



BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

**IN THE MATTER OF UNION ELECTRIC COMPANY
d/b/a AmerenUE, etc.**

Case No. ER-2007-0002

FILED³

APR 20 2007

DEPOSITION OF DAVID A. SVANDA

Missouri Public
Service Commission

MARCH 1, 2007

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BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

IN THE MATTER OF UNION ELECTRIC COMPANY, d/b/a
AmerenUE, for Authority to File Tariffs Increasing
Rates for Electric Service Provided to Customers in
the Company's Missouri Service Area.

Case No. ER-2007-0002

DEPOSITION OF DAVID A. SVANDA

TAKEN ON BEHALF OF
THE MISSOURI PUBLIC SERVICE COMMISSION

MARCH 1, 2007

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COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION

1 BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
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3 IN THE MATTER OF UNION ELECTRIC)
4 COMPANY, d/b/a AmerenUE, for)
5 Authority to File Tariffs)
6 Increasing Rates for Electric) No. ER-2007-0002
7 Service Provided to Customers)
8 in the Company's Missouri)
9 Service Area.)

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 DEPOSITION OF DAVID A. SVANDA, produced,
sworn and examined on behalf of the Missouri
Public Service Commission on March 1, 2007, at the
offices of AmerenUE, 1901 Chouteau Avenue, St. Louis,
Missouri, before WILLIAM C. MORRIS, a Registered
Diplomate Reporter and Notary Public.

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1 IT IS HEREBY STIPULATED AND AGREED by and
2 among Counsel for the parties that this deposition may
3 be taken in shorthand by WILLIAM C. MORRIS, a
4 Registered Diplomate Reporter and Notary Public, and
5 afterwards transcribed into typewriting, and the
6 signature of the Witness is reserved.

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10

DAVID A. SVANDA,

11

of lawful age, being produced, sworn and examined

12

on behalf of the Defendant, deposes and says:

13

DIRECT EXAMINATION

14

QUESTIONS BY MR. DOTTHEIM:

15

Q. Mr. Svanda, good morning.

16

A. Good morning.

17

Q. Mr. Svanda, I'm Steven Dottheim. I'm the

18

attorney who filed a notice of deposition on behalf of

19

the staff of the Commission for this morning. I'm

20

with the General Counsel's Office representing the

21

staff. Have you been deposed before?

22

A. I have been.

23

Q. Okay. So, then you're familiar with the

24

general procedure?

25

A. Yes.

1 Q. Okay. Let me first ask you, are you on any
2 medication or is there any reason why you would be
3 impaired from your ability to answer questions this
4 morning to the best of your ability?

5 A. No.

6 Q. Okay. There would be no reason that you
7 would be impaired in answering truthfully and
8 correctly?

9 A. No.

10 Q. Okay. With me this morning is Mr.
11 Robert Schallenberg. Mr. Schallenberg is a division
12 director. He is a division director of the services
13 division of the staff of the Public Service
14 Commission. He has filed testimony in the case. I,
15 of course, am going to be asking you some questions
16 this morning. If anything I ask is unclear and you
17 would like clarification, please ask me to clarify or
18 to repeat the question. I'll try not to talk over
19 you and permit you to answer the questions I ask. If
20 you would like to take a break at any point, please
21 indicate that.

22 I understand Mr. Byrne has indicated previously
23 that at approximately 10:30 this morning you have a
24 conference call --

25 A. Yes.

1 Q. -- that you have scheduled. We'll break
2 whatever that time is.

3 MR. BYRNE: Actually we need to break
4 because of me now. His conference call has been
5 resolved but --

6 MR. DOTTHEIM: We'll break for Mr.
7 Byrne's conference call.

8 MR. BYRNE: Thank you.

9 Q. (By Mr. Dottheim) But if at any time you
10 would like to take a break, just please indicate that.

11 A. All right. And I do have a scheduled
12 1:30 conference call that I could not make any
13 alternative arrangements for.

14 Q. Okay. And offhand, I anticipate we will
15 be completed by then. Certainly it's my hope that
16 we will be. And I may ask for a break, even if you
17 don't. So, on that, I think we'll start.

18 Now, you have -- as of Tuesday of this week you
19 have filed direct, rebuttal and surrebuttal testimony
20 in Ameren's pending rate increase case, have you not?

21 A. That's correct.

22 Q. And in looking at your direct testimony in
23 particular, you have a Bachelor of Arts Degree in
24 political science/urban affairs; is that correct?

25 A. Correct.

1 Q. And you also have a Master of Public
2 Administration Degree; is that correct?

3 A. That is correct.

4 Q. You are not an accountant; is that correct?

5 A. Correct.

6 Q. You are not an engineer; is that correct?

7 A. Correct.

8 Q. You are not an economist; is that correct?

9 A. Correct.

10 Q. You are not an attorney; is that correct?

11 A. Correct. I practice in all those areas, but
12 you are correct.

13 Q. Okay. You are not a financial analyst; is
14 that correct?

15 A. I am not.

16 Q. Okay. You are a former member of the
17 Michigan Commission?

18 A. Yes.

19 Q. And approximately how many years were you on
20 the Michigan Commission?

21 A. Seven and a half.

22 Q. Seven and a half, and were you chairman --

23 A. Pardon me?

24 Q. Were you chairman at any time of the
25 Michigan Commission?

1 A. I was not.

2 Q. And in your time as being -- serving as a
3 Michigan commissioner, had you made the acquaintance
4 of any of the present Missouri commissioners?

5 A. Yes.

6 Q. Okay. Could you identify which Missouri
7 commissioners, present Missouri commissioners?

8 A. I'm just trying to remember. You asked
9 during my term on the Commission, because I've met and
10 know all of the commissioners at this point. Connie
11 Murray and I certainly overlapped when I was at the
12 Commission. I think probably Steve Gaw was a
13 commissioner when I was a commissioner in Michigan,
14 and I'm not absolutely certain but I think the
15 other three were appointed after I had left the
16 Michigan Commission.

17 Q. Okay. And you are now a private consultant;
18 is that correct?

19 A. That's correct.

20 Q. You have a consulting firm, Svanda
21 Consulting?

22 A. Yes.

23 Q. And what is the size of Svanda Consulting?

24 A. What you see is what you get. It's a
25 one person operation.

1 Q. And Mr. Svanda, have you filed testimony in
2 any other rate increase cases as a consultant?

3 A. Rate increase any place?

4 Q. Yes, in any other state commission
5 proceeding?

6 A. I'm not certain I would characterize any
7 as rate increase.

8 Q. Okay. I don't recall in looking through your
9 testimony, maybe I'm just not recalling it or maybe I
10 missed it, a listing of cases in other jurisdictions
11 where you might have filed testimony or participated
12 as a witness in some capacity. Are there other state
13 commission cases that you have filed testimony in?

14 A. There are. Washington, D.C., Pennsylvania,
15 Delaware, I believe those are the others.

16 Q. Could you identify -- when you say
17 Washington, D.C., was that a District of Columbia --

18 A. Yes.

19 Q. -- case?

20 A. Yes.

21 Q. And could you indicate the approximate date
22 that you filed testimony and the nature of the
23 testimony that you filed?

24 A. It would have been in the '05 time frame, I
25 believe, and the nature was on behalf of merchant

1 generating plants.

2 Q. And in what type of a proceeding did you
3 file that testimony?

4 A. It was a -- what did they term it? It's
5 a fairly unique term that they were applying, and I
6 was working on behalf of an association there of the
7 merchant generators and others. It had to do with the
8 underlying costs that customers experienced, again a
9 fairly unique term that they applied.

10 Q. What were the merchant generators seeking
11 before the Washington, D.C. -- is it public service
12 commission or what regulatory body?

13 A. It was the Washington, D.C. Utility
14 Commission or Public Service Commission. I'm not sure
15 which they characterize, and they were seeking
16 just generally to allow their generation to be a part
17 of the market in those jurisdictions.

18 Q. And they actually had a merchant generating
19 unit that was constructed and operating, or they were
20 seeking to offer such a unit or --

21 A. I can't say what they had. I don't know
22 that level of detail, if they had an actual plant in
23 the footprint or not, but they represented generation
24 interests that were trying to participate.

25 Q. Did you just submit testimony or did you

1 actually testify in that instance?

2 A. In the Washington, D.C. instance I actually
3 appeared before the Commission.

4 Q. Was there any resolution in that proceeding
5 that you're aware of?

6 A. Not that I'm aware of.

7 Q. Okay. You mentioned Pennsylvania, was that
8 the Pennsylvania Public Service Commission?

9 A. Yes.

10 Q. And what proceeding or proceedings did you
11 submit testimony in?

12 A. It was really very similar in Pennsylvania
13 as to Washington, D.C., and it was with the same
14 association that worked within the general PJM
15 footprint.

16 Q. What was the name specifically of the
17 association?

18 A. I knew you would ask that, and I don't know
19 right off the top. It has changed three or four
20 times, two or three times anyway, and it was an
21 association of folks interested in participating in
22 the marketplace of those states.

23 Q. And you submitted similar testimony as you
24 did before --

25 A. Yes.

1 Q. -- the D.C. regulatory body?

2 A. Yes.

3 Q. And again, the nature of your testimony was
4 what?

5 A. The nature was how the generation that was
6 produced by those companies in the association was a
7 part of the marketplace in the state.

8 Q. Have you submitted testimony in any other
9 proceedings before the Pennsylvania Public Service
10 Commission?

11 A. No.

12 Q. And again, I'm sorry if I asked you, the
13 time frame in which you submitted that testimony
14 before the Pennsylvania Public Service Commission?

15 A. Same '05 time frame.

16 Q. Okay. You also mentioned Delaware. And
17 what -- I'm sorry, I'm not sure that I recall the name
18 of the Delaware regulatory body.

19 A. I think it might be a PUC, also.

20 Q. And you submitted testimony before the
21 Delaware state public utility regulatory body?

22 A. Yes.

23 Q. What time frame?

24 A. Same time frame.

25 Q. And what was the nature of that testimony?

1 A. Same nature.

2 Q. Same nature, was it for the same
3 association?

4 A. Same association, yes.

5 Q. Okay. Have you submitted testimony as
6 Svanda Consulting before any other regulatory body?

7 A. In telecommunications, I have.

8 Q. Could you identify what regulatory bodies
9 you've submitted testimony on telecommunications
10 before?

11 A. That was before California.

12 Q. Would that be the California Public Utility
13 Commission?

14 A. Again, it's been a couple of years. I
15 believe it was before the commission. It may well
16 have been before one of the California courts. I just
17 am not recalling. That matter had to do with a pole
18 attachment matter.

19 Q. Who did you submit the testimony or testify
20 on behalf of?

21 A. On behalf of SBC.

22 Q. And the nature of your testimony would be --
23 what was the nature of the testimony?

24 A. As the former president of NARUC, I was
25 asked about the independent veracity of the California

1 Commission, if they were acting independently of the
2 appointing authority. And that's why I think it may
3 have been before, actually, one of the courts as
4 opposed to the commission itself.

5 Q. Okay. Have you submitted testimony before
6 any other regulatory body or court in your capacity as
7 the principal of Svanda Consulting?

8 A. One other, not a state entity but the FERC.

9 Q. And could you identify the time frame?

10 A. The '05, '06 -- no, '05, I would say.

11 Q. And could you identify the nature of the
12 testimony that you submitted?

13 A. It was an issue that MISO was dealing with
14 before the FERC.

15 Q. And who did you submit the testimony on
16 behalf of?

17 A. On behalf of MISO.

18 Q. Do you recall offhand what the docket number
19 was?

20 A. No.

21 Q. Okay. Any other instances that you recall
22 at this time where you've submitted testimony for a --
23 before a regulatory body or a court as the principal
24 of Svanda Consulting?

25 A. No.

1 Q. Do you recall submitting testimony before a
2 regulatory body or court in any other capacity other
3 than as Svanda Consulting?

