

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION  
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6 TRANSCRIPT OF PROCEEDINGS  
7 On-the-Record Presentation  
8 May 2, 2007  
9 Jefferson City, Missouri  
Volume 1

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12 In the Matter of an Investigation )  
of the Relationship Between ) Case No. EW-2007-0379  
13 Utilities with Credit Rating )  
Agencies )

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16 STEVE GAW, Presiding  
17 ROBERT M. CLAYTON, III, Presiding  
COMMISSIONERS.

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1 P R O C E E D I N G S

2 COMMISSIONER CLAYTON: My name is Robert  
3 Clayton, Commissioner of the Missouri Public Service  
4 Commission, acting on behalf of myself as well as  
5 Commissioner Steve Gaw in regard to Case No. EW-2007-0379,  
6 investigation into communications with rating agencies and  
7 Missouri utilities.

8 It is 11 o'clock on Wednesday, May 2nd,  
9 2007, where it is now time for a return on a number of  
10 subpoenas that have been issued to Ameren Corporation and  
11 a number of its affiliates.

12 At this time I'd like to go ahead and  
13 recognize who is appearing on behalf of Ameren, its  
14 affiliates, and specifically identify who -- if there are  
15 more than one person, who they're representing. So  
16 Mr. Lowery, would you like to start?

17 MR. LOWERY: Thank you, Commissioner. My  
18 name is James B. Lowery of the law firm Smith Lewis, LLP,  
19 111 South Ninth Street, Suite 200, Columbia, Missouri  
20 65205, appearing on behalf of Ameren Corporation and the  
21 other affiliates, Ameren affiliates to whom subpoenas were  
22 directed.

23 MR. BYRNE: And I'm Tom Byrne. My address  
24 is 1901 Chouteau Avenue, St. Louis, Missouri 63109, also  
25 appearing on behalf of AmerenUE and its affiliates.

1                   And we also have with us Jerre Birdsong,  
2     who is the treasurer of Ameren Corporation and AmerenUE  
3     and a number of the affiliates, and Lee Nickloy, who's  
4     assistant treasurer. Mr. Birdsong and Mr. Nickloy are two  
5     of the primary people within Ameren who have contacts with  
6     the credit rating agencies. They're familiar with --  
7     well, we've got several thousand pages of documents, but  
8     they would be familiar with a lot of these documents, most  
9     if not all of the documents, and they can give you as much  
10    information as anybody can about the communications with  
11    the rating agencies.

12                   COMMISSIONER CLAYTON: Before we get  
13    started on that, are there any other attorneys that need  
14    to be identified or any other Ameren folks that we need to  
15    identify at this time?

16                   MR. BEDNAR: Joe Bednar with Armstrong  
17    Teasdale. I also represent Ameren on a variety of issues.

18                   MR. BYRNE: I think that's everybody from  
19    Ameren.

20                   COMMISSIONER CLAYTON: Just for  
21    clarification purposes, there were subpoenas issued to a  
22    number of different entities, and I wanted to clarify for  
23    the record there were subpoenas issued to Ameren Energy  
24    Resource Company, Ameren Energy, Inc., Ameren Services  
25    Company, Ameren Energy Fuels and Services Company,

1 AmerenUE, Ameren Energy Generating Company, Ameren Energy  
2 Marketing Company and Ameren Corporation. And it is my  
3 understanding from what you've stated earlier that each of  
4 the attorneys here are representing each and every one of  
5 those affiliates; is that correct?

6 MR. LOWERY: That's correct.

7 COMMISSIONER CLAYTON: Are there any other  
8 attorneys appearing in the room at this time that would  
9 like to be identified? They don't have to be identified.

10 MR. MILLS: Yes, Commissioner. On behalf  
11 of the Office of the Public Counsel, my name is Lewis  
12 Mills. My address is Post Office Box 2230, Jefferson  
13 City, Missouri 65102.

14 COMMISSIONER CLAYTON: Okay. Are there any  
15 attorneys here from Staff?

16 MS. SYLER BRUEGGEMANN: Yes, your Honor --  
17 or yes, Commissioner. My name is Shelley Syler  
18 Brueggemann, and I am here from General Counsel's Office,  
19 200 Madison Street, Jefferson City, Missouri 65102.

20 COMMISSIONER CLAYTON: Okay. Thank you  
21 very much, Ms. Brueggemann, not Syler anymore. At this  
22 point I would like to go ahead and just start off, unless  
23 you want to say anything to start off with, Commissioner  
24 Gaw.

25 COMMISSIONER GAW: No.

1 COMMISSIONER CLAYTON: Mr. Lowery?

2 MR. LOWERY: Commissioner, if it pleases  
3 the Commission, I was going to give a little bit of a  
4 description of what we've brought today, and I don't have  
5 to introduce Mr. Birdsong and Mr. Nickloy now, but just  
6 give you a little bit of background might facilitate where  
7 we're going to go today.

8 COMMISSIONER CLAYTON: I think that would  
9 be helpful, and I'd also like to suggest that there are  
10 paragraphs listed on the subpoenas indicating a number of  
11 different types of information. If you can help offer  
12 some guidance on how the material is organized, if at all.

13 MR. LOWERY: I intend to do that, yes.

14 COMMISSIONER CLAYTON: And there was  
15 something else. Also the quantity that you have supplied,  
16 and we'll start off with your opening statement and we'll  
17 go from there.

18 MR. LOWERY: Excuse my voice if I have to  
19 pause and cough. One of my kids I think brought a cold  
20 home. Hopefully I won't have too much trouble with that.

21 We've provided, as you can see, two boxes  
22 of materials this morning. It covers all the Ameren  
23 companies that you mentioned, Commissioner Clayton, to  
24 which the subpoena was directed for the period of July 1,  
25 2005 to the present, which is pursuant to some discussions

1 that we recently had with you and some of your advisors.  
2 I would estimate that there's several thousand, probably 4  
3 or 5,000 pages there, something along those lines.

