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Witness:	**Michael Brosch**
Sponsoring Party:	**Union Electric Co.**
Type of Exhibit:	**Deposition**
Case No:	**ER-2007-0002**
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Missouri Public
Service Commission

AmerenUE Exhibit No. 95
Date 3-16-07 Case No. ER-2007-0002
Reporter KF

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

IN THE MATTER OF UNION ELECTRIC)
d/b/a AMEREN UE FOR AUTHORITY)
TO FILE TARIFFS INCREASING RATES) Case No. ER-2007-0002
FOR ELECTRIC SERVICE PROVIDED TO)
CUSTOMERS IN THE COMPANY'S MISSOURI)
SERVICE AREA.)

DEPOSITION OF MICHAEL BROSCH, produced, sworn and examined on the 11th day of January, 2007, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day, at the offices of the Missouri Attorney General, 1530 Rax Court, in the City of Jefferson City, State of Missouri, before Randall W. Wells, Official Court Reporter, Certified Shorthand Reporter, Certified Court Reporter and Notary Public in the State of Missouri, in a certain cause now pending Before The Public Service Commission of the State of Missouri, In The Matter of Union Electric Company, d/b/a Ameren UE for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Company's Missouri Service Area.

INDEX

EXHIBITS

EXHIBIT NO.	DESCRIPTION	PAGE MKD.
Brosch Exhibit 1	Power Supply Agreement	23

(Original exhibit retained by Attorney Robert J. Cynkar.)

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IT IS HEREBY STIPULATED AND AGREED by and between counsel for the Plaintiffs and counsel for the Defendants that this deposition may be taken in shorthand by Randall W. Wells, CSR, CCR and notary public, and afterwards transcribed into printing, and signature by the witness expressly reserved.

* * *

MICHAEL BROSCH,

Of lawful age, produced, sworn, and examined on behalf of Ameren UE, deposes and says:

DIRECT EXAMINATION

QUESTIONS BY MR. CYNKAR:

Q. Mr. Brosch, my name is Bob Cynkar and this is a deposition in case ER-2007-0002. And have you been deposed before?

A. Yes, I have.

Q. So then you understand that you need to give oral answers to questions and not nod your head and so forth, correct?

A. Sure. That's right.

Q. And as I mentioned before we began, rate making is not my specialty. So if I ask you a question that you don't understand, tell me so. It's not going to be some prevarication or word playing on my part. Probably just stupidity on my part. So if you don't understand anything I ask you just ask.

A. I will seek clarification where needed.

Q. Wonderful. Now there is no reason today that you're unable to answer questions rationally, is there?

A. I hope to be rational today.

Q. You're not on any medications or anything like that?

A. That's correct.

Q. Good. All right. And could you state your full name for the record, please?

A. Michael L. Brosch.

Q. And you are a principle in the consulting firm of Utilitech, is that correct?

A. That's correct.

Q. And you have sponsored two pieces of testimony in this case, correct?

A. That's right.

Q. Okay. And is there any particular way in which you would like to refer to them? As to your fuel adjustment clause testimony and the other testimony? Is that -- how do you think of it? I'll use whatever appellation you use.

A. We could call it fuel adjustment and revenue requirement.

Q. Okay. Great. Both of those pieces of testimony you have sponsored on behalf of the State of Missouri, is that correct?

A. That's correct.

Q. Okay. And your professional background has already been set out in your testimony and in your schedules, correct?

A. That's correct.

Q. So we don't need --

A. In the direct testimony there are two schedules: One that describes my qualifications and education, and a second that lists the proceedings I've been involved in where there was testimony filed.

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Page 6

Q. Great. Now you are not a lawyer, correct?
A. That's correct.
Q. And you have not had any legal training at all?
A. That's correct.
Q. Okay. And so you are not qualified to undertake any kind of a legal analysis, correct?
A. That's true.
Q. And you're also not qualified to offer any legal opinions, correct?
A. That is correct.
Q. Okay. Now the areas that we're going to talk about today focus on the E.E., Inc. issue and then the fuel adjustment clause. So those are the two topic areas.
I will start with E.E., Inc.
A. Okay.
Q. First of all, I want to just ask you a little bit about your understanding of what E.E. Inc. is. I know you discuss it in your testimony. But do you recall when E.E. Inc. was formed, roughly?
A. Early 1950's, approximately.
Q. And do you know what purpose it was formed for?
A. Yes. To invest in, own, and operate a large generating facility for the primary purpose of serving the AEC Paducah facility for the federal government, with available capacity, not needed by the AEC, later DOE, available to meet

Page 7

demands served by the sponsoring companies.
Q. Okay. What was the federal government undertaking at the Paducah plant? What was going on there?
A. I believe it to be a uranium enrichment facility.
Q. Do you have any sense of what the energy needs of that facility was to undertake uranium enrichment?
A. I have seen numbers from early Commission cases where there were witnesses describing that, but I don't recall with any specificity. It was a significant share of the output of the plant.
Q. So with respect to the gaseous diffusion plant at Paducah, you've had no reason to look into how that process worked or what kind of electrical power it took to make that process work?
A. Certainly didn't investigate the gaseous diffusion process. I was interested in and familiarized myself with the fact that the new generating facility, the Joppa plant, was constructed with a primary purpose of serving the nation's interests in the nuclear program at the time.
Q. Who formed E.E., Inc.?
A. You want names of people?
Q. No, no, no. What are the entities? I mean, who were the original owners who put it together?
A. I don't have the names at my fingertips. There were maybe half a dozen separate utility entities involved, one of

Page 8

which is Amerin U.E., then Union Electric Company.
Q. Now at the time that U.E. entered into the E.E., Inc. project and it -- it bought shares in E.E. Inc., correct?
A. That's right.
Q. And did it get permission from the Public Service Commission to do that?
A. Yes.
Q. Do you know why they had to do that, or if they had to?
A. I don't recall what legal requirement was being satisfied by that application.
Q. Okay. Do you know if the Commission's action at that time made the Joppa plant a regulatory asset, a regulated asset of U.E.?
A. I don't recall there being a decision at that time with respect to rate making at all.
Q. So the answer is no, it was not a regulated asset at that time?
A. I don't -- I don't recall a decision being made one way or the other at that time. The decision authorized the investment for the purposes described.
Q. Do you know what assets E.E., Inc. owns? You mentioned the Joppa plant. Besides the Joppa plant what other major assets come to mind?
A. Well, the Joppa plant is the major asset.

Page 9

Q. Okay. So is there -- there's no other asset that you think is significant; that Joppa is pretty much the major asset of the --
A. Joppa is the major asset as I understand it.
Q. Okay. Are you familiar with any of the subsidiaries of E.E., Inc.?
A. No.
Q. So you don't know how many or if there are subsidiaries?
A. I think there may be a subsidiary that's involved in coal movement or transportation to support the plant. Beyond that I'm not familiar with other subsidiaries.
Q. Now the cost of -- U.E.'s cost of purchasing those shares was not included in U.E.'s cost of service, was it?
A. There would be no place in a rate case proceeding where one would include the acquisition cost of shares in cost of service.
Q. Do you know how those shares were paid for?
A. I assume with U.S. currency. I don't know otherwise.
Q. Well, do you know in more common regulatory words whether it was a blow the line or above the line purchase?
A. That distinction is not meaningful with respect to acquisitions of shares. I think of above the line, below the line as being a jurisdictional distinction where a business segment or a business operation is included or excluded when the

Page 10

utility's revenue requirement is assembled.
Q. Well, the dollars that came from U.E. to purchase E.E., Inc. shares had to come from somewhere, correct?
A. Well, yes. It's difficult to trace fungible dollars from a source to a place.
Q. Well, let me back up and ask as a general matter. The shareholders of a utility can with just shareholder dollars purchase an investment in another enterprise, isn't that true?
A. Yes, assuming required approvals are sought and obtained I believe so, yes.
Q. Which as you said a moment ago was obtained in the context of --
A. Yes, that's my understanding.
Q. And so do you know whether the dollars that purchased E.E., Inc. shares were shareholder dollars or the whole utility's money?
A. Well, I don't think that's a meaningful distinction.
Q. What does below the line mean to you?
A. As I said before, I think of it as a jurisdictional distinction where, for instance, a utility may be involved in a business operation that the Commission considers and incorporates when determining the utility's revenue requirement as distinguished from a business segment that the Commission would exclude and not consider in determining the utility's revenue requirement.