4 A. No.

5 Q. Mr. Svanda, you received a copy of the
6 notice of the deposition that I filed in the AmerenUE
7 rate case. I have a copy which I would hand to you.

8 A. Okay.

9 Q. Do you recognize that?

10 A. Actually I don't know that I received a
11 physical copy of it. I was in fact told by Tom that I
12 had been summoned.

13 Q. Okay, because I wanted to refer to Exhibit
14 A, the subpoena duces tecum, where there's a request
15 for certain documents that you bring with you,
16 including documents that you relied on for purposes of
17 your testimony that you've filed -- of the testimony
18 that you've filed that you've referred to. Did you
19 bring with you such documents?

20 A. I have copies of what, I guess, are
21 correspondence, workpapers, and I do have copies of my
22 testimony. Now, I have my copies. I didn't bring
23 copies for you or anything like that.

24 Q. No, and I don't need any additional copies
25 of your testimony.

1 A. Okay.

2 Q. In looking at that list, are there any
3 documents in addition to what you've handed to me as
4 your workpapers that in particular are covered by item
5 No. 3 on the list?

6 A. Well, I've looked at all sorts of
7 electronic documents, I guess. You want the hard
8 copies of all of those?

9 Q. All right. Well, could you identify for me
10 what electronic documents have you looked at?

11 A. The filings of other witnesses and all the
12 things related to the case that would get me familiar
13 with and the documents -- for example, I gave you
14 copies of that listing, but documents that I cited,
15 you know, whether it's a financial analyst report or
16 something of that nature.

17 Q. Documents as you've just said that you've
18 cited in the footnotes?

19 A. Right.

20 Q. In your testimony or in the body of your
21 testimony?

22 A. Yes.

23 Q. Nothing that you recall in addition to those
24 documents?

25 A. No. That was pretty extensive.

1 Q. Mr. Svanda, do you know how AmerenUE came
2 about choosing you to testify on their behalf, on its
3 behalf in this proceeding in their rate increase case?

4 A. I only know it from my side of the equation.

5 Q. If you could, explain it as you understand
6 it or as you know it.

7 A. Sure. My understanding was they were
8 looking for a consultant who could give a general
9 history perspective on regulatory environment, how
10 things work, what's important in confronting a case,
11 someone who has kind of sat in the chair. And I guess
12 I had the idea that they were probably talking to a
13 few different people at the time. I don't know that
14 for certain but I surmised.

15 And so I think we -- I spent time inquiring, "Is
16 this somebody that I could be comfortable
17 representing?" One of the things that I like to do is
18 sleep at night, and so I only work for clients that
19 will allow me to feel good about the work that I'm
20 doing and sleep good at night. So, I had a number
21 of inquiries in terms of their approach and what their
22 track record and history and all of those kinds of
23 things were, and from my perspective they met that
24 criteria.

25 Q. Do you recall who with AmerenUE first

1 contacted you?

2 A. It would have been Tom.

3 Q. Mr. Federer, I would like --

4 MR. BYRNE: Mr. Svanda? You said Mr.
5 Federer.

6 THE WITNESS: I'm not Steve Federer.

7 Q. (By Mr. Dottheim) Mr. Svanda, you're aware
8 that in AmerenUE's -- I guess I should characterize it
9 -- preceding rate case, which was not a rate case
10 filed by Ameren UE, an excess earnings complaint case
11 filed by the staff of the Commission in 2001, AmerenUE
12 filed the testimony of Mr. Steven Federer. Were you
13 aware of that?

14 A. I was not aware of that. I know Steve as
15 many people do in this whole sector, and he was, in
16 fact, a Michigan commissioner, so our paths have
17 crossed quite a bit.

18 Q. Okay. Do you know whether Mr. Federer was
19 considered by AmerenUE for purposes of filing
20 testimony in the presently pending case?

21 A. I do not.

22 Q. Okay. If I may refer you now to your direct
23 testimony in particular. I'd like to refer you to
24 Page 5, Line 17 to 23 where you state, "Moreover, it
25 is apparent to me that in the last few years the

1 Commission began a progression of positive steps that
2 have improved the State's regulatory environment and
3 made it more consistent with the mainstream of
4 regulatory policy on a national basis. These
5 improvements include regulatory orders that made
6 Missouri depreciation policy more consistent with
7 those of other states and that set utilities allowed
8 returns on equity at levels more consistent with those
9 of other utilities across the country."

10 Should the Missouri Commission, Mr. Svanda, be
11 using the median or better of what other state
12 commissions are doing in setting electric rates as its
13 objective?

14 A. Well, I don't think that's the only
15 objective, and it would not be an automatic sort of
16 mechanical thing. The Commission has a lot of input
17 and variables that it would need to consider, and that
18 would be one of them.

19 Q. Can you identify what would be the other
20 input and variables?

21 A. Sure. And I have identified them throughout
22 my testimony, and they include how the utility will
23 be perceived in the financial community, whether or
24 not it can gain access to the lowest priced capital,
25 the least cost capital. It needs to assure both

1 itself and the court that the utility is going to
2 remain a healthy entity into the future so that it can
3 make the investments that it needs to make to assure
4 that it can be an active and vital participant in the
5 economic health of its footprint and Missouri
6 generally.

7 Q. Okay. I'd like to refer you to your direct
8 testimony again, Page 7, Lines 19 to 22. You state,
9 "AmerenUE has also wisely stuck to its core regulatory
10 utility business and has remained focused on the
11 region in which it operates. It has avoided the
12 pitfalls some other utilities have experienced when
13 they shifted their focus to unregulated businesses and
14 far-flung utility operations."

15 Would an unregulated energy provider operating in
16 another region of the United States be an example of
17 what you referred to as an unregulated business in
18 another region?

19 A. It could be that. It could also be even on
20 a different continent. What I was referring to there
21 was the experience of the '90s and maybe some of the
22 late '80s as some utilities in the country fancied
23 themselves as dot com growth types of industries and
24 made all sorts of investments away from their
25 core competencies.

1 Q. Were there any Missouri utilities of that
2 nature that you recall, any utilities with service
3 territories in Missouri, such as Utility Corporation,
4 United, Aquila, Inc.?

5 A. Aquila came to mind for me. I was speaking
6 from indirect exposure to some Michigan utilities and
7 others that are even more poster child like for me
8 than Missouri companies. The names certainly that you
9 mentioned would be in that group probably, too.

10 Q. If I could refer you to Page 9 of your
11 direct testimony, and in particular starting at Line
12 11 going to 13, you state, "AmerenUE's cost
13 reductions, improved performance, and a constructive
14 and improving regulatory environment have enabled the
15 Company to decrease rates steadily for approximately
16 20 years." In particular, if I refer you to Lines 12
17 and 13 where you state, "a constructive and improving
18 regulatory environment have enabled the company to
19 decrease rates steadily for approximately 20 years,"
20 would you please explain that statement?

21 A. Sure. And I guess give credit to the
22 Commission in Missouri or in any state for that sort
23 of thing, but also to the legislative and executive
24 branches who are important in formulating the confines
25 in which a commission operates. And the record of

1 reducing rates over the years would be a result of
2 both commission actions and legislative actions. And
3 I've noted that in particular by my observation over
4 the last few number of years that the regulatory
5 environment has continued to be more favorable, and
6 that's been noted probably more importantly than I
7 noted it by folks like the credit rating agencies and
8 those types.

9 Q. Well, on 12 and 13 you referred to the
10 company decreasing rates. Has AmerenUE decreased
11 rates in these last few years when you specifically
12 referred to an improving regulatory environment?

13 A. They have been on a kind of steady march of
14 rates declining, yes, and I guess I can't cite to you
15 specific decreases in a particular year, but that has
16 been the trend.

17 Q. So, you can't cite to me what you've
18 characterized as an improving regulatory environment
19 leading to these steadily decreasing rates that you
20 refer to on Page 9, Lines 12 and 13, can you?

21 A. Well, as I said, more important than me
22 noting it, it's folks like my footnote on that page
23 referencing Moody's, noting that the utility has a
24 better operating environment, is able to achieve its
25 objectives in that environment, and is doing so within

1 that trend line of decreasing rates.

2 Q. Do you recall from your reference to Moody's
3 credit opinion December 16, 2005, Moody's citing
4 AmerenUE decreasing rates related to an improving
5 regulatory environment over the last several years?

6 A. Moody's has cited the improving regulatory
7 environment that has come into play in Missouri, yes.
8 If it's in that article or another, yes.

9 Q. Do you recall Moody's citing decreasing
10 AmerenUE rates being traced to that improving
11 regulatory environment over the last several years?

12 A. That probably would not be Moody's focus.
13 They are more concerned with the financial side.

14 Q. Do you know, when was the last time that
15 AmerenUE decreased its rates?

16 A. On that trend line on -- I don't have a
17 specific date if that's what you're asking me.

18 Q. Do you have any specific dates -- can you
19 cite me any dates as to when AmerenUE has decreased
20 rates over the last several years?

21 A. I guess I don't commit those kinds of things
22 to memory, no.

23 Q. Do you recall whether it was associated with
24 a stipulation and agreement that AmerenUE entered
25 into?

1 A. Sure, yeah. Of course they wouldn't,
2 without working within the confines of the regulatory
3 commission, do that.

4 Q. You don't recall the date of the stipulation
5 and agreement, do you?

6 A. I don't recall the date, no.

7 Q. Mr. Svanda, I'd like to -- probably everyone
8 thought we were making progress. I'm going to ask you
9 to turn back to Page 8. I'd like to refer you to Line
10 21 where you make a reference to "AmerenUE fares
11 similarly well in terms of service reliability." And
12 I'd like to refer you back to Page 4, Line 4 -- well,
13 excuse me, that's not the other reference I wanted to
14 cite you to, but in your direct testimony you do
15 reference AmerenUE with what you characterize as high
16 customer service and reliability ratings, do you not?

17 A. Yes.

18 Q. Okay. And your testimony was filed on -- I
19 believe it was July 7th, was it not, or early July?

20 A. Yes.

21 Q. And that was before the storm outages that
22 occurred later in July of 2006 and the ice storm
23 outages that occurred in December of 2006?

24 A. That's correct.

25 Q. Okay. Now, I'd like to jump to Page 10,

1 and I'd like to refer you to Lines 12 to 15 where you
2 state, "The combination of high quality service, high
3 reliability, and high customer satisfaction levels
4 and low rates can also be credited for contributing to
5 the strong economic resurgence so evident throughout
6 the St. Louis metropolitan area." What is your basis
7 for your statement that AmerenUE can be credited for
8 contributing to the strong economic resurgence so
9 evident throughout the St. Louis metropolitan area?

10 A. It has to do with my experience going back
11 as a city manager, my experience working with the
12 governor's office of Michigan, and what it is that
13 contributes when you get a healthy locale. And
14 whether it's industrial recruitment activities or
15 vibrant commercial activities or investment in housing
16 or what have you, one of the factors is always what's
17 it cost to live here, how much am I going to pay for
18 my electricity, especially through industrial
19 recruitment and retention.

20 And so it has to do with those observations, that
21 the cost of electricity has just always been one of
22 the factors that gets considered, and if firms or
23 individuals make their decisions to invest, it's one
24 of the components that obviously is working for the
25 area.

1 Q. You're not referring to any study or
2 analysis that either you have done, economic analysis,
3 or a study that you've reviewed?

4 A. I have not done an economic analysis, no.

5 Q. Have you reviewed any academic or other
6 business analysis for purposes of the statement that
7 you make that I've referred you to?

8 A. Well, what I've observed is other people
9 saying Ameren has a high level of quality service.
10 They have some of the lowest rates in the country, and
11 reliability that works for industrial, commercial, and
12 residential investment.