4 We have Mr. Birdsong and Mr. Nickloy with  
5 us today, who are I'm sure the individuals who would be  
6 most familiar with these documents. And we organized the  
7 documents according to the nine categories that were  
8 listed in the subpoenas.

9 And in the very front of the first box, and  
10 there's Box 1 and Box 2, is a response that basically 1  
11 through 9 it states the question or the request and then  
12 we have a description of either here's the tab you need to  
13 look at for the documents or in certain cases you asked  
14 for information like names of employees, and those folks  
15 are there in that response in the very first box very,  
16 very beginning.

17 Let me give you a little bit of information  
18 about how the boxes are organized. First box has what's  
19 called Tab 1/4, and those are documents -- there's a very  
20 large number of documents in those two categories that  
21 really responded to both 1 and 4 in a lot of cases. So we  
22 just combined those tabs, and so behind Tab 1 to 4 are  
23 responsive documents for both of those.

24 Tab 2 is information about the company's  
25 payments to the agencies and backup materials. There's a

4                   Tab 3, we put together, I assume it was an  
5   Excel spreadsheet.  It's a spreadsheet, I believe, that  
6   has the ratings information as requested for the various  
7   companies at these various points in time.

13                   Tab 5, we have a listing of the ratings  
14   agency personnel with whom the company deals, and to the  
15   extent records of communications exist, documents showing  
16   that are behind Tab 5.  There's some overlap with Tab 6  
17   also.  Those two categories have some overlap.

21                   Tab 7 are the minutes that were requested.  
22   And then we again combined Tabs 8 and 9 because there's  
23   overlap between those two categories as well, and there's  
24   quite a few documents there.

1 period that I mentioned that are kept in the normal course  
2 of the company's business. There might be some  
3 materials -- we don't know if there are or not at this  
4 point -- arising from potential acquisitions that were  
5 considered but never compensated that are outside the  
6 normal course of our dealings. Typically those documents  
7 are required to be destroyed pursuant to the, you know,  
8 the confidentiality agreements and so on when you're  
9 looking at acquisitions. So we don't know if those  
10 documents exist.

11                   What we sometimes do there is we'll ask a  
12 credit rating agency, if we were to acquire this set of  
13 assets or this company, what might that do to credit  
14 ratings? Well, I mean, those didn't happen. Those are  
15 now moot. I don't know whether you really are interested  
16 given the things that your -- this appears to be directed  
17 toward, I'm not sure if you're interested in those or not.

18                   We don't know if they exist, but I just  
19 wanted to clarify that those are not in there to the  
20 extent they exist, which we may not have any of those  
21 anymore anyway.

22                   I'm not entirely sure how you intend to  
23 proceed this morning. Mr. Birdsong is prepared to attempt  
24 to answer your questions about these documents. If  
25 there's something he couldn't answer, Mr. Nickloy probably

1     could or might be able to. I don't know exactly how you  
2     would logistically plan to proceed, but that's kind of  
3     what we were thinking.

4                     And I wanted to mention one other thing.  
5     Many, many of these documents have been marked proprietary  
6     because -- and a lot of the information in answers to  
7     questions we'd have to give are proprietary or  
8     confidential because a great amount of this information is  
9     information that's not been publicly disclosed.

10                    And because we're a publicly traded company  
11    and we have a lot of 10-K and 10-Q kind of disclosure  
12    requirements, since we haven't disclosed to the public,  
13    there's many of these things that, if we are going to talk  
14    about them, my guess is, except if you stay sort of a high  
15    10,000 foot level or background, we're probably going to  
16    need to be in-camera all the time.

17                    It would be very difficult. I mean,  
18    partial answers would be confidential, part not. It might  
19    be very difficult to manage the proceedings. So I just  
20    wanted to give you that heads up. That would sort of be  
21    our guess, it's going to be difficult to manage.

22                    And we can provide these to the agencies,  
23    and that's not considered public disclosure because they  
24    are considered insiders for purposes of the SEC  
25    regulations. So they're insiders and they can get the

1 information. It doesn't trigger a general disclosure.

2 So it's up to you how you want to proceed,  
3 but I'd suggest that we may need to be in-camera for most  
4 if not all of it if we get into any kind of substantive  
5 questions.

6 COMMISSIONER CLAYTON: Thank you. First of  
7 all, I wanted to ask, what were the dates these documents  
8 reflect answers, for what time period?

9 MR. LOWERY: July 1, 2005 to the present.

10 MR. BEDNAR: That would cover the test year  
11 forward, and that I thought was consistent with our  
12 earlier discussions. What's broader here is that they  
13 apply to all the companies, not just UE. So all the  
14 documents for all the companies requested for that time  
15 period, the test year and everything following the test  
16 year.

17 COMMISSIONER CLAYTON: It was my  
18 understanding it was all '05, '06 and '07 is what we were  
19 dealing with.

20 MR. BEDNAR: Maybe I was imprecise by  
21 saying '05 was the test year.

22 COMMISSIONER CLAYTON: What was the test  
23 year?

24 MR. LOWERY: July 1, '05 to June 30, '06,  
25 and then updated for -- we had a true-up to through

1 January 1, '07.

2 COMMISSIONER CLAYTON: I think what we need  
3 to do is first and foremost if the court reporter could  
4 swear in I suppose both -- well, at least Mr. Birdsong and  
5 perhaps Mr. Nickloy, and I think we need to -- maybe we  
6 can authenticate or establish a foundation for the  
7 documents and that type of thing, and at that point, I  
8 guess, Commissioner Gaw, we'll go to you if you're  
9 comfortable with that, or do you want to go to Shelley?

10 COMMISSIONER GAW: Probably will have  
11 Ms. Brueggemann deal with the foundation. And I just want  
12 to say, at least for purposes of today, the main purpose  
13 is the authentication of the documents today so that we  
14 can then have time to go through and get a better  
15 understanding of what's in there with the idea that we  
16 would come back with questions on another date, because I  
17 think it would be extremely inefficient for us to try to  
18 go through detailed questions without having seen these  
19 documents before today.