Page 11

Q. Do you think that it is fair to understand below the line as an investment in which the rate payers are not at risk?
A. Usually that distinction would be agreeable. There are times when utilities have suffered mightily because of otherwise below the line investments that have damaged the creditworthiness of the overall business and therefore implied negative outcomes for the utility part of the business. So regulators' efforts to separate and insulate regulated from non-regulated often work, but occasionally do not.
Q. At the time that U.E. purchased the shares of E.E., Inc., do you have any evidence to doubt that it was shareholder dollars that purchased the shares for Amerin -- for U.E., rather?
A. Again, I don't know that that's necessarily a meaningful distinction, but I'll assume that it is, and I don't know that we can track the source of the dollars, but I will say that I'm not aware of a regulatory decision in which rate payers were assessed extra money in their rates to fund the acquisition of U.E.'s interest in E.E., Inc.
Q. Do you know if any capital expense of E.E., Inc. has ever been included in U.E.'s cost of service?
A. I'm sure that they have, yes.
Q. How so?
A. The purchase power agreement through which E.E., Inc. provided capacity and energy to Union Electric through the year 2005 was a cost based rate and price. And if you look at that

Page 12

supply contract you will see that there are provisions for essentially a guaranteed return on investments made by E.E., Inc. in the Joppa facility.
And when capital investments were required and made by E.E., Inc., the capacity charges to Union Electric for that purchase power would have increased and would have been includable as part of the Union Electric revenue requirement.
Q. Okay. We'll get back to that and -- and also the purchase power contracts, but to sort of go back a little bit more to the beginning of the enterprise where I was.
Do you know when the Joppa plant began to generate power?
A. I think I have the date in my testimony. I'll say --
Q. Roughly.
A. -- mid 50's.
Q. That's fine. To whom did it sell that power?
A. To the federal government agency, then the AEC, and to the sponsoring companies, primarily.
Q. At that time there was not wholesale power competition, correct?
A. At that time the bulk power transactions that occurred tended to be between and among utility operating companies.
Q. Is it fair to say that in that context that cost base contracts were pretty common?

Page 13

A. They were pretty common, yes.
Q. And was there any in your experience -- of course that would have been before your experience back then. So given your experience and knowledge. You're not that old of a guy.
So do you know if any of those contracts gave the purchaser the right to continue to purchase power at a particular price after that contract had expired?
A. I think there were contracts that had specified terms and there were other contracts that were evergreen in nature.
Q. What do you mean by evergreen in nature?
A. That they were continuing until altered by the parties or terminated by the parties.
Q. Okay. About when was wholesale power competition introduced?
A. I would --
Q. Let me make it easy. That wasn't trying to be a trick question. Do you think around 1992 with the Energy Policy Act?
A. That would be one step in the progression, yes.
Q. And in terms of this understanding of this move as one step in the progression, do you -- would you say that that was the beginning of the introduction of market rates for the purchases of wholesale, or as you were using the term, bulk power?
A. To some extent, yes. There was an environment in the

Page 14

90's where utilities continued to engage in more traditional demand and energy cost based arrangements as well.
Q. And FERC has jurisdiction over wholesale power rates, correct?
A. That's right.
Q. And would you agree with the proposition that from FERC's perspective a market rate is just another way of setting a just and reasonable rate?
A. I'm not sure I understand the connection there.
Q. Well, the market rates are the way rates are settled -- set mostly in the wholesale power world post 1992, is that correct?
A. If you're saying assuming effective competition rates set in a competitive market environment are de facto just and reasonable, I would tend to agree with that.
Q. What is an exempt wholesale generator?
A. That is an entity that has been granted status to engage in competitive market based wholesale power arrangements.
Q. And is that entity, the EWG, is that part of a utility's rate base?
A. Typically it is not.
Q. And that status as an EWG is granted by FERC, correct?
A. I believe so, yes.
Q. And when did -- and is E.E., Inc. an EWG?

Page 15

A. I'm not sure.
Q. So you don't know if it has been granted that status?
A. I know that it has been granted market based pricing authority status.
Q. Okay. Have you done any comparison of the profits of E.E., Inc. with other coal fire generating units in Illinois?
A. No.
Q. If I could direct your attention in your testimony to page 25.
MR. MICHEEL: Are you in the revenue requirement?
MR. CYNKAR: Yes. Thank you. In the revenue requirement testimony.
Q. (BY MR. CYNKAR) And indeed, while we're in the E.E., Inc. world, logically whenever I refer to your testimony it will be to that testimony.
A. All right.
Q. If you go to page 25, line 5. And for purposes of the record I'll just read the whole sentence, but I'm going to be asking you about that word windfall.
A. Okay.
Q. The whole sentence is, quote, "Moreover, there is no justification from a risk return perspective in allowing Amerin management acting through their controlling position on the E.E., Inc. board of directors to achieve windfall below the line profits from Joppa station by electing to not extend the

Page 16

historical power supply agreement." Period. Close quote.
What do you mean by the word windfall?
MR. MICHEEL: If I may just interject. In the file copy that sentence that you just read starts on line 3. So we've got some pagination issues. I just want the record to be clear.
Q. (BY MR. CYNKAR) That's great. The sentence goes -- it's on page 25 from line 3 to line 7, and the word windfall appears on line 5, which was what was my trigger.
A. And what did I mean by windfall? Is that your question?
Q. Yes, sir.
A. What I meant by windfall is by reference to the change in income depicted in the graph on page 27 where historically in the era of the cost based purchase power agreement wherein E.E., Inc. achieved a return in the mid teens or OE. You can see the -- the windfall, the tremendous expansion in net income per megawatt hour?
Q. Uh-huh.
A. That's also referenced at the bottom of that page as moving from 15.1 percent -- these are confidential percentages, so I don't know if there's a way to mark what we're transcribing in any meaningful way, but --
Q. Well, you don't have to articulate them. You're --
A. Much higher percentage.
Q. You're reference to the graph is fine.

Page 17

A. Yes.
Q. Thank you. And that answers my question.
A. All right.
Q. So I'll move on.
Turning now to those purchase power agreements we were talking about.
A. Uh-huh.
Q. Have you examined any other purchase power contracts that Amerin has entered into?
A. I believe I examined the Arkansas Power & Light purchase arrangement. Entergy Arkansas. I'm not sure what they themselves now.
Q. And that is the only one that you've examined?
A. That's the only one, the only other one of consequence to the revenue requirement in this case. I may have seen others in very distant history, but I don't recall them.
Q. Have you done any comparison of that agreement to the 1987 power supply agreement with E.E., Inc.?
A. You're talking about the APL agreement? Have I compared the APL agreement to the E.E., Inc. agreement?
Q. Yes.
A. I guess not consciously. I didn't put them side by side and say where are they the same, where are they different.
Q. That's fine. I want to turn back to -- earlier in answer to my question when I asked you about capital costs at

E.E., Inc. and how -- whether those had ever been put in Amerin cost to service you gave me a long answer with a lot of important information. I want to turn back to that now.

A. All right.

Q. And these questions are just to get an understanding of your perspective on some of these facts. I want to start as just a general economics matter. When -- and I'm going to use the example of purchasing a car.

If someone purchases a car, the cost -- there are a number of costs that shape the price of that car. Would that be fair to say?

A. Uh-huh.

Q. I'm just going baby steps here because I don't want to move past a point where you might not agree with me or want to explain.

And of course there's the labor costs. There's the cost of the material for the car itself, correct?

A. You talking about the cost incurred by the manufacturer to produce the car?

Q. Yes. That those costs incurred by the manufacturer are what in great degree determine the price, correct?

A. Perhaps. The market probably determines the price. And assuming the manufacturer has his costs in line with the market clearing price, I assume he's recovering his costs.