13 Q. The basis for your statement is just your
14 own observation?

15 A. It is.

16 Q. Okay. I'd like to refer you to Page 11,
17 Lines 9 to 12 where you state, "The principal
18 conclusion I draw from my observations is that all
19 stakeholders in Missouri within AmerenUE's service
20 territory and the state as a whole have reaped the
21 benefits of a constructive regulatory environment and
22 AmerenUE's ability to achieve and maintain its
23 superior performance within that environment." As
24 you've just indicated, I think your statement here is
25 -- your conclusions are based upon your observations

1 as you've stated there on Line 9; am I correct?

2 A. My observations, my review, again, of what
3 other people have said about service quality by Ameren
4 and where they fall on charts that compare electricity
5 rates around the country, those kinds of things. So,
6 yes, my observations of that information.

7 Q. What are the benefits that the state has
8 reaped that you refer to in that sentence?

9 A. The benefits are having a strong utility
10 with a strong track record and attributes that we've
11 been talking about for service quality and price, any
12 -- it's the sort of attributes that any state economic
13 development director would like to be able to tout
14 when they are trying to recruit or retain commercial
15 enterprises or that anybody concerned with housing
16 issues and things like that would be wanting to talk
17 about.

18 Q. Are you referring to any economic or
19 business study specifically applying to AmerenUE that
20 you've referred to that you've reviewed?

21 A. Economic study by?

22 Q. Chamber of commerce, by University of
23 Missouri-St. Louis, the University of
24 Missouri-Columbia, by some academic institution or by
25 some business group as opposed to just your personal

1 observations.

2 A. When I was first going to be engaged, I took
3 a look at websites from state economic development
4 agencies, the St. Louis Chamber, and those sorts of
5 entities. And, you know, their conclusions were all
6 that St. Louis was a very good place to live and do
7 business.

8 Q. So, you -- well, could you list -- could you
9 identify what sources you've referred to, you've used
10 for the basis for your statement?

11 A. In terms of looking for those sorts of
12 things, and I don't recall the specific names, but the
13 State Economic Development Organization, the St. Louis
14 Metropolitan Area Chamber, and I think there may have
15 been one other entity concerned with jobs creation
16 whose website I would have also looked at, all part of
17 my observations.

18 Q. Okay. I refer you to Page 13, Lines 1 to 3
19 where you state, "The prices of other fuels, in
20 particular natural gas, have been increasing as well,
21 and there are increasing concerns about the long-term
22 adequacy of natural gas supplies, which also can
23 affect market prices." Do you know what percentage of
24 the generation owned by AmerenUE is gas fired, coal
25 fired, hydro or nuclear?

1 A. I don't know the specific percentages, but I
2 know that a large percentage is coal and/or nuclear.

3 Q. Do you know what percentage is gas?

4 A. Again, I don't know the specific percentages
5 of any of them.

6 Q. Do you have a ballpark idea?

7 A. I would say directly a small percentage but,
8 you know, they also operate within MISO where gas is a
9 factor.

10 Q. Okay. I would refer you to Page 14 of your
11 testimony. And I'd like to refer you in particular to
12 the phrase, "discretionary investments that --

13 A. Excuse me, where are you again?

14 Q. Page 14.

15 A. Yes.

16 Q. The phrase, "discretionary investments that
17 reduce rates in the long term."

18 A. Which line?

19 Q. I'm sorry, I didn't say the line. I meant
20 to say Lines 20 and 21. I'm sorry.

21 A. Okay, thank you.

22 Q. I'm sorry. The phrase on Lines 20 and 21,
23 "discretionary investments that reduce rates in the
24 long term." Discretionary investments that reduce
25 rates in the long term, what are you referring to?

1 A. Again, one of my roles nationally was to
2 chair for NARUC the Finance and Technology Committee,
3 and I always had an interest and focus on what can be
4 done to improve the system with technology and things
5 like that. Metering is one of the very good examples
6 that comes to mind in that regard, and how metering
7 can send price signals, how it can be a critical tool
8 in demand response systems and things of that nature.

9 **Q. Also, on Page 15, Lines 15 to 23, you make**
10 **reference to financially weak utilities. Are any of**
11 **the utilities that you're describing in Lines 15 to 23**
12 **as financially week utilities, are any of those**
13 **utilities regulated by the Missouri Commission?**

14 A. They might be.

15 **Q. Can you identify --**

16 A. My experience is where this is coming from,
17 and again, my specific Michigan experience, my kind
18 of national experience when commissioners get together
19 and talk about utilities that get in trouble
20 financially, whether of their own doing or whatever.
21 And I think some of the examples that you cited may be
22 Missouri utilities that got into some trouble. My
23 experience has been that when a utility gets in
24 financial trouble, it is running from one fire to the
25 next with its financial issues. It's more interested

1 in how do I get through this week on a cash flow basis
2 than it is concerned with how can I make improvements
3 that are going to serve my customers better.

4 Q. Well, you made reference to utilities I
5 identified. I think I had only meant to identify one,
6 although I referred to it by two different names that
7 it's had, Utility Corporation and Aquila, Inc., but
8 you do make reference, I think, in your testimony
9 whether it's direct or rebuttal or surrebuttal to
10 another Missouri utility, Empire District Electric
11 Company. Might Empire District Electric Company be
12 one of those financially weak utilities that you're
13 referring to on Page 15, Lines 15 to 23?

14 A. Looking from a broad perspective, looking at
15 how the financial community viewed that company, it
16 may well fit that profile. I haven't looked
17 exhaustively at how they do.

18 Q. Okay. I'd like to refer you to Page 16 of
19 your testimony, direct testimony, Lines 3 to 14 where
20 you make reference to decisions that the Missouri
21 Commission makes in other cases where AmerenUE has
22 a profound impact on whether AmerenUE is not acquired
23 by some other entity based outside of Missouri. On
24 the basis of your testimony, Mr. Svanda, wouldn't the
25 best way that the Missouri Commission could assure

1 that AmerenUE remains unacquired is to approve 100
2 percent of what AmerenUE is seeking in its rate case
3 filings?

4 A. Well, if you're suggesting that that's a
5 good idea, I would probably agree.

6 Q. Well, I'm suggesting that that's what you're
7 suggesting. Are you suggesting in your testimony that
8 a goal of the Missouri Commission should be to
9 regulate it such that in this instance AmerenUE is
10 not acquired as a result of rate making decisions of
11 the Missouri Commission or other decisions of the
12 Missouri Commission, acquired by some non-Missouri
13 entity?

14 A. Well, what I'm suggesting here is that it is
15 one of the -- as you know I'm responding to a question
16 that has an additional benefit, and there are a number
17 of statutory requirements that the Commission has to
18 consider. I'm saying this is a benefit. It serves
19 the state well. It serves St. Louis well to have that
20 ownership here locally. It's consistent with what we
21 were talking about earlier, economic development
22 grounds and things like that, to have the ownership
23 here where they can care about the community.

24 And, you know, a recent example is down in Texas
25 of TXU being acquired, just in the headlines over the

1 past three or four days, of how utilities can become
2 attractive targets if they are weak, in a weakened
3 condition. And what I'm suggesting, that having a
4 strong company with its local ties and heritage has
5 served the St. Louis and Missouri area very well.

6 Q. How important of a concern should that
7 be?

8 A. I can't speak for how the Missouri
9 legislature and governor's office would view that, but
10 I suspect that people who care about creating an
11 attractive environment would rate that fairly highly,
12 you know. It's kind of new, not just utilities but
13 banking and other places. It's good to have somebody
14 based in your state as opposed to based elsewhere.

15 Q. How important should -- how important of a
16 concern should that be to the Missouri commissioners?

17 A. To the commissioners, again, as I said, they
18 have a large number of statutory requirements that
19 govern their decision making, and fitting within those
20 statutory confinements is their most important
21 undertaking.

22 Q. Well, based upon your understanding of their
23 responsibility -- I mean you filed direct rebuttal and
24 surrebuttal testimony. How important of a concern
25 should that be to them in this case?

1 A. In balancing all of the interests that they
2 have to take into account and under the heading of
3 additional concerns of maintaining the company's
4 financial strength, obviously the company could be
5 financially strong and totally ignore all of this
6 stuff. They could be a bad corporate citizen and be
7 financially strong. So, it comes down to balancing,
8 as the commissioners alone must do, all of those
9 various factors.

10 Q. You have in your surrebuttal testimony
11 arguably filed rate of return testimony. Where in the
12 rate of return determination should the concern, I
13 think that you've articulated, of keeping AmerenUE a
14 Missouri corporation figure in?

15 A. I guess it factors in in the context of what
16 I've been trying to express in this whole line of
17 questions. It's an additional benefit to have
18 corporations located in the home service territory
19 for a whole number of factors that get expressed in
20 economic development terms. That's an important
21 consideration for the state as a whole.

22 Q. Can you quantify it as a basis point
23 quantification, 25 basis points, 50 basis points?

24 A. It's probably a qualitative issue, not a
25 quantitative issue.

1 Q. Okay. Mr. Svanda, I'd like to refer you to
2 Page 18 of your direct testimony where I think you
3 indicate that the Missouri Commission shares your view
4 of its duty in setting rates.

5 A. You're down at the bottom?

6 Q. Yes. I'm going to refer you to where you
7 discuss the Missouri Commission statement.

8 A. Uh-huh.

9 Q. And I think you state that's an indication
10 that the Missouri Commission shares your view of
11 its duty in setting rates by its mission statement
12 that appears on its website; do you not?

13 A. Uh-huh.

14 Q. Do you know when the Missouri Commission
15 adopted that mission statement?

16 A. I don't know that.

17 Q. You don't know in what time frame the
18 Missouri Commission adopted that mission statement,
19 correct?

20 A. That's correct. You know, it's on their
21 website, so they clearly still find it relevant.

22 Q. Okay. I have a copy of the Commission's
23 1999 annual report which I'm going to hand to you.

24 A. Uh-huh.

25 Q. And I'd like to refer you to the first page

1 on the inside where there's the PSC mission statement,
2 and I'd like to ask you to read that. And I'd
3 also like to refer you to Page 6, the very first
4 paragraph on that page, if I could. The mission
5 statement is on a page that is not numbered, and
6 then refer you to Page 6, the first paragraph, and I
7 would like to ask you to read that.

8 A. The PSC mission statement says, "We will
9 ensure that Missourians receive safe and reliable
10 utility service at just, reasonable, and affordable
11 rates; support economic development through either
12 traditional rate of return regulation or competition as
13 required by law; establish standards so that
14 competition will maintain or improve the quality of
15 service provided to Missourians; provide the public
16 the information they need to make educated utility
17 choices, provide an efficient regulatory process that
18 is responsive to all parties; perform our duties
19 ethically and professionally."

20 And then you referred me to --

21 Q. If I could refer you Page 6, the very first
22 paragraph on Page 6.

23 A. Yes.

24 Q. If you could read that, also.

25 A. Sure. "The Missouri Public Service

1 Commission regulates investor owned public utilities
2 operating in Missouri. The Commission has the
3 statutory responsibility to ensure that customers
4 receive adequate amounts of safely delivered and
5 reasonably priced utility service at rates that will
6 provide the company shareholders with the opportunity
7 to earn a reasonable return on their investment. The
8 Commission must balance a variety of often competing
9 private interests to ensure the overall public
10 interest."

11 Q. Okay. And have you had a chance to take a
12 look at the document that I've handed to you which on
13 the outside cover is titled 1999 Missouri Public
14 Service Commission Annual Report?

15 A. Yes.

16 Q. I would like to ask you --

17 A. Well, I've looked at the pages you referred
18 me to.

19 Q. Yes, if you would just, you know, take a
20 look at the document. Certainly feel free to look
21 through it because I would just like to ask you a
22 question or two respecting it and respecting the items
23 -- the information that I'd asked you to read.

24 A. Okay.

25 Q. The mission statement that you referred to

1 on Page 18 of your direct testimony that carries over
2 to Page 19, would you agree that that mission
3 statement is also reflected in the Commission's 1999
4 Annual Report?