20 So that's -- that's generally the concept,  
21 so we don't get into the idea of how long we're going  
22 today ahead of time, give you some heads up on that.

23 MR. LOWERY: And I thought, Commissioner,  
24 that might be the case, but we didn't know for sure.

25 COMMISSIONER GAW: And I apologize if

1     that's the case. I know how that can be trying to prepare  
2     for something that's more unknown. And then we need to  
3     establish at some point how we're going to deal with the  
4     remainder of the time frame in the subpoenas at some  
5     future -- on some future date. But that's basically all I  
6     want to say right now, if we want to go to Shelley.

7                     By the way, Ms. Brueggemann is acting in  
8     the capacity working for these two Commissioners on this  
9     case as opposed to working as an independent staff  
10    attorney, so we can clarify that for the record. She  
11    would be, for any future cases would be considered to be  
12    on this side of the wall, and I want to make that clear so  
13    it's not -- doesn't become an issue down the road.

14                    MR. LOWERY: That's helpful. I had a  
15    question in my own mind.

16                    COMMISSIONER GAW: Unless someone has an  
17    objection to that, that's how we're going to proceed.

18                    COMMISSIONER CLAYTON: Why don't we start  
19    with Mr. Birdsong?

20                    (Witness sworn.)

21                    MR. LOWERY: And I don't know that we're  
22    even going to have an in-camera issue given Commissioner  
23    Gaw's comments, but I apologize, I don't know a couple o  
24    of people in the room. I know Mr. Reed. Are the other  
25    folks Staff members or --

1                   MR. REED: Blane Baker with the General  
2 Counsel's Office.

3                   MS. ROBYN: I'm Angie Robyn. I'm advisor  
4 to Commissioner Clayton and Commissioner Gaw at this  
5 point.

6                   MR. LOWERY: Okay. Nice to meet you.

7                   COMMISSIONER CLAYTON: Well, and bigger  
8 than that, we are webcasting right now, so if we do get --  
9 and I don't think we're going to get into an in-camera  
10 situation, but certainly if you have concerns, speak up  
11 about that.

12                  Mr. Birdsong having been sworn, Shelley, if  
13 you could go ahead and get started with your questions.

14 JERRE BIRDSONG testified as follows:

15 QUESTIONS BY MS. SYLER BRUEGGEMANN:

16                  Q.     Mr. Birdsong, would you state your name for  
17 the record, please.

18                  A.     Jerre Birdsong.

19                  Q.     And what's your actual title?

20                  A.     Vice president and treasurer.

21                  Q.     And who do you work for?

22                  A.     I work for Ameren Corporation, and I'm also  
23 the vice president and treasurer of its operating  
24 subsidiaries.

25                  Q.     Okay. So would that be all eight

1 identified earlier of the Ameren subsidiaries, affiliates  
2 and AmerenUE that you're connected with?

3 A. All with the exception of Electric Energy,  
4 Inc.

5 Q. And did you have any hand in preparing the  
6 documents that we see in the two boxes before us today?

7 A. Yes, I did.

8 Q. And was that in response to subpoenas that  
9 were served on April 9th?

10 A. It was.

11 Q. And what kind of hand did you have in  
12 preparing those documents?

13 A. You could say that I supervised much of the  
14 process.

15 Q. Okay. And how did you go about compiling  
16 the information?

17 A. Well, first we identified who at the  
18 company has the most contact with the rating agencies, and  
19 there are very few of us. Between Mr. Nickloy and our  
20 CFO, Warner Baxter, myself, that will constitute the vast  
21 majority of the contact that we do have with the rating  
22 agencies on an ongoing basis.

23 Q. Okay.

24 A. We will upon occasion, if there is a  
25 special topic or something where we need a subject matter

1 expert to come in, we'll bring some other people to talk  
2 to them. We have listed those people that, to the best of  
3 our recollection, in the response to the subpoena. There  
4 were two or three that have had more contact, and so we  
5 went to them to make sure that they would respond to the  
6 subpoena as well.

7                   So I would say there were about three or  
8 four other people that were able to produce a few  
9 documents but not very much. The vast majority of it came  
10 from Mr. Nickloy and myself.

11           Q.       And were there those other individuals  
12 primarily employed by AmerenUE or Ameren Corp or just --

13           A.       Ameren Services.

14           Q.       Ameren Services?

15           A.       Yes.

16           Q.       And Ameren Services does what?

17           A.       Ameren Services performs the administrative  
18 services for the Ameren companies, and technically my  
19 employer is Ameren Services even though I'm an officer of  
20 all the subsidiaries.

21           Q.       And did Ameren Services have access to all  
22 of the documents because it is the -- acting in the  
23 administrative capacity that you provided?

24           A.       Yes.

25           Q.       Okay. How else did you actually go about

1 compiling? Since you knew the primary contacts you just  
2 said, did you go through and call everybody you thought  
3 may have any information or did you e-mail or how did you  
4 get in contact with those people?

5 A. Mr. Nickloy actually contacted them. I  
6 don't know whether he used the phone or e-mail.

7 Q. Okay. And these are not complete responses  
8 to the subpoenas; is that correct?

9 A. That's correct. The date of the response  
10 that we are providing today starts with July 1st, 2005.  
11 The subpoena went back to the year 2000.

12 Q. And would you explain why that is? Was  
13 it -- I understand that there are other individuals in the  
14 room that have had discussions about time frames for  
15 documents to be pulled, but is there another basis why  
16 those documents were only pulled from the test year,  
17 July 1st, 2005 to 2007?

18 A. That was on instruction from my counsel.

19 Q. Okay. Are you able to authenticate that  
20 all of these documents are kept in the regular course of  
21 business by Ameren Services?

