

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

November 25, 2008
Jefferson City, Missouri
Volume 17

In the Matter of Union Electric)
Company d/b/a AmerenUE's Tariffs)Case No. ER-2008-0318
to Increase its Annual Revenues)
for Electric Service)

MORRIS L. WOODRUFF, Presiding
DEPUTY CHIEF REGULATORY LAW JUDGE

JEFF DAVIS, Chairman,
CONNIE MURRAY,
ROBERT M. CLAYTON, III,
TERRY JARRETT,
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1 P R O C E E D I N G S

2 JUDGE WOODRUFF: Let's come to order, please.

3 Welcome back to Day 4, I believe it would be, of the
4 AmerenUE case hearing.

5 Our first issue today, I believe, will be demand
6 side management. So we'll do mini openings.

7 MR. LOWERY: Your Honor, I was wondering if you
8 had made a decision about taking up the motion that we
9 filed yesterday. We're prepared to take that motion up if
10 you want to do that preliminary matter now.

11 JUDGE WOODRUFF: Okay. That's fine. Let's do
12 that now.

13 MR. LOWERY: Thank you.

14 JUDGE WOODRUFF: As everyone probably knows,
15 AmerenUE filed a motion yesterday to allow admission of
16 designated portions of depositions. And if you weren't
17 here on Friday, I believe it was, there was some
18 controversy about an admission of an entire deposition,
19 which I ruled that the Commission would not admit.

20 And now this motion suggests that -- asks in
21 general that designated portions of depositions be
22 admitted. Presumably, the offering party will designate
23 the portion of the depositions that they believe are
24 appropriate for the Commission to consider. Does anyone
25 wish to be heard on -- on that motion?

1 MR. LOWERY: Your Honor -- your Honor, if it
2 pleases the Commission, I just had a couple remarks that I
3 would make in support of the motion. And then, obviously,
4 anyone else can be heard.

5 I think the basis of the motion and the relevant
6 law as set forth in the motion is pretty clear. The
7 Bynote (ph.) Case that's cited in our motion decided by
8 the Supreme Court in 1995 was quite clear.

9 Statements by an agent or employee of a party
10 opponent, in this case, Staff witness, OPC witness, what
11 have you, all of whom are party opponents in the case, are
12 admissible, vicarious admissions of a party opponent.

13 Rule 57.07(a) indicates depositions can be used
14 for any purposes -- purpose. It makes no difference. The
15 Still case that we also cite in our motion is very clear.
16 It makes no difference where these witnesses are or are
17 not available to testify or whether they have testified.

18 Admissions can be -- can be entered into the
19 record without further foundation. As we indicate in our
20 motion, proper objections based upon relevance or
21 materiality can be made to a particular designation or if
22 the witness was incompetent for some reason.

23 But short of that, the -- I think the rules and
24 the case law on this is very clear. The reason we filed
25 this motion -- it's a little unusual. Had we -- we known

1 how the Commission intended to handle this in this case
2 being different than the last case -- and we respect the
3 Bench's ruling, but it is a change from what we did in the
4 last case, we would have simply filed on deposition
5 designations before the case started.

6 But we thought, given the ruling that took place
7 on Friday, the efficiency of the process and the parties
8 would be benefited if the Commission could give us some
9 guidance and confirm, in fact, our understanding of what
10 the law and what the rules are.

11 And so we're simply asking for that guidance,
12 and then we would, and any or party could as well, provide
13 those designations as is -- as is typically done.

14 JUDGE WOODRUFF: All right. Anyone else want to
15 be heard? Mr. Conrad?

16 MR. CONRAD: We've -- I've reviewed Counsel's
17 motion. And I guess the -- the concern that I have with
18 it, which he can certainly elaborate, is that we find
19 ourselves in the same box by another route, that being
20 that somebody says, Well, I'm really not interested in the
21 initial two or three questions about whether the witness
22 was under any medication that would prevent him from
23 testifying, but from page 3, line 1 through page 275, line
24 24, we want to designate that.