5 A. Yes, it carries the same sentiment. I
6 didn't compare it word for word but, yes.

7 Q. Okay, thank you. Mr. Svanda, have you
8 reviewed the Missouri statutes that apply directly to
9 the Missouri Public Service Commission?

10 A. No, I don't believe that I have.

11 Q. Okay. Have you reviewed the Commission's
12 rules?

13 A. All of their rules?

14 Q. Have you reviewed any of the Commission's
15 rules?

16 A. Yes.

17 Q. Which of the Commission's rules have you
18 reviewed?

19 A. I don't know their numbers but, for example,
20 the newer rules on the fuel adjustment clause and
21 things like that.

22 Q. Okay. Do you recall whether you've reviewed
23 any rules in addition to the rules applying to the
24 fuel adjustment clause?

25 A. I may have skimmed through it.

1 Q. Have you reviewed any reports and orders,
2 decisions of the Commission?

3 A. Yes.

4 Q. Which decisions have you reviewed?

5 A. The ones related to matters of my testimony,
6 orders going way back into the '50s and things like
7 that that are related.

8 Q. When you say the ones going way back into
9 the '50s, then are you referring to the Commission's
10 orders relating to EEInc.?

11 A. Yes.

12 Q. And have you reviewed any of the
13 Commission's orders decisions other than those
14 relating to EEInc.?

15 A. Whatever is in those pages. I may have run
16 through some, but I have not done any exhaustive
17 review of the Commission's orders.

18 Q. Okay. I'd like to refer you to Page 20 of
19 your direct testimony where I'd like to refer you to
20 Lines 13 to 16 where you state, "First, AmerenUE is
21 requesting, as I understand it subject to finalization
22 of administrative rules, the use of a fuel adjustment
23 clause mechanism and an environmental cost rider that
24 will insure that only the Company's actual, prudently
25 incurred fuel and environment costs are recovered from

1 customers." What is the basis for your understanding
2 that AmerenUE is seeking an environmental cost rider
3 in this case?

4 A. My understanding came from conversations
5 with Tom. And I begin that whole section by saying
6 that I am not intimately familiar with all the
7 details, and I would surmise they evolved through the
8 course of filing as well.

9 Q. I'd like to refer you to Page 21 of your
10 direct testimony. I'd like to refer you to Lines 7 to
11 9 where you make reference to incentive mechanisms
12 are constructive tools to provide benefits to
13 customers. Could you explain that statement?

14 A. Sure. And it again goes back to the overall
15 health of the utility. If they are able to make
16 off-system sales and to improve their financial
17 position, that can translate directly into lower costs
18 of capital and other things that are enjoyed by
19 operators.

20 Q. Again, on Page 21 I'd like to refer you to
21 Lines 17 and 18 where you make reference to,
22 "in traditional ratemaking, ratepayers are at-risk of
23 the utility achieving higher off-system sales margins
24 than were set in base rates." Could you please
25 explain that statement?

1 A. In the base rate everything is locked in
2 place at that point in time. Then they aren't very
3 flexible to move as the conditions change.

4 Q. And how does that place ratepayers at risk?

5 A. Because the off-system sales could be
6 considerably higher than maybe the base rate would
7 have recommended.

8 Q. At the bottom of the page, Line 23 to the
9 top of the page on 22, Line 1, your reference to
10 "under traditional regulation in circumstances where
11 the Company is able to modestly exceed the normal
12 level of expected off-system sales margins," would
13 you please explain that?

14 A. Well, what I'm speaking to there is a band
15 that would be considered normal and some level of
16 deviation from that.

17 Q. We're going to move to your rebuttal
18 testimony, but let me ask you in general about your
19 direct, rebuttal, and surrebuttal testimony, how you
20 went about in general in writing that testimony, how
21 was it determined what issues you would submit
22 testimony on in the pending case. Was that something
23 that you suggested or were the topics suggested to
24 you?

25 A. Well, that goes clear back to some of our

1 earlier discussions about how I was retained. You
2 know, there was kind of a mutual interviewing process
3 going on, and as I talked to the company about, again,
4 their track record and things like that, what I would
5 do is say, "That's impressive, that's good. You know,
6 I can build what I'm willing to say around that kind
7 of factual background."

8 And so what's in here is based on the discussions
9 that I had with the company beginning early on in
10 terms of what I would be expected to be commenting on.

11 Q. Your rebuttal testimony addresses only the
12 subject of EEInc. And when I say EEInc., I'm using
13 that as the abbreviation for the corporation Electric
14 Energy, Inc. How was it determined that you would
15 submit rebuttal testimony on EEInc.? Is that
16 something that you suggested yourself or did someone
17 suggest to you that you submit testimony, rebuttal
18 testimony on EEInc.?

19 A. I wouldn't characterize it as being
20 suggested to me. I didn't have a natural intellectual
21 curiosity about EEInc. It was, "Here is an issue that
22 has cropped up in the case. Here is some of the
23 information. Is that something that you would take a
24 look at and would you be willing to make some comments
25 about it"?

1 Q. And you were supplied, if I understand
2 correctly, with information to take a look at for you
3 to determine if you would be comfortable submitting
4 testimony on?

5 A. Yes.

6 Q. What information were you provided with?

7 A. Other people's testimony, the documents as
8 we noted earlier surrounding the creation of EEInc.
9 and its performance operation over time, the kind of
10 natural evolution of its -- the companies that were
11 part of its ownership and those issues, kind of a
12 full briefing set of information.

13 Q. Were you provided an outline for your
14 testimony?

15 A. An outline?

16 Q. Yes, as to what to cover in your rebuttal
17 testimony.

18 A. Not really, no. That's more my job.

19 Q. The testimony is your own?

20 A. Oh, yes.

21 Q. You wrote it yourself?

22 A. Yes.

23 Q. Okay. You had previously -- you previously
24 had mentioned Commission decisions from the 1950s,
25 and I think we discussed that those were the

1 Commission decisions on EEInc. You read those
2 decisions before you wrote your EEInc. testimony, your
3 rebuttal?

4 A. I reviewed all of that documentation, yes,
5 from the SEC and right on through.

6 Q. Okay. Now, you said you reviewed all that
7 documentation and you made reference to -- did you say
8 documentation from -- from the FERC, did I hear that?

9 A. No, I said from the SEC.

10 Q. SEC?

11 A. Yes.

12 Q. Did you review any documents from the FERC?

13 A. Not in that early time frame but coming
14 forward.

15 Q. Okay. What information did you review from
16 the SEC?

17 A. Whatever it was called, where they
18 acknowledged that the technical structure was
19 different from structures that they would ordinarily
20 be seeing in a utility matter. And I don't know
21 exactly what that document was called.

22 Q. When was the initial filing or initial
23 filings with the SEC, do you know, what time frame?

24 A. In the '50s, yes.

25 Q. Okay.

1 A. '50s or the '40s, late '40s, you know,
2 '49, '50, in there.

3 Q. Okay. And you indicated that you reviewed
4 these materials. Did you review these materials
5 before you wrote your rebuttal testimony?

6 A. Uh-huh.

7 Q. Okay. And you've identified Commission
8 decisions in the 1950s and SEC filings and you've
9 mentioned FERC filings?

10 A. Uh-huh.

11 Q. Now, the FERC filings are referred to in
12 your rebuttal testimony; are they not?

13 A. Yes.

14 Q. Are there FERC filings that you reviewed
15 that you do not refer to in your rebuttal testimony?

16 A. I don't know if I mention in here the EWG
17 status, would have been one.

18 Q. Okay. And the SEC filing in particular that
19 you're referring to, is that the SEC filing that you
20 footnoted at the bottom of Page 6 of your rebuttal
21 testimony?

22 A. Uh-huh.

23 Q. Is that correct?

24 A. What footnote number?

25 Q. I'm sorry, it's Footnote No. 1 at the bottom

1 of Page 6.

2 A. Yes.

3 Q. I'm sorry, the SEC filing that you reviewed

4 --

5 A. Uh-huh.

6 Q. -- that's the one that's referred to at the
7 bottom of Page 6?

8 A. Yes.

9 Q. I'm sorry, I didn't realize that you
10 evidently were responding to my question. Did you
11 review any of the power supply agreements themselves
12 between EEInc. and the sponsoring companies?

13 A. I did.

14 Q. Can you identify which ones?

15 A. I probably spent the most time on the latest
16 one that expired in '05.

17 Q. The 1987 power supply agreement?

18 A. Yes.

19 Q. Did you review any of the modifications to
20 the 1987 power supply agreement?

21 A. I believe so, yes, but again, there's a lot,
22 so --

23 Q. Yeah.

24 A. -- if you ask me specifics about a
25 modification, I probably won't have that.

1 Q. You do recall there were modifications?

2 A. Uh-huh.

3 Q. To the, at least, the initial 1987 power
4 supply agreement?

5 A. Right.

6 Q. Do you recall how the modifications were
7 numbered or that the modifications were numbered?

8 A. I don't know.

9 Q. Okay. You don't recall whether the 1987
10 power supply agreement itself, whether it was referred
11 to as a modification?

12 A. I don't remember if it was called a
13 modification. There was reference back to the earlier
14 agreements.

15 Q. I gather then from your responses you are
16 aware that the 1987 power supply agreement could be
17 modified?

18 A. Uh-huh.

19 Q. You're indicating yes?

20 A. Yes.

21 Q. Did you review the EEInc. articles of
22 incorporation?

23 A. I guess that's where I would have picked up
24 the early ownership interest information. So, they
25 have articles of incorporation and bylaws and a number

1 of documents, and, yes, I attempted to look at a
2 number of those.

3 Q. You attempted to look at them. Do you
4 recall whether you actually did look at the articles
5 of incorporation?

6 A. Yes, I did.

7 Q. I'm going to hand to you what I'm going to
8 represent are the articles of incorporation and ask
9 you if you recall --

10 A. I don't remember seeing this State of
11 Illinois certificate from the Secretary of State.

12 Q. I probably should mark that as an exhibit
13 then. Mark that as Exhibit 1, that entire document.

14 MR. BYRNE: I guess I would note that it
15 appears that there's also bylaws attached in addition
16 to the articles.

17 MR. DOTTHEIM: But why don't we have that
18 document marked as Svanda Exhibit 1.

19 [Marked Svanda Exhibit 1 for
20 identification.]

21 MR. DOTTHEIM: I'd like to have marked as a
22 second exhibit what I'll represent are the present
23 bylaws as opposed to the bylaws that are attached to
24 the document or packet that's marked as Exhibit 1.

25 [Marked Svanda Exhibit 2 for

1 identification.]

2 Q. (By Mr. Dottheim) Mr. Svanda, I also hand
3 to you what's been marked as Exhibit 2 and represent
4 to you that those are the present bylaws of EEInc. Do
5 you recognize that document? Have you reviewed that
6 document previously?

7 A. Either I've skimmed it or I've seen enough
8 references to that that I generally recognize them as
9 the bylaws.

10 Q. Well, that's -- your answer wasn't in
11 response to my question. My question was, have you
12 reviewed that document as opposed to have you seen
13 enough references to the bylaws? I'm asking you --
14 I'm representing that what's been marked as Exhibit 2
15 are the present bylaws of EEInc. Have you reviewed
16 what I'm representing are the present bylaws of
17 EEInc.? Do you recognize that document? Have you
18 seen previously a copy of the document that's been
19 marked as Exhibit 2 and have you reviewed a copy?

20 A. I have reviewed it. I have not committed it
21 to memory, yes.

22 Q. All right. So, you recognize what's been
23 marked as Exhibit 2?

24 A. Uh-huh.

25 Q. You've reviewed that document?

1 A. (Witness nods head.)

2 Q. But you've indicated that you don't
3 recognize the document that has been marked as Exhibit
4 1, the document that begins after the first page that
5 I'm representing as the articles of incorporation.
6 And I believe the cover letter, the first page, also
7 indicates that the document behind the cover page is
8 the articles of incorporation.?

9 MR. BYRNE: I'm going to object. I think
10 that maybe misstates his testimony. He said he hadn't
11 seen the certificate from Illinois, not that he had
12 not seen the whole document.