22 A. Yes.

23 Q. Or by -- and they are all kept by Ameren  
24 Services?

25 A. That's correct.

1           Q.       Okay. Now, how is the proprietary  
2 information that was mentioned by Mr. Lowery, how is it  
3 marked on the documents?

4           A.       It's stamped proprietary on each page of  
5 the documents.

6           Q.       Okay. And as I understand it, the  
7 documents themselves have been Bates stamped already?

8           A.       That's my understanding.

9           Q.       Okay. Now, do all of these documents as  
10 far as you know accurately reflect what the subpoenas were  
11 requesting and accurately reflect what they are on their  
12 face?

13          A.       They do.

14          Q.       And understand that I'm at a little bit of  
15 a disadvantage, as are the Commissioners today, since  
16 you-all had a short amount of time to pull the documents  
17 together, and so we haven't had the ability to review  
18 anything in those boxes?

19          A.       No. I understand.

20          Q.       Okay. Now, it was mentioned by Mr. Lowery  
21 that all of these documents are completed in the regular  
22 course of business?

23          A.       Right.

24          Q.       Could you explain a little bit of the  
25 dealing you have with the credit rating agencies as a

1     general matter?

2             A.       Sure. We have ongoing dialogs. They're  
3     monitoring us on an ongoing basis. They do not monitor  
4     all of the companies that were listed in the subpoena.  
5     Not all of those are registered companies that issue  
6     public securities, and in that case those companies would  
7     have really no dealings with the rating agencies.

8             Q.       Okay. So what credit rating agencies were  
9     involved or have some representation in the documents you  
10    brought today?

11            A.       There are three credit rating agencies  
12    represented. They are Moody's, and I don't know their  
13    official name, Moody's Investment, Moody's Investors  
14    Service, Standard & Poor's and Fitch Ratings.

15            Q.       Now, on the interaction that you have with  
16    these credit rating agencies, are these documents  
17    developed in that process and through those procedures  
18    with every year of what you do with them?

19            A.       Yes. For the part of the documents that  
20    are responsive between the company and the rating  
21    agencies, that's the case. Another part of the subpoena  
22    asked for just internal communications regarding credit  
23    ratings, so that would not fall in that category.

24            Q.       Okay. And how long do you as a policy keep  
25    different types of documents, drafts from credit rating

1 agencies? We'll start there. How about the drafts that a  
2 credit rating agency may or may not give you?

3 A. No, we have no policy to keep a draft of  
4 anything received from the credit rating agencies.

5 Q. Okay.

6 A. So I typically do not keep any drafts from  
7 any part of my work, not just credit agency drafts, but  
8 any drafts. I generally do not keep drafts.

9 Q. What about e-mail communication?

10 A. There is no policy on retaining e-mail  
11 communication.

12 Q. Okay. And what other kinds of documents  
13 are reflected in the boxes?

14 A. It's a combination of e-mail that we did  
15 save. There is other electronic information that was held  
16 electronically. And then a third category would just be  
17 hard copy that we keep in and around our offices.

18 Q. And so would that also -- that would  
19 include whatever final rating would be from a credit  
20 rating agency or --

21 A. The final ratings and the final drafts are  
22 published by the rating agency, so that is available on  
23 the website through a service. So it's really not an  
24 official document that we have to keep or we're the  
25 official keeper of.

1 Q. Okay.

2 A. They are the rating agencies' publications.  
3 They belong to them. They're the ones responsible for the  
4 content, and they are available through a service that the  
5 public can access. So we are not the official keepers of  
6 those documents.

7 Q. Okay. Now, you were made aware that this  
8 will be a continuing process that we're going through  
9 today on the subpoenas that have been issued?

10 A. Yes, that's my understanding.

11 Q. And were you -- were you aware that the  
12 subpoenas themselves said from 2000, I think it was  
13 January 1st, 2000 to the current date were the original  
14 documents that were requested?

15 A. Yes.

16 Q. Okay. So this is also continuing in light  
17 of the fact that we don't have all the documents at this  
18 point?

19 A. I understand.

20 Q. I'd like to go ahead and just, since we  
21 have the court reporter here, to mark for the record,  
22 since there's two boxes, if I can mark Exhibit No. 1 and  
23 Exhibit No. 2.

24 (EXHIBIT NOS. 1 AND 2 WERE MARKED FOR  
25 IDENTIFICATION BY THE REPORTER.)

1 BY MS. SYLER BRUEGGEMANN:

2 Q. And I'm putting Exhibit No. 1 on what looks  
3 like what starts with Tab 1/4, and then Exhibit No. 2 on  
4 the rest of Tab 2 through Tab 8 and 9. And you would  
5 verify that these are the documents that you brought with  
6 you today in response to the subpoenas?

7 A. I do.

8 MS. SYLER BRUEGGEMANN: I think that's all  
9 the foundation I have right now.

10 MR. LOWERY: Ms. Syler, I might make one  
11 suggestion. We might want to just put in the record how  
12 many pages are there using the Bates stamp, if you go to  
13 the last one of Tab 8 and 9, then there wouldn't be  
14 confusion about how many we brought.

15 BY MS. SYLER BRUEGGEMANN:

16 Q. Will you read that number for the court  
17 reporter?

18 A. The last number at the bottom of the page  
19 is 04869.

20 MR. LOWERY: My guess was pretty good.

21 MS. SYLER BRUEGGEMANN: Very close. Very  
22 impressive.

23 COMMISSIONER CLAYTON: Commissioner Gaw,  
24 why don't you go ahead?

25 QUESTIONS BY COMMISSIONER GAW:

1           Q.       I just had a few follow-ups. You mentioned  
2 the documents that are in as a result of the subpoenas.  
3 You also mentioned something about that you didn't keep  
4 some draft copies, if I am understanding correct.

5           A.       That's correct. There are some drafts that  
6 I do know that we received that we no longer have.

7           Q.       And as a result, they would not, of course,  
8 appear in these exhibits that you brought in today?

9           A.       That's true.

10          Q.       Can you tell me whether or not there would  
11 be records of deletions or destruction of paper copies of  
12 any of those documents that would have otherwise been  
13 responsive to the subpoenas?

