Do you remember that
5 conversation?

6 **A. Yes.**

7 Q. Do you know what spreads were doing
8 prior to that Bloomberg decision?

9 **A. They were narrower, you know, during**
10 **the 2020 -- I think 2020 timeframe. I mean, I think**
11 **2022 there was a little bit of volatility obviously**
12 **with the markets. That's one thing about trying to**
13 **isolate things when it comes to financing there might**
14 **be some market volatility as well. But 2020 I**
15 **believe they were tighter.**

16 Q. For 2020 they were tighter but about
17 what about -- when what was this Bloomberg decision?

18 **A. I believe it was August 1st, 2022.**

19 Q. Okay. What was it in '21, what was
20 happening with the spreads in '21?

21 **A. I don't have the information**
22 **specifically in front of me right now.**

23 Q. You seem to imply that the widening
24 of the spreads was because of the Bloomberg decision.
25 What's your basis for that belief, if you don't know

1 what it was doing immediately beforehand?

2 **A. Oh, I read an article from an asset**
3 **manager, periodical.**

4 Q. So it was that person's opinion?

5 **A. It was an asset -- yeah. It was a**
6 **financial period -- article.**

7 Q. Okay. Thank you.

8 JUDGE CLARK: Any re-direct from Public
9 Counsel?

10 MR. WILLIAMS: Yes. Just a little bit.

11 EXAMINATION CONDUCTED

12 BY: MR. WILLIAMS

13 Q. Do you recall, in response to a
14 question about the impact on cost of equity of
15 securitization and you said that it would decrease
16 the cost of equity?

17 **A. Yes.**

18 Q. Do you know if there's any limitation
19 on what the Commission can do with that decrease in
20 cost of equity in a general rate case?

21 **A. No.**

22 Q. And who is it that owns Ameren
23 Missouri stock?

24 **A. Ameren Incorp -- Ameren Corp.**

25 Q. 100 percent?

1 **A. 100 percent, yes.**

2 Q. What does that allow Ameren
3 Corporation to do with Ameren Missouri stock -- or
4 capital structure?

5 **A. They have affiliate -- you know,
6 whether it's dividends or capital contributions or
7 tax allocation agreements, et cetera. There are all
8 sorts of things that -- you know, that can be done
9 to -- you know, to adjust the -- the capital that
10 goes in and out of the company.**

11 Q. And then I'm going to go to some
12 questions Presiding Officer Clark asked you about
13 4.05 percent traditional imbedded costs.

14 **A. Yes.**

15 Q. Does the Commission use that when
16 it's setting general rates, imbedded cost?

17 **A. Yes. That's included in the overall
18 rate of return.**

19 Q. And what does that mean for purposes
20 of securitization versus not securitizing?

21 **A. It's -- you know, 4.05 percent was
22 the -- you know, was the -- what I thought was
23 consistent with the Commission's analysis of
24 scenarios in Evergy Missouri West and Liberty as to
25 if it was to allow a lower return instead of making**

1 investors completely whole for a plant that is no
2 longer used and useful to use a -- the lower imbedded
3 cost of debt that basically finances, you know, the
4 aggregate assets on Ameren Missouri's books.

5 Q. No further questions. Thank you.

6 JUDGE CLARK: Thank you, Mr. Murray. You
7 may step down.

8 THE WITNESS: On Item 2?

9 JUDGE CLARK: No.

10 THE WITNESS: Okay. I didn't know if
11 there was still more on Item 2, I'm sorry.

12 JUDGE CLARK: There are -- there are items
13 on Item 2 but we're not on Item 2 yet.

14 THE WITNESS: Okay. I'm sorry.

15 JUDGE CLARK: We took a few witnesses out
16 of sequence and that's the reason they were allowed
17 to go over both.

18 THE WITNESS: I'm sorry, I was confused.
19 Apologize.

20 JUDGE CLARK: I wouldn't venture too far,
21 I imagine you'll be up here quite quick.

22 THE WITNESS: Okay. Good deal. Thank
23 you.

24 MS. TATRO: Your honor, can I inquire
25 about the possibility of a very short break?

1 JUDGE CLARK: I am glad you did because I
2 almost forgot and I think everybody could use one.
3 So it is now 3:47. Why don't we all come back at
4 4:00.

5 (At this point in the proceedings, a short
6 recess was taken.)

7 JUDGE CLARK: Okay. Let's go back on the
8 record. All right. We just concluded Public Counsel
9 witness David Murray for Issue Number 1. I believe
10 that that only leaves Staff's witness remaining; is
11 that correct?

12 MR. KEEVIL: I think so -- I think so
13 Judge.

14 JUDGE CLARK: Okay. If you want to go
15 ahead and call your witness.

16 MR. KEEVIL: Yeah. I would call Keith
17 Majors to the stand.

18 JUDGE CLARK: And I will revise my
19 prediction that we will be done with Issue 2 by 5:00.

20 * * * * *

21 KEITH MAJORS,

22 The witness, having been first duly sworn
23 upon his oath, testified as follows:

24 * * * * *

25 JUDGE CLARK: Please be seated. Staff, go

1 ahead.

2 EXAMINATION CONDUCTED

3 BY: MR. KEEVIL

4 Q. Yes. Thank you. Could you state
5 your name for the record, please, sir?

6 **A. Keith Majors.**

7 Q. By whom are you employed and in what
8 capacity?

9 **A. The Staff of the Missouri Public
10 Service Commission as a utility regulatory audit unit
11 supervisor.**

12 Q. Are you the same Keith Majors who has
13 caused to be prepared in this case rebuttal testimony
14 which you may not know this but it has been
15 pre-marked Exhibit 110 and -- is there also an HC on
16 that? No. Yes, there was. There was a 110 and 110C
17 rebuttal?

18 **A. Yes.**

19 Q. And with that rebuttal was there also
20 I believe four schedules which were filed along with
21 the rebuttal but were filed separately due to the
22 length of the schedules?

23 **A. Yes, that's correct.**

24 Q. Okay. Do you have any additions or
25 corrections you need to make to any of the 110

1 documents?

2 **A. No, I do not.**

3 Q. Okay. Did you also cause to be
4 prepared and filed surrebuttal testimony which has
5 been pre-marked as Exhibit 111?

6 **A. Yes.**

7 Q. Do you have any additions or
8 corrections to that?

9 **A. No, I do not.**

10 Q. If I were to ask you the same
11 questions contained in Exhibit 110 -- 110C and 110
12 and then 111 would your answers be the same as
13 contained therein?

14 **A. Yes.**

15 Q. And are those answers true and
16 correct to the best of your information, knowledge,
17 and belief?

18 **A. Yes.**

19 MR. KEEVIL: Judge, Mr. Majors has a
20 multitude of issues that he's appearing on so I don't
21 know that it would be proper to answer -- or to offer
22 the testimony at this stage. So with that, I would
23 just tender the witness for cross-examination and
24 make note of fact that the exhibits have been marked
25 but they haven't been received. If that's okay with

1 you.

2 JUDGE CLARK: Yes. So noted. Thank you.
3 I think that's what we all agreed to.

4 MR. KEEVIL: Yes. And with that, I tender
5 Mr. Major for cross-examination on this issue.

6 JUDGE CLARK: All right. Any
7 cross-examination from Public Counsel?

8 MR. WILLIAMS: Briefly.

9 JUDGE CLARK: Go right ahead.

10 EXAMINATION CONDUCTED

11 BY: MR. WILLIAMS

12 Q. Good afternoon, Mr. Majors. How are
13 you doing?

14 A. **Good afternoon, Mr. Williams. I'm**
15 **fine. Thank you.**

16 Q. That's good to hear. Let's assume
17 that Rush Island has a net plant balance of 475
18 million as of a date that is going to be included
19 either in securitization or in general rates. Okay
20 with that?

21 A. **Okay.**

22 Q. How would that net plant balance be
23 treated in traditional rate making in your view?

24 A. **Well, I think the assumption is --**
25 **well, can I ask is the assumption that it's no longer**

1 -- it's retired, it's offline?

2 Q. Yes. Yes. Assuming it's permanently
3 shut down, retired, abandoned, whatever word you want
4 to use, it's no longer used and useful.

5 A. Righted.

6 Q. So how would it be treated if the
7 Commission were to allow recovery for that plant?

8 A. I think recovery separately you would
9 -- you would assume some sort of amortization over a
10 period of time in this year. In this case it's --
11 the assumption is 15 years and that correlates to the
12 original retirement date of the unit of 2039 which
13 would be 15 years in the future. Whether or not the
14 Commission would include that in rate base the
15 unamortized balance is unknown. I think you would
16 look -- you would probably look at past examples on
17 -- just if you're doing an analysis -- on assuming
18 whether or not the Commission would include that
19 amount in rate base.

20 Q. Have you ever -- are you aware of any
21 instance where the Commission has included a net --
22 net book balance for a retired generating plant that
23 was retired ten or more years in advance of its
24 depreciation life where it's done that amortization?
25 I mean rate base, I'm sorry.

1 MR. KEEVIL: I'm sorry. I'm confused now
2 as to what the question is.

3 MR. WILLIAMS: Let me try again.

4 BY: MR. WILLIAMS

5 Q. Are you aware of any instance where
6 the Commission for a plant that's retired more than
7 ten -- ten years or more prematurely where the
8 Commission has allowed it to be -- continue to give
9 it rate base treatment?

10 A. There are no examples that I recall
11 offhand. There are very few examples of plants that
12 I can recall that have actually been retired. I can
13 come up with a list. But there are only two that I
14 can think of that received some kind of treatment,
15 special regulatory treatment in the form of an
16 amortization, that would be Meramec, it was an Ameren
17 plant, and then Sibley 3 which was an Evergy West,
18 also known as GMO plant. Those are the two examples
19 of special treatment that come to mind.

20 Q. And how much -- well, what was the
21 retirement date of Meramec versus its anticipated
22 life for depreciation purposes for rate making?

23 A. That's a good question. My -- my
24 recollection was Meramec was an older unit and so
25 that would have been closer to the retirement date.

1 It would have been closer to its projected retirement
2 date. Its actual retirement date would have been
3 closer to its projected. On Sibley 3, I'm going to
4 say less than a decade but I would really have to go
5 back. It was closer than 15. I think that's what
6 your question is.

7 Q. I think you've anticipated some
8 questions but I'm fine with the information you've
9 given. Whenever those amortizations were set up, how
10 was ADIT treated, accumulated deferred income taxes,
11 associated with the plant?

12 A. I would really have to go back and
13 research that. It hasn't really been that long ago
14 but I just don't recall.

15 Q. And of course I'm asking about Sibley
16 and Meramec?

17 A. Right. Yeah.

18 Q. You just don't know right now?

19 A. I'm sure I know somewhere but I don't
20 recall sitting right here on how those were treated.

21 Q. No further questions. Thank you.

22 JUDGE CLARK: Ameren Missouri.

23 MS. TATRO: Thank you, your Honor.

24 EXAMINATION CONDUCTED

25 BY: MS. TATRO

1 Q. Are you familiar with the retirement
2 of the Montrose plant for Evergy -- who is now
3 Evergy?

4 A. Yes. Yes, I am.

5 Q. And do you know how that was handled
6 at retire -- how rate base was handled at retirement?

7 A. So that would be the other
8 non-securitization method of retiring a large rate
9 base unit -- or a large coal fired unit -- not
10 necessarily coal fired. A large piece of -- a large
11 amount of plant. So you would have journal entries
12 taken and say a like amount out of plant reserve and
13 so that would have hit the reserve as a debit and
14 reduced overall reserve. And so there was no special
15 treatment for any of the Montrose units, not
16 amortization or something like that.