Q. Fair enough. And if the market won't give him the

prices to recover his costs he's out of business.

A. Eventually.

Q. Yes. Okay. So let's assume that the price that that manufacturer is charging is within the range acceptable to the market out there in terms of other competitors and so forth. I'm just talking about the price that that manufacturer puts on his car or her car.

And another cost that is reflected in the price of the car is the cost of the machinery at the plant that makes the car, correct?

A. Well, certainly part of what would need to be recovered is a return on and return of the manufacturer's investment and the facilities required to make the car, if I'm tracking with you.

Q. Right. Absolutely. Yes. You're using rate lingo, but that's fine.

A. Okay.

Q. That's fine. It's important for me to understand how you analyze these issues.

And that also obviously includes any part of the financial cost. I mean, if the manufacturer has to borrow money to buy expensive machines to make a car, part of the cost of money is part of the cost of the product at the end of the day, is that fair?

A. I would think so. That's what I was attempting to

make reference to when I said a return on the manufacturer's investment.

Q. I understand. I understand. I talk in simpler language.

A. All right.

Q. But that's fine. You talk however you want, but I think we mean the same thing.

Now when I buy that car, is it your view that I in some way share in the manufacturer's risk of doing business?

A. No. You're buying that car in a competitive market environment where the market determines which manufacturers survive and make a profit high or low and which do not. And that's a market environment that's very different from the environment in which Amerin sets prices for electricity in Missouri for its retail customers.

Q. And in your view what is the significance of that difference?

A. The significance of the difference is that customers of a regulated utility pay prices that are explicitly designed to recover the costs of production and distribution of utility service, including in this case for many years the costs of the Joppa plant facility.

Q. How is that different from our example of the car manufacturer including a return on and a return of the investment in the plant that made the car?

A. Well, the difference is the car manufacturer sells his product in a competitive market environment, unlike Amerin U.E. selling electricity to Missouri customers in a cost of service rate regulated environment.

Q. E.E., Inc. sells its electricity in a market environment, though, correct?

A. It does as of January 1, 2006, yes. And that's the cause of the spike in the graph that I spoke of earlier.

Q. So before E.E., Inc. -- well, E.E., Inc. was operating in a market environment before December 31, 2005, correct?

A. I would say it this way: Union Electric's entitlement to output from the Joppa plant created an opportunity for Union Electric to capture the value of the output of the plant for the benefit of its rate payers.

And on January 1, 2006, the value was transferred away from Union Electric and its rate payers.

Q. I'm sorry. I'm confused by that. I'll ask you a few questions.

I'm not exactly sure what you mean. It was a cost base contract up to that -- up to December of 2005, correct?

A. That's correct.

Q. And what about that contract captured this value as you were just using it in your last answer?

A. Union Electric was positioned through that contract

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to acquire the output of the Joppa plant at cost, and share the benefit of that low cost capacity and energy with its customers, or monetize the value of that low cost capacity and energy by selling it into interchange power markets at market prices.

That situation changed at the end of 2005 when Union Electric lost the opportunity to capture that value and E.E., Inc. realized for its own account the benefits of selling low cost capacity and energy at high market prices.

Q. So what I understand you to say is that U.E. under the cost base contract had a good deal for buying EEI's power, and once the price changed after 2005 it wasn't as good a deal? Is that the most pedestrian bottom line of what you just said?

A. Well, U.E. had a long term deal --

Q. Was that unusual, by the way?

A. -- through which -- excuse me?

Q. I'm sorry. I interrupted you. Go ahead. I apologize. Go ahead. Finish your answer.

A. Union Electric had a long term deal through which it on behalf of its rate payers assumed the risks and costs of the Union Electric share of the Joppa plant. And then at the termination of the purchase power agreement it -- it turned out that the output of that plant had a market value considerably above cost. And Union Electric and its rate payers lost that benefit by virtue of that contract terminating at the end of 2005.

Q. How did Union Electric assume the risks of the Joppa plant by buying power from it?

A. The long term power supply agreements included a provision that made E.E., Inc. whole for the costs it incurred, operating and capital, associated with the plant over much of the plant's life.

Q. If we could, again in the revenue requirement testimony, if we could turn to page 21 of your testimony. And I particularly -- the section I would like to refer you to is page 21, line 15, through page 22, line 7. And I think -- is that the provision you were just referring to?

A. No.

Q. What provision were you referring to?

A. What I was just referring to was the purchase power agreement.

This portion of my testimony that you just referenced has to do with Missouri Commission action in case number 12064 regarding authorization of funding and assurance of the repayment of loans.

Q. Do you recall which specific provision in the purchase power agreement you are thinking of?

A. I think generally paragraph 3.

Q. I'll tell you what, to make it simpler I will mark these.

Could we mark each of these as Deposition Exhibit

Number 1? Just to make it easier because it's not a memory game.

We have now marked as deposition -- as Brosch Deposition Exhibit Number 1 a document which is labeled "Electric Energy, Inc., Power Supply Agreement, Electric Engineer, Inc. Sponsoring Companies." And it has five tabs.

First of all, Mr. Brosch, as you are, if you could just skim through that. And is that the purchase power agreement to which you have been referring?

A. Yes.

Q. Okay. Then returning to our last discussion. If you could direct me to the provision you're thinking of.

A. Under Tab 1, page 11, look at Article 3, Rates. That article provides for a definition of plant costs. And then defines in Section 3.02 how those costs are to be translated into the capacity, or what's called demand charge, and the energy charge, which Union Electric paid E.E., Inc. for its share of the output from the plant.

And then at Section 3.04 there is the reference to the true-up to be sure that those charges were sufficient to cover all the costs and provide a fifteen percent after tax return on invested capital.

Q. And in your view what is the particular aspect of these provisions by which U.E. assumed the risks of the Joppa plant?

A. Well, when you are responsible for all of the costs

and an assured return on equity investment, you, while not in the legal sense you don't own the assets, but as a practical matter you have full responsibility for them from a -- from a cost perspective.

Q. And how is -- is it the notion that -- let me ask you it this way. How does that differ from our example with the car purchase?

A. I've never bought a car pursuant to a contract where I guarantee, for example, General Motors a return on investment of fifteen percent over many years.

Q. But the price of the car includes those costs, whether it's explicitly -- well, as you said earlier, correct?

A. General Motors would probably argue that it doesn't often enough here of late recover all of those costs.

Q. Well, that's not --

A. Because their output is sold on a competitive market and that's not what we're talking about here.

Q. The U.E. contract to purchase this power was not done pursuant to any regulatory proceeding, correct?

A. Are we talking about this contract that you handed me, this Deposition Exhibit 1?

Q. Yes, sir.

A. This September 2, 1987 contract?

Q. Yes, sir.

A. If your question is did the Missouri Commission renew

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Page 26

and approve the contracting that was done then --
Q. Yes.
A. -- I suspect that they did not at that time. I'm not aware of any requirement that Missouri Commission approval be sought and granted for a regulated Missouri utility to engage in a bulk power contract like this.
However, I am confident that subsequent to entering into this agreement the Union Electric revenue requirement determined by the Commission included the costs of purchase power pursuant to this contract.
Q. And is it -- if I understand your answer correctly, is it the -- the notion that the sponsoring companies agreed -- the sponsoring companies and DOE agreed to purchase all of the power of the Joppa plant, that is -- is significant in your conclusion that U.E. assumed the risks of the Joppa plant? Is that your -- the logic that you're following?
A. Essentially that -- that is it, yes; that over an extended period of time, from the inception of construction of the plant forward, through this purchase power agreement and the ones before it, and through the assurances to support the financing that were approved by the Commission, the Joppa plant, Union Electric's share of the Joppa plant was treated as a jurisdictional power supply resource.
Q. What do you mean by jurisdictional power supply resource?