14          A.       I don't know the answer to that at this  
15 point. I have requested that from our IT department.  
16 I've not yet received a response.

17          Q.       Okay. And can you tell me whether or not  
18 there were any -- subsequent to April the 4th of this  
19 year, whether there have been any drafts that would have  
20 been responsive to the subpoenas that would have been  
21 deleted from e-mails or shredded or otherwise destroyed if  
22 they were paper copies?

23          A.       Since April 4th? There's been a  
24 publication by S&P on April 23rd. In that publication  
25 they downgraded the senior secured rating of Union

1 Electric to triple B minus from triple B. We did not see  
2 a draft of that report before it was issued so would not  
3 have that, and we never saw a draft of that report.

4 On April 24th, Moody's published an  
5 announcement, what they call an announcement, a very small  
6 piece, and I believe we did see that draft. I don't know  
7 if it's included or not.

8 COMMISSIONER GAW: Okay. Does someone else  
9 perhaps know the answer to that question?

10 MR. NICKLOY: Yeah, I think -- I think it's  
11 included.

12 COMMISSIONER GAW: Is that something you  
13 can verify by looking now or is it something you'll have  
14 to do later?

15 MR. BYRNE: Your Honor, we might want to  
16 swear in Mr. Nickloy.

17 (Witness sworn.)

18 LEE NICKLOY testified as follows:

19 QUESTIONS BY COMMISSIONER GAW:

20 Q. Do you want to state your name?

21 A. Lee R. Nickloy.

22 Q. What do you do?

23 A. I'm assistant treasurer for Ameren.

24 Q. Ameren Corp?

25 A. Yes, and most of its subsidiaries. Not

1 EEInc.

2 Q. All right. And I'll let someone else if  
3 they want to further lay that foundation. But you were  
4 providing an answer to a question. I want you to either  
5 repeat your answer or tell me whether or not that document  
6 that you referred to can be verified to be in the  
7 exhibits.

8 A. I believe it was included in the response.

9 Q. And this has to do with which report?

10 A. This would be the recent Moody's release,  
11 the date indicated by Mr. Birdsong. I think it was last  
12 week.

13 COMMISSIONER GAW: All right. Thank  
14 you.

15 Mr. Birdsong, do you want to finish if you  
16 have more to that answer?

17 MR. BIRDSONG: No. Those are the only  
18 publications that have been made by Moody's and S&P since  
19 that time.

20 COMMISSIONER GAW: Okay. And I appreciate  
21 your answer. It's a little bit different answer than what  
22 I was -- than for the question that I was asking you,  
23 which is whether or not subsequent to April the 4th of  
24 this year there have been any documents, either electronic  
25 e-mails or other paper copies, that would have been

1 destroyed either by deletion on e-mails or shredding or  
2 otherwise destroyed that would have been in response or  
3 otherwise would have been responsive to the subpoenas.

4 MR. BIRDSONG: I understand. I don't  
5 believe so.

6 COMMISSIONER GAW: Okay. That's all I  
7 have.

8 COMMISSIONER CLAYTON: Okay. At this point  
9 I think we need to talk a little bit about future  
10 activity. Since we have only a portion of the amount of  
11 the material that was requested, which will be considered  
12 sufficient for today, I want to be clear that there's no  
13 release from the subpoenas for the entirety of the  
14 material, and I think, Mr. Lowery, you agree with that  
15 from our conversation here today at this time.

16 MR. LOWERY: I understand that there's no  
17 release.

18 COMMISSIONER CLAYTON: We had talked about  
19 setting a future date, and I don't know if you want to do  
20 that or not.

21 COMMISSIONER GAW: Well, I think --

22 COMMISSIONER CLAYTON: At least reserving a  
23 slot.

24 COMMISSIONER GAW: -- it would be a good  
25 idea to have some sort of a date. If that appears to not

1 be workable, we can change it. That way there's something  
2 in the record.

3 MR. BYRNE: Your Honor, could I suggest  
4 something? You know, when you consider the entire time  
5 frame, there becomes a lot of documents, you know, several  
6 times as many as this if you go back to 2000. What might  
7 be helpful is if you look through these documents and  
8 there might be certain types of documents that you want  
9 and certain types that you don't want. Maybe not. Maybe  
10 you'll want the whole stack.

11 But just from an administration standpoint,  
12 it might be worth at least thinking about whether you  
13 could narrow your request once you've seen what we're  
14 producing in response to it. You may not want to, but  
15 you're going to get -- if you don't narrow it, you get a  
16 six-foot stack of papers that somebody's got to put  
17 someplace.

18 MR. BEDNAR: Outside chance you may be  
19 satisfied with this?

20 COMMISSIONER GAW: I think we need to --  
21 again, I think we need to figure out some sort of a date,  
22 and then we can work within that date to answer those  
23 questions about whether or not there's -- it would be  
24 appropriate from our standpoint to narrow down a focus as  
25 a result of reviewing what you brought us today.

1                   COMMISSIONER CLAYTON: I'd like to throw  
2 out a couple of dates that at the very least we can  
3 reserve and then we can address whether or not they're  
4 necessary at a later date. The first date is two weeks  
5 from today, which is May 16th. And then I want to throw  
6 out a second date, which is two weeks after that, which  
7 would be May 30th.

8                   Can you-all -- I know we didn't ask for you  
9 to bring your calendar. Is there anything that jumps out  
10 that it would appear that either of those dates would be  
11 inappropriate or difficult for you?

12                  MR. BEDNAR: May 30th from the standpoint  
13 it gives you some time to go through these documents, see  
14 whether or not we get the answer whether you want them  
15 narrowed or more precise or, in fact, could lead to  
16 something additional that you want. And to me, it seems  
17 to give you-all sufficient time, since I think you have a  
18 couple things on your plate right now, and then -- so May  
19 30th as a date that if there's going to be additional  
20 materials that have to be produced, we'll produce them on  
21 that date.