17 Q. Was there any unrecovered balance?

18 A. Yes.

19 Q. And did that receive rate base
20 treatment?

21 A. I think it would receive rate base
22 treatment in the context that you're eating up the
23 depreciation reserve. But it did not get a separate
24 amortization and inclusion through -- inclusion in
25 rate base of the unamortized balance. It wasn't

1 anything special, it was more of a retirement like, I
2 don't know, pole, substation, other pieces of plant
3 that are subject to whatever retirement entries are
4 appropriate.

5 Q. Was the debit to reserve included in
6 rate base?

7 A. Yes.

8 Q. I have no further questions. Thank
9 you.

10 JUDGE CLARK: Any Commission questions?
11 I've got a few for you, Mr. Majors.

12 EXAMINATION CONDUCTED

13 BY: JUDGE CLARK

14 Q. I'll start with what's immediately in
15 front of me which is we were just talking about
16 Meramec and Sibley 3. You don't by chance remember
17 those case numbers, do you?

18 A. Meramec, the actual retirement would
19 have been in the context of ER-2021-0258, I believe.
20 I had testimony in ER-2022-0337, would be the last
21 Ameren rate case. So my testimony that I don't have
22 in front of me that dealt with the amortization of
23 the regulatory asset, which I believe was five years
24 and we recommended no rate base of inclusion of the
25 unamortized balance. And I believe you asked about

1 Sibley 3?

2 Q. Correct.

3 A. That would have been in the last
4 Everygy Missouri West rate case which was a --
5 occurred at the same time as the last Everygy Metro
6 general rate case. Those case numbers were
7 ER-2022-0129 for Everygy Metro and ER-2022-0130 for
8 Everygy West. And in those cases I would have had
9 direct testimony, rebuttal testimony, and surrebuttal
10 testimony addressing the Sibley deferral and the
11 amortization of the net book value.

12 Q. Thank you. On Murray's rebuttal on
13 Page 3, he makes statements based on your response to
14 DR-0036 from Public Counsel which is attached to
15 Schedule -- as Schedule DM-S-1. Now, your response
16 says that the net book value would reduce the
17 accumulated depreciation reserve. Now, is that
18 according to the uniform system of accounts, or USOA?

19 A. I can pull up the response if you'd
20 like. But I think, from what I recall, just a normal
21 retirement would reduce -- the net book value would
22 reduce the reserve. So you would be implicitly
23 earning a return on the net book value if you just do
24 a normal retirement. And so for example your rank
25 and file wood poles or service trucks, when those are

1 retired and they have a net book value those would --
2 that net book value would reduce the reserve. But
3 you also have other items of plant that don't have a
4 net book value in their own right that are -- last
5 longer than other items of plant in that category.
6 So it all somewhat evens out.

7 Q. Okay. Would the USOA require an
8 entry as a credit to remove the original cost of the
9 plant retiring?

10 A. Without writing it down, I think you
11 would credit plant and debit reserve for the like
12 amount.

13 Q. And would you post the debit as -- to
14 the accumulated depreciation reserve account?

15 A. Yes.

16 Q. If the plant's actual useful life
17 corresponded to the anticipated depreciation useful
18 life at the end of the plant's useful life would the
19 accumulated depreciation reserve amount equal the
20 original cost of the plant?

21 A. Generally speaking that's correct,
22 yes.

23 Q. According to the USOA if a plant were
24 retired before its estimated useful life would the
25 accumulated depreciation reserve have a credit or a

1 debit balance?

2 A. I think it would have a net -- it
3 would have a net debit balance all other things being
4 equal because you would have ate up more reserve that
5 had been accumulated over the life of the plant
6 because the retirement was premature.

7 Q. Okay. So it would be a debit?

8 A. Yes.

9 Q. Now, that same Public Counsel DR-0036
10 that I just referred to, you indicated in your
11 response to that that your accounting treatment
12 described as not representative of the treatment if
13 Rush Island were retired; is that correct? Or I'm
14 sorry. If it's not retired with securitization or a
15 regulatory asset or amortization?

16 A. Right. I think that's -- and I'd
17 have to go look at the -- I don't think we've asked
18 Ameren for the, I guess, journal entries. But you
19 wouldn't have -- it wouldn't be appropriate to
20 reflect any kind of net book value or any kind of
21 residual amount as a debit balance to the reserve
22 because then you would be double collecting over --
23 you would be double collecting both securitized net
24 book value and the debit balance in accumulated
25 reserve. So it's one or the other. So for example,

1 it would be inappropriate to go back and securitize
2 Montrose because you've already recognized the
3 journal entries to retire the unit. And so it would
4 be one or the other, you wouldn't want to do both.

5 Q. And I hate to say this but I'm going
6 to admit it. I do not understand the question I just
7 asked and as much as you tried to explain it to me
8 with an example it still kind of flew over my head.
9 Can you --

10 A. Okay. If I could write down a few
11 figures just for my own edification.

12 Q. Please. Go ahead.

13 MR. KEEVIL: Joking, Judge, I suppose this
14 would not be a good time for an asked and answered
15 objection?

16 JUDGE CLARK: All right. You get a point.

17 THE WITNESS: Okay. So let's assume --
18 and this is a bit on the fly so bear with me. So if
19 you assume you had a hundred dollar wood pole and
20 it's halfway through its useful life so it would have
21 50 buried in the reserve -- or not buried but in an
22 accumulated reserve and if you retired the wood pole
23 you would debit the reserve for \$100 and credit plant
24 for \$100. So your original balance of plant was a
25 debit amount, that wipes out the hundred dollars so

1 you're even there. But when you take a hundred
2 dollars out of the depreciation reserve that would be
3 50 over what was already accumulated. So that 50 of
4 reserve would eat up other amounts of accumulated
5 reserve.

6 So -- but when you securitize the --
7 whatever you're securitizing in this case, Rush
8 Island, you're getting an amount of money, half a
9 billion dollars, for the -- that net -- plant net net
10 book value. So you wouldn't want to retire the unit
11 according to normal accounting procedures and take a
12 half a billion dollars out of reserve and get the
13 half billion dollars in cash. And so it's one or the
14 other, you would not want to do both.

15 BY: JUDGE CLARK

16 Q. Okay. Thank you. That makes a lot
17 more sense to me. Does the USOA provide instructions
18 for the accounting of extraordinary property losses
19 and the amortization of those losses?

20 A. It does. I would have to have my
21 copy of the USOA in front of me. I believe that's --
22 that is a -- I mean, it's a public document, it's a
23 codification of the Federal Energy Regulatory
24 Commission uniform system of accounts. So I could
25 certainly go back and get the exact section of the

1 **USOA that deals with extraordinary property losses**
2 **for you at a later time. I mean, not right now, I**
3 **don't have that document in front of me.**

4 Q. Yes, I would like that. Those are
5 all the questions -- those are all the questions I
6 have.

7 JUDGE CLARK: Any re-cross based upon
8 Bench questions?

9 MR. WILLIAMS: Yes.

10 JUDGE CLARK: Go ahead.

11 EXAMINATION CONDUCTED

12 BY: MR. WILLIAMS

13 Q. Mr. Majors, you recall when Judge
14 Clark was asking you about net book value and
15 depreciation reserve and you used the term normal
16 retirement?

17 A. Yes.

18 Q. What is a normal retirement?

19 A. Probably -- there's a zone of
20 reasonableness when it comes to rank and file like
21 poles and transformers, things like that, where you
22 would have premature retirements of those assets and
23 then retirements that occurred after their -- the end
24 of their useful life. And so there's -- I would
25 assume there's some kind of bandwidth there. But

1 since, as a whole, Rush Island was retired 15 years
2 prior to its projected retirement date I think you
3 would have to call it an extraordinary retirement or
4 at least an abnormal retirement.

5 Q. Well, you've anticipated one of my --
6 one of the lines I want to ask you about. What about
7 Montrose and Sibley 3 and Meramec?

8 A. So the Montrose units, really testing
9 my memory, were vintage, 1958, 1961, and maybe 1962.
10 Their retirements took place in approximately -- one
11 unit was first I think in 2018, the remaining two
12 were maybe one or two years after. So the -- I guess
13 the experience -- the total life would have been
14 approximately almost 60 years. And so I guess -- I
15 guess -- oh, that was your question, what were the --
16 how old were they at retirement?

17 Q. Well, let's just take them one at a
18 time.

19 A. Okay.

20 Q. Was Montrose a normal retirement?

21 A. I would call that a normal
22 retirement. The boilers had a very high heat --
23 well, not -- a very high heat rate in comparison to
24 other coal fired units. They were relatively small
25 units at approximately 175 megawatts a piece. It was

1 not economic to make the kind of improvements that
2 would extend their useful lives any longer than
3 approximately the date they were retired.

4 Q. Was Meramec a normal retirement?

5 A. My recollection was that generally
6 speaking the facts were similar. It was an older
7 unit and substantially smaller than say Rush Island
8 or the Sioux units or Labadie. And so I would say
9 those were similar circumstances.

10 Q. And was Sibley 3 a normal retirement?

11 A. That was a bit of a different --
12 different example there. So the Sibley 3 had been
13 scheduled to retire -- forgive me, I can't remember
14 the date. But sometime in the -- in this decade.
15 There was a turbine event that caused the unit to be
16 non-operational, it was a substantial amount of money
17 to fix the turbine. Given the economics specifically
18 of that unit it was determined that it would not be
19 economic to fix the unit. And so that was probably
20 somewhat of an abnormal retirement. Not -- not to
21 the effect this is -- you're retiring Rush Island
22 15 years prior to its projected retirement, not to
23 that extent. But it certainly wasn't older -- like
24 the older coal fired units, Meramec and Montrose, it
25 wasn't quite that. It wasn't the same example.

1 Because Sibley 3 was slate to run at least for -- at
2 least -- my recollection would be several more years
3 after the turbine event, to my recollection.

4 Q. Well, how often do utilities come in
5 for rate cases?

6 A. That's a good question. It depends
7 on the utility. So Ameren seems to run, if you go
8 back to the last decade, about every 18 months. I
9 think Ms. Tatro could probably elucidate that better
10 than I could. Depending on -- just depends on what a
11 utility's earnings are and actual financial results
12 depends on -- would depend on how often they would
13 come in for a rate case. And it also depends on the
14 timing with the requirement to maintain the fuel
15 clause.

16 Q. The fuel clause is every four years,
17 is it not?

18 A. Yes. That's my understanding from --
19 my recollection is approximately four years, yes.

20 Q. You testified that Meramec and
21 Montrose were both -- you considered those to be
22 normal retirements but that the rate making treatment
23 was different. Do you have an explanation for why?

24 A. I think my recollection is Meramec
25 was a bit larger and more substantial in the Ameren

1 system than was Montrose. I think there were
2 probably various other reasons, I could go back and
3 review testimony. But I -- yeah, I don't recall
4 anything more substantial -- other substantial
5 difference than that.

6 Q. Was the treatment of Meramec in rates
7 after it was retired a contested matter?

8 A. There was some dispute on whether or
9 not you would include the unamortized balance in rate
10 base, yes.

11 Q. For Sibley 3, was that a contested
12 matter before the Commission --

13 A. Yes.

14 Q. -- recovered? And for Montrose, was
15 that a contested matter for the recovery?

16 A. No. Not to -- not to my recollection
17 was there any kind of dispute over the regulatory
18 treatment of Montrose.

19 Q. Wasn't on an issues list in front of
20 Commission then?

21 A. No. No, it was not.

22 Q. No further questions. Thank you.

23 JUDGE CLARK: Any cross-examination from
24 Ameren?

25 MS. TATRO: Thank you.

1 EXAMINATION CONDUCTED

2 BY: MS. TATRO

3 Q. So the Judge at one point asked --
4 tested your memory and asked you for some case
5 numbers. And do you remember that conversation?