25 And if -- if that's Counsel's intent, I -- I

1 don't think it is, but it could be helpful, I think,
2 for --

3 MR. LOWERY: It is not.

4 MR. CONRAD: -- that to be allayed.

5 JUDGE WOODRUFF: Okay.

6 MR. LOWERY: I mean, Judge, the intention of --
7 and we haven't gone through, but the intention is to offer
8 admissions that are contained in the deposition that are
9 pertinent and relevant. And there are -- there are loads
10 of questions and answers that we would not be answering
11 probably -- or offering. Probably the vast majority of
12 the depositions would not be offered, as is typical.

13 So I can certainly allay that concern. Again,
14 the parties will have an opportunity to object to any
15 particular question or answer that they -- that they so
16 choose. But we don't intend to designate essentially the
17 bulk of the deposition in lieu of offering the entire
18 deposition.

19 JUDGE WOODRUFF: Anyone else want to be heard?

20 MR. CONRAD: Well, that -- pardon me. That --
21 that would then address the point -- the second point that
22 I have, which is found in paragraph 4 of their motion,
23 which is referencing two objections, and just clarify what
24 counsel's intent is that after designation or designations
25 are submitted, I think we probably need to spend just a

1 moment on the mechanics of that. But there would be an
2 appropriate opportunity for objection. Counsel seems to
3 be clarifying that that's -- that's their intent.

4 And all of that said, if we can kind of get
5 those clarifications and things worked out, I don't -- I
6 think we would not be in opposition to what the motion
7 appears as clarified to be seeking.

8 JUDGE WOODRUFF: All right. Well, I have
9 considered the -- the motion, and I find it to be
10 appropriate. I think it accurately states what -- what
11 the law is as far as the use of depositions.

12 And as I indicated on Friday, the Commission's
13 concern is that we don't get a 400-page deposition dropped
14 on us with no indication of what's important because that
15 increases the bulk of the material that the Commissioners
16 have to read.

17 And it's, frankly, not very helpful. And I know
18 from the last case, there was -- there was stacks of
19 depositions put in, and they were never mentioned in the
20 briefs. They were just there cluttering the record. And
21 that's what I wanted to try and avoid.

22 So if the parties want to designate portions of
23 depositions, I think that's highly -- that's appropriate.
24 That's the way it should be done.

25 As far as mechanics, I don't think you have to

1 necessarily tell the Commission in advance what portions
2 you're going to be designating. But I think it would
3 certainly be helpful if the parties would tell each other
4 in advance, let each other know.

5 MR. LOWERY: Your Honor, my experience is that
6 designations are filed in the case docket. I mean, this
7 is my experience in Circuit Court. And then parties
8 either could in writing object if they chose to. I mean,
9 most of the time there aren't objections most of these
10 things that are generally fairly clear on most instances,
11 but occasionally there are.

12 Or as we get to a particular witness and the --
13 and designations has been made, folks could make oral
14 objections at that time.

15 JUDGE WOODRUFF: Certainly.

16 MR. LOWERY: But, otherwise, if there's not an
17 objection, then those designated portions are deemed
18 admitted into the record. We would -- we intended to file
19 and we intended to use the mini script versions if it
20 pleases the Commission so it will cut down on the bulk.

21 JUDGE WOODRUFF: Yes. That's helpful.

22 MR. LOWERY: We intended to PDF those mini
23 script versions and actually file it in the case docket.
24 This is exactly what happens in the Circuit Court, the
25 actual deposition transcript is in the Circuit Court's

1 file. And then the Commission will have available the
2 designations. And if any were objected to and the
3 objection was sustained, then that would be part of the
4 record. And then the Commission would have available
5 those transcripts during its deliberations and can review
6 the designated portions and not the other portions, which
7 would be consistent with practice and, I think, consistent
8 with the law.