22                  MR. LOWERY: And if we took that route, if  
23 we could, we would need some time to make sure we've  
24 gathered the additional five years, I guess. And then  
25 also some effort went into trying to organize this so we

1 didn't just give you a complete mass of paper, and that's  
2 a pretty substantial effort when you multiply that by four  
3 or five times, too. Maybe we can have some -- if we're  
4 going to go down that road, we need some time I think  
5 before that next appearance to have that for you.

6 I mean, we'd rather not just start today  
7 and do -- I mean, you know, people do have things to do,  
8 obviously, as you can appreciate. You don't want us --  
9 you don't want us using labor that the ratepayers are  
10 paying for that's unnecessary, I'm sure.

11 COMMISSIONER CLAYTON: Good try,  
12 Mr. Lowery.

13 MR. LOWERY: It's worth a try.

14 COMMISSIONER CLAYTON: The material that is  
15 not -- the material that predates July 1, 2005, is there  
16 any way that some sort of index or categorization can be  
17 done, or has that been done, of the type of information  
18 that is included in that? It's hard to say -- I  
19 understand your concerns. I appreciate the effort that's  
20 gone into the organization of the material. You could  
21 have come in with a stack of loose paper and made things  
22 difficult. I appreciate that.

23 Still, it's hard to say we don't want to  
24 look at documents from a prior period without knowing  
25 perhaps what we're giving up without having an idea. And

1    when I had a conversation with Mr. Bednar about limiting  
2    this material, the idea was that we could get some sort  
3    of -- some sort of suggestion of what is in that other  
4    material.

5                   MR. LOWERY:   Right.

6                   COMMISSIONER CLAYTON:   Perhaps with dates,  
7    whether we're talking about -- I mean, there may be  
8    different time periods that were more active than others.  
9    There may be different types of material going back in  
10   time where -- I mean, I think we need to get some idea  
11   before we just say, okay, we'll look at this.

12                  MR. BEDNAR:   I think the detail of your  
13   index is the trick, would that be accurate, as to --

14                  MR. LOWERY:   I'll let Mr. -- I mean,  
15   Mr. Birdsong might be able to help me.   In terms of the  
16   type and the category, I think it's going to be the same  
17   type and categories that you have here.   It's just going  
18   to cover a different period.   So to that extent, I'm  
19   personally not entirely clear on what you're looking for.

20                  An index, of course, of every document, you  
21   know, that would defeat the purpose.   So there's something  
22   in between, and maybe we can figure out something in  
23   between that would be helpful to you.

24                  COMMISSIONER GAW:   Mr. Birdsong, in regard  
25   to material that would be in the earlier dates contained

1 in the subpoena before the dates that these exhibits  
2 pertain, would the documents generally fall into the very  
3 same categories that these would? Was there any  
4 significant change in the way business was conducted or  
5 handled during any part of that time frame as compared to  
6 the ones pertaining to these documents?

7 MR. BIRDSONG: I'd say there's one  
8 difference. In this time frame there was no acquisition  
9 at Ameren, so there's nothing involving communications  
10 with rating agencies involving an acquisition. In the  
11 previous --

12 COMMISSIONER GAW: In the time frame  
13 pertaining to the exhibits you're saying?

14 MR. BIRDSONG: That's correct. In the time  
15 frame prior to that, we did have two acquisitions, and in  
16 each of those cases we went to the rating agencies and  
17 said, tell us what the effect would be on our ratings if  
18 we did this acquisition and financed it in a certain way.  
19 So there would be considerably more. That would be the  
20 subject. Other than that, I think everything would be the  
21 same that we have here but just for a prior time period.

22 MR. LOWERY: That would be IP and SILCO, I  
23 assume?

24 MR. BIRDSONG: Yes.

25 COMMISSIONER GAW: If that's the case, then

1 if it's not productive to produce another document, than  
2 just adding to the workload, I don't see a reason to go  
3 through that personally. I think we can discern kind of  
4 the makeup from the documents you have brought in and make  
5 decisions about whether there are elements in here that  
6 are not helping us. I'm not sure that we'll be able to do  
7 that to any degree that will be -- that will produce less  
8 in the way of document production, but it's worthwhile for  
9 us to examine it, I think, from that perspective.

10 MR. LOWERY: Appreciate that.

11 COMMISSIONER CLAYTON: Is it possible in  
12 the time period that goes back, is it -- during those time  
13 periods, I mean, was there ongoing communication  
14 throughout the year or would it clump together in terms of  
15 periods where certain activity was going on?

16 MR. BIRDSONG: They performed their ongoing  
17 analyses year round. Every time that we meet, they're  
18 either asking us for information or data requests or we're  
19 providing them information on some significant event that  
20 could be happening, and then they're providing us feedback  
21 about their view of things, certain things that have  
22 happened or they think might happen that could affect our  
23 credit ratings. That is ongoing.

24 For the analyses that we have them do on  
25 the acquisitions, that is kind of a special contract, kind

1 of a special service that they do. So it really is kind  
2 of separate. But the ongoing contact for the company as  
3 it exists pre-acquisition continues.

4 COMMISSIONER CLAYTON: Aside from the  
5 acquisition conversations, how many times a year does a  
6 rating agency want to visit with the company with regard  
7 to exchanging economic data?

8 MR. BIRDSONG: They will want a  
9 face-to-face meeting about once every one to two years.  
10 They will want our forecast of our financials that we are  
11 budgeting for the next three years, they'll ask to have  
12 that once a year. Every time there is any event, they  
13 really do keep up with industry events, and if they run  
14 across some public information on something they think  
15 that could affect us, they will contact us.