6 A. I do.

7 Q. And I think the Ameren case number
8 that you meant to say was ER-2021-0242 -- 0240, does
9 that sound right?

10 MR. KEEVIL: I don't think so.

11 THE WITNESS: Well, I think -- and I've
12 got a lot of case numbers.

13 BY: MS. TATRO

14 Q. I'm impressed you remembered any of
15 them.

16 A. Thank you. I think 2011 was 0258,
17 ER-2011-0258. I think ER-2021-0240, you're correct,
18 that's the correct case number.

19 Q. As part of that conversation he had
20 you go through Staff's positions in those cases and
21 talk about the various rate making treatments, do you
22 remember that?

23 A. Yes.

24 Q. Are you familiar with Lisa Ferguson's
25 testimony in the 20 -- in Ameren Missouri's '21 rate

1 case?

2 **A. I'm sure I read it. I don't have it**
3 **in front of me but yes.**

4 MS. TATRO: May I approach?

5 JUDGE CLARK: Yes.

6 MS. TATRO: I just have it on a computer
7 screen because I didn't expect to --

8 MR. KEEVIL: What are you -- 2040, what's
9 the issue that -- because your last case was 337.

10 MS. TATRO: Yeah. This is '21 because
11 that's the case he referenced. And we're talking
12 about Meramac.

13 BY: MS. TATRO

14 Q. Can you read -- I'll let you read
15 this to yourself first.

16 **A. Yes.**

17 Q. Read this page.

18 **A. Okay.**

19 Q. Sorry.

20 MR. WILLIAMS: What are you showing him?

21 MS. TATRO: Lisa Ferguson's rebuttal
22 starting on Page 4.

23 BY: MS. TATRO

24 Q. So read this entire page and then the
25 end of that sentence right there just to yourself.

1 **A. Okay. Yeah. Yeah. If you could**
2 **give me one moment, please.**

3 Q. Of course.

4 **A. Oh, okay. I remember this now. If**
5 **you'll give me one moment.**

6 Q. Yeah.

7 **A. And you want me to end at regarding**
8 **carrying costs?**

9 Q. That would be fine.

10 **A. Okay. I read it.**

11 Q. Okay. So in Ms. Ferguson's rebuttal
12 testimony did she say that she did not oppose Ameren
13 Missouri receiving carrying costs on the Meramec
14 remaining costs?

15 **A. Yes, that's correct.**

16 Q. Okay. Is it fair to say in general
17 that the Commission has to consider a multitude of
18 facts when it's deciding any rate review?

19 **A. Oh, absolutely. Yes.**

20 Q. And so is it fair to say there could
21 be reasons that are specific to each case as to why
22 the Commission rules the way that they do on any
23 particular topic?

24 **A. Yes.**

25 Q. That's all. Thank you.

1 JUDGE CLARK: Any re-direct from Staff?

2 MR. KEEVIL: Not on this issue, Judge.

3 Thank you.

4 JUDGE CLARK: Okay. Mr. Majors, thank
5 you. You may step down.

6 **THE WITNESS: Thank you.**

7 JUDGE CLARK: I'm going to move on to
8 Issue 2, what we have left of it. Is there a mini
9 opening that any party wanted to make in regard to
10 that? I hear none and see none. All right. The
11 next witness I have in regard to that would be Mr.
12 Murray again.

13 And Mr. Murray, I'm going to remind you
14 you're still under oath.

15 **THE WITNESS: Thank you. Yes.**

16 **Understand.**

17 * * * * *

18 **DAVID MURRAY,**

19 **The witness, recalled upon his oath,**

20 **testified as follows:**

21 * * * * *

22 JUDGE CLARK: Public Counsel.

23 MR. WILLIAMS: Tender the witness for
24 examination. His exhibits have already been marked.

25 JUDGE CLARK: Thank you. Any

1 cross-examination from the Commission Staff?

2 MR. KEEVIL: Judge, I hate to admit it but
3 when Mr. Murray was up here previously I thought he
4 was up on both 1 and 2 so I asked everything I had
5 last time. So no, not at this time.

6 JUDGE CLARK: All right. Ameren Missouri?

7 MS. TATRO: I do have a few questions,
8 thank you.

9 JUDGE CLARK: Go right ahead.

10 EXAMINATION CONDUCTED

11 BY: MS. TATRO

12 Q. Mr. Murray, do you have a copy of the
13 statute with you, the securitization statute?

14 A. Let me see here. Yeah. That's a
15 thick document in here. Yes, I do.

16 Q. Great. Is it safe for me to assume
17 that you've read that statute?

18 A. I have read over, you know, most of
19 the statute. I can't say that when it gets towards
20 the end, with some of the other details that I don't
21 think are areas that I was directly involved in, you
22 know, I probably skimmed over those parts.

23 Q. Okay. You consider yourself familiar
24 with the statute and the portions that deal with the
25 Commission appointing a Staff representative to be

1 part of the team that advises the Commission?

2 **A. Yes.**

3 Q. Okay. So tell me what the statute
4 says about the Office of Public Counsel's role in
5 providing input and collaborating with utility?

6 **A. I think the statute excludes the
7 Office of the Public Counsel from having any role in
8 the securitization process.**

9 Q. What does the statute say about and
10 the bond issuance process, same answer?

11 **A. I do not recall seeing anything that
12 says the Office of the Public Counsel will be
13 involved in the post issuance process I guess. Only
14 chance we have to comment maybe is when the issuance
15 advice letter is filed.**

16 Q. Because the statute specifically
17 entrusts those portions of the process to the Staff,
18 the Commission appointed Staff representative and the
19 financial advisers, right?

20 **A. I don't know about the term entrust.
21 But the statute definitely anticipates it will be the
22 Staff's designated representative through a financial
23 adviser and a team. I mean, I don't think the term
24 team is used but yes.**

25 Q. All right. Would you accept the word

1 delineates or names, names those individuals --

2 **A. Yes.**

3 Q. -- as the ones who are supposed to
4 look at this? And if the bond issuance terms are
5 inappropriate who has the ability to prevent the
6 bonds from being issued?

7 **A. The Commission.**

8 Q. All right. And that's because the
9 process, under the statute, is that the
10 representative of the Staff provides an opinion to
11 the Commission on the reasonableness of the pricing
12 terms and conditions, right?

13 **A. The Staff, the underwriters, the
14 Company, yes.**

15 Q. And the Staff representative is
16 advised by a financial adviser, yes?

17 **A. That is correct.**

18 Q. So the complaint here is that OPC
19 doesn't get to play a role?

20 **A. The complaint here is that when I
21 reviewed the issuance of advice letter in the Liberty
22 case I found mistakes and yes, I would like to
23 entrust for that process to work properly but, you
24 know, I found that the Liberty order -- Liberty
25 issuance advice letter did not follow the**

1 Commission's orders as far as the terms. So
2 anyway, --

3 Q. Well, that was in your opinion,
4 correct?

5 A. That was correct.

6 Q. The Commission --

7 A. They were factually incorrect. They
8 revised the issuance advice letter.

9 Q. So the final issuance advice letter?

10 A. Was corrected.

11 Q. Was corrected?

12 A. After Public Counsel filed it.

13 Q. You were able to play that role?

14 A. Within the day, yes.

15 Q. Okay. Regardless of whether or not
16 you were part of -- I'm going to use the term finance
17 team although I recognize it's not the statutory
18 term.

19 A. Yes.

20 Q. Even though you weren't a part of
21 that role, right?

22 A. Yes.

23 Q. Have you participated -- other than
24 the two securitizations and whatever role -- that the
25 Commission has approved and whatever role you were

1 able to play in those, have you participated in any
2 type of bond offering?

3 **A. No.**

4 Q. Any type of security?

5 **A. No.**

6 Q. Do you have any special knowledge
7 about bonds that Staff does not have?

8 **A. Staff's financial adviser is**
9 **obviously involved in capital markets, I'm not**
10 **involved in capital markets. I would say that the**
11 **other Staff members -- I have, you know, a CFA**
12 **designation which goes into detail about capital**
13 **market issues.**

14 Q. Do you --

15 **A. So I would say I have better**
16 **knowledge of capital market specifics than general**
17 **staff, in-house staff.**

18 Q. What about the Staff representative
19 that the Commission chooses?

20 **A. Financial adviser has specific**
21 **capital market experience.**

22 Q. Okay. How many issuance advice
23 letters have you reviewed?

24 **A. Twenty.**

25 Q. Okay. So in your surrebuttal

1 beginning on Page 17, I think it's about Line 15, you
2 talk about including comparable pricing analysis that
3 you suggest be done for the issuance advice letter?

4 **A. I'm sorry, what page and line number?**

5 Q. I believe it was Page 17.

6 **A. Okay. I'm there.**

7 Q. You see where you reference
8 comparable pricing analysis?

9 **A. That's Line 5 through 14. Yes.**

10 Q. Okay. How often do securitized
11 utility bond issuances include comparable bond
12 issuing analysis of the 20 you reviewed?

13 **A. Can you repeat the question, please?**

14 Q. How many securitized utility bond
15 issuances, the advice letter, how many of them
16 include comparable pricing analysis?

17 **A. Okay. The advice letter itself?**

18 Q. Yeah. Sorry, I missed that.

19 **A. That's very key.**

20 Q. Yes.

21 **A. Most of them -- all of them should**
22 **include a comparable price analysis. But I'll -- I**
23 **can think of two that I --**

24 Q. Two out of the 20?

25 **A. Two out of the 20, yes.**

1 Q. Okay. Have you seen Katrina Niehaus
2 -- well, never mind. Of the two, are any of them in
3 the last five years?

4 A. Yes. I attached the one -- well,
5 that's not completed yet. But in Kentucky.

6 Q. Kentucky?

7 A. That's a procedure -- you know,
8 that's a currently pending proceeding. And that was
9 the draft issuance advice letter that had a
10 comparable pricing analysis. I think there was one
11 in 2016 that might have been Duke Energy Florida.
12 Yeah, I don't recall. I mean, I looked at quite a
13 few issuance advice letters.

14 Q. It's not a common thing to be
15 included as per your review demonstrated, right? You
16 said two out of 20?

17 A. Yeah. Common doesn't mean
18 inappropriate though but yes.

19 Q. And I did not -- I asked if it was
20 common.

21 A. Okay.

22 Q. And the answer's no; is that right?

23 A. That is correct.

24 Q. Thank you. You talk about Triple A
25 rate bonds -- rated bonds, right? Can you explain

1 what that is to the Commission?

2 **A. It's the highest quality of corporate**
3 **securities. There's only two companies in the United**
4 **States, Johnson and Johnson and Microsoft, that are**
5 **rated Triple A at this point in time.**

6 Q. Do you think security -- utility
7 securitized bonds are comparable to Triple A?

8 **A. They are usually assigned Triple A, I**
9 **don't know that the costs are always consistent with**
10 **other Triple A's.**

11 Q. Okay. Let's talk about that a little
12 bit. Would you agree with me that the underlying
13 credit requirements and obligations are different
14 between Triple A bond and securitized utility tariff
15 bonds?

16 **A. Securitized bonds are structured**
17 **bonds, that means a structured security. So it's**
18 **claimed to very specific -- you know, in this case a**
19 **financial -- some financial cash flows from utility**
20 **customers where a Triple A bond from Microsoft or**
21 **Johnson and Johnson, typically general corporate**
22 **bonds.**

23 Q. Okay. Would you agree that utility
24 securitization bonds are amortized?

25 **A. Yes.**

1 Q. And by that it means that you're
2 paying on principal interest at the same time?

3 A. Generally refer to it as a sinking
4 fund, that's correct.

5 Q. Okay. Would you agree that Triple A
6 rated bonds are not amortized?

7 A. In general corporate -- in most
8 corporate bond issuances they're issued as what's
9 called a bullet bond, you know, maturity at the end
10 of the term. Which is what Ameren Missouri does as
11 well for the most part.