13 Q. (By Mr. Dottheim) Then I'd like for Mr.
14 Svanda to indicate whether he has seen -- what portion
15 of that document he has seen.

16 A. I've seen these beginning pages, I guess
17 what I was saying, and this probably would have stuck
18 out in my memory to have seen the original
19 documentation from '53, and I don't recall that
20 correctly.

21 Q. All right. When you say -- I'm sorry, I
22 didn't mean to talk over you.

23 A. That's all right.

24 Q. When you say you've seen the beginning
25 pages, could you identify what pages you have seen?

1 Could you identify the number of pages that you've
2 seen?

3 A. These articles of incorporation through Page
4 10, I guess, or 11, I guess, it would be.

5 Q. Okay. Have you seen any of the pages after
6 -- did you say Page 8?

7 A. Eleven.

8 Q. I'm sorry, Page 11, have you seen any of the
9 pages after Page 11?

10 A. I don't recall seeing these amendment
11 sheets, if they are amendments to bylaws.

12 Q. Okay. So, again, you've indicated that
13 you've seen the first 11 pages?

14 A. Uh-huh.

15 Q. But not the pages beyond the first 11 pages?

16 A. Right.

17 Q. Okay. Mr. Svanda, do you recall -- did
18 you review the December 22, 2005 letter from Charles
19 A. Freiberg from the Kentucky Utility Company to the
20 president of EE, Inc, Robert L. Powers?

21 MR. BYRNE: Might he be able to look at the
22 document and see if he remembers it?

23 Q. (By Mr. Dottheim) Yes. I've just handed
24 you a copy of a letter that I've referred to.

25 A. Yes.

1 Q. Okay. The opinions that are expressed in
2 your rebuttal testimony on EEInc., those are your
3 opinions?

4 A. Yes.

5 Q. You formed those opinions on your own?

6 A. Yes.

7 Q. Okay. Mr. Svanda, what's your definition
8 for below-the-line?

9 A. Below-the-line is resources that are at-risk
10 to the shareholders, the nonregulated assets.

11 Q. I'd like to refer you to your rebuttal
12 testimony, Lines 21 and 22 from --

13 A. Of what page?

14 Q. Page 2. The definition you've just
15 provided, does that definition apply to how you've
16 used the term below-the-line at Line 21 on Page 2 of
17 your rebuttal testimony?

18 A. That is consistent, yes.

19 Q. Okay. I'd like to refer you to Page 3
20 of your rebuttal testimony, your reference to the
21 board of directors having a fiduciary duty to run the
22 company profitably. How do you define the term
23 fiduciary duty?

24 A. Which line are you looking at just so we're
25 on the same spot?

1 Q. I'm on Page 3.

2 A. Yes.

3 Q. I'm at Lines 1 and 2.

4 A. Okay. Fiduciary, again, by my common
5 understanding is a focus on, I'm the managing trustee
6 of a trust and my fiduciary responsibility is to
7 carry out that trust as directed by the trust and its
8 financial parameters. The same would apply here.

9 Q. Are you equating EEInc. with a trust?

10 A. No. I was using that as an example just to
11 help you understand my perception of fiduciary
12 responsibility.

13 Q. And as far as EEInc. is concerned, where
14 does that fiduciary duty arise from?

15 A. Its fiduciary responsibility arises from
16 its articles of incorporation and its other corporate
17 documents --

18 Q. Mr. Svanda --

19 A. -- and the law. Obviously, fiduciary is
20 within the confines of law.

21 Q. Mr. Svanda, is it your testimony that EEInc.
22 was not profitable when it was receiving cost-based
23 rates from the Department of Energy and the sponsoring
24 companies?

25 A. That it was not profitable? No, I didn't --

1 no.

2 Q. Was EEInc. profitable when it was receiving
3 cost-based rates from DOE and the sponsoring
4 companies?

5 A. My understanding is that it has always been
6 profitable.

7 Q. Mr. Svanda, is it your understanding that
8 AmerenUE's ratepayers own any of the assets of
9 AmerenUE?

10 A. Own them directly? If we're back to the
11 issue of above-the-line, below-the-line, then there
12 are assets that are in rate based and above-the-line,
13 but I don't know if the ratepayers directly have the
14 title to those assets.

15 Q. Do AmerenUE's ratepayers have any rights to
16 any of the profits of AmerenUE?

17 A. Inherent or by tariff or agreement or, you
18 know, there can be shares that are agreed to and
19 approved by commissions and those kinds of things, but
20 in terms of just because someone is a customer of a
21 regulated utility do they own the assets or do the
22 profits inure to them, no.

23 Q. I'd like to refer you again to Page 3 of
24 your testimony, Lines 8 through 10.

25 A. Uh-huh.

1 Q. Okay. Are you stating that AmerenUE, the
2 representatives of AmerenUE on the board of directors
3 are required to vote yes on every matter brought
4 before the EEInc. board?

5 A. Well, if -- I guess you're saying they're
6 representatives of Ameren. I believe them to be
7 directors of EEInc., not representatives necessarily
8 of AmerenUE.

9 Q. And so with that distinction what's your --
10 is it your understanding that the sponsoring companies
11 have any representatives on the board of directors?

12 A. Not representatives. That conjures up a
13 different image.

14 Q. What is your understanding regarding the
15 board of directors and the sponsoring companies?

16 A. Well, the board of AmerenUE and the other
17 owners have allocated numbers of seats on the board.
18 But back to my understanding of fiduciary
19 responsibility and things like that, those directors,
20 once they are pointed, don't go there as
21 representatives of the company anymore than I would
22 from Kentucky.

23 Q. And what is the basis of your understanding
24 on -- what is -- on what grounds is the basis of your
25 understanding?

1 A. The allocation of the directorships, my
2 understanding of what a director is and does.

3 Q. And what is the source of that
4 understanding?

5 A. I think probably words that I have seen
6 in those documents in terms of --

7 Q. When you just pointed, you said words you've
8 seen in those documents --

9 A. I think corporation documents, those things
10 where the director -- I don't think I've ever seen
11 reference to directors going there to represent a
12 company. I think that I've seen words to the effect
13 that AmerenUe and other entities have this number
14 of directors that they can place on the board, but
15 they go there as directors, they don't go there as
16 representatives.

17 Q. Can you point me to those words you're
18 referring to in the articles of incorporation?

19 A. Maybe, given some time.

20 Q. Why don't you take some time.

21 (A break was taken.)

22 THE WITNESS: Article 8 says the number of
23 directors to be elected at the first meeting of the
24 shareholders is seven. It doesn't say that the number
25 of company representatives from UE or the other

1 entities that were involved in the ownership at the
2 very outset. It doesn't call them representatives of
3 the company. It says the directors and that, you
4 know, director is -- director to me, it's akin to, you
5 know, when I was appointed as a commissioner, I took
6 on responsibilities for being a commissioner. I
7 wasn't there as a representative of the appointing
8 authority. I was there as a commissioner, and the
9 same would be true of a director.

10 That said, I'd like to participate in the
11 bathroom break.

12 MR. DOTTHEIM: Yes, let's take another
13 break.

14 (A break was taken.)

15 MR. DOTTHEIM: Back on the record. We've
16 also been joined on the telephone by Mr. Ryan Kind of
17 the Office of Public Counsel. So, we thought we would
18 note that for the record.

19 Q. (By Mr. Dottheim) Mr. Svanda, again, in
20 your most recent response referring to the articles of
21 incorporation, again, you're not an attorney, are you?

22 A. I am not.

23 Q. Okay. Mr. Svanda, have you reviewed any of
24 the minutes of the EEInc. board of directors?

25 A. I have reviewed, I think, other people's

1 citations of the minutes.

2 Q. So, I think what you've just indicated is
3 that you haven't literally viewed the board of
4 directors minutes themselves?

5 A. Right.

6 Q. Okay. Do you know how the directors voted
7 respecting the contract that was awarded to, I believe
8 it was, Ameren Energy Marketing upon the
9 conclusion of the contract at December 31, 2005, with
10 the sponsoring companies?

11 A. Do I know the number of votes or --

12 Q. Yes. Do you know how the actual votes --
13 the number of votes --

14 A. I do not.

15 Q. -- of the board of directors?

16 A. I do not.

17 Q. Okay.

18 A. I'm curious now that you've asked.

19 Q. Well, let me ask you a hypothetical then.
20 If you would assume with me -- you're aware of the
21 agreement that was entered into that presently exists
22 between EEInc. and Ameren Energy Marketing, are you
23 not?

24 A. I'm not -- I'm not sure that I've reviewed
25 that as a document if that's what you're asking.

1 Q. Okay. You're aware that that document
2 provides for the provision of energy at market based
3 rates?

4 A. I'm aware of that result, yes.

5 Q. Okay. If any -- well, again, you've -- if
6 any members of the board of directors voted to provide
7 energy at cost based rates instead of at market based
8 rates, would you consider that to be a breach of that
9 director's or directors', plural, fiduciary duty?

10 A. I guess I would consider it to be that
11 director exercising their independent judgment as a
12 director and they would be exercising that discretion,
13 you know, on their own. If they felt -- if a director
14 felt justified in that sort of vote, they would have
15 to stand any test that might be thrown their way in
16 that regard. That's my point about the independence
17 of a director. They deal based on the information
18 that they have before them.

19 Q. Okay. I'd like to refer you, again, to your
20 rebuttal testimony, Page 3, Lines 15 through 18, and
21 in particular, on Line 15 where you make reference to
22 all the costs. What do you mean by all the costs?

23 A. And I clarify that later. I guess what I am
24 including there is costs of capital and those sorts of
25 things. It is not just, you know, a very confined

1 area, but in order for an enterprise to continue to be
2 an enterprise, all costs have to be taken into
3 account.

4 Q. Are you familiar with the term incremental
5 costs?

6 A. Sure.

7 Q. Are you familiar with the term fully
8 distributed costs?

9 A. Yes.

10 Q. In your thinking are incremental costs the
11 same as fully distributed costs?

12 A. No.

13 Q. How are they different in your thinking?

14 A. Incremental cost is at the margin and
15 represents a marginal representation of costs. It is
16 right at the edge and more the concept of how you
17 consider pure market approaches.

18 Q. Mr. Svanda, do you know when AmerenUE first
19 represented to the parties in this case that capacity
20 and energy of EEInc. would be unavailable to serve
21 Missouri upon the termination of the 1987 power supply
22 agreement?

23 A. I've seen reference to it. I believe
24 somebody in 2004 first mentioned it.

25 Q. And your response, 2004, solely is based

1 upon your reading of that date in another party's
2 testimony?

3 A. I believe so.

4 Q. You don't recall which party's testimony or
5 which witness's testimony?

6 A. I'm not absolute -- I don't remember the
7 individual's name. It seems to me that it was in a
8 proceeding and it was an Ameren employee that also
9 serves as a director of EEInc. is my recall, but I'm
10 not absolutely certain of that.

11 Q. Okay.

12 A. Am I right?

13 Q. I'll ask the questions.

14 A. Fair enough.

15 Q. I have a difficult enough time asking the
16 questions without also trying to answer the questions.

17 A. I'm sorry.

18 Q. Mr. Svanda, I'd like to refer you to Page 4
19 of your rebuttal testimony, and in particular, Lines
20 20 to 23 -- or excuse me, 20 to 22, but Line 21 where
21 you make reference to cheap power. On what do you
22 base -- what studies or information did you rely upon
23 to make your statement on Page 4, Lines 20 to 22 of
24 your rebuttal testimony that AmerenUE customers
25 receive cheap power from EEInc.?

1 A. I guess I thought it was generally accepted
2 that EEInc. power was some very low cost power, and I
3 didn't think that was disputed.

4 Q. And so, again, you're indicating that the
5 basis for your statement is that you believe that's
6 generally accepted?