Page 27

A. All of the costs associated with the power supplied to Union Electric from that facility were treated as jurisdictional. They were included in the revenue requirement, to go back to what we talked about earlier today.
Q. Okay. And when -- would the same be true when U.E. purchases power from any other entity other than E.E., Inc.?
A. Not necessarily. It depends on the nature of the arrangement. If you had the facts and circumstances that we have here, yes, the same would be true.
Q. And again, those circumstances is that commitment on the part of the sponsoring companies and DOE to purchase all of the power of E.E., Inc.
A. That's the essence of it, along with the recovery of costs that were cost plus an assured return on investment over an extended period of time.
Q. Now that second attribute, is that different from any other cost plus contract?
A. Well, it could be different. I mean, here you're basically assuring the investors in E.E., Inc. a fifteen percent return on their equity investment. I don't know about you, but I would be pretty content with that return these days.
Q. And that was the price of E.E., Inc.'s power, correct?
A. The assurance of a return on investment was priced into the -- the price paid by Union Electric to buy capacity and

Page 28

energy from E.E., Inc., yes.
Q. So -- and that obviously affects the level of the price, correct?
A. Yes.
Q. Okay. So is -- is this second part of your reasoning determined by how high the price was; that that creates this relationship where U.E. assumes the risk of the plant because of the amount of the price?
A. Not necessarily. It's the notion that you have full assured cost recovery from the 50's through 2005 pursuant to contract. And then at the termination of that contract you discover that the market value of the output of that plant is way above cost. And rather than continue the decade's long historical arrangement with Union Electric and its rate payers, the decision is made to move that resource below the line through the termination of the purchase power agreement and capture all the difference between market price and cost base price for shareholders.
Q. Now the -- if E.E., Inc. had lost money, is it your view that Ameren's rate payers would be on the hook for that loss?
A. Well, historically I don't think E.E., Inc. could lose money because it had a contractual right to recover all of its costs. And in fact, in response to one of the State's data requests we were told that E.E., Inc. has never lost money, which

Page 29

was a not very surprising answer.
Q. But I guess in principle in understanding your use of the word risk, when you say that U.E. assumed the risks of the Joppa plant, and therefore the rate payers did, which is as we have this dialogue I'm -- I understand it's one of the animating aspects of your thinking, that must mean that if the relationship with E.E., Inc. was a losing proposition, E.E., Inc. would always make out like a bandit, but that Amerin could lose money and the people who would pay that loss of money would be the rate payers. Is that the -- in principle is that the risk there?
A. I would say it this way: If the Joppa plant turned out to be a not very cost effective generating resource such that its costs had grown to exceed normal market prices, this contract would have obligated Union Electric to buy on behalf of its rate payers the Union Electric share of the output at the plant at cost based rates, no matter how high they were, plus a fifteen percent return on equity.
And in that sense rate payers, Union Electric and its rate payers, were at risk. And those costs could include insurance premiums to ensure against casualty losses, and probably did include those kinds of costs, outage costs if the plant didn't perform in accordance with expectations.
Q. In your view were those aspects of this cost base contract unusual compared to other ones at the time?
A. Not particularly, no. It essentially is a unit power

agreement where the buyer of the output of the plant commits to full cost support for the asset and receives the output of the asset.
Q. Are you familiar with the cancellation provisions of the contract?
A. I once was. I'm not sure I can recite them.
Q. Well, tell me what you remember in general terms. It's basically the concept that I'm interested in talking about.
A. Well, I recall the original contract had a specified termination date.
Q. Five years, I believe. They had five -- well, any participant on five year's notice could terminate the contract. Do you recall that?
A. I don't. Why don't you refer me to -- we're talking about this contract, the one you handed me?
Q. That's all right. I'm just trying to find out sort of what goes into your thinking. Not a pop quiz on the text there. That's fine.
Earlier you mentioned that you're not familiar with the subsidiaries of E.E., Inc., correct?
A. I think that I have seen financial statements or something else in passing that cause me to note that there were some minor subsidiary operations, at least minor from a financial impact perspective.
Q. So you don't know whether any of those subsidiaries

have suffered losses.
A. I don't know. It's my expectation that if they did they were minor.
Q. Why is that your expectation?
A. Because the structure of this contract is to provide full cost recovery of plant operations.
Q. And if those costs were not recovered, in fact could that suggest that this contract might not operate the way you think?
A. If there were financially significant subsidiary operations that were not included in the cost recovery provisions of the contract and that led to losses, that would be a situation where there could be some risk to shareholders.
Q. Do you know over the time of the 1987 contracts, 1987 through December of 2005, how much power DOE purchased from E.E., Inc. compared to sponsoring companies?
A. No. I have not studied that. It's my impression that the DOE share gradually declined over that period.
Q. Would you say that at the outset it was the lion's share of the power?
If you don't know just say so.
A. I think it was most of the power. I don't recall the numbers. I've seen some reference to perhaps in these early Commission decisions some representations to the Commission that the AEC facility was expected to take much of the power.

Because, for instance, at the bottom of page 21, top of page 22, the quoted excerpt from the Commission decision references the fact that the sponsoring companies were a -- a party made responsible for the repayment of the loans, and including responsibility for use or sale of the capacity in case the AEC should terminate its purchase.
So clearly it was contemplated that irregardless of how much AEC was taking and paying for, there was a risk born by the sponsoring companies that if AEC should pull out and strand, the resource, cost responsibility, or at least repayment responsibility would be assured by the sponsoring companies.
Q. Under your analysis during the period when DOE was taking most of the power, would they have been assuming most of the risk of the Joppa plant?
A. Not necessarily.
Q. Why not?
A. Because -- well, as I just referenced, they would -- they would be bearing most of the cost, but in the event of their election to terminate under the presumption that they could find a better arrangement somewhere else, or the plant wasn't performing according to expectations, the sponsoring companies were still on the hook for the residual capacity and repayment of the debt on the plant.
Q. But that didn't happen, correct?
A. I thought we were talking about hypotheticals. No,

it didn't happen. It's my understanding that the plant performed generally as expected. And certainly in recent times the output cost of the plant, as indicated by the graphs, was very favorable relative to market value.
Q. What I was curious about is in your analysis -- excuse me -- in your analysis if during that period when DOE was buying most of the power it had assumed the lion share of the risks of the Joppa plant.
A. Certainly depending on what DOE's contract said at that time and what their obligations and termination rights looked like, if they were bound to take and pay for on a cost basis like the sponsoring companies the output of the plant, they would have shouldered some of the risk.
However, with reference to this Commission, Missouri Commission decision at the inception, there was at least the contemplation that it was possible AEC could terminate that arrangement; and sponsoring companies, including Union Electric, would bear residual responsibility for the capacity and its costs.
Q. Right. But while it is buying and paying for most of the power produced by Joppa it is bearing most of the risk of Joppa, is that fair?
A. Depending on what their power supply agreement said at that time that could be true, yes.
Q. And as we were talking earlier, any of the sponsoring

Page 34

companies had the right with five years notice to terminate their involvement in this deal, correct? Or you're just not familiar with that?
A. I don't recall. If you --
Q. That's fine.
A. If you'll show me that we can agree on it.
Q. Let me think about it. We may not need to spend time on it, but that's fine.
Do you know if the Public Service Commission has ever considered E.E., Inc. or the Joppa plant to be a U.E. asset and rate base?
A. Not in rate base. As I said before, it's my belief that the Commission has treated the Joppa plant as jurisdictional by including the costs of the output through the purchase power agreement as part of Union Electric's revenue requirement.
Q. And that wouldn't be different from any other purchase power agreement, correct?
A. Well, it could be different. We're talking about a long term commitment for unit power out of the Joppa plant. That may be very different from a spot market purchase of energy from some utility for a seven by eight strip of energy next week.
Q. Why would that not be the kind of an expense that would appropriately be part of a utility's revenue requirement?
A. What is that? I'm not tracking with you now.
Q. Well, I mean, if a utility buys power to serve its