16 COMMISSIONER CLAYTON: How often would you  
17 say industry events come up?

18 MR. BIRDSONG: There are times that things  
19 are just normal and nothing's out of the ordinary, we may  
20 go a couple of months without any contact. But if  
21 something really is an evolving issue, we could have daily  
22 contact. We primarily have our communications by phone.  
23 They really are so frequent that we don't have a log of  
24 every single phone conversation with them.

25 But as I said, the purpose of every contact

1 is for us to respond to their questions that they have or  
2 to alert them to something that may be coming down the  
3 road and to get their take on things.

4 COMMISSIONER GAW: Just a follow-up on  
5 that, Mr. Birdsong. In regard to those phone  
6 conversations, you say some of them are not logged. Some  
7 of them are logged; would that be accurate?

8 MR. BIRDSONG: Some are. If we know that  
9 they want to talk at, say, three o'clock this afternoon  
10 and they want to talk to three of us, then we'll put it on  
11 our Outlook in the computer that we have a call at  
12 three o'clock this afternoon. When that has happened in  
13 the past, we'll have records of that that we've provided.

14 COMMISSIONER GAW: When you say you  
15 provided, that means some of those are -- all of those  
16 that you have logged would be in the exhibits that you  
17 provided for the dates that the exhibits pertain to?

18 MR. BIRDSONG: That's correct.

19 MR. LOWERY: You won't find call logs. You  
20 know, you'll find the Outlook pages where they -- they  
21 schedule a meeting in Outlook, as I'm sure you're familiar  
22 with, and they've printed those pages.

23 COMMISSIONER GAW: Were there notes kept of  
24 those conversations?

25 MR. BIRDSONG: There are a few notes,

1 mostly from recent conversations. Personally what I do is  
2 I keep a yellow pad, and I keep notes sometimes when we  
3 have conversations. And then when I get to the end of the  
4 yellow pad, I look and see if there's anything in there  
5 worth keeping, and if there's nothing I think needs to be  
6 kept, I get rid of it at that point.

7 So for my current yellow pad, I went  
8 through and you do have copies of the notes that I took  
9 for the most recent conversations.

10 COMMISSIONER GAW: Do you brief the other  
11 Ameren personnel on the status of credit rating agency  
12 discussions and ongoing reviews? Are there briefings done  
13 about that?

14 MR. BIRDSONG: If there's anything that is  
15 significant, I'll brief my boss, the CFO, on the issue.

16 COMMISSIONER GAW: Okay. Who is that?

17 MR. BIRDSONG: That's Warner Baxter.

18 COMMISSIONER GAW: And are those briefings  
19 verbal, are they e-mail or some other form?

20 MR. BIRDSONG: They can be either verbal or  
21 e-mail.

22 COMMISSIONER GAW: To the extent that those  
23 exist, are they included in these documents?

24 MR. BIRDSONG: They're generally not more  
25 than two or three lines, so they're not really worthy of

1 keeping. It's for information at the moment. Then I'd  
2 say in the vast majority of the cases they're deleted, but  
3 you might find a few from the last few days there.

4 COMMISSIONER GAW: Okay. In these  
5 documents?

6 MR. BIRDSONG: Yes.

7 COMMISSIONER GAW: In the exhibits?

8 MR. BIRDSONG: Right.

9 COMMISSIONER GAW: And again, you said  
10 earlier you were making further inquiry about when things  
11 might have been deleted or whether they could be  
12 recovered. I'm not exactly sure what you stated. Could  
13 you revisit that and tell me again what you're doing?

14 MR. BIRDSONG: Yes. I don't know if we can  
15 recover e-mails that have been deleted in the past. I  
16 have put that question to a director of information  
17 technology, and she did not know the answer either. So I  
18 do expect to hear whether that is possible.

19 COMMISSIONER GAW: Okay. And to the extent  
20 that we can get that question answered after you have an  
21 answer to that, I think we would want to know that.

22 MR. LOWERY: I made a note for that  
23 purpose.

24 COMMISSIONER GAW: Thank you, Mr. Lowery.

25 MS. SYLER BRUEGGEMANN: Just a couple of

1 questions. When you organized the actual documents, since  
2 they're organized by the numbers 1 through 9, is there  
3 identification markers as to which company the document  
4 came from or at least who the company came from -- or  
5 sorry -- who the person was that the document came from?

6 MR. BIRDSONG: No, I don't think that was  
7 on it.

8 MS. SYLER BRUEGGEMANN: Okay. So the  
9 documents may or may not have an identifier on them?

10 MR. BYRNE: Most of the documents do say  
11 what person it's from, but, you know, because it's Ameren  
12 Services Company that's, you know --

13 MR. LOWERY: The e-mail will have it, of  
14 course.

15 MS. SYLER BRUEGGEMANN: Okay. And then is  
16 there any kind of master list in there as to who the  
17 people that were noted in there, who they work for, or is  
18 that something we can just follow up on later?

19 MR. BYRNE: No, but they all -- I believe  
20 they all or just about all work for Ameren Services  
21 Company. In the vast majority of cases that's who they  
22 work for.

23 MR. BIRDSONG: Yes.

24 MS. SYLER BRUEGGEMANN: And would either of  
25 you, Mr. Birdsong or Mr. Nickloy, be considered the

1     custodian of records?

2                   MR. BIRDSONG:  As I said, there are no  
3     official records.  These are pretty much our own personal  
4     records from our dealings with the rating agencies.  The  
5     only official product of this are the reports that they  
6     put out.  They're available.  They belong to the rating  
7     agencies.  They're available on their website through a  
8     subscription.  So we're not the official custodian of  
9     these documents.

10                  MR. LOWERY:  Ms. Syler, to the extent  
11     you're using that term like a designated custodian of  
12     records for purposes of the Sunshine Law like the  
13     Commission would have, I don't think the company has any  
14     such person who, you know, fills that analogous role per  
15     se.