7 A. Yes.

8 Q. And --

9 A. I guess I wouldn't thing people would be
10 trying to hang onto it if it were not a very good
11 deal.

12 Q. And the basis of your own understanding
13 of that is from AmerenUE?

14 A. AmerenUE and the testimony of others and
15 the fact that others are trying to retain access to
16 that very inexpensive power.

17 Q. Okay. I'd like to refer you to Page 5 of
18 your testimony, and you make various statements
19 throughout your testimony, references. For example,
20 on Page 5, Lines 4 to 6, you state, "The problem with
21 the other parties' position is the unprecedented legal
22 and regulatory consequences they propose to give to
23 these facts." Are you drawing any legal conclusions
24 yourself? You make reference to legal consequences on
25 Line 5.

1 A. Well, you've already reminded me a couple of
2 times that I'm not an attorney, so I can't draw those
3 conclusions in your context, but as a practical
4 matter, which is what all my testimony is about,
5 I've been around negotiating and implementing and
6 closing down contracts for a long time. So, I have a
7 pretty good sense for how they operate and how things
8 get done under contracts.

9 **Q. You said you've been around closing down**
10 **contracts for a long time, if I understood you**
11 **correctly.**

12 A. Yes.

13 **Q. What did you mean by that?**

14 A. Going back a number of career lives, clear
15 back to city management days, when you got to the
16 end of a labor agreement, when you got to the end of
17 an agreement to provide a material or a service,
18 that's what I considered closing down.

19 **Q. Okay.**

20 MR. BYRNE: Steve, I probably need to break,
21 if that's okay, and we need to move to another room.

22 MR. DOTTHEIM: All right.

23 (A break was taken.)

24 MR. BYRNE: we're back. I guess we're ready
25 to get started.

1 Q. (By Mr. Dottheim) Okay. Mr. Svanda, when
2 we broke, oh, approximately a little less than an hour
3 ago, I was asking you some questions about references
4 in your testimony where you made reference to the term
5 legal, and I think we had established earlier that
6 you're not an attorney. There are any number of
7 places in your testimony where you make reference to
8 legal authority or legal entity, legal power, legal
9 consequences. Again, you're not representing yourself
10 as being an attorney, are you?

11 A. No, I'm not. I think just before we did
12 take the break I repeated that you were right, I'm not
13 an attorney. And then I made reference to the fact
14 I've spent a lot of time, a number of different career
15 lives working in the context of what's legal and
16 what's not legal.

17 Q. And there is just one other in particular
18 reference I want to refer you to where you probably
19 make your strongest statement, and that is on Page 16
20 of your rebuttal testimony. And it's in particular on
21 Line 16 on Page 16, the sentence where you state,
22 "Such an action would be a very questionable and
23 probably illegal attempt to override FERC's exclusive
24 authority over the rates and charges for wholesale
25 power transactions." And again, you're not an

1 attorney, are you?

2 A. I am not an attorney.

3 Q. Okay. I'd like to -- we are making
4 progress. I'm going to refer you back to Page 4 of
5 your rebuttal testimony, Lines 20 to 22 where you
6 state, "The other parties' proposal would effectively
7 punish AmerenUE for doing a great job in getting cheap
8 power for its rate payers from EEInc. when the
9 wholesale market did not exist." What do you mean by
10 the word punish?

11 A. Well, punish the Ameren purchase of power
12 from EEInc. at the cost -- basic cost plus arrangement
13 that had been struck. It was a good deal by most
14 parties' acknowledgement and, you know, to continue it
15 or to attempt to force them to continue it when there
16 isn't an opportunity to do such just seems like
17 punishment to me. You did a good job in the past but
18 the situations have changed, contracts have expired,
19 and regardless of all that, now we're going to slap
20 you around in essence because you're not able to
21 continue that.

22 Q. And you're indicating that that is the
23 intention of the parties, to punish, that's the
24 effect?

25 A. I don't know about the intention. That's

1 the effect as I see it.

2 Q. Okay. I'd like to refer you to Page 6 of
3 your rebuttal testimony, Lines 13 to 14 where you
4 state, "In recent years as operations at the Paducah
5 facility slowed, the Government's power needs from
6 Joppa declined and the sponsoring companies were able
7 to buy more power." Do you know whether the
8 Government's needs from Joppa have declined because
9 the Paducah facility had been meeting its power needs
10 from sources other than Joppa?

11 A. I believe it's just because the facility was
12 not requiring as much power.

13 Q. That's your understanding?

14 A. Yes.

15 Q. What is the basis of your understanding?

16 A. I've not been to the plant, just based on
17 kind of an understanding of what we are doing in the
18 entire nuclear armament arena.

19 Q. And when you say just a general
20 understanding, is that just from your general
21 readings? Is it based on anything that you have
22 reviewed in this case?

23 A. It is not. I guess the rest of that answer
24 is, I do pay attention to what is going on in national
25 defense issues, back to other career lives, and it's

1 from that understanding that, you know, understanding
2 what our needs are.

3 Q. And that is the basis for that statement in
4 your testimony?

5 A. Uh-huh.

6 Q. Yes?

7 A. Yes.

8 Q. Okay. And if I can refer you still on Page
9 6, Lines 17 and 18 of your testimony, I think we
10 broached this earlier today, the power -- the energy
11 from the Joppa facility is now being sold to what
12 entity, is it your understanding, after the
13 termination of the 1987 power supply agreement with
14 the sponsoring companies?

15 A. Being sold into the MISO market. I can't
16 identify bilateral contracts or those kinds of things
17 if you're asking that.

18 Q. Do you know if it's being sold to an
19 affiliate of AmerenUE?

20 A. I do not.

21 Q. Mr. Svanda, are you familiar with the
22 Missouri affiliate transaction rules?

23 A. I am familiar -- it's another of those I
24 probably scanned when I was looking at Missouri rules
25 generally, but, yeah.

1 Q. Does Michigan have affiliate transaction
2 rules?

3 A. Yes.

4 Q. Okay. I'd like to refer you to Page 13 of
5 your rebuttal testimony, Lines 6 to 9, where in
6 particular you refer to Case No. EF-77-197 where Union
7 Electric sought Missouri Commission authority to
8 guarantee certain eight and a half percent Series
9 First Mortgage sinking bonds respecting EEInc., do you
10 not?

11 A. Uh-huh, I do.

12 Q. You indicate, do you not, that the bonds
13 were used for purchase of pollution control equipment,
14 do you not?

15 A. That's correct.

16 Q. Okay. Mr. Svanda, have you reviewed any of
17 EEInc.'s FERC Form Ones?

18 A. No, I have not.

19 Q. Are you familiar with FERC Form 1s?

20 A. Yes.

21 Q. And you've not reviewed any of EEInc.'s FERC
22 Form 1s. Have you reviewed any of EEInc.'s Form
23 1s to FERC's predecessor, the Federal Power
24 Commission?

25 A. No.

1 Q. I'm going to hand you what I'm going to
2 represent is a copy of the EEInc. FERC Form 1 for the
3 year ended December 31, 1980. And I'd like first to
4 ask you to take a look at that document.

5 MR. BYRNE: While he's looking at that, I'm
6 going to interpose an objection on asking him about
7 that FERC Form 1 because there's been no foundation
8 that he can identify the document or has ever seen it
9 before, but he can go ahead -- subject to that
10 objection he can go ahead and answer questions.

11 THE WITNESS: Okay, I see it and it looks
12 generally fascinating, but you probably don't want me
13 to read the whole thing here.

14 Q. (By Mr. Dottheim) No, no. Mr. Svanda, have
15 you ever reviewed the FERC Form 1?

16 A. Yes.

17 Q. Okay. The document that I've handed to you,
18 does that appear to be the EEInc. FERC Form 1 for the
19 year ended December 31, 1980?

20 A. It does appear to be that type of document,
21 yes.

22 Q. I'd like to direct you to Page 112C.

23 A. All right.

24 MR. DOTTHEIM: It's not -- I don't believe
25 it's tabbed, so I don't want the tabs to misdirect

1 you. The page number is at the bottom of the page.
2 Unfortunately, it doesn't appear they are at the
3 bottom of every page.

4 MR. BYRNE: Here's 112D, and so I'm assuming
5 this is 112C.

6 MR. DOTTHEIM: Okay.

7 Q. (By Mr. Dottheim) I've turned to what I
8 believe at the bottom of the page indicates 112C,
9 and I'd like to direct you to what's identified as --
10 has the heading Five Other Special Deposits.

11 A. Yes.

12 Q. And that paragraph there states, and I'll
13 read it, "Other special deposits represent unexpended
14 proceeds of the eight and a half percent Series First
15 Mortgage sinking fund bonds. These bonds were issued
16 for the purpose of providing capital funds for the
17 construction of EEI's new stacks. Prior to 1979 the
18 use of these excess proceeds were limited to the
19 construction of the stacks. During 1979 the indenture
20 relating to the bonds was amended to permit the use of
21 these funds for the acquisition, construction, or
22 installation of any facilities at EEI's plant. During
23 1980 EEI used a portion of the excess proceeds to
24 expand their existing locker room facilities. The
25 remaining proceeds are being held and invested in

1 temporary cash investments by the bond trustee until
2 withdrawn by EEI. The income from the temporary cash
3 investment has been credited to interest income and
4 used to reduce the current power billing." Did I read
5 that paragraph correctly?

6 A. Yes, you did.

7 Q. Okay. That paragraph, does that appear or
8 refer to the eight and a half percent Series First
9 Mortgage sinking fund bonds that you address at Page
10 13 of your rebuttal testimony, Lines 6 to 9?

11 A. Yes.

12 Q. Okay. Do you know whether Union Electric
13 Company came before the Missouri Commission for
14 authorization for the proceeds to be used for reasons
15 other than environmental matters, such as the
16 expansion of existing locker room facilities at the
17 EEI facility?

18 A. I do not.

19 Q. Okay, thank you, Mr. Svanda, on that item.
20 Mr. Svanda, over the period when you were serving on
21 the Michigan Commission, December, 1995, to August,
22 2003, can you identify any power supply agreements
23 that you reviewed that were comparable to the 1987
24 contract between EEInc. and the sponsoring companies?

25 A. Not right off the top. I would guess if I

1 went back and looked either on the electricity side or
2 on the gas side there would be agreements that have
3 some comparability.

4 Q. But you can't identify any at this moment,
5 there are none that you can --

6 A. That stick right out.

7 Q. -- identify by name? No?

8 A. No.

9 Q. The Michigan Public Service Commission is a
10 member of the Organization of MISO States, Inc.; is it
11 not?

12 A. It is.

13 Q. In fact, Commissioner Marsha Pepp is the
14 current president of MISO; is she not?

15 A. OMS, that's correct.

16 Q. OMS, that's the abbreviation for the
17 Organization of MISO States, Inc.; is it not?

18 A. Yes.

19 Q. When you were a Michigan commissioner you
20 participated, did you not, in the OMS?

21 A. Yes, in its formative stages.

22 Q. Among other things, the OMS would submit
23 comments to the SEC regarding first dockets; would it
24 not?

25 A. Yes, it does.

1 Q. Do you recall on any occasions state
2 commissioners ever indicating that they would not join
3 in comments of the OMS states because of concern that
4 it might appear that their state commission had
5 prejudged a matter that was pending or would be
6 pending before their state commission?

7 A. That's an ongoing concern that the states
8 have, yes.

9 Q. Mr. Svanda, does the board of directors of
10 Ameren UE have a fiduciary duty to run AmerenUE
11 profitably?

12 A. Sure.

13 Q. Okay. Does the board of directors of
14 AmerenUE have a fiduciary duty to maximize the profits
15 of its shareholders?

16 A. Within the environment that they operate,
17 yes.

18 Q. Would you please explain for me your
19 statement, "within the environment that they operate"?

20 A. Sure. They are part of that whole community
21 of electric suppliers in this country that have
22 different expectations and requirements than other
23 industry sectors do, for example.