12 Q. Right. So just to make sure we're
13 clear, a bullet bond -- because I'm not the expert
14 here. A bullet bond you pay the interest every six
15 months or whatever it is and then the principal's all
16 due at the end of the term; --

17 A. That's correct.

18 Q. -- is that right?

19 A. That's correct.

20 Q. Let's talk about the liquidity
21 profile of utility securitization bonds and the
22 Triple A rate bonds. Can you explain how they
23 compare? Well, first of all, do you know what I mean
24 when I say liquidity?

25 A. I know what you mean by liquidity.

1 Q. Okay.

2 A. I don't -- to be honest with you,
3 yeah, as far as when it comes to securitized bonds I
4 don't know if they're actively traded, you know.
5 That may be a function of the investors that like --
6 you know, that -- the target investors that want to
7 buy and hold.

8 Q. But these Triple A corporate bullet
9 style bonds, they retain the principal value, right,
10 because it's not paid until the end?

11 A. Well, I think the Company hopes
12 they'll retain their principal value. If something
13 happens financially to the Company, their risk
14 profile increases then their principal value or the
15 value of the bond decreases.

16 Q. Can bullet bonds be resold?

17 A. Well, any bond can be resold and
18 over-the-counter if it's -- you know, if it's
19 registered with the Security Exchange Commission.

20 Q. Would you agree that bullet bonds are
21 more attractive to investors to be resold because
22 they still have the principal value that is paid at
23 the end?

24 A. That would generally be the case,
25 yes.

1 Q. Okay. Thank you. I have no further
2 questions.

3 JUDGE CLARK: Are there any Commission
4 questions?

5 MS. HOLSMAN: No.

6 JUDGE CLARK: I hear none. I haven't got
7 many for you, Mr. Murray, but I do have a few.

8 EXAMINATION CONDUCTED

9 BY: JUDGE CLARK

10 Q. How do you respond to Staff's
11 position that including comparable securities,
12 pricing analysis and the issuance advice letter could
13 have an adverse impact on the marketing and pricing
14 of the bonds?

15 A. I personally don't understand that
16 because the marketing and the pricing has already
17 occurred so if you put it in the issuance advice
18 letter that process is completed. So I don't
19 understand how that would impact any further
20 interaction with the investors because they've
21 already went out and received the pricing.

22 Q. Okay. What about -- never mind.
23 Sorry, I'm trying to see if I can simplify my
24 question. Okay. Issue 2D, which I guess involves
25 should the Commission order Ameren Missouri to

1 provide the issuance advice letter and supporting
2 work papers to other interested parties at the same
3 time it provides the information to Staff's finance
4 team. Is OPC intending for this information to be
5 shared with just the parties to the case?

6 **A. Just the parties to the case.**

7 Q. And are you intending for that to be
8 shared with the parties in the case when the draft
9 issuance advice letter is shared with Staff prior to
10 the official submission or are you talking about at
11 the end?

12 A. When the draft -- I think it's two
13 weeks before the anticipated issuance of -- or, you
14 know, pricing of the bonds. And like I said, this is
15 just from experience. We had a -- you had asked the
16 Commission -- excuse me, Commission had asked if --
17 for comments on the issuance advice letter in the
18 Liberty case and I'll tell you we had -- I had to
19 drop everything to try to see if I agreed with the
20 net present value calculations and we did not. So
21 that was just -- I mean, it was -- we were just
22 attempting to improve and make corrections and
23 changes.

24 And so, yeah, I really don't understand,
25 you know, the pushback on that and I think that

1 that's just -- you know, that's just something to
2 give us more time to see if we agree or disagree and
3 then we can reach out to Staff and the Company and
4 ask them questions and make sure that, you know, we
5 don't have a disagreement. I mean, obviously it's
6 ultimately their responsibility, if they want to move
7 forward with something that we don't think is correct
8 then that it is what it is. At least give us the
9 opportunity to collaborate.

10 Q. Okay. And I understand obviously a
11 longer period makes for a better review and certainly
12 makes reviewing easier. And so what you're talking
13 about is a potential two week review period. I know
14 it was done differently between Liberty and Evergy.
15 I know that as you said in Liberty you got just a
16 very short amount of time and I don't know if you
17 received any in Evergy except for -- certainly not an
18 invitation to comment but just a time period. How
19 important to OPC is it -- how important to Public
20 Counsel is it that it be allowed to comment on the
21 issuance advice letter?

22 A. Well, we represent the rate payers
23 and there's supposed to be, you know, some confidence
24 in this process that this is going to result in a net
25 present value savings to customers and they're

1 footing the bill. So I think it's very important to
2 the Office of the Public Counsel as representation
3 for the retail -- you know, the retail rate payers.

4 Q. All right. Thank you.

5 A. Thank you.

6 JUDGE CLARK: Any re-cross based upon
7 Bench questions? Hold on just a second. Have to,
8 after each time, check my order. Any re-cross from
9 the Commission Staff?

10 MR. KEEVIL: No. Thank you.

11 JUDGE CLARK: Ameren Missouri?

12 MS. TATRO: Yes. Thank you.

13 EXAMINATION CONDUCTED

14 BY: MS. TATRO

15 Q. So Mr. Murray, the Judge asked you --
16 I think the very first question the Judge asked you
17 was did you remember the earlier conversations about
18 the adverse impact on the price of bonds that making
19 the advice letter public or partially public might
20 cause. And your answer was not sure how that -- why
21 that would happen because the work would already be
22 done. Do you remember that conversation?

23 A. Yes.

24 Q. You're requesting that the Commission
25 in this case put in the financing order that this --

1 the financing -- the issuance advice letter will be
2 made partially public, partially redacted, right?
3 You're asking that to be in the financing order; is
4 that correct?

5 **A. I think those are just certification**
6 **letters that I was referring to.**

7 Q. You're right, certification letters,
8 okay. But you're requesting that be put in the
9 financing order?

10 **A. I don't think I recommended the**
11 **certification letters to be part of the financing**
12 **order.**

13 Q. Are you requesting that the
14 certification orders be -- or letters be made public?

15 MR. WILLIAMS: Judge, I'm going to object
16 at this point. I mean, certification letters were
17 not the subject of Commission questions.

18 MS. TATRO: Well, that's what I'm trying
19 to clarify. Perhaps I misunderstood his answer. I
20 thought his answer was talking about those letters.

21 BY: MS. TATRO

22 Q. Did it not?

23 **A. No. I was talking --**

24 MS. TATRO: Then I'm done. Thank you.

25 JUDGE CLARK: Okay. Thank you. Any

1 re-direct?

2 MR. WILLIAMS: Just a few hopefully.

3 EXAMINATION CONDUCTED

4 BY: MR. WILLIAMS

5 Q. You remember being questioned about
6 comparable pricing and this being part of the -- my
7 notes are not that great. Do you remember the
8 exchanges about comparable pricing --

9 **A. Yes.**

10 Q. -- included -- should they be
11 included?

12 **A. Yes.**

13 MR. KEEVIL: Objection. Included in what?

14 JUDGE CLARK: Mr. Williams?

15 MR. WILLIAMS: Well, let me try again.

16 BY: MR. WILLIAMS

17 Q. Do you remember the questions you got
18 about how often the comparable pricing was included
19 in -- I can't remember if it was -- I think it was --
20 let's try, issuance advice letter?

21 **A. Yes. That's exactly what she asked**
22 **me about.**

23 Q. And you responded that it -- or two
24 out of 20 that is what you'd seen, correct?

25 **A. Ballpark.**

1 Q. And I think you acknowledged that it
2 wasn't common then, correct, based on what you've
3 seen?

4 A. Yes.

5 Q. Should it be common?

6 A. Yes.

7 Q. Why?

8 A. Because a yield -- you know, looking
9 at a yield by itself doesn't tell you anything about
10 the pricing of the bond as compared to other -- you
11 know, other securities being issued at the same time
12 with maybe the same, you know, amount of issuance,
13 same ratings, same weighted average of life. A yield
14 on its own doesn't tell you anything, you need
15 benchmarks. And as they've -- they've acknowledged
16 that -- I say they. You know, the financial adviser
17 and the underwriters are -- you know, the Goldman
18 Sachs and others that may be involved that that's a
19 very important part of the process to make sure --
20 you know, more or less in certifying that they
21 achieve the lowest cost for the securitized utility
22 tariff bonds. But it's impossible to be able to make
23 any conclusion or judgment, specifically from the
24 public, by just looking at a yield. A yield of
25 5.1 percent doesn't mean anything unless you look and

1 **compare it to benchmarks.**

2 MR. WILLIAMS: Thank you. No further
3 questions.

4 JUDGE CLARK: Actually that brought one to
5 mind for me.

6 EXAMINATION CONDUCTED

7 BY: JUDGE CLARK

8 Q. You said -- of those 20, you said one
9 was still in process; is that correct?

10 **A. That's the --**

11 Q. That's the draft? I believe you
12 referred to it as the draft issuance advice letter?

13 **A. That's a schedule attached to my**
14 **testimony. It's the Kentucky issuance advice letter.**

15 Q. Okay. And the other one would have
16 been one that was already issued; is that correct?

17 **A. Yes.**

18 Q. Do you know what it was rated at?

19 **A. It should have been rated at Triple**

20 **A. I mean, almost all of these securitized bonds are**
21 **rated at Triple A. Now the pricing, the spread**
22 **varies. You know, over treasuries and over Triple**
23 **A's the spread varies based on various factors.**

24 JUDGE CLARK: Okay. Any questions based
25 upon that question? Any re-direct based on that

1 question?

2 MR. WILLIAMS: No, thank you.

3 JUDGE CLARK: All right. Thank you, Mr.
4 Murray, you may step down.

5 **THE WITNESS: Thank you. Appreciate it.**

6 JUDGE CLARK: We have one last witness for
7 this, I believe it's Mr. Sagel. Now, if I remember
8 Mr. Sagel only had testimony as to the DOE issue. So
9 is this another case where he -- Mr. Sagel is being
10 put on for Commission questions?

11 MS. TATRO: It is. If the Commissioners
12 doesn't have any questions he doesn't need to take
13 the stand.

14 JUDGE CLARK: Are there any -- well, let
15 me ask first. Are there any cross-examination
16 questions for Mr. Sagel on Issue 2 from the parties?
17 Okay. I see no affirmative yeses. I'll ask for
18 Commissioners that are present, are there any
19 Commission questions for Mr. Sagel on this Issue
20 Number 2 which is the post financing order process or
21 procedure? I hear none. I have no questions for Mr.
22 Sagel. So I --

23 MS. TATRO: That's fine.

24 JUDGE CLARK: Okay. So are we finished
25 with Issue 2?

1 MS. TATRO: Two down.

2 JUDGE CLARK: Okay. Why don't we take a
3 short break at this time so that Mr. Keevil can make
4 arrangements for his vehicle. Can we go off the
5 record for a moment? And can we strike that last
6 line of mine. Mr. Keevil, how long would you like to
7 move your car for?

8 MR. KEEVIL: Honestly, I'm not handling
9 the next issue so I'm going to be in my car the
10 entire time. How about until -- what time is it now,
11 quarter till? Probably 15 minutes. Do we know, is
12 -- okay.

13 JUDGE CLARK: It's my intention, like I
14 said, I plan at this point, depending on the progress
15 we make, on staying probably till about six 'cause I
16 do want to make some headway. I do think we have an
17 incredible amount to pack into this hearing and I
18 want to be sure that we don't need to find extra days
19 at the end or for us all to be here on weekends. So
20 with that in mind, why don't we -- this will be a
21 slightly longer recess. Why don't we take a recess
22 till about -- I'll take that 15 minutes and we'll do
23 -- let's go ahead and do 5:15. We'll go off the
24 record provided we ever went back on.