9 JUDGE WOODRUFF: I think that sounds like a good
10 practice for use in this case as well. And it may be that
11 the Commission needs to revisit its -- its rules on
12 hearing procedures to implement that sort of process in
13 future cases.

14 MS. WOODS: If I may ask clarifying question?

15 JUDGE WOODRUFF: Sure.

16 MS. WOODS: Are you talking about just
17 objections or cross designations? Because I know in at
18 least federal court, that's fairly common that one party
19 designates and the other party, if they feel there's
20 information that would say clarify a particular portion,
21 does cross-designate other portions of the deposition.

22 JUDGE WOODRUFF: I think that would be helpful
23 as well.

24 MR. CONRAD: And that -- that all makes sense.
25 I'd like to be able to count on having at least some --

1 more than two or three minutes to look at something. So
2 I'd like to suggest to Counsel maybe we can talk about
3 something either the morning of the afternoon or the
4 afternoon of the previous day so that there's an
5 opportunity to look at things. There is a risk of a
6 person, obviously -- and you also kind of have the risk
7 there of getting carried away.

8 JUDGE WOODRUFF: Yes.

9 MR. CONRAD: I don't know. I -- I think that's
10 why they have judges is to exercise discretion. And so
11 I'm not uncomfortable with that. But I do think it's --
12 it's helpful for all of us to have something of an
13 organized procedure.

14 And I -- I agree that we probably need to look
15 at the -- the Commission rules, not only this particular
16 one, but maybe in others. The problem, of course, with
17 the rule that Counsel is citing is it does not lend itself
18 very well to multi-party litigation, which is obviously
19 what you have here.

20 Where you have a plaintiff and defendant and so
21 on, that's fine. But that's -- and the plaintiff has been
22 deposed and the defendant has been deposed and so on, then
23 you have admissions of parties. Here, it's not quite so
24 clear.

25 JUDGE WOODRUFF: And, of course, there will

1 always be an opportunity to object, and I'll make a ruling
2 on what's appropriate based on those objections.

3 MR. LOWERY: And, Judge, we'll certainly
4 endeavor -- and, of course, other parties -- Staff has
5 taken some depositions as well. But we'll certainly
6 endeavor to designate these as quickly as we can. And
7 we're not trying to unfairly surprise anybody.

8 But I would ask the Bench's indulgence given
9 that we have had a change in the process from the last
10 case. And had we known that, we would have handled this
11 differently before the hearing started.

12 We might need a little bit of latitude. And I
13 think all the parties can work together. But I would ask
14 the Bench's indulgence in that regard.

15 JUDGE WOODRUFF: Certainly. And, of course,
16 you'll have all day tomorrow.

17 MR. LOWERY: All Thanksgiving weekend, right?

18 JUDGE WOODRUFF: That's right.

19 MS. WOODS: Ho, ho, ho.

20 MR. LOWERY: That's Christmas.

21 MR. IVESON: This is Thanksgiving.

22 MS. WOODS: After Thanksgiving, it is Christmas.

23 JUDGE WOODRUFF: All right. Let's move on to
24 mini openings, then, on the demand side management issue.
25 Mr. Dottheim?

1 MR. DOTTHEIM: Judge, yesterday, I think I did
2 not give to the Court Reporter Exhibit No. 222, Jeremy K.
3 Hagemeyer's surrebuttal testimony on RSG --

4 JUDGE WOODRUFF: Okay.

5 MR. DOTTHEIM: -- expense --

6 JUDGE WOODRUFF: If you want to do it --

7 MR. DOTTHEIM: -- Which also contains his
8 surrebuttal testimony on incentive compensation, restrict
9 -- restricted stock. So at this time, I'd like to do
10 that.

11 JUDGE WOODRUFF: Just go right ahead. All
12 right. Then for the -- for the mini opening on the next
13 issue, we'll begin with AmerenUE.