16                  MS. SYLER BRUEGGEMANN:  Okay.  So the  
17     personal knowledge is what designates you both as the  
18     experts --

19                  MR. BIRDSONG:  Yes.

20                  MS. SYLER BRUEGGEMANN:  -- in this  
21     situation?

22                  MR. BIRDSONG:  Yes.

23                  COMMISSIONER CLAYTON:  At this point I want  
24     to ask Public Counsel, this is not a case.  This is not a  
25     contested matter.  Public Counsel has its own independent

1 statutory authority to conduct investigations. I wanted  
2 to see if the Public Counsel has anything to add at this  
3 time.

4 MR. MILLS: I don't have any questions at  
5 this time. Will I have access to these documents, to go  
6 through them to see what's there? Having done that, I may  
7 certainly have some questions, but at this point I don't.

8 COMMISSIONER CLAYTON: That's a good  
9 question. I don't know the answer to that question.  
10 Since this is not a Commission action, we do have a case  
11 that was set up as a place to hold documents so that the  
12 public can be aware. I see no reason why you wouldn't  
13 have access to it. We may need to work out how that's  
14 done.

15 MR. MILLS: Are you planning to scan all  
16 these pages in and put them in the EFIS system?

17 COMMISSIONER CLAYTON: Do you have an extra  
18 Staff person that we could utilize?

19 MR. MILLS: Unfortunately, no.

20 COMMISSIONER CLAYTON: Well, then don't get  
21 pushy.

22 MR. MILLS: I didn't think so. I thought  
23 it would be an easy way to do it if you were planning to  
24 do that anyway.

25 COMMISSIONER CLAYTON: We're not sure how

1 we're going to address that. That is a -- it's an  
2 excellent point. We're not sure how we're going to  
3 address that, because scanning them in would be --

4 MR. BYRNE: Your Honor, I would point out  
5 that a lot of these are confidential, and I know -- well,  
6 sometimes they get concerned about the confidentiality  
7 being maintained when you're scanning thousands of  
8 documents onto EFIS, you know. Mr. Mills, of course, has  
9 access to all documents, confidential or not, but once you  
10 start putting them on EFIS, I worry about who has access.

11 MR. MILLS: I wasn't suggesting that you  
12 should. I was simply asking if you were going to, that  
13 would be an easy way for me to get access to them. If  
14 you're not planning to do that, I could certainly arrange,  
15 if it's okay with you-all, to come look through these  
16 documents.

17 COMMISSIONER CLAYTON: Are you going to  
18 assign a staff person or are you going to assign yourself  
19 to work on this?

20 MR. MILLS: I don't know yet. I will  
21 probably be the one that will take the initial look at it  
22 just to see what kind of stuff is there and whether it  
23 looks as though this is going to be a profitable avenue to  
24 pursue. I probably will assign a staff person.

25 COMMISSIONER CLAYTON: Stay in contact with

1 either Ms. Brueggemann or us and we'll address that.  
2 We'll address the whole EFIS thing later on, because there  
3 are logistical problems with that.

4                   Having said that, is there anything else  
5 from Ameren that needs to be added at this time? I would  
6 like to set a date at least as a placeholder at this time,  
7 and we're going to pick the earlier date, as a placeholder  
8 and we'll address things as we go along. I know you-all  
9 need time, and the intention is not to spring something on  
10 you, but I think at this point why -- is there a conflict  
11 with May 16th at this point? Why don't we say 1:30 in the  
12 afternoon.

13                   MR. LOWERY: And is the purpose and scope  
14 of that appearance still up in the air at this point?

15                   COMMISSIONER CLAYTON: The purpose is to  
16 have a placeholder in the event we're going through these  
17 documents, questions are raised, that we have a time  
18 that's set aside. I don't want to -- we don't want to  
19 have to, you know, reschedule a number of different things  
20 down the road. If we set a place right now, then we can  
21 address that. We may be able to communicate concerns that  
22 come up in the meantime. I think we need to set a time  
23 just to mark it off, unless there are any conflicts with  
24 that time.

25                   MR. BYRNE: I don't think we have

1 conflicts.

2 COMMISSIONER CLAYTON: No family vacation,  
3 Mr. Birdsong, that week?

4 MR. BIRDSONG: No.

5 COMMISSIONER CLAYTON: No stockholders  
6 meeting in Florida that week, Mr. Byrne?

7 MR. BYRNE: No.

8 COMMISSIONER CLAYTON: Mr. Nickloy, you're  
9 good?

10 MR. NICKLOY: I'm fine.

11 COMMISSIONER CLAYTON: Mr. Lowery?

12 MR. LOWERY: Looks like I'm good. District  
13 soccer game at six o'clock that night.

14 COMMISSIONER CLAYTON: We'll have you out  
15 in time for the district soccer game. Anything else from  
16 Public Counsel? Ms. Brueggemann? Mr. Bednar? Appreciate  
17 your restraint back there.

18 MR. BEDNAR: That's me, Mr. Restraint, or  
19 restraining order.

20 (Laughter)

21 COMMISSIONER CLAYTON: Then if we have  
22 nothing else, I think we'll go off the record. Thank  
23 you.

24 WHEREUPON, the on-the-record presentation  
25 in this case was concluded.

## 1 C E R T I F I C A T E

2 STATE OF MISSOURI )  
3 ) ss.  
4 COUNTY OF COLE )

5 I, Kellene K. Feddersen, Certified  
6 Shorthand Reporter with the firm of Midwest Litigation  
7 Services, and Notary Public within and for the State of  
8 Missouri, do hereby certify that I was personally present  
9 at the proceedings had in the above-entitled cause at the  
10 time and place set forth in the caption sheet thereof;  
11 that I then and there took down in Stenotype the  
12 proceedings had; and that the foregoing is a full, true  
13 and correct transcript of such Stenotype notes so made at  
14 such time and place.

15 Given at my office in the City of  
16 Jefferson, County of Cole, State of Missouri.

17 Kellene K. Feddersen, RPR, CSR, CCR  
18 Notary Public (County of Cole)  
19 My commission expires March 28, 2009.  
20  
21  
22  
23  
24  
25