25 (At this point in the proceedings, a short

1 recess was taken.)

2 JUDGE CLARK: Okay. We're about to start
3 -- we are going to start Issue 3 which is the
4 prudence of the retirement. Looks like the first
5 witness is Ameren Missouri. Ameren, you may go ahead
6 and call your witness. Let me go ahead and ask this.
7 I know we did a mini opening which encompassed part
8 of Holmstead's testimony on the 12th. Were you
9 wanting to do a mini opening at this time?

10 MR. LOWERY: I think we're only here on
11 Issue 3A this evening and that mini opening's already
12 been done and 3B, it's really kind of a distinct
13 issue with some distinct witnesses so we'll want to
14 do a mini opening on 3B when we get to it, but...

15 JUDGE CLARK: Okay. Well, let's talk
16 about 3A. What witnesses are going to encompass
17 that?

18 MR. LOWERY: Birk, Whitworth, Holmstead,
19 Reed, Eubanks, Majors and Seaver.

20 JUDGE CLARK: Okay. So we're trying to
21 get through 3A today?

22 MR. LOWERY: Well, we're not going to get
23 through it today but that's what we're starting today
24 as I understand it, Judge.

25 JUDGE CLARK: All right. Go ahead and --

1 go ahead and call your witness.

2 MR. LONG: Ameren Missouri calls Mark
3 Birk.

4 THE REPORTER: Could I get your name,
5 please?

6 MR. LONG: Yes. I'm Nash Long, nice to
7 see you, for Ameren Missouri.

8 JUDGE CLARK: All right. Mr. Birk, would
9 you raise your right hand to be sworn.

10 * * * * *

11 MARK C. BIRK,

12 The witness, having been first duly sworn
13 upon his oath, testified as follows:

14 * * * * *

15 JUDGE CLARK: Thank you. Go ahead,
16 Ameren.

17 EXAMINATION CONDUCTED

18 BY: MR. LONG

19 Q. Please state your name.

20 **A. Mark Christopher Birk.**

21 Q. And are you the same Mark Christopher
22 Birk who caused to be prepared for filing in this
23 docket direct and surrebuttal testimony marked for
24 identification as Exhibit 6 and 7?

25 **A. Yes, I am.**

1 Q. Do you have any corrections to either
2 Exhibit 6 or 7?

3 A. Just the correction on the timing of
4 the -- of some of the project.

5 MR. LONG: Your Honor, we'd like to hand
6 up an exhibit -- hand out an exhibit that notes the
7 correction for the record which we'll mark as
8 Exhibit 21.

9 JUDGE CLARK: Okay. Thank you.

10 MR. LOWERY: Judge, you want copies for
11 the other Commissioners or just one? I have copies
12 if you'd like them?

13 JUDGE CLARK: Why don't you give me three.
14 Thank you.

15 (WHEREIN, Exhibit 21 was marked for
16 identification.)

17 JUDGE CLARK: And so you're calling this
18 Exhibit 21; is that correct?

19 MR. LONG: Yes, your Honor.

20 JUDGE CLARK: And how would you like that
21 titled? It's an errata?

22 MR. LONG: It's corrections to MCB-02.

23 JUDGE CLARK: Can you give me that
24 schedule number again?

25 MR. LONG: MCB-D2.

1 JUDGE CLARK: Thank you.

2 BY: MR. LONG

3 Q. All right. Just looking at Exhibit
4 which we've numbered 21, Mr. Birks, can you identify
5 for us the corrections that you would like to make to
6 this exhibit MCB-D2?

7 A. Yes. The corrections I'd like to
8 make are the ones that are written -- handwritten on
9 the document. And basically what they were is moves
10 in the years that those projects were actually
11 executed compared to what was in the original
12 schedule.

13 JUDGE CLARK: Can you explain that to me
14 again? So what are the corrections of?

15 THE WITNESS: The corrections are
16 handwritten and with the circles. So when you look
17 at -- for instance, the first one to the left, Rush
18 Island 1, it says it was actually performed in 1995
19 and 1997. So it's actually shown under the year
20 2001. It was actually performed in 1995 and 1997.
21 They just denote when they were actually performed,
22 Judge.

23 JUDGE CLARK: Okay. That clarifies that
24 for me, thank you.

25 THE WITNESS: You're welcome.

1 **BY: MR. LONG**

2 Q. Mr. Birk, with these corrections
3 which you have noted for the record on Exhibit 21, if
4 I posed the same questions to you today reflected in
5 your Exhibit 6 and 7 would your answers be the same?

6 **A. Yes, they would.**

7 Q. Are those answers true and correct to
8 the best of your knowledge and belief?

9 **A. Yes, they are.**

10 MR. LONG: Your Honor, at this time Ameren
11 Missouri will move Exhibit 6 and 7 into the record.

12 MR. WILLIAMS: Judge, I believe Mr. Birk
13 is testifying to other issues later, so --

14 JUDGE CLARK: That was the question I was
15 getting ready to ask. I don't believe Mr. Long was
16 here before. But because a lot of the testimony that
17 -- the Commission is taking some of the testimony
18 that there have been motions to strike on. And so
19 what we've done with all the testimony is we're --
20 because some of the witnesses are going to be
21 testifying on multiple issues, we're not just
22 accepting it into the record on the first issue but
23 we'll be taking it into the record pending objection
24 the last time that witness testifies.

25 MR. LOWERY: Judge, I'm handling that last

1 issue so I'll just move it into the record at that
2 time.

3 JUDGE CLARK: That sounds great, Mr.
4 Lowery.

5 MR. LONG: At this time I would also then
6 just move Exhibit 21 into the record.

7 JUDGE CLARK: Okay. Are there any
8 objections to Exhibit -- to admitting Exhibit 21, the
9 corrections to -- corrections to Schedule MCV-D2?

10 MR. WILLIAMS: It appears that exhibit's
11 limited to the issue that's before the Commission
12 currently so Public Counsel has no objection.

13 JUDGE CLARK: Thank you. Staff, do you
14 have any objections?

15 MS. MERS: No.

16 JUDGE CLARK: Is that a no?

17 THE REPORTER: And I'm sorry, could I get
18 your name?

19 JUDGE CLARK: And you're going have to
20 speak into the microphone, I apologize.

21 MS. MERS: Sorry. Yes, we don't have any
22 objections. And it's Nicole Mers, M-E-R-S.

23 THE REPORTER: Thank you.

24 JUDGE CLARK: Okay. Thank you, Ms. Mers.
25 Hearing no objections, Exhibit -- Ameren Exhibit 21

1 is admitted onto the hearing record.

2 MR. LONG: Your Honor, at this time we
3 would tender Mr. Birk for cross.

4 JUDGE CLARK: Okay. Are there any
5 questions, cross-examination, for Mr. Birk from the
6 Staff of Commission?

7 MS. MERS: No, your Honor.

8 JUDGE CLARK: Any cross-examination for
9 witness Birk from the Office of the Public Counsel?

10 MR. WILLIAMS: Yes. Thank you.

11 EXAMINATION CONDUCTED

12 BY: MR. WILLIAMS

13 Q. Good afternoon, Mr. Birk.

14 **A. Good afternoon.**

15 Q. Has Ameren Missouri included anything
16 in the pre-filed testimony in this case regarding the
17 New Source Review permitting and activities at Rush
18 Island Units 1 and 2 in 2007 and 2010 that it did not
19 present in evidence before the federal court?

20 **A. I don't know all the evidence that**
21 **was presented before the federal court. But I do**
22 **believe that the proceeding that we're here today for**
23 **is to really look at the prudence of the permitting**
24 **decision.**

25 Q. I understand that. My question is

1 whether you put evidence in this case that was not in
2 -- or pre-filed evidence in this case that was not
3 included in the record in front of the federal court?
4 And if you don't know, that's fine.

5 **A. I do not know. I do not know.**

6 Q. All right. Thank you. No further
7 questions.

8 JUDGE CLARK: Bear with me just a moment.
9 Okay. Are there any Commission questions?

10 COMMISSION HOLSMAN: No questions.

11 JUDGE CLARK: I've got a few questions for
12 you, Mr. Birk. Let me see if I have any more.

13 EXAMINATION CONDUCTED

14 BY: JUDGE CLARK

15 Q. All right. Now in your testimony you
16 phrased the prudence question as why Ameren Missouri
17 did not get those permits -- okay. In your -- in
18 your testimony you indicated that the appropriate
19 question that you believed the Commission is asking
20 here is why did Ameren Missouri not get the permits
21 and was that decision reasonable at the time of the
22 projects; is that correct?

23 **A. That is correct.**

24 Q. And why do you believe that that's
25 the appropriate question?

1 A. I believe that's the appropriate
2 question because what this Commission should be
3 deciding is around the prudence of not getting those
4 permits and the reason that we did not get those
5 permits is because we were following the Missouri SIP
6 which was the law at the time. And the SIP indicated
7 that had basically that we -- if potential emissions
8 did not increase and if the work was routine that
9 permits were not required. And so after analysis of
10 these projects at Rush Island we determined that the
11 permits were not required. And in doing that
12 basically we -- we acted prudently. And I'm
13 absolutely certain of that. We did -- we did the
14 review like we had done on all previous projects and
15 -- that we had done at the various generating plants
16 and that is the question.

17 Q. Are emissions calculations required
18 in Missouri?

19 A. So according to the Missouri SIP --
20 are you talking about the SIP at the time back in
21 2007?

22 Q. Yes, that's correct.

23 A. Yes. So the Missouri SIP at the time
24 required -- really required three things. And in
25 that you only had to show that one of those things

1 was basically correct and you didn't need the permit.
2 So you either had to show that there wasn't any
3 potential hourly emissions increases, you had to be
4 able to show basically that the projects you do --
5 you were doing were routine. And then there was also
6 a portion in that that looked at -- at the actual
7 emissions. Again, the requirement was you just had
8 to show that one of them was met and you didn't need
9 the permit. And we believe that through our analysis
10 that there were no potential emissions increases
11 associated with the projects we were doing, we
12 clearly believed that these were routine not only in
13 Ameren but in the rest of the industry, that these
14 type of boiler component replacements were being done
15 across the industry at the time. And when we -- you
16 know, when we looked at the reason there was no -- we
17 believe no hourly potential increases led us to also
18 believe that there were no actual increases
19 associated with implementation of these projects.

20 Q. Now, I believe that the district
21 court, according to your testimony, determined that
22 you're wrong about the law -- what the law was but
23 reasonable -- well, I don't think they made the
24 determination. I guess what you're saying is that
25 you're admitting that Ameren was wrong about the law

1 but was reasonable in their interpretation?

2 A. That's correct. We were wrong about
3 the law but we were reasonable in the way we
4 implemented the Missouri SIP at the time. What the
5 federal court found was -- and this was years after
6 the fact. They used a different interpretation of
7 the Missouri SIP. So what they found was that we did
8 not interpret it correctly so we were wrong in the
9 law. Now, we were interpreting it the way that other
10 utilities in Missouri were also interpreting it, we
11 were interpreting it the way the DNR was interpreting
12 it. And we believe what we were doing was consistent
13 with the industry the way that the EPA had even
14 discussed this issue and as such we believe that what
15 we did was reasonable and it was prudent.

16 Q. Do you believe there's a difference
17 between reasonable and prudent?

18 A. You know, I believe that what -- I
19 believe we show that it was reasonable then the
20 decisions we made were prudent. And I think at the
21 time, because we were following the Missouri SIP, we
22 were following the law at the time and because these
23 projects didn't increase emissions, potential hourly
24 missions and basically they were routine that we
25 believe the permits were not needed. We believe we

1 were reasonable in looking at that and as such we
2 were prudent.