14 DEMAND SIDE MANAGEMENT

15 OPENING STATEMENT

16 BY MS. TATRO:

17 MS. TATRO: Good morning. I think as all
18 parties in the room know, AmerenUE is in the beginning
19 stages of a fairly large investment, which will result in
20 some of the largest demand response energy efficiency
21 programs in the State of Missouri.

22 This work has been prompted by this Commission
23 and by the results of our last integrated resource plan.
24 And the company is working pretty hard to capture that
25 potential for reductions in electric demand going forward.

1 In its last rate case, Staff recommended a
2 regulatory asset be established to capture the costs
3 incurred for these types of programs. The parties
4 concurred and the Commission approved that agreement.

5 AmerenUE considers this step to be a start
6 towards addressing the challenges of financing demand side
7 programs as it is compared to the well-established rate
8 based method for recovering in the cost of, say, a coal
9 plant.

10 AmerenUE hopes this conversation continues as it
11 believes a regulatory asset is a starting point, but
12 likely does not represent the finish line on the
13 discussion of how these programs should be treated.

14 Now, in this case, Staff requests the Commission
15 clarify that the revenues attributable to the programs be
16 placed in the regulatory asset along with the costs.
17 AmerenUE generally agrees for demand response programs.

18 Demand response programs such as AmerenUE's
19 industrial demand response tariff free up identifiable
20 amounts of electricity which can then be held to the
21 market. That revenue is made available by that program,
22 and AmerenUE has already agreed to off-set the cost of
23 that program.

24 This link, however, is not so clear for energy
25 efficiency programs. Replacing a thermostat with a

1 programmable thermostat or weatherizing a house doesn't
2 make available an easily identifiable amount of power for
3 sale.

4 There's no direct time between that program and
5 any off system sale. And without that clear linkage, the
6 risk is that this Commission becomes the arbitrator
7 between the company and other parties who can't agree on
8 whether or not energy consumption was decreased, what type
9 of day it was decreased and what the appropriate power
10 price levels should be used to off-set that reduction.

11 I don't think that's in anyone's interest and
12 probably not something you'd look forward to. So we
13 believe that off-setting revenues, when it's clearly
14 linked and identifiable, makes sense, and we have already
15 agreed to do so.

16 JUDGE WOODRUFF: Opening for Staff?

17 MR. REED: Yes. Thank you, Judge, and good
18 morning.

19 OPENING STATEMENT

20 BY MR. REED:

21 MR. REED: I don't think that the Staff and
22 AmerenUE are -- are that far apart. I think, as we try
23 this case this morning, we'll see that -- that we're in
24 pretty -- pretty much the same position, pretty close.

25 The issue here is the netting of demand response

1 programs or all demand side management resources. And
2 you'll see that in the issue list. I have a copy of that
3 issue that I want to put up on the -- on the white board.

4 I wanted to put this up for the Commission to
5 review this morning as we take up this issue because when
6 I first looked at this issue, I thought, What's the
7 difference? Should the Commission require netting of
8 revenues for only demand response programs, or should
9 netting apply to all demand side management resources?

10 So the issue is between these two things.
11 That's what we're going to talk about this morning.
12 Will there be netting for only demand response programs or
13 netting for all demand side management resources?

14 Now, after trying to get a handle on the issue
15 on what we would try this morning, these are the
16 categories that I came up with. And they're a little bit
17 limited, but I think this is what you'll hear in the
18 testimony this morning.

19 Demand response programs. Now, I think the
20 demand response programs are actually a sub-category or a
21 category of demand side management resource. But for the
22 purposes of issue this morning, what we're talking about
23 in terms of demand response programs is the curtailment,
24 for instance, of large industrial customers at peak load
25 times.

1 And what this would allow AmerenUE to do is, for
2 instance, if there's a curtailment of a large industrial
3 customer at 5 p.m., mid July when the air conditioners in
4 the residences are coming on, then there's the possibility
5 that AmerenUE could take that additional capacity and make
6 a sale in the off-system sales market.