Page 35

customers, wouldn't that be an expense that would be factored into any future rate?
A. Purchased power costs are often considered and included within a utility's revenue requirement. The point I was trying to make is one needs to distinguish between short term spot market purchases of energy where there's no long term relationship, no long term commitment, to stand in the shoes of the producer and bear his costs, but instead you have an obligation to pay a market-like price for energy on a given day, and when it's done it's done, you step out.
Q. Well, my question actually goes to that very point, and that is I'm unclear as to why the short term quality of the spot purchase is significant in terms of whether that expense can be recovered by utility and rates.
A. I was attempting to say that there are --
Q. And I may be confused, so I apologize.
A. -- there are different characters of purchase power. This is a -- this E.E., Inc. contract with Union Electric is a long term unit power cost based agreement. That could be and has been part of Union Electric's revenue requirement in the past.
Q. Correct.
A. Another kind of agreement, completely different from this, could look like a contract to purchase a hundred megawatts at a fixed price eight hours a day for seven days firm power that's not unit specific that's at a price that probably has

Page 36

nothing to do with how or where the energy is produced or purchased for resale, but instead is just a market derived price. Those are two very different kinds of transactions.
Q. They are, but for regulatory purposes wouldn't the utility be entitled to have its costs for the -- the non-unit based arrangement recovered in its rates?
A. The utility could certainly request recovery of all of its costs and be subject to audit review and questioning of the reasonableness of each of those transactions and their costs.
Q. Assuming prudence, and reasonableness, and so forth, as a principled matter if the non-unit specific contract was reasonable, prudent, all those other things that go on in a rate case, the utility would be entitled to be compensated for those in the context of rates, correct?
A. Generally, yes.
Q. Okay. That's all I just wanted to know.
A. Okay.
Q. If I could direct your attention again to your testimony in the revenue related testimony that we have been dealing with, page 22, like 17 through 25.
A. All right.
Q. And I wanted to ask you a couple of questions about your observations about the coal supply pool.
A. All right.
Q. The coal supply pool benefited U.E., too, didn't it?

Page 37

A. To the extent there are efficiencies associated with combining the purchasing power of all of the Amerin regulated utilities along with E.E., Inc. and the other non-regulated generating resources, then yes, the agency agreement benefits everyone, all of the participants in the pool.
Q. That's an economy of scale kind of thing, is that understanding correct?
A. It's an economy of scale. It's efficiencies that are achievable by having one group of individuals responsible for sharing systems and information to support the procurement function and the contract administration function and -- and all that goes with that.
Q. Have you examined, and I realize from our earlier discussion you're not a lawyer, so I realize you may not have done this, but have you at all considered the duties of the board of directors of E.E., Inc. to maximize the income of that company?
A. Well, I certainly have thought about the duties and responsibilities of the directors. There is always this tension between the duties of a regulated utility's directors to its shareholders as well as its customers. And the -- the interesting issue here is whether we can hold Amerin corporate officers and directors, who are also E.E., Inc. directors, to a different standard that excuses them from any responsibility to Missouri rate payers.

Page 38

Q. Is it your view that Amerin has an obligation to direct those employees, those Amerin employees that are on the board of E.E., Inc., to supply power to U.E. at costs even if E.E., Inc. could make more by selling it at market price?
A. Let me answer it this way. I don't know what duties and obligations there are from a legal perspective, but my testimony speaks to the reasonable expectations from a regulatory perspective.
Q. Do those reasonable expectations from a regulatory perspective entail the premise that the Amerin employees who serve on the board should have had E.E., Inc. enter into another cost based contract with U.E.?
A. I would think that to be a much more acceptable outcome given the facts and circumstances we have here than what was actually done.
Q. Which is -- is yes?
A. I believe so, yes.
Q. Now again, picking up, as I said a couple of times, and I recognize you're not a lawyer, but I do want to direct your attention to your testimony towards the end of the E.E., Inc. discussion, which is on page 29, line 21, through page 30, line 8, which is where you refer to and cite several telephone cases.
A. Yes.
Q. How did these cases come to your attention?
A. I have been involved with this issue in Missouri and

Page 39

other states for many years and it's I think analogous to this notion of a business segment that has been treated as jurisdictional, even though a separate legal entity that's not directly a part of the regulated business.
Q. Were you personally involved in any of these cases?
A. No.
Q. Turning your attention to the Southwestern Bell case, the first one, and actually they're both similar for these purposes. Do you know how Southwestern Bell was created?
Well, let me make it simpler. I'm not trying to hide the ball. That was created by the breakup of AT&T, is that correct?
A. I was going to ask you which Southwestern Bell we're talking about. This entity that was regulated by the Commission was actually a legal entity once part of the integrated AT&T.
Q. Right.
A. And that's when I last touched regulation of it in Missouri. So it's been out and then now is AT&T, the way the hats have changed over the years.
Q. But this case arose as a consequence of the breakup of the AT&T --
A. Yes.
Q. -- monopoly, correct?
A. That's fair. In about 1984 a separate directory publishing entity was formed as part of the regional Bell

Page 40

operating company then known as Southwestern Bell.
Q. And isn't it true that the Yellow Page business, directory business, was a core part of the telephone business before AT&T was broken up?
A. It was for Southwestern Bell. It was not for GTE.
Q. We'll get to GTE. But for Southwestern Bell, that's fine.
Again, you're not a lawyer, so if you don't know the answer to this question please just say so. Do have any understanding of the role that a particular Missouri statute, which is Section 386.330, played in the outcome of that case?
A. If I did I don't today.
Q. Okay. That's fine. Was there a revenue imputation in the GTE North case?
A. There was some consideration of the directory publishing arrangement. I don't know if it was explicitly labeled a revenue imputation or not.
Q. So would you know whether the issue was the proper pricing of the contract between GTE North, which is the regulated phone company, and the directory publishing sub? Does that ring a bell?
A. I believe it went to that issue, yes. Yeah. The separate entities that were involved in directory publishing had a publishing agreement or something like that that was the affiliate transaction with the regulated business that was the

Page 41

subject of Commission concern over whether telephone rate payers were being treated equitably or not.
MR. CYNKAR: May I make a suggestion?
Can we go off the record for a second?
(There was a discussion off the record.)
Q. (BY MR. CYNKAR) Let's get back on the record here. Just a couple more on E.E., Inc.
A. I knew we weren't done.
Q. Well, you know, I always have to add something.
I want to ask you a couple of hypothetical questions. If the government, the United States, was the sole customer of E.E., Inc., would it be fair to say that E.E., Inc. would be less risky than if it had private consumers as its customers?
A. It depends on the structure of the contractual relationship between E.E., Inc. and that government customer.
Q. Well, would it be fair to say that the federal government is the deepest pocket there is?
A. If you can get them to pay, yes, that's true.
Q. So would it be fair to say that irrespective of the terms, if they are liable to pay they have less of a -- there's less of a danger of them defaulting on whatever obligation they have to pay than a private entity?
A. Perhaps. My point was that I would expect a long term unit power agreement that the federal government negotiated would be prepared with an appreciation for how that agreement

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Page 42

apportioned risks and rights to each party.
Q. I guess I'm thinking of perhaps a much more pedestrian level; that whatever duties the federal government as a customer of E.E., Inc. would have is by definition a more reliable customer because, you know, the money will be there. Is that fair?
A. Well, certainly your customer if it's the federal government would be very creditworthy as compared to other potential customers, if that's the distinction you're trying to make.
Q. Yes. That's it for E.E., Inc.
A. All right.
Q. All right.
A. Do you want these back?
Q. No. Those are for you. And you can use them for kindling or whatever.
A. Well, I don't have a nice bound copy like that of my own.
Q. There you go. Something to use.
All right. So now -- and when I refer to your testimony we'll be referring to your fuel adjustment clause testimony.
A. All right.
Q. First of all, I guess my introductory question is: Do you know how many states allow fuel adjustment clauses right

Page 43

now?
A. You know, I haven't done a survey. It's my impression that the majority do. I've worked in some states that have had them for some utilities and not others and some states that have had them for awhile and then turned them off and then turned them back on.
So it kind of depends when and how you ask the question, but I would not be surprised if I did a survey to find that the majority do. And I have seen published information to suggest that the majority do.
Q. Would you be surprised if as of right now only Vermont and Utah do not allow fuel adjustment clauses?
A. You said do not allow?
Q. Do not -- yeah. It -- yes, that's what I said.
A. All right. I've not investigated authorizing statutory language to see what is allowed or prohibited. Some states have fairly specific instructions to their regulatory agencies regarding whether there shall be or not a fuel adjustment process. Others leave it to the Commission.
And my point in my earlier answer was that Commissions have exercised their discretion different ways at different times for different utilities.
Q. That's fair. Now in the context of a formal rate proceeding, fuel costs would just be one of many costs that would be examined at that time, is that fair?