3 Q. Is the converse true, if Ameren were
4 unreasonable would it also presumptively be
5 imprudent?

6 A. I don't know that I can -- I would
7 not say that in every case, no.

8 Q. What would be the difference that
9 would cause it not to work the other direction?

10 A. For instance, if -- I'm trying to
11 think of an example, Judge. I can't think of one
12 right off the top.

13 Q. I'm just -- I guess I'm just having a
14 hard time digesting part of this.

15 A. Uh-huh.

16 Q. And I understand the reliance on the
17 SIP. But I have a hard time reconciling the Court's
18 determining that Ameren was wrong about the law but
19 that it's -- and using your word understanding that
20 it was reasonable in its understanding about the law.
21 I don't understand how you can be wrong about
22 something yet reasonable in your understanding of it?

23 A. Well, -- well, we were interpreting
24 this for projects that we did seven to ten years
25 earlier. So our interpretation of the Missouri SIP,

1 which was the law at the time, was the reasonable
2 interpretation that not only we were using but other
3 utilities and the DNR was using in Missouri at the
4 time. What the Court ultimately found, years later,
5 was they basically said that we were wrong in the
6 interpretation of the SIP and that we were wrong in
7 the law. And we're not denying that we were wrong in
8 the law, we were wrong in the law, that is what the
9 Court has found. But we made reasonable judgments to
10 follow the Missouri SIP and, you know, we were, in
11 our environmental group -- and Steve Whitworth can
12 talk more to this. But we were very in tune to what
13 was going on in the industry and in Missouri and we
14 were following the Missouri SIP and we believe that
15 that was reasonable.

16 Q. And you asked me if I was referring
17 to the SIP at the time. Has the SIP changed since?

18 A. The SIP has been modified over time.
19 I'm not as converse on it as Mr. Whitworth would be,
20 that is his expertise. But it has changed over time.

21 Q. Bear with me just a moment. Okay. I
22 have no further questions for you at this point.

23 JUDGE CLARK: Is there any re-cross based
24 upon Commission questions?

25 MR. WILLIAMS: There is from Public

1 Counsel.

2 MS. MERS: Just very, very briefly.

3 EXAMINATION CONDUCTED

4 BY: MS. MERS

5 Q. You just had your conversation with
6 the Judge about the judge of the district court
7 coming to at that different interpretation of the
8 Missouri SIP, do you recall?

9 **A. Yes, I do.**

10 Q. So that judge's interpretation is
11 also reasonable, wouldn't you agree?

12 **A. That judge's interpretation is**
13 **reasonable at the time, yes.**

14 Q. Nothing further. Thank you.

15 JUDGE CLARK: Public Counsel.

16 MR. WILLIAMS: Thank you.

17 EXAMINATION CONDUCTED

18 BY: MR. WILLIAMS

19 Q. Mr. Birk, if I heard you correctly,
20 you said that you were following the law at the time
21 and I believe you were referring to the 2007, 2010
22 timeframe. Did you mean to say that you were
23 following your understanding of the law at the time
24 when you were following the Missouri SIP?

25 **A. What I said was we were following the**

1 Missouri SIP which was -- was our understanding, was
2 Missouri's DNR's understanding and it was the way
3 that the SIP was being implemented.

4 Q. But that's not what Judge Sippel
5 found that the SIP said, your understanding didn't
6 comport with his decision, correct?

7 A. That is indeed what the Court found
8 is that we were wrong in the law. But that --

9 Q. And he was saying that was the law at
10 the time he made the decisions regarding Iatan 1 and
11 2, correct?

12 A. Iatan, we're not arguing.

13 Q. I'm sorry. Rush Island. Wrong
14 plant. Rush Island Units 1 and 2?

15 A. What was the question again?

16 JUDGE CLARK: I was very excited to see
17 where that was going.

18 THE WITNESS: What was the question again.

19 MR. WILLIAMS: Maybe Ameren has a new
20 plant that I didn't know about. Sorry about that
21 slip up.

22 BY: MR. WILLIAMS

23 Q. What Judge Sippel found was what the
24 law was at the time Ameren Missouri was making the
25 decisions regarding Rush Island Units 1 and 2 and

1 that led to the major modifications in 2007 and 2010,
2 correct?

3 A. No. I think what Judge Sippel, what
4 the Court did was they used a different
5 interpretation of the SIP and a different test to
6 determine whether we needed the permits or not. And
7 again, what I've said is the Court -- the Court
8 ultimately determined that we -- that we needed the
9 permits. Again, they interpreted the SIP different
10 than we did.

11 Q. Well, the Judge was saying that was
12 -- his interpretation was what the law was at the
13 time you were making those decisions which differed
14 from yours, correct?

15 A. His interpretation differed from
16 ours, correct.

17 Q. But it was the inter -- his
18 interpretation is what he said applied at the time
19 you were making those decisions, correct?

20 A. I don't know that he said it applied
21 at the time we were making those decisions.

22 Q. Well, how could it apply at some
23 other time?

24 A. Well, I think he -- I think he did
25 the evaluation almost ten years after the fact --

1 after we made those decisions and things had changed
2 -- had changed through time. His interpretation was
3 not our interpretation.

4 Q. You keep focusing on your
5 interpretation of the Missouri SIP as being
6 consistent with the Missouri Department of Natural
7 Resources and other utilities in Missouri. Was it
8 consistent with the EPA's interpretation?

9 A. The EPA basically accepted the
10 Missouri SIP and that's how the EPA rules were
11 implemented. They were implemented through the
12 Missouri SIP.

13 Q. Well, EPA brought an enforcement
14 action against the major -- or based on the major
15 modifications that Rush Island Unit 1 and Rush Island
16 Unit 2 in 2007 and 2010, did it not?

17 A. It did.

18 Q. Actually it brought some counts for
19 earlier modifications, did it not?

20 A. Yeah. The EPA actually changed
21 course about five or six times on things that they
22 brought counts against. And ultimately -- if you --
23 if you look at, you know, my testimony, I think it
24 talks about how they went back and forth and then
25 ultimately decided on the projects they decided on

1 **for Rush Island 1 and 2.**

2 Q. Well, then the Court dismissed a
3 couple of counts saying they were time barred?

4 **A. I'm not -- they may have done that.**

5 Q. No further questions at this time,
6 thank you.

7 EXAMINATION CONDUCTED

8 BY: JUDGE CLARK

9 Q. Mr. Birk, I can't remember right off,
10 did your testimony include information concerning
11 whether or not Ameren's decisions harmed customers,
12 was that a you issue?

13 **A. That was not a me issue.**

14 Q. Whose issue was that, was that
15 Whitworth's?

16 **A. Do you -- I think it's Matt Michels,
17 is it not?**

18 MR. LONG: That's Matt Michels, your
19 Honor.

20 **THE WITNESS: Yes.**

21 JUDGE CLARK: Thank you very much. Any
22 re-direct?

23 MR. LONG: Just briefly, your Honor.

24 EXAMINATION CONDUCTED

25 BY: MR. LONG

1 Q. Mr. Birk, you were asked about the
2 district court decision. To your knowledge, did the
3 district court ever find that Ameren Missouri's
4 understanding of the law at the time that it made its
5 permitting decisions was an unreasonable
6 understanding?

7 A. **No, they never found it was**
8 **unreasonable.**

9 Q. Did the district court ever find that
10 Ameren Missouri was unreasonable in having the same
11 interpretation of the Missouri state implementation
12 plan that the Missouri Department of Natural
13 Resources held?

14 A. **No, they never found that was**
15 **unreasonable.**

16 Q. No further questions.

17 JUDGE CLARK: Mr. Birk, you may step down.
18 Ameren, you can call your next witness.

19 MR. LONG: We're calling Mr. Steven
20 Whitworth.

21 JUDGE CLARK: Mr. Whitworth, if you'll
22 come down to the stand and raise your right hand and
23 be sworn.

24 * * * * *

25 STEVEN C. WHITWORTH,

1 The witness, having been first duly sworn
2 upon his oath, testified as follows:

3 * * * * *

4 JUDGE CLARK: Please be seated. Ameren,
5 go ahead.

6 MR. LONG: Your Honor, if I may have one
7 moment. We have another correction, I just need to
8 pull it out of my box.

9 JUDGE CLARK: Please, go ahead.

10 MR. LONG: It's going to be Exhibit 22.

11 (WHEREIN, Exhibit 22 was marked for
12 identification.)

13 JUDGE CLARK: And you said this was a
14 correction?

15 MR. LONG: Yes, your Honor. This will be
16 a correction to Mr. Whitworth's Schedule SCW-D20.
17 The original, which was filed, we've noticed did not
18 have all the pages. This SCW, it -- this version
19 which we'll call Exhibit 22, does have all of the
20 pages to the document.

21 JUDGE CLARK: Okay. Thank you. Go ahead.

22 EXAMINATION CONDUCTED

23 BY: MR. LONG

24 Q. Please state your name.

25 A. **Steven Whitworth.**

1 Q. And are you the same Steven Whitworth
2 who caused to be prepared for filing in this docket
3 direct and surrebuttal testimony marked for
4 identification as Exhibits 8 and 9?

5 A. I am.

6 Q. And do you have any corrections?

7 A. I have the one correction with this
8 Exhibit D20 that you mentioned.

9 Q. And Exhibit 22, which you have before
10 you, is that the full and complete version of your
11 Schedule SCQW-D20?

12 A. Yes, it is.

13 Q. Now, with those corrections, if I
14 posed the same questions to you today will your
15 answers be the same as which you've provided in
16 Exhibits 8 and 9?

17 A. Yes, it will.

18 Q. And are those answers true and
19 correct to the best of your knowledge and belief?

20 A. They are.

21 MR. LONG: Your Honor, at this point we
22 would tender the witness for cross.

23 JUDGE CLARK: Thank you. Sorry. Bear
24 with me just a moment. Any cross-examination from
25 Commission Staff?

1 MS. MERS: Briefly.

2 EXAMINATION CONDUCTED

3 BY: MS. MERS

4 Q. So turning to your Exhibit 22, am I
5 correct in saying the date at the bottom is
6 5-31-2011?

7 **A. It is.**

8 Q. And is it correct that the outages in
9 which the Rush Island projects were installed, they
10 were in 2007 and 2010?

11 **A. Yes.**

12 Q. And presumable decision making would
13 have started at least in 2006?

14 **A. Or earlier, yes.**

15 Q. Is there a -- do you have any copy of
16 this guide that we've referred to those points in
17 time when the decisions were being made?

18 **A. That was not a part of my testimony,
19 no.**

20 Q. Okay. Thank you.

21 JUDGE CLARK: Does Staff have any further
22 cross-examination?

23 MS. MERS: Sorry. I thought I said no
24 further questions but I apologize.

25 JUDGE CLARK: Okay. I'm sorry, I didn't

1 hear that. Office of the Public Counsel.

2 MR. WILLIAMS: Thank you.

3 EXAMINATION CONDUCTED

4 BY: MR. WILLIAMS

5 Q. Good afternoon Mr. Whitworth.

6 **A. Good afternoon.**

7 Q. Are any of the schedules that you
8 have to your testimony documents that were not also
9 put into evidence before the Judge Sippel in the
10 federal action?

11 **A. I am not sure if those documents that**
12 **were in my testimony were part of the case.**

13 Q. You didn't testify in that case?

14 **A. I did.**

15 Q. Did Ameren Missouri consider
16 inquiring of the EPA as to whether its understanding
17 of the Missouri state implementation plan was correct
18 back in the 2005 to 2010 timeframe?

19 **A. No. As was stated in my testimony,**
20 **Missouri is the permitting authority, the Missouri**
21 **Department of Natural Resources.**

22 Q. I understand that. But my question
23 is whether Ameren Missouri even considered asking the
24 EPA about its understanding of the Missouri SIP?