7 And so what we're talking about in that
8 circumstance is the netting between what the industrial
9 customer might be paid for accepting the curtailment
10 versus what AmerenUE might make on the off-system sale.
11 So that's the netting of demand response programs.

12 On the other hand, under demand side management
13 resources, the categories that I have up here are -- are
14 examples. These are for instance. It would be
15 weatherization programs, the Energy Star program regarding
16 appliances, Change a Light program, which would be putting
17 in fluorescent bulbs.

18 And what these would have the effect of doing is
19 over a period of time consistently reducing the overall
20 load in a consistent and ongoing basis. And so I think
21 for purposes of the discussion this morning, this is the
22 way we need to look at the issue that we're going to try.
23 Because, for one thing, that's how the issue was worded,
24 and that's how it's before us this morning.

25 Staff's position in this case is that when we

1 can identify an immediate, identifiable and measurement
2 increase in revenues that's associated or related back to
3 the DSM program, the netting should apply.

4 In Witness Henry Warren's surrebuttal testimony,
5 you'll see at page 2 has the language that staff proposes
6 should govern the DSM regulatory asset account that the
7 Commission will talk about this morning. Thank you.

8 JUDGE WOODRUFF: Thank you. Public Counsel?

9 MR. MILLS: Yes. Thank you.

10 OPENING STATEMENT

11 BY MR. MILLS:

12 MR. MILLS: Good morning. May it please the
13 Commission. I think Mr. Reed did a good job of explaining
14 just how limited this issue really is. And that is the
15 Staff's position, Public Counsel largely shares the
16 staff's position.

17 What -- what's being proposed in this case is
18 really not radical. It's essentially an extension of
19 what's currently being done for the demand response to
20 energy efficiency. And there's no real compelling reason
21 other than as Mr. Voytas testified that there may be some
22 incremental problems with tracking as the programs expand.

23 But I believe UE's main objection is not really
24 philosophical, but practical. And as a result, Public
25 Counsel -- and I'll get to this in a minute. Public

1 Counsel has changed our proposal as a result of reading
2 Mr. Voytas' surrebuttal. And I'll explain to you what
3 that change is, and I think it addresses their main
4 pragmatic concern.

5 The proposal here to track and net all demand
6 side management courses is really very similar to
7 off-system sales. Customers have for years contributed to
8 the building of UE's supply side resources as -- and as a
9 result, on many occasions, those resources were available
10 to provide capacity and to market for which UE is
11 compensated and which traditionally flows back to
12 ratepayers.

13 All we're proposing in this case is to do
14 something similar on the demand side. When UE with
15 ratepayer funds implements demand side programs and that's
16 in off-system sales markets, those revenues should flow
17 back to customers in the same way that off-system sales
18 do. So we're proposing that -- that the demand side
19 revenues be treated in roughly a similar fashion as -- as
20 off-system sales.

21 Now, I mentioned that UE -- that UE has raised
22 some concerns in Mr. Voytas' surrebuttal testimony. And
23 Public Counsel has -- has -- has read that and finds some
24 of them to be -- to be well taken.

25 Our original proposal in terms of language for

1 the DSM cost recovery was that in addition to booking the
2 incremental costs of implementing DSM programs in its
3 regulatory asset account, UE shall book the reimbursement
4 of incremental cost in dollars that are equal to fund from
5 any source that the company receives that are associated
6 with the implementation of DSM programs and not otherwise
7 credited.

8 We propose to change that to read -- and I'll
9 read the whole statement and then focus in on the change
10 at the end. In addition to booking the incremental costs
11 of implementing DSM programs in its regularity asset
12 account, UE shall book the reimbursement of the
13 incremental cost in dollars that are equal to capacity
14 related revenues from any source that the company receives
15 that are associated with this implementation of DSM
16 programs and not otherwise credited.