Page 44

A. Did you say fuel clause or fuel --
Q. Fuel costs. I'm sorry.
A. Okay.
Q. Sorry. My cold is getting the best of me here.
A. Yes. For an electric utility, fuel and purchased power or purchased energy expenses become part of the revenue requirement.
Q. And in the context of any particular formal rate proceeding, the focus on the proceeding could be on issues other than fuel costs, such if a new generating plant was being brought to rate base and so forth, correct?
A. I'm not sure what you mean. I mean, some issues could be perceived as more important than others. Is that what you're getting to?
Q. Correct.
A. Well, yes. That's always true. Yes.
Q. Okay. Now in your testimony, and again your fuel adjustment testimony, on page 5, line 14, in a passage which includes page 5, lines 13 through line 20, you make a reference to the intensive focus in the context of a rate proceeding, I believe.
Could you explain what you mean by intensive focus there?
A. Yes. We have a formal proceeding where people interested in utility rates tend to gather their experts.

Page 45

There's a formal filing, often with prescribed elements and disclosures. There's a defined test year. There's a discovery opportunity and a fair amount of attention paid to the elements of the revenue requirement, and the rate design, and utility management decisions that drive costs to determine revenue requirement.
So it's a gathering of interested observers in the utility's operations for a particular purpose. And here we are.
Q. One wouldn't be tempted to say vultures, but I -- well, the intensive focus then is not specifically on fuel costs in that context.
A. Well, what I meant here is that there is a focus because rates are subject to change at this point in time, and everything that is important to determining the revenue requirement and the rate design is I'll say in play or receiving scrutiny.
Q. But that wouldn't necessarily mean that there would be intensive focus on fuel costs compared to any other component of the revenue requirement, is that fair?
A. Well, fuel costs tend to be large and people do pay attention to the larger elements of the revenue requirement.
Q. Is this intensive focus available only in the context of a formal rate proceeding?
A. Not necessarily. You could, and probably should, have an intensive focus on fuel and purchased energy costs

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through continuous scrutiny in an environment where you have continuous rate changes driven by those costs.

For example, if you have a fuel adjustment clause, what comes with that from the regulatory perspective is an obligation to monitor and scrutinize those costs continuously, as opposed to this periodic focus that those costs get in a rate case where the jurisdiction does not have a fuel adjustment clause.

Q. So that intensive focus could occur in that fuel adjustment clause context also.

A. Could and should.

Q. Do you believe that fuel cost increases are typically offset by decreases in other cost elements?

A. You said typically?

Q. Yes.

A. Yes, I would agree with that. It depends on when and where you look, but certainly there are many utilities in Missouri where there's not been a fuel adjustment clause for a very long time that went a number of years without need for a rate case, implying that any increases in fuel costs they experienced were being offset by reductions in other costs.

Q. Besides those examples, are there any other studies that you've done or read to support that conclusion?

A. I wouldn't call them studies, but certainly my experience supports that conclusion. One might look to the State

of Indiana as an example where jurisdiction has a fuel adjustment clause. And the rules the Commission applies incorporate an earnings test and an expense test within the calculation of the fuel adjustment clause. So that rates will not be increased because of increases in fuel expense, unless the utility demonstrates through application of this rule that its earnings are not excessive, are not above authorized levels, and that its total operating expenses are in fact not below what was last authorized in a rate case.

So there's an expense test and an earnings test to kind of get to that point.

Q. But let me ask you this because I think I understand what you're saying. So you're saying that it is appropriate when setting rates to consider, just because fuel costs have gone up if other costs have gone down, you take that into account in ultimately what the revenue requirement should be? Is that your basic proposition?

A. That is what happens in traditional test period regulation.

Q. Right.

A. And one of the problems with, I'll call it tracker regulation, where you pick out pieces of the revenue requirement like fuel expense and separately track those and allow rate changes on a single issue basis, one of the problems with that that I talk about in my testimony is that you lose that

accounting, that balancing that you just spoke of where we account for changes in other costs that may be offsetting increases in fuel costs.

Q. But is it fair to say that the other non-fuel costs, whether they're going up or down, is independent of whether the fuel costs are going up or down?

A. Not necessarily.

Q. Can you generalize? I mean, is there a -- when fuel costs are going up is it automatic that other costs are going down?

A. No, it's not automatic. What I meant to say and have said in testimony is that there's a skewing, a perversion of the incentives created by preferential rate making for certain kinds of costs and not others.

Where I thought you were going with your question, maybe you weren't, is it costs money to administer fuel contracts. It costs money to procure fuel. It costs money to maintain generating units. Those costs can be trade-offs for fuel expense.

Q. Okay. Actually, I wasn't. It wasn't that clever, but thank you. That's a great suggestion. I'll use it later in the deposition.

A. Please do.

Q. It was just simpler, and that is just as a matter of economics there's no necessarily cause and effect relationship

with an up or down move in fuel costs with other costs that a utility may have.

A. There probably is a linkage between fuel costs and purchased energy costs. There undoubtedly is a linkage between fuel costs and certain other costs.

For instance, environmental costs, the use of emission allowances versus the sulfur content of your coal that you buy.

Q. Yes.

A. There are some trade-offs and some relatively direct linkages, but for the majority of non-fuel, non-energy operating expenses they are fairly independent.

Q. Are capital costs, such as depreciation expense and return on investment, subject to the same type of fluctuation and volatility as fuel costs?

A. Probably not. The only pause would be in instances where a significant amount of a utility's capitalization is short term debt where the costs can fluctuate fairly significantly.

Q. Do you believe that fuel costs are typically offset by increased revenue margins from native load and are off system sales?

A. Did you say typically?

Q. Typically, yes.

A. I'll say to some extent, probably.

Q. And what is the basis for that answer? Any studies

you've done or that you would point to?
A. Well, let me say this. Fuel costs -- I'll go back to my earlier answer first to explain.
In an environment like Missouri where we have had no fuel adjustment costs for many years and a history of extended periods without the need for a rate case by regulated Missouri utilities, there's a suggestion there that that offsetting is taking place like we talked about before.
For a utility that has a significant base load generation like Amerin U.E., there is an opportunity to leverage that resource into the interchange sales market. And the price of energy is linked to the fuel cost environment that's being experienced.
So that a utility that is long capacity in selling into that market can mitigate some upward pressure on its fuel costs by selling energy at higher prices at market.
Q. Basically passing on those fuel costs to that market.
A. To some extent, yes. Or selling coal capacity into a gas energy market.
Q. Let's go to incentives now, which you had mentioned earlier.
A. All right.
Q. I wasn't totally unprepared on that subject since I know that it's an important part of your testimony.
I am not going to -- I'm looking at, I'm not going to

necessarily ask you specific questions about it, but just so you know where we are, I'm on page 7, lines 3 to 17.
A. Me too.
Q. I figured you would be. Just so we're on the same page.
In your view does the fuel adjustment clause mechanism entirely remove incentives for cost control and efficiency that are provided by regulatory lag?
A. Almost entirely. The only remaining incentive is the risk that a decision made by management in incurring energy costs may be subject to disallowance by the regulator. That's not really a regulatory lag phenomenon. Your question was limited to regulatory lag.
Q. Right.
A. The existence of a return on the deferred fuel balance pretty much wipes out any regulatory lag incentive.
Q. And is that true for costs that are not covered by the fuel adjustment clause?
A. No. That's really -- that's really the point here; that there's preferential treatment given, one type of utility cost relative to the others. And where costs are substitutable where you can install environmental investment or burn cleaner coal you introduce this perversion, this mismatch in the incentives.
Q. I'm not sure I understand, so I'm going to ask you a

follow-up question.
If you've got a fuel adjustment clause, so let's say I'm a utility manager, and so I know that this mechanism is going to -- is designed to -- and obviously nothing's perfect in this world. So for purposes of our discussion it's designed to and hopefully works to reflect actual fuel costs as life goes on in the marketplace.
A. All right.
Q. All right? With me?
And in that sense it's a fairly accurate pricing mechanism. Is that fair?
A. If by accurate you mean revenues track expenses, yes.
Q. Okay. Now as you have been articulating it, when I get into a rate case, or in the rest of my operation I have these other costs, fuel costs are now off the table, they're taken care of by the fuel adjustment mechanism, why as a practical matter would I not have the same incentive to try to run my operation efficiently vis-à-vis other costs? I'm not sure I understand that linkage you're making.
A. Because you're not in a rate case continuously. So to explain.
Q. Please do.
A. Let me suggest that you complete this rate case and Ameren gets everything it wants and the next day has -- well, you smile.