25 **A. The Missouri SIP was approved by EPA.**

1 And Missouri DNR administered that in accordance with
2 the approval that they gained from US EPA.

3 Q. So you didn't to make any other
4 independent inquiry and you didn't consider doing so?

5 A. Well, when we went through our
6 process of evaluating projects we had a host of
7 information available to us. Primary was the
8 Missouri SIP, potential to emissions. We also looked
9 at actual emissions and we also looked at routine.
10 The projects were classified under the Missouri SIP
11 as routine maintenance. Also with our knowledge of
12 other units that we had in our Illinois fleet as well
13 as in the Missouri fleet we knew that these types of
14 projects did not -- were not the type of projects
15 that would increase actual emissions as well as they
16 weren't the type of projects that increased potential
17 to emit. So in the process as we go through we also
18 had information from the industry, from the lawyers
19 that we had interpreting it through our UR group as
20 well. So no, we did not see the need or by process
21 the process was not to go over the head, if you will,
22 of the Missouri DNR who was our permitting authority.

23 Q. Well, wouldn't it have foreclosed the
24 EPA from pursuing enforcement actions against Ameren
25 Missouri for the modifications of Rush Island in 2007

1 and 2010 had it gotten an opinion from the EPA that
2 permitting was not required -- NSR permitting was not
3 required?

4 **A. I can't project the answer to that**
5 **hypothetical.**

6 Q. No further questions. Thank you.

7 JUDGE CLARK: Thank you. Any Commission
8 questions?

9 MR. HOLSMAN: No.

10 JUDGE CLARK: I hear none. I've got a few
11 questions for you, Mr. Whitworth.

12 EXAMINATION CONDUCTED

13 By: JUDGE CLARK

14 Q. Now, in Lansford's direct testimony
15 he stated that Ameren is contractually required to
16 operate through September 1st, 2024; is that correct?

17 **A. I'm really not sure of that date.**

18 Q. Is the September 1st, 2024 operation
19 date based on the terms of the SSR agreement with
20 MISO or do you know?

21 **A. I do not know, Judge.**

22 Q. Are you aware of anything that would
23 cause the Rush Island's operation to extend -- do you
24 know what conditions would -- under what conditions
25 will the operation of Rush Island be extended through

1 October 15th, 2024?

2 A. Judge, I'm really not involved in
3 that part of the decision and cannot answer your
4 question.

5 Q. All right. Fair enough. We've tried
6 three, I've gotten three strikes so I'm going to move
7 off of that line of questioning. Now, at the time I
8 remember reading in Holmstead's testimony that the --
9 that the EPA was losing a variety of enforcement
10 actions. Are you aware of that part of his
11 testimony?

12 A. Yes, I am.

13 Q. Did that factor into Ameren's
14 decision making process?

15 A. There was a host of information at
16 that time when we were looking at these projects.
17 The regulations were very dynamic, EPA's enforcement
18 action that began in 1999 was very dynamic. So we've
19 took, as part of our evaluation, a host of
20 information that was provided to us from several
21 sources, from inside our utility groups within
22 Missouri and talking to other utilities, talking with
23 DNR, talking with EPA, and also getting information
24 from Utility Air Regulatory Group which were a law
25 firm and a group that was supporting the industry and

1 helping us navigate across the board of all these
2 numerous cases and dynamics associated with New
3 Source Review. So I can tell you that there was a
4 body of work that we were looking at with close
5 attention. We did not, in environmental, analyze the
6 court cases, we relied on the attorneys, both
7 in-house and with UR and other sources, to provide us
8 with information about those cases as they provided
9 as they went through their course. However we were
10 also looking at what our requirements were in the
11 state of Missouri as well as looking at what the
12 other utilities were doing both in Missouri and then
13 across the country with regard to looking at these
14 routine maintenance projects that were being
15 conducted to maintain availability and the
16 reliability of the Ameren Missouri generating fleet.

17 Q. I remember somewhere in your
18 testimony reading something about some of these
19 smaller replacements were being targeted and that ESD
20 was aware of it. Do you remember that portion of
21 your testimony?

22 A. If -- I don't have any testimony in
23 front of me. But what I said and what I think is in
24 the testimony, I know is in the testimony, is that
25 there was a list of projects provided by UR to all

1 the member companies that listed a host of projects
2 that were very similar in nature to projects that we
3 had been completing at Ameren both on the Illinois
4 fleet and the Missouri fleet as well as the other
5 utilities in Missouri. The list included projects
6 that were conducted at the Rush Island units and also
7 included other projects. So there was a general
8 awareness across the industry about what projects
9 were being looked at by EPA and that was part of the
10 considerations making sure that we were aware of
11 those projects and paying attention to them and
12 making sure that they were fully evaluated.

13 Q. Also in your testimony I remember
14 reading that -- that the -- and I'm going use quotes
15 here. The obvious engineering conclusion was that
16 there would be no increase in emissions. Do you
17 remember that?

18 A. I don't have the testimony in front
19 of me, Judge, but...

20 Q. That was one of the reasons given for
21 not doing an emissions calculation, that it was
22 obvious from the engineering and the engineers that
23 it didn't need to be done. So I guess my question is
24 what happened?

25 A. When you're talking about emissions

1 calculation, can you clarify what you're directly
2 referring to?

3 Q. It was -- I've heard two reasons that
4 emissions calculations were done, not done. One
5 reason that I've come across in the case is that they
6 were not done because they were not required in
7 Missouri?

8 UNIDENTIFIED SPEAKER: So we only have
9 three.

10 JUDGE CLARK: Somebody -- if somebody
11 could mute. I am picking up somebody else's WebEx.
12 Thank you.

13 BY: JUDGE CLARK

14 Q. The other reason that was given and
15 was mentioned in your testimony was that there was no
16 need to do emissions calculations because the
17 engineers said from an engineering standpoint it
18 didn't need to be done, the emissions weren't going
19 to be exceeded from an engineering angle so why --
20 why do an emissions calculation?

21 A. If I can, I would like to give a
22 little more context. But your question -- I
23 apologize but it's a little bit out of context. So
24 our project -- our process was to look at potential
25 emissions so the unit operating at maximum

1 capability, 87 and 60 hours a year, looking at those
2 maximum emissions that were required to be looked at
3 by the Missouri SIP. We also looked at actual
4 emissions. We performed qualitative type analysis.
5 We had experience on our Illinois units because the
6 Illinois law was a different implementation.
7 Illinois had a delegated program so the Missouri --
8 or the federal regulations were implemented directly.
9 And so we had knowledge of similar projects where we
10 had done those types of projects and looked at the
11 application of the actual emissions test that was not
12 yet implemented in the Missouri SIP -- state
13 implementation plan. As well as the fact that I
14 mentioned that these projects were routine in nature
15 and met the qualifications of routine. In fact,
16 there was an exemption in the Missouri state
17 implementation plan for those types of projects as
18 well.

19 So we did perform a -- both a potential to
20 emit evaluation, we performed using engineering
21 judgment both from the engineering -- project
22 engineering and design folks as well as from our
23 knowledge of working day-to-day with all of the
24 emissions data and knowing the operating
25 characteristics of these units from an environmental

1 air emission perspective. And then also with our
2 experience looking at -- because the rules in
3 Illinois were different but we had that knowledge
4 base, we looked at actual emissions as well and knew
5 that those types of projects were not the types of
6 projects that would cause an increase in both actual
7 emissions or potential emissions.

8 Q. Thank you. Hold on just a moment.
9 Okay. I have no further questions.

10 JUDGE CLARK: Any re-direct from -- I'm
11 sorry. Any re-cross from the Commission Staff?

12 MS. MERS: Briefly.

13 EXAMINATION CONDUCTED

14 BY: MS. MERS

15 Q. Do you recall having a conversation
16 with the Judge about the types of things that
17 utilities were looking at to inform their
18 interpretation of the Missouri SIP and how permitting
19 would work?

20 A. Well, they -- we did just have this
21 discussion and it's in the record, yes.

22 Q. Okay. And do you recall using the
23 word dynamic?

24 A. I think I used the word dynamic in
25 terms of the evolving regulatory, both the Missouri

1 -- not the Missouri, the federal rules for changing
2 as well as EPA's interpretation and implementation of
3 revised regulation, in that context I mentioned
4 dynamic.

5 Q. Okay. And your statement just now,
6 that implies that perhaps those laws and regulations
7 and the interpretations of them were not as constant
8 and known as implied then, correct?

9 A. No, that's not correct.

10 Q. So they were dynamic and changing but
11 static and known to be equally applied by all the
12 utilities?

13 A. You're mischaracterizing what I said.
14 The landscape was dynamic in that there was a lot of
15 activity with EPA and the enforcement initiative.
16 The process for changing rules in a state
17 implementation plan stay is for the state to either
18 be asked by EPA or has an obligation to revise their
19 regulations and a process for doing that and then
20 implementing it into the program. It's then approved
21 by EPA.

22 So as those things were changing EPA was
23 proposing several different rulings. We were
24 tracking federal regulations as well. And so things
25 might be proposed and we would be reviewing them,

1 evaluating them, maybe submitting comments on them.
2 And in that sense the actual Missouri regulation did
3 not change but what my intent to say was, or my
4 meaning was that the landscape was very dynamic
5 because of the number of activities and other actions
6 that were taken from it both in a litigation and then
7 on EPA changing or proposing to change regulations.

8 Q. So it sounds like the EPA, it's not
9 surprising -- wouldn't be surprising to anybody in
10 the industry that they may change how they're looking
11 at something, you know, have a different
12 interpretation, at a rule or regulation?

13 A. Well, I think it's a consistent
14 process. You know, for example, as the rules were
15 evolving in 2003 EPA program staff had been proposing
16 different regulations to help clarify some of the
17 regulations as well as change their position on the
18 enforcement initiative and actually suspended that
19 for a period of time. So as you look at that the
20 during the time that we were evaluating these
21 projects EPA did have a view of definitions of what
22 some of these things may have meant.

23 However the outstanding rules that were in
24 place at the time that we had to abide by, even
25 though we were tracking things on a federal

1 landscape, we had to abide by the Missouri state
2 implementation plan that again was approved by US
3 EPA.

4 Q. And would they have been evaluating
5 that in 2003?

6 A. Excuse me, who -- would who be
7 evaluating what?

8 Q. Ameren.

9 A. I still don't quite understand the
10 context of your question.

11 Q. Would Ameren have been still
12 evaluating in 2003 the changing or potential changing
13 landscape and dynamics?

14 A. Well, the regulations -- it was our
15 job in Environmental Services to keep track of
16 regulations and be abreast of what the requirements
17 were and then help advise the Company on what things
18 needed to be done to maintain compliance.

19 Q. You -- do you recall, in a
20 conversation you had with the Bench, mentioning a
21 list of projects that included Rush Island that it
22 was implied that the EPA was maybe keeping a closer
23 eye on or monitoring closer?

24 A. I mentioned a list that's a schedule
25 to my direct testimony. I do not have that in front

1 of me.

2 Q. So if Ameren knew that it was on this
3 list and that there was a little bit closer scrutiny
4 would it not then be prudent to reach out to MDNR and
5 EPA?

6 A. Well, I did not say that the Rush
7 Island projects were on that list. I said that
8 projects that were similar in nature to the Rush
9 Island projects were on the list as I recall. And we
10 had constant contact with MDNR on these issues as we
11 moved forward. It was standard practice in the
12 industry for both MDNR did a great job with outreach
13 and the industry took advantage of that have and made
14 sure that we were on the same page.

15 Q. But did you seek a permit
16 applicability determination from MDNR?

17 A. No. And there was no need to do so
18 in this case.

19 Q. You also had mentioned in your
20 conversation with the Judge that Ameren Missouri did
21 its own industry calculations, do you recall that?