24 Q. What are those other expectations and
25 requirements?

1 A. Living within the regulatory world as it's
2 been created in this country.

3 Q. What does that entail, "living within the
4 regulatory world"?

5 A. Subject to either national or state
6 iterations, for example, of PUHCA kinds of
7 expectations.

8 Q. PUHCA has been repealed, has it not?

9 A. And that's why I included state iterations.
10 There's a whole bunch of tests, as I'm sure you're
11 aware of, around that today.

12 Q. Do you know whether Missouri has statutes
13 comparable to what the federal PUHCA statutes were?

14 A. I don't.

15 Q. Well, let me ask you again, do the board of
16 directors of AmerenUE have a fiduciary duty to
17 maximize the profits of its shareholders?

18 A. As a general principle, yes.

19 Q. Okay. Well, I'm going to ask you a
20 hypothetical question.

21 A. Okay.

22 Q. If you bear with me. Assuming
23 hypothetically AmerenUE believes it is legally
24 entitled to a \$747 million rate increase, but it is
25 only seeking \$361 million of that rate increase, would

1 such an action be inconsistent with your statement
2 that the board of directors of AmerenUE has a
3 fiduciary duty to run AmerenUE profitably?

4 MR. BYRNE: I'm going to interpose an
5 objection. I think that calls for a legal conclusion.
6 As we've discussed, Mr. Svanda is not a lawyer, but
7 you can go ahead and answer subject to that objection.

8 THE WITNESS: I don't see an inconsistency
9 there. I was, without allowing you to drag me into a
10 full discussion of PUHCA and things like that, just
11 trying to outline the fact that operating a utility is
12 done within a certain field of relevance. We all have
13 reference to regulatory compacts and all of those
14 kinds of issues that come into play, and so that's why
15 I even mentioned it in my earlier response in this
16 whole line. I don't think that it is fiduciarily
17 irresponsible to recognize the regulatory climate and
18 that you may not be able to ask for every last nickel
19 that you might be entitled to, but within the
20 regulatory world a reasonable request is placed.
21 That's part of that fiduciary responsibility and
22 recognizing the real world and acting properly within
23 it.

24 Q. (By Mr. Douthett) Mr. Svanda, I think you
25 made reference about me dragging you into PUHCA. I

1 don't believe I ever mentioned PUHCA. I believe you
2 mentioned PUHCA. I don't believe I made any attempt
3 to drag you into PUHCA. So, I want to be very clear
4 about that. I had no intention of doing so. So, in
5 any future questions I ask you or any question I've
6 asked you so far other than possibly a follow-up to
7 one of your answers where you made reference to PUHCA,
8 I am not attempting to drag you into PUHCA.

9 Next, regarding your attorney's objection, I
10 think possibly my use of the word or term fiduciary
11 duty, I believe that term appears repeatedly
12 throughout your testimony.

13 MR. BYRNE: I wasn't objecting to your use
14 of the term fiduciary. I was objecting to your asking
15 him about the legal consequences of the particular
16 hypothetical factual situation you were presenting to
17 him.

18 Q. (By Mr. Dottheim) Mr. Svanda, you used the
19 term regulatory compact. What do you mean by that
20 term, regulatory compact?

21 A. Common understanding, in going back in the
22 history of regulated utilities there was a compact
23 between the regulated and the regulator and the whole
24 field of operation within being a regulated entity.

25 Q. Are there any responsibilities or

1 obligations that arise from the regulatory compact
2 relating to the ratepayer and the utility?

3 A. I would say that's the basis for both U.S.
4 and state law around the country.

5 Q. And when you say the basis for state law,
6 can you be more explicit than that, what you mean by
7 the basis for state law?

8 A. Creating an environment for regulated
9 utility operation.

10 Q. And could you be more explicit by what you
11 mean by environment, by creating an environment? What
12 environment? What is that environment?

13 A. The energy policy acts at the national level
14 and state statutory enactments that spell out how
15 utilities operate.

16 Q. Well, you've made reference throughout this
17 morning to general understanding. What's your general
18 understanding of that, the statutes that you're
19 referring to relating to the regulatory compact on the
20 state level?

21 A. That a setting gets created whereby power is
22 delivered at just and reasonable costs to the
23 customers.

24 Q. You made some reference to a utility not
25 asking for every, I think maybe you used the word

1 nickel, that it was entitled to. Does the utility
2 have some discretion?

3 A. I don't understand.

4 Q. Okay. I'm returning to your use of the
5 term fiduciary duty and the utility's fiduciary duty
6 to its shareholders and seeking to operate so as to
7 produce a profit for the shareholders. Is the
8 fiduciary duty to maximize profit?

9 A. Yes.

10 Q. Does the utility have any discretion?

11 MR. BYRNE: I'm going to object on the same
12 ground as before, it calls for a legal conclusion.
13 Subject to that you can answer the question.

14 THE WITNESS: They live in the same real
15 world as all of the rest of us do, and so, of course,
16 there are practical limitations.

17 Q. (By Mr. Dottheim) What are the practical
18 limitations?

19 A. The climate of the operation of utilities
20 within the state.

21 Q. What do you mean by the climate of the
22 operation of utilities within the state?

23 A. Maybe an example is a good way to do it. I
24 reference in another place what transpired in
25 California a number of years ago, and a utility in

1 California may well have been able to justify every
2 last nickel, but things in California were such that
3 it wasn't a realistic sort of expectation.

4 Q. And what was the prudent thing for the
5 utility to do?

6 A. Acknowledge the world that they live in.

7 Q. And not ask for every single nickel?

8 A. Sure.

9 Q. And the utility would fulfill its fiduciary
10 duty to its shareholders?

11 MR. BYRNE: I'm going to object on the same
12 ground, it calls for a legal conclusion.

13 THE WITNESS: In California, yes.

14 Q. (By Mr. Dottheim) Would that apply only to
15 California?

16 A. Well, that's going back to the example
17 that I gave to you.

18 Q. Would your example apply only to California?

19 A. In terms of fiduciary responsibility, no.

20 Q. Does that apply to all states?

21 A. As a practical matter, of course.

22 Q. I'd like to refer you to Page 17 of your
23 rebuttal testimony, in particular Line 20 where you
24 refer to, "Such discrimination is a perverse form of
25 affiliate abuse." What do you mean by the phrase, "a

1 perverse form of affiliate abuse"?

2 A. A fairly common assumption of perverse
3 is that it sets customary notions on their head.

4 Q. Are you intending by the use of the word
5 perverse anything more than what you just indicated?

6 A. No.

7 Q. Are you indicating that that is the effect
8 of the position taken by the parties, or is that the
9 intention of the parties, or both?

10 A. It's the effect. As before, I really
11 probably can't speak to intention.

12 Q. Okay. I'd like to refer you to again here
13 Pages 16 and 17 of your testimony, starting on Page
14 16 where at the bottom of the page you make reference
15 to --

16 A. Rebuttal testimony we're still talking
17 about, right?

18 Q. I'm sorry, rebuttal testimony where you make
19 reference to the Midwest ISO, and you finish at the
20 top of Page 17, but in particular I'd like to refer
21 you to Line 20 where you have the words, "off the
22 market," and you have the words off the market in
23 quotation marks. Could you tell me why you've got the
24 words off the market in quotation marks?

25 A. Just as a reference point. It's kind of a

1 term of art or something, and so I was designating it
2 as such.

3 Q. That portion of the Joppa plant is not
4 literally being taken off the market, is it?

5 A. Well, if there were successful -- if the
6 attempt to force it to be sold to AmerenUE were
7 successful, then it would be unavailable to the rest
8 of the market.

9 Q. There might be other power as a consequence
10 available to the market, would it not?

11 A. Well, that wouldn't be the output of the
12 Joppa plant, though.

13 Q. If there were power even less expensive
14 than the Joppa power, then the Joppa power still might
15 be available to the MISO market; might it not?

16 A. I suppose.

17 Q. Do you know, referring to the MISO energy
18 market, whether the AmerenUE plants are bid into the
19 MISO energy market?

20 A. Well, they are on the MISO footprint, so,
21 yes.

22 Q. Isn't Joppa bid into the MISO energy market
23 even if the 405 megawatts previously available to
24 AmerenUE remained available to AmerenUE?

25 A. I assume that's how they operate, sure.

1 Q. Mr. Svanda, when you were on the Michigan
2 Commission, do you recall whether you were ever
3 presented with any jurisdictional allocation issues?

4 A. As in transmission distribution?

5 Q. Yes, transmission distribution.

6 A. Sure.

7 Q. Do you recall when you were on the Michigan
8 Commission, were there ever any issues presented to
9 you where there were differences in the jurisdictional
10 allocations between the methodology adopted by the
11 FERC and the methodology adopted by the Michigan
12 Commission?

13 A. I'm certain, yes. Again, I can't site you
14 specifics, but I was there quite a while. A lot of
15 water went under the bridge.

16 Q. And pardon me for my ignorance, I definitely
17 without any question should know, but I assume there
18 are electric utilities that serve in Michigan that
19 also serve adjoining states to Michigan?

20 A. That's correct.

21 Q. Do you know whether there were any electric
22 utilities serving Michigan and adjoining states that
23 had different jurisdictional allocation methodologies
24 adopted by the Michigan Commission and by the
25 commission of an adjoining state?

1 A. I don't.

2 Q. I'd like to turn to your surrebuttal
3 testimony, okay, and just start off by asking you some
4 general questions. I had asked you previously if you
5 were a financial analyst, and I believe you indicated
6 that you're not; is that correct?

7 A. By my understanding of financial analyst,
8 that's right. My wife is a financial analyst.

9 Q. You don't have a degree in financial
10 analysis?

11 A. No.

12 Q. Have you ever performed a DCF analysis?

13 A. DCF?

14 Q. Discounted cash flow.

15 A. I have not performed analyses myself. I
16 understand and have utilized the work of others in
17 that regard.

18 Q. And in what capacity have you done that?

19 A. As a commissioner, as city manager.

20 Q. And we've talked about your educational
21 background. You don't have any degrees in finance?

22 A. I do not.

23 Q. Have you authored any articles on rate of
24 return?

25 A. No.

1 Q. Have you authored any articles on
2 regulation?

3 A. Yes.

4 Q. Can you identify those?

5 A. They would be articles in legal journals and
6 other things like that in association with conferences
7 that I participated in, papers presented, those sorts
8 of things.

9 Q. And they are not identified as part of your
10 direct testimony, are they?

11 A. No.

12 Q. Okay. Mr. Svanda, do you know, what was the
13 last rate of return set by the Missouri Commission for
14 AmerenUE?

15 A. I do not have that in front of me.

16 Q. Do you know, when was the last rate of
17 return set by the Missouri Commission for AmerenUE?

18 A. No.

19 Q. Okay. Mr. Svanda, just in general, having
20 read your direct, rebuttal, and surrebuttal testimony,
21 is there any area of utility regulation which you do
22 not consider yourself qualified to offer testimony on?

23 A. Utility regulation?

24 Q. Yes.

25 A. No.

1 Q. Do you consider yourself qualified to offer
2 testimony on weather normalization?

3 MR. BYRNE: I object. He's already answered
4 the question, but subject to that objection you can go
5 ahead.

6 THE WITNESS: No. I certainly in the course
7 of my experience in the commissioner's seat formed
8 opinions about weather normalization.

9 Q. (By Mr. Dottheim) Do you consider yourself
10 qualified to -- or offer yourself to offer testimony
11 on federal income taxes?

12 MR. BYRNE: Objection, asked and answered.

13 THE WITNESS: At the level of my testimony,
14 certainly the impact of federal income taxes is a
15 factor that I can speak to, but, of course, I'm not an
16 expert in the IRS code or am not a tax attorney or
17 other person as such.

18 Q. (By Mr. Dottheim) Do you consider yourself
19 qualified to offer testimony on pensions and other
20 post-employment benefits?