Q. I'm not. I am just teasing. A number of people are going to try to prevent that from happening, I suspect.
A. So the next day there's a meeting among production department management and they review a series of business cases looking at potential staffing decisions for production maintenance personnel, and a decision says we can maintain staffing and maintain the availability of our coal fired steam units at current levels, or now that we've got all these people in the revenue requirement we can let attrition take its toll and not backfill vacant positions, or we might reduce staffing even, so that we can save maintenance expenses at the steam plants.
And if availability goes down and the plants aren't as efficient as they might have been with better maintenance, it doesn't hurt us because any increase fuel costs will be tracked through the FAC and we'll be made whole.
So from that point forward the rational business perspective is to say we need to care less about the costs that we just passed through and really focus on managing the costs that are subject to regulatory lag until we have the next test year.
And to go back to that analogy. If I reduce the maintenance force by five percent, shareholders get the wage savings and the benefits savings until there's the next test year that captures those and passes them through to customers.
Q. Okay. Would it be fair to say from your perspective

that the costs that are not recovered in the context of a fuel adjustment clause are more subject to a utility's control than those recovered under a fuel adjustment clause?

A. Let me answer the question this way. Usually tracking regulation is more acceptable to regulators when the costs being tracked are believed to be less subject to management control. So it's kind of a --

Q. Say that again?

A. -- what's first; the horse or the cart.

Q. I'm not sure I follow.

A. I referenced in testimony some criteria. Look at page 8.

Q. I'm right there.

A. And look at line 11.

Q. Uh-huh.

A. Where the cost in question is determined to be less controllable by management than other kinds of costs. That tends to be a criteria that regulators look to when deciding which costs to allow tracker regulation for.

Q. Uh-huh.

A. So if we --

Q. By tracker regulation you mean the fuel adjustment clause?

A. Like the fuel adjustment clause, yes. So if you've already determined that the costs are not controllable by

management and therefore you've permitted tracker regulation then it's kind of like, yes, we've determined the costs are less controllable by management.

Q. In your view could a significant cost of a utility ever be so volatile that the rate case mechanism is really not the efficient way to go about dealing with those costs?

A. Yes.

Q. And when is that?

A. I have testified in support of a fuel adjustment clause in Hawaii, for instance, where virtually the entire generation fleet is fueled by oil.

Q. Okay.

A. And without a fuel adjustment clause there you would have unacceptable volatility of earnings. You would have utilities exposed to financial ruin absent an ability to recover volatile market oil prices.

Q. What standard of volatility to use? I mean, how volatile is volatile in your mind to justify a fuel adjustment clause or a tracker kind of mechanism?

A. Well, you look at -- I mean, there's no metric that I can recite that says this is the number, but when you see fuel expenses that are a huge portion of total O and M expense where --

Q. Huge? Just give me like a rough percentage.

A. More than half.

Q. Okay.

A. And where you see the utility's cost of fuel pegged to fuel supply contracts that look at published indices of world oil prices, and where you see those prices moving to the extent where the utility's entire net income can be consumed by an upward movement in market oil prices, you can see that there's a need for some tracker regulation.

Q. Now you've just talked, articulated obviously a very dramatic scenario where an entire -- a utility's entire income would be consumed by this movement of this one cost item.

Is that really your floor or is it something less than that would -- would be volatile enough in its impact on a particular utility?

A. It's obviously a question of judgment. And my testimony tries to relate the Union Electric facts and circumstances to that same kind of scrutiny, that same criteria. And I would characterize Union Electric as being at the far other end of the spectrum in terms of exposure to fuel price volatility.

So I don't have a screening criteria where black and white this is what the answer is as soon as you trip this trigger.

Q. Now with respect to your view of where U.E. stands on that spectrum is -- and from your hypothetical the way we were just describing your standard for this it seems, as I understand

it, there were two components of it: One is the level of volatility, and the other is the impact on the particular utility. Is that fair?

A. Well, there's more than two.

Q. Well, your bullets here are -- but in terms of --

A. Yeah. Let me -- look at page 16. I'll call it the list of five.

Q. Okay.

A. And the first three correspond generally with the bullets and the last two deal with what you're compromising.

Q. On page 16, lines 10 to 11, which is your point number 3 there, which reads, quote, "Volatile in amount, causing significant swings in income and cash flows if not tracked." Period. Close quote.

Just focusing on volatility. Now in terms of U.E.'s fuel costs and what's been going on let's say between 2003 to 2005, just as sort of a period we have data for, do you think that the volatility of those costs would satisfy this component of your analysis?

A. Probably not, given the way U.E. manages its fuel price risk.

Q. When you refer to the way U.E. manages that risk, are you talking more about the impact of the volatility on U.E. or the effect of the volatility of the prices?

A. I'm talking about the extent to which U.E. is exposed

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Page 58

to the volatility.
Q. Okay. So that you don't have any dispute that irrespective of what U.E. has done to protect itself from those, fuel prices have been volatile in that period of 2003 to 2005?
A. To some extent, yes, they have been volatile. Gas and oil more than coal. Coal more than nuclear.
Q. Let me ask you a little bit about some of those components and see if you agree with these facts as I understand them.
With respect to natural gas, is it true that the spot price of natural gas experienced more than a hundred percent increase between 2003 and 2005?
A. Possibly. There has been significant movement in gas prices --
Q. Okay.
A. -- in the past few years.
Q. And is that kind of movement, is that -- would that if we were just focusing on that -- that movement there, would that be volatile enough to satisfy your standard 3?
A. I would expect that if U.E. had a generating fleet that was dependent upon natural gas as a fuel, there would be a concern with respect to volatility for U.E.
Q. Okay.
A. My testimony is that their exposure to gas fuel is very modest.

Page 59

Q. Right. No. I'm asking you just in principle here, not in the particular context of U.E.
With respect to petroleum based fuels, oil based fuels delivered to electric generators in that same period, that the price of those fuels rose about fifty percent between 2003 and 2005.
A. It depends on what, where, and when you measure, but there has been volatility in oil prices, and certainly fifty percent is consistent with my experience in the Hawaii environment that I spoke of earlier where the utility is massively exposed to that particular commodity.
Q. Now you were talking about coal earlier and I want to refer to that. I only have data in front of me for the 2004 to 2005 period, but over that period the delivered price of coal increased by approximately twenty percent. Is that a big enough swing in your mind?
A. If you'd look at Schedule MLB-5.
Q. I don't have it right here with me, but that's fine.
A. Page 2. It depends on what coal you're interested in. Amerin U.E. is mostly interested in powder river basin western coal. And prices there -- well, there's a chart there that shows front month spot prices.
And there was a large run-up in the last half of 2005 that has since abated with respect to spot prices.
Q. Is that run-up and abatement, would you consider that