22 A. Yes.

23 Q. Were those provided to the district
24 court?

25 A. I really can't recall what

1 information was provided directly at this point in
2 time.

3 Q. Okay. No further questions. Thank
4 you.

5 JUDGE CLARK: Public Counsel?

6 MR. WILLIAMS: Thank you.

7 JUDGE CLARK: Public Counsel?

8 MR. WILLIAMS: Thank you.

9 EXAMINATION CONDUCTED

10 BY: MR. WILLIAMS

11 Q. You testified that the projects met
12 the routine maintenance repair and replacement
13 exception whenever -- back in 2007 and 2010, do you
14 recall that?

15 A. Yes, they did.

16 Q. Judge Sippel found they did not, did
17 he not?

18 A. In his opinion, issued several years
19 later, I think that was his opinion.

20 Q. But he was construing the Missouri
21 state implementation plan as of the 2005 to 2010
22 timeframe, was he not?

23 A. Well, I can't I guess understand or
24 comment on his decision at the time but I do know his
25 decision was issued as written and that's the

1 **decision that he made in his opinion in, what, 2017.**

2 Q. Wouldn't your answer be more accurate
3 if you'd said that it comported with -- that based on
4 Ameren Missouri's -- and you can add in Missouri DNR
5 and other utilities if you like. But the projects in
6 2007 and 2010 in your view were routine maintenance
7 repair and replacement?

8 A. As I mentioned, our evaluation was
9 based on initially -- we had a three pronged approach
10 initially. We looked at the scope of the project,
11 looked at potential emissions, we also looked at
12 actual emissions. As well as the projects when you
13 look at them and look at the scope of the projects
14 and the definitions in the Missouri SIP as well as in
15 the industry and EPA's interpretation at the time
16 were considered to be routine maintenance and repair
17 type projects.

18 Q. Well, what I'm trying to get at is
19 whether you're saying that was the law at the time or
20 that was Ameren Missouri's understanding of the law
21 at the time in terms of the routine maintenance,
22 repair, and replacement exemption?

23 A. It was Ameren Missouri's
24 interpretation as well as the utility industry's
25 opinion as well as advice that we had gotten from

1 **counsel at that time.**

2 Q. And when you say the utility
3 industry's opinion, are you speaking beyond the
4 bounds of the state of Missouri?

5 **A. Yes. Both in Missouri, with Missouri**
6 **DNR as you will, as well as from information that we**
7 **gleaned from the utility and regulatory group.**

8 Q. No further questions. Thank you.

9 JUDGE CLARK: Any re-direct from Ameren
10 Missouri?

11 MR. LONG: Yes, your Honor. Thank you.

12 EXAMINATION CONDUCTED

13 BY: MR. LONG

14 Q. Just to start with that last issue,
15 Mr. Whitworth, that you discussed with Mr. Williams
16 about the routine maintenance, repair, and
17 replacement test that was applied by Judge Sippel in
18 his 2017 decision. Do you know whether he was
19 looking at that from the perspective of whether
20 something was routine at the unit or routine in the
21 industry or some other perspective?

22 **A. Mr. Long, I can't answer that as I**
23 **sit here today.**

24 Q. Okay. Fair enough. Why did you at
25 Ameren Missouri believe that these projects at Rush

1 Island were routine?

2 **A.** **There's three reasons why they were**
3 **considered to be routine. There was the exemption in**
4 **Missouri state construction permitting rule that**
5 **included items like routine maintenance and boiler**
6 **tubes explicitly. There was the routine nature of**
7 **the projects that had been conducted in the Ameren**
8 **fleet over the years with replacements of like kind**
9 **replacements, functionally equivalent replacements of**
10 **tubes for example reheater, economizers, as well as**
11 **there was consistency with routine in the industry as**
12 **other companies were being both advised by, you know,**
13 **their original equipment manufacturers, the boiler**
14 **provider, as well as, in the industry, these types of**
15 **projects were routine in nature.**

16 **Q.** **There was a discussion that you had**
17 **you with counsel for the Staff about some list that**
18 **you received through the Utility Air Regulatory**
19 **group, do you recall that discussion a few minutes**
20 **ago?**

21 **A.** **Yes.**

22 **Q.** **And you didn't have that list in**
23 **front of you at the time you had that discussion with**
24 **the counsel for Staff?**

25 **A.** **That's correct.**

1 MR. LONG: Your Honor, can I approach and
2 show an exhibit, Schedule SCW-D6 to Mr. Whitworth?

3 JUDGE CLARK: Yes, you may.

4 **THE WITNESS: Thank you.**

5 JUDGE CLARK: And did you say this was
6 Schedule SCW-D6?

7 MR. LONG: Yes, your Honor, I did. And I
8 will also note for the record it's one that has been
9 marked confidential but I don't believe, for purpose
10 of my question, that we need to move this in-camera.

11 BY: MR. LONG

12 Q. Mr. Whitworth, do you have in front
13 of you schedule SCW-D6 to your direct testimony in
14 this case?

15 **A. Yes.**

16 Q. Was that the list that you were
17 referring to in the discussion you had with the
18 counsel for Staff?

19 **A. It is.**

20 Q. Okay. Does it have a table of
21 contents somewhere in the first few pages.

22 **A. Yes.**

23 Q. And is there any reference to Ameren
24 Missouri at all in any of the table of contents?

25 **A. No, there is not.**

1 Q. Is there any reference, to your
2 knowledge, to Ameren Missouri or any of its plants
3 anywhere in that Schedule D-6?

4 **A. Not that I am aware.**

5 Q. I'd like to go back to a topic that
6 you had discussion on with Judge Clark about emission
7 calculations. I think his question was about
8 something you had written in your testimony about the
9 obvious engineering conclusion was that there was no
10 increase in emissions. And you had a discussion then
11 with Judge Clark about that. I think his question
12 was about whether emissions calculations were
13 required or a part of that analysis. Is it your
14 understanding, when you were answering his questions,
15 whether you were talking about potential emissions
16 under the SIP or an actual emissions calculation?

17 **A. No, I didn't understand the context.**

18 Q. So let's just break this down and
19 make sure that it's clear for the record. So in
20 determining whether potential emissions increase
21 would occur for a project at an existing coal fired
22 unit, what were the things that you would look at at
23 the time that you were making these decisions?

24 **A. Well, there were several parameters**
25 **and I did try to explain our process for the Judge.**

1 However looking at potential emissions, maximum
2 capacity of operation at a steam electric generating
3 unit, so we're looking at primary design capability
4 of the unit, its rated heat input, its rated steam
5 flow, those type of things are fundamental and, you
6 know, the unit is certified and insured at those
7 levels. So step one was really looking at was
8 anything going to change that design rate of the
9 generating unit which would impact emissions. For
10 example, if the heat input capacity was increased
11 emission -- potential emissions could increase. So
12 looking at those projects, these types of projects
13 did not cause that type of a change. The unit
14 maintained its current design, maximum design
15 operating capabilities.

16 Q. So what sort of change, in your
17 experience, to a coal fired unit on the Ameren system
18 would cause an increase in the potential emissions?

19 A. I have an example and it was included
20 in my testimony. But in Illinois another steam
21 generating unit, the Duck Creek facility, a project
22 was scoped to increase the maximum heat input
23 capacity of a boiler, increase the coal burning
24 capability, and increase the maximum heat input
25 capability to take advantage of steam turbine when it

1 was constructed had a higher capacity than the boiler
2 could provide steam. So for Environmental Services,
3 if there was going to be that change in in design of
4 the actual unit changing its design capabilities that
5 was almost an automatic for us. So that first step
6 the potential emissions could increase. And as I
7 mentioned, rules in Illinois were different but the
8 analogy was looking at the maximum design capability
9 of the permitted steam generating unit change was
10 going to increase. So then the process began to
11 evaluate the emissions, look at the requirements, and
12 apply for a PSD permit in that case to cover that
13 work that was being performed.

14 Q. So you're talking about the increase
15 in the maximum capability of the boiler --

16 A. Yes.

17 Q. -- or some other component?

18 A. No. The boiler. The permitted coal
19 burning emitting unit, yes.

20 Q. Okay. So is there any way to change
21 that potential coal burning capability of the boiler
22 if you don't increase the fuel feed rate?

23 A. Not that I'm aware of.

24 Q. Was there anything like that at issue
25 in the Rush Island projects that PSD evaluated?

1 A. No. That was step one in all of
2 these evaluations was looking at where the primary
3 design, rated design parameter is going to be changed
4 as a result of the project that was being proposed.
5 And in this case they were not being changed.

6 Q. And where did you get that
7 information?

8 A. We got that information --
9 Environmental Services got that information from
10 engineering, from the project engineering staff.

11 Q. Was there a need to do any kind of
12 calculation to verify what you were learning about
13 the parameters of the project and whether it would
14 increase potential emissions?

15 A. No. These types of -- you know, a
16 boiler is an association of a lot of different
17 equipment that all works together, if you will. So
18 looking at one piece, you know, a tube that allows
19 steam to go through it would not have the type of
20 change that would increase the amount of emissions or
21 change the design capability of the unit.

22 Q. So I would like to go back to where
23 we started, which is Exhibit 22. You were asked some
24 questions about this document by the attorney from
25 Staff. And I think her question was based upon the

1 date of this document which is 2011. Do you see
2 that?

3 A. Yes.

4 Q. Okay. I think her question was
5 whether this document was in existence at the time
6 that the permitting decisions were made by the
7 Environmental Services department on the Rush Island
8 projects, do you remember that colloquy?

9 A. Yes, I do.

10 Q. Okay. And in terms of how the state
11 was applying its SIP and what it considered
12 triggering projects for construction permitting
13 review, did this Exhibit 22 change from what it had
14 been at the time that you were evaluating the project
15 at Rush Island?

16 A. No.

17 Q. It starts on Exhibit 22 with an
18 inquiry into whether the potential emissions
19 increase, do you see that?

20 A. Yes.

21 Q. Was that the way that the SIP was
22 interpreted and applied at the time?

23 A. Yes.

24 Q. By you?

25 A. By me as well as Missouri DNR and the

1 other utilities in the state.

2 Q. Thank you. No further questions.

3 MR. LONG: Your Honor, I have been
4 corrected by my co-counsel. Mr. Whitworth is not
5 coming back again and I've neglected to move
6 Exhibits 8, 9, and 22 into the record and so I would
7 make that motion at this time.

8 JUDGE CLARK: Any objection -- any
9 objections to admitting Exhibit 8C, 8P, 9C, and 9P
10 and Exhibit 22 onto the hearing record? Any
11 objection?

12 MR. WILLIAMS: No objection.

13 JUDGE CLARK: Okay. Exhibits 8, 9, and 22
14 will be admitted onto the hearing record. And Mr.
15 Whitworth, you may step down. It is now 6:19. It
16 seems like a good time to break for the evening at
17 this point.

18 MR. LONG: Thank you, Judge.

19 MR. LOWERY: Thank you.

20 JUDGE CLARKE: So with that, I will
21 adjourn until tomorrow at nine a.m.

22 (Hearing was concluded at 6:20 p.m.)

23

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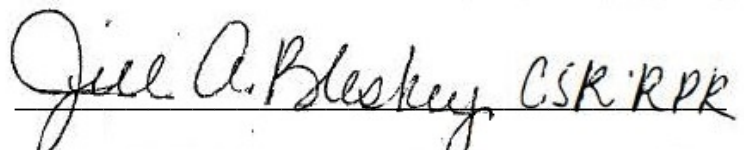
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) ss.
CITY OF KANSAS CITY)

I, JILL A. BLESKEY, a Registered Professional Reporter, Certified Shorthand Reporter (IL), and Certified Court Reporter (MO), do hereby certify that the testimony was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of this action.



Jill A. Bleskey, RPR, CSR, CCR

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