21 MR. BYRNE: Again, objection, asked and
22 answered.

23 THE WITNESS: I do, again at the same level
24 that my testimony is offered at. I've operated
25 pension systems for cities where I was a city manager,

1 for example, and sure, I have an understanding.

2 Q. (By Mr. Dottheim) Let me ask you one last
3 item, do you consider yourself qualified to offer
4 yourself to offer testimony on production cost
5 modeling?

6 A. On my doing the modeling, no.

7 Q. Mr. Svanda, do you know how much in revenue
8 requirement is the difference a return on equity of
9 9.5 percent and 12 percent in the pending AmerenUE
10 electric rate case?

11 A. I do not.

12 Q. I'd like to refer you to your surrebuttal
13 testimony, bottom of Page 5, starting on line 24 going
14 to the top of Page 6, Line 1 where you state,
15 "However, if it becomes apparent that a utility is
16 over-earning because of excessive ROE, a change of
17 course can be relatively promptly implemented in a
18 proceeding before the Commission, and the consequences
19 of excessive ROE are therefore limited." Can you
20 identify for me, what are the procedures in Missouri
21 whereby a change of course can be relatively promptly
22 implemented in a proceeding before the Missouri
23 Commission and the consequences of an excessive ROE
24 therefore limited?

25 A. Sure. And in the context of time frame,

1 I go on in that section to talk about starving a
2 company and the implication of that being very long
3 term, decades long in particularly the capital
4 investment side in this context, and I believe there's
5 another reference to an example where the staff wanted
6 the Commission to direct it to do an investigation and
7 the staff was commenting on a jurisdictional piece in
8 that regard. But unless Missouri is very different
9 from other jurisdictions, there is an opportunity to
10 investigate what is going on.

11 Q. Do you know how long -- is there -- do you
12 know if there's a time frame on an investigation in
13 Missouri set by statute or by rule?

14 A. I don't know either -- I don't know either
15 rule or statutory time frame, but again, in the
16 context of time frames here, any process can be
17 corrective on a fairly short term. If there are
18 over-earnings on a long term, you can do damage that
19 goes on for decades.

20 Q. When you say corrective on a short term,
21 what do you mean by short term?

22 A. Within a year or within something in that
23 time frame, maybe two years.

24 Q. Pardon?

25 A. A year or two years.

1 Q. Do you know whether there is any time frame
2 set by statute or rule in Missouri for rate increase
3 cases?

4 A. I do not know.

5 Q. I'd like to refer you to Page 6, Lines 6 and
6 7, your sentence, "Erring on the higher side of a
7 range of proposed ROEs is, accordingly, a prudent
8 approach." Mr. Svanda, are you indicating that erring
9 on the lower side of a range of proposed ROEs is,
10 accordingly, an imprudent approach?

11 A. I would say imprudent in the sense that
12 nearly irreparable damage can be done to err on the
13 low side. To starve a company of its investment
14 needs deprives the company on the ROE side, also
15 deprives the customers in terms of quality of service
16 that they experience.

17 Q. Who defines the quality of service that
18 customers receive?

19 A. A large number of folks are in that
20 definitional process. It is the customers themselves,
21 it is the media, it is the legislature, it is the
22 governor, it's the Public Service Commission, it is
23 the Office of Public Counsel, and on and on that
24 all contribute to that entire definition.

25 Q. Do you know whether customers ever define

1 the quality of service they receive based upon the
2 price at which they receive it?

3 A. Generally speaking, I would say they do,
4 yes.

5 Q. I would take it from your sentence on Page
6 6, Lines 6 and 7 and the response you've given, that
7 erring on the higher side of a range of proposed ROEs
8 never does harm; is that correct?

9 A. Well, I think I also indicate that that is
10 not good business for customers to be paying too much,
11 but that's the reason that there are corrective
12 mechanisms.

13 Q. So, it is possible that erring on the higher
14 side of a range of proposed ROEs can do harm?

15 A. Not in the context of utility time, no.

16 Q. What do you mean --

17 A. We're making public investments in public
18 infrastructure.

19 Q. What do you mean by utility time?

20 A. How long the service is provided, what it
21 does in an economic development sense to either
22 provide for a good operating climate in the state or
23 not.

24 Q. Okay. I'd like to refer you to Page 10.

25 MR. BYRNE: Surrebuttal?

1 MR. DOTTHEIM: Surrebuttal, sorry.

2 Q. (By Mr. Dottheim) In fact, it's the heading
3 at the middle of the page, "Erring on the high side of
4 the ROE ranges presented is prudent and justified."
5 What do you mean by justified?

6 A. Relatively common meaning, it's appropriate
7 in the context of utility investments and
8 infrastructure. It is a justifiable act.

9 Q. Mr. Svanda, I think you've indicated that
10 the Missouri Commission should be concerned with how
11 investment analysts view regulation; is that correct?

12 A. Yes.

13 Q. Isn't part of how investment analysts view
14 Ameren how investment analysts view what is occurring
15 in the regulatory sphere in Illinois and not just in
16 Missouri?

17 A. Yes, I'm sure that's the case.

18 Q. Based upon your review of AmerenUE, do you
19 believe it is adequately ring fenced?

20 A. Adequately ring fenced from?

21 Q. Events, such as events from regulation in
22 Illinois.

23 A. It's probably adequately ring fenced in a
24 financial sense, yes.

25 Q. Is it not adequately ring fenced in some

1 other sense.

2 A. I think Illinois and some other recent
3 examples are extremely unsettling and dangerous for
4 utility regulation and independent of public service
5 commissions across the country.

6 Q. Do you believe that AmerenUE is properly
7 ring fenced from Ameren nonregulated operation based
8 upon your review of AmerenUE?

9 A. Yes. No reason to think differently.

10 Q. Mr. Svanda, do you know whether AmerenUE
11 has market base rate authority from the FERC?

12 A. I do not.

13 Q. And still if you bear with me just another
14 minute, Mr. Svanda, I had asked you about
15 jurisdictional allocation methodologies differing
16 between state jurisdictions and the FERC. In your
17 experience as a Michigan commissioner, do you recall
18 whether depreciation methodologies, depreciation rates
19 differed respecting the same companies between the
20 Michigan Commission and the FERC?

21 A. I'm sure they would have differed, yes.

22 Q. And similar to the question I asked you on
23 jurisdictional allocations involving the Michigan
24 Commission and adjoining state commissions, do you
25 know whether electric utilities serving both in

1 Michigan and adjoining states, whether there were
2 instances of depreciation methodologies and rates that
3 differed between the Michigan Commission and those
4 rates and methodologies adopted by the adjoining state
5 commission?

6 A. There would have been differences, sure.

7 Q. Okay. Mr. Svanda, I assume you're being
8 compensated for your work for AmerenUE?

9 A. I hope so.

10 Q. Are you being paid an hourly rate or a lump
11 sum?

12 A. Can we perhaps --

13 MR. BYRNE: I think it's a fair question.
14 We can make it highly confidential if you would like.

15 MR. MICHEEL: Why is that highly
16 confidential, Tom? Why don't the ratepayers get a
17 chance to know how much we're paying him?

18 MR. BYRNE: Well, you make kind of a good
19 point. Give me just a second. Can we go off the
20 record for a second?

21 (Discussion off the record.)

22 MR. BYRNE: All right, back on the record.
23 We won't say this is highly confidential.

24 THE WITNESS: I am paid a monthly retainer.

25 Q. (By Mr. Dottheim) And what is that monthly

1 **retainer?**

2 A. It's 12,500.

3 MR. DOTTHEIM: Mr. Svanda, thank you very
4 much. You've been very patient. I appreciate that.

5 THE WITNESS: Thank you.

6 CROSS-EXAMINATION

7 QUESTIONS BY MR. MICHEEL:

8 Q. Mr. Svanda, this is Doug Micheel. I'm an
9 assistant attorney general here for the State of
10 Missouri. I'm representing the State. Can you hear
11 me okay?

12 A. Yes.

13 Q. All right. I'm sorry, I just couldn't make
14 it down there today. You indicated in your response
15 to the last question to Mr. Dottheim that you're
16 getting a monthly retainer of \$12,500, is that what I
17 heard?

18 A. That is correct.

19 Q. And how long have you been on Union
20 Electric's payroll?

21 A. I guess it would be since June, just before
22 I entered my direct testimony.

23 Q. And how many hours have you worked on this
24 case?

25 A. Well, we've established I'm not an attorney

1 and I don't do billable hours.

2 Q. Okay. How many hours have you worked on
3 this case? You don't know?

4 A. I do not record my hours.

5 Q. Okay. You don't have a ballpark for me?

6 A. Not really.

7 Q. Do you think it's fair for the ratepayers to
8 pay you for \$12,500 a month in rate case expense and
9 not know how many hours you spend?

10 A. I don't work on an hourly basis, so, yes, it
11 is.

12 Q. Okay. What else are you doing for AmerenUE
13 other than providing this testimony?

14 A. That is what I'm doing.

15 Q. So, how much today have you been paid by
16 AmerenUE?

17 A. Well, twelve five since June.

18 Q. And how much does that come out to, sir, or
19 do you not pay attention to that?

20 A. I don't keep a running calculation. I
21 thought you might have a calculator there and could
22 run it.

23 MR. BYRNE: You can be a little less rude,
24 Mr. Micheel, if you wouldn't mind.

25 Q. (By Mr. Micheel) Okay. Let me ask nice,

1 how much money is that, sir?

2 A. I don't have a calculator. I just pencilled
3 it out to eighty-seven five.

4 Q. And how long does your contract with
5 AmerenUE go out for, how long are they paying the
6 \$12,500 a month?

7 A. Well, while the case is active.

8 Q. So, through the operation of law date or
9 does that mean through the appeal?

10 A. No.

11 Q. Do you have a written contract with
12 AmerenUE?

13 A. Yes.

14 Q. Have you provided that today in response to
15 the subpoena duces tecum?

16 A. I have not.

17 Q. Do you think that was covered by that?

18 A. No.

19 Q. What are your obligations in that contract
20 that you have with Ameren, are they specified?

21 A. Only in very broad general terms.

22 Q. What are those broad general terms?

23 A. To work with them on the rate case.

24 Q. Now, are you a fact witness or just a policy
25 witness?

1 A. I don't know if I know the distinction.

2 Q. Well, what do you view your job as in this
3 case?

4 A. Policy.

5 Q. Well, what did you review and analyze to
6 come to the conclusion that you came to in your
7 direct, rebuttal, and surrebuttal testimony?

8 A. Well, source documents related to, for
9 example, EEInc., I looked at documentation presented
10 by others, I looked at the materials that I have
11 referenced in my testimony.

12 Q. Did you conduct any of your own studies?

13 A. I did not.

14 Q. Did you conduct any of your own independent
15 analyses?

16 A. No. Definitional, probably, I certainly
17 analyzed the information that I was reviewing.

18 Q. Okay. Did you provide your workpapers to
19 the parties in this case?

20 A. Yes.

21 Q. And how many workpapers did you have?

22 A. I don't know, five or six.

23 Q. Are you aware that the industrial customers
24 of AmerenUE are intervenors in this case?

25 A. Yes.

1 Q. Are you aware that they are vigorously
2 opposing this rate increase?

3 A. As intervenors, yes.

4 Q. Are you aware that the State Department of
5 Economic Development is an intervenor in this case?

6 A. By that name, probably not, I guess.

7 Q. Are you aware that they are opposing the
8 rate increase?

9 A. No, I guess not.

10 Q. Are you aware that the State of Missouri is
11 an intervenor in this case?

12 A. Sure.

13 Q. Are you aware that they are opposing the
14 rate increase?

15 A. Yes.

16 Q. When you were a commissioner in Michigan,
17 did you ever grant 100 percent of what a utility's
18 rate increase requested?

19 A. I don't believe so.

20 Q. Why not?

21 A. It wasn't proven to be the appropriate
22 amount.

23 Q. And so would you agree with me that in
24 making your decision when you were a commissioner in
25 Michigan you based it on evidence in the record?