Page 60

a volatile movement of those prices?
A. Only if the utility buys most or all of its coal on the spot market, and most don't. In fact, in Missouri historically there's been a strong interest in maintaining some term to one's coal price contracts if for no other reason than to synchronize price changes to the timing of rate cases.
Q. And I understand that from the perspective of how a utility would behave and try to protect itself and so forth, but just focusing on the movement of the prices itself would you consider that movement to be a volatile movement of those prices?
A. But for the 2005 experience and the rail induced shortages and problems that occurred, combined with the hot summer conditions, I think coal is much less volatile than gas and oil have been in recent years.
Q. But is it volatile at all?
A. Well, there was the disturbance in 2005 that I spoke to.
Q. And that qualifies as volatility?
A. Well, there was upward movement in price in that period of time that has since abated. So whether that's recurring or not might bear on whether you think volatility is predictable in the future.
Q. Well, do you think that that was a volatile movement of those prices?
A. I'm sure that it surprised some people when it

Page 61

happened, yes.
Q. That's a yes. Okay.
Isn't it true that the price of uranium has increased by about forty percent since 2001?
A. It has increased. I don't know the percentages. I've seen the Callaway loads in a data response. The reality is that the reloads don't expose the utility to full replacement at current market prices because of the way the fuel cycle works.
So if you look at the Callaway fuel expense projections, for instance, you see gradual upward movement at reload when assemblies are replaced.
Q. If a utility -- in your view, if a utility has been adept enough, fortunate enough in a particular circumstance to have long term contracts for fuel that mitigate their exposure to the volatility of fuel, at least during that period, in your view is that an argument against having the fuel adjustment clause for that utility?
A. I think that utility, aggressive and ambitious utility management of fuel costs is indicative of an environment where you do not have a fuel adjustment clause. And whether that should be used against the utility or not will be for the Commission to decide.
I think it's relevant that management is able to display an ability to control volatility in commodity prices --
Q. Is --

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A. -- relevant to the decision.
Q. Is it -- I think I understand what you're saying, but I want to be sure.
Is it really -- do you mean what you just said, and that is that a long term contract for fuel is really not management controlling fuel prices? Like that's beyond the control of the management of a utility, isn't that fair?
A. The decision to adopt a risk management strategy that includes term contracting is certainly within the control of management.
Q. Right. But that's -- the risk that they're managing is the actual price of fuel to them. That is the prices go up and down irrespective of what a utility does and they're just gambling that they have gotten a good deal with a particular long term contract, correct? They're really not controlling. The prices are still beyond their control; they're just trying to deal prudently in that context, is that fair?
A. Well, I think that if you ask U.E., as I have, they have adopted a risk management strategy that limits exposure to movements in market prices by not being caught short in the burn year without significant coal under contract to mitigate price swings. But certainly when one buys either long or short, one is exposed to market conditions, if that's your point.
Q. Yes. And the management of the utility could make the wrong guess; in other words, they could get into a term

contract that pegs the price at X level and then the price goes down and they're stuck with paying a higher price.
A. That's true. Some have said it's the business of heroes and fools.
Q. I just have a few more questions here. I want to ask you a couple of questions, and again I'm not going to ask you I don't think specifically about this text, but just so you know where I am in your testimony I'm at page 28, lines 4 to 9.
Would you agree that in the MISO day two market the price of energy generally is set by the marginal, that means the most expensive unit, dispatched by MISO?
A. Aside from congestion issues and other complexities, probably, yes.
Q. Would you agree that during on peak hours the marginal unit will sometimes be a gas fired unit?
A. Yes.
Q. Would you agree that you have to consider the region wide MISO market when considering the extent to which U.E. is subject to volatility in gas and oil prices?
A. I'm not sure I understand your question. Are we talking about subject to volatility in purchasing gas for --
Q. Yes.
A. -- fuel for its generating units?
Q. Yes. Based on an earlier answer you gave I think you may have already answered this question.

A. I don't understand the relationship of region wide MISO markets to gas market prices. Are you trying to get to a linkage between market energy prices and gas prices?
Q. Well, yeah. I mean, in a sense. And I think you -- you may have already addressed this earlier because we talked about that a bit.
But the notion is is that in terms of making a judgment about whether U.E. is subject to volatility in gas and oil prices, whether the market you're looking at in terms of prices going up and down include the MISO regional market nowadays.
A. Well, I'm confused.
Q. I may be confused, too, so I apologize.
A. If we're talking about gas fuel for Amerin U.E. generation --
Q. Yeah.
A. -- I think that's a different market than the MISO spot energy market. There may be parallel movement, particularly in the summer between the market price of gas and the market price of energy, but the modest exposure to gas and oil fired CT fuel that I'm talking about here on page 28 is aimed at considering and differentiating Amerin U.E. from other utilities that have a much larger gas and oil mix in their generating portfolio.
MR. CYNKAR: Okay. I think I'm done.

THE WITNESS: All right.
MR. MICHEEL: I have no questions.
THE WITNESS: I don't have any questions.
MR. MICHEEL: We'll read and sign, but waive presentment.

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CERTIFICATE OF REPORTER

STATE OF MISSOURI) SS:
COUNTY OF RALLS)

I, RANDALL W. WELLS, a Certified Court Reporter, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

____
Notary Public within and for
the State of Missouri

My Commission will expire July 31st, 2010.
Commission #06430973

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January 11, 2007

Utilitech, Inc.
740 NW Blue Parkway
Suite 204
Lee's Summit, Missouri 64086-5983
Attn: Michael L. Brosch
In Re: In The Matter of Union Electric
Dear Mr. Brosch:

Enclosed please find a "Condensed" copy of your deposition taken on Janaury 11. Also enclosed are the original signature page and an errata sheet.

As you did not waive signature, you need to:

1. Read your transcript;
2. Note any changes and/or corrections on the errata sheet;
3. Sign the original signature page (page 67) before a notary public.
4. Please return the signed and notarized signature And errata page(s) to Cuneo, Gilbert & LaDuca, 507 C Street, NE, Washington, DC, 20002, attention Robert J. Cynkar.

If we can be of any further assistance to you in this matter, please feel free to contact us.

Thank you for your prompt attention to this matter.

Sincerely,

Randall W. Wells, CCR

STATE OF __________
COUNTY OF __________

I, MICHAEL L. BROSCH, do hereby certify:
That I have read the foregoing deposition;
That I have made such changes in form And/or substance to the within deposition as might Be necessary to render the same true and correct;
That having made such changes thereon, I Hereby subscribe my name to the deposition.
I declare under penalty of perjury that the Foregoing is true and correct.
Executed this _____ day of __________, 2006, at __________________.

____
Notary Public

My Commission expires: ______________

____

Signature page to Attorney Robert J. Cynkar.

WITNESS ERRATA SHEET

Witness Name: MICHAEL L. BROSCH
Case Name: In The Matter of Union Electric Company
Date Taken: January 11, 2007

Page #_____ Line #_____
Should read: ____________________
Reason for change: ____________________

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Witness Signature: ____________________

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STATE OF Missouri

COUNTY OF Jackson

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That I have read the foregoing deposition;

That I have made such changes in form And/or substance to the within deposition as might Be necessary to render the same true and correct;

That having made such changes thereon, I Hereby subscribe my name to the deposition.

I declare under penalty of perjury that the Foregoing is true and correct.

Executed this 16 day of January, 2007, at Lees Summit, MO.

____

Notary Public

My Commission expires: 6-7-2010

NOTARY PUBLIC NOTARY SEAL STATE OF MISSOURI

LORI M. RICE
My Commission Expires
June 7, 2010
Jackson County
Commission #06897298

Signature page to Attorney Robert J. Cynkar.

WITNESS ERRATA SHEET

Witness Name: MICHAEL L. BROSCH

Case Name: In The Matter of Union Electric Company

Date Taken: January 11, 2007

Page # 53 Line # 18

Should read: "passed" should be "pass"

Reason for change: transcription error

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Page #______ Line #______

Should read: ____________________

Reason for change: ____________________

Witness Signature: Michael L. Brosch

STATE OF Missouri

COUNTY OF Jackson

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That I have read the foregoing deposition;

That I have made such changes in form And/or substance to the within deposition as might Be necessary to render the same true and correct;

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Lori M Rice

Notary Public

My Commission expires: 6-7-2010

NOTARY PUBLIC NOTARY SEAL STATE OF MISSOURI

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Witness Signature: Michael L Brosch