17 So the essential change is instead of trying to
18 track funds from any source that the company receives, we
19 believe that to make it more manageable, we would limit it
20 to reimbursement of capacity related revenues from any
21 source.

22 And I think that will largely address the
23 pragmatic concerns that -- UE has raised in its testimony.
24 Thank you.

25 JUDGE WOODRUFF: Thank you. Any other party

1 wish to make an opening on this issue? I don't see
2 anybody else. So let's go ahead and bring the first
3 witness up, which I believe is Mr. Voytas.

4 MS. TATRO: Can I have just three seconds to
5 talk to my witness about this change?

6 JUDGE WOODRUFF: Okay. We'll go off the record.

7 MS. TATRO: Maybe more than three seconds, but
8 not a long time, I promise.

9 MR. MILLS: And, Judge, just for the record, we
10 did -- we did inform the parties just briefly before the
11 hearing this change was coming.

12 MS. TATRO: Yeah. I'm not saying it was an
13 unfair surprise or anything. I just --

14 MR. MILLS: I certainly have no problem with
15 taking a recess to talk about that.

16 (Break in proceedings.)

17 JUDGE WOODRUFF: All right. We're back on the
18 record. Opening for Ameren, then?

19 MS. TATRO: Well, I did my opening, but I'd like
20 to call our witness to the stand.

21 MR. MILLS: Judge, before we do that, if it
22 would be helpful, and this would be somewhat out of order,
23 if you want to put Mr. Kind on the stand to explain the
24 reason for that change, you can.

25 JUDGE WOODRUFF: However the parties want to do

1 it.

2 MR. REED: Well, I have a proposal. I think we
3 should at least explore on the record what we mean by
4 capacity related. And it would probably be helpful if
5 Mr. Kind took the stand first and then we went from there
6 first with Staff's witness as well as the company's.
7 So --

8 JUDGE WOODRUFF: Okay.

9 MS. TATRO: AmerenUE doesn't object to that.

10 MR. MILLS: Okay. Now all I have to do is go
11 find Mr. Kind. But I -- I think I know where he is.

12 JUDGE WOODRUFF: Okay. Let's go off the record.
13 We'll actually take a break until 9:00.

14 MR. REED: Thanks.

15 (Break in proceedings.)

16 JUDGE WOODRUFF: All right. Let's go ahead and
17 get started. While we were on break, Mr. Kind was found.
18 And go ahead and take the stand.

19 MR. KIND: Okay.

20 JUDGE WOODRUFF: Please raise your right hand.

21 RYAN KIND,

22 being first duly sworn to testify the truth, the whole
23 truth, and nothing but the truth, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. MILLS:

26

1 JUDGE WOODRUFF: You may be seated. And you may
2 inquire.

3 MR. MILLS: Judge, we're doing this a little bit
4 out of our normal order. Would you like me to offer his
5 -- mark and offer his testimony at this time as well or --

6 JUDGE WOODRUFF: Sure.

7 MR. MILLS: Okay. I have Exhibit 40 -- 402, is
8 that correct, his direct testimony?

9 JUDGE WOODRUFF: Yes. On rate of return.

10 MR. MILLS: Yes. HC and NP. 403 is the direct
11 testimony on class cost of service, rate design. 404 is
12 the rebuttal testimony. And 405 HC and NP is the
13 surrebuttal testimony.

14 JUDGE WOODRUFF: Okay.

15 Q (By Mr. Mills) Mr. Kind, can you please state
16 your name for the record?

17 A My name is Ryan Kind.

18 Q And by whom are you employed and in what
19 capacity?

20 A I'm employed by the Missouri Office of Public
21 Counsel.

22 Q And what is your job?

23 A My job is -- my position at the Office of Public
24 Counsel is the -- I am the Chief Energy Economist.

25 Q Did you cause to be filed in this case testimony

1 that's been marked as Exhibits 402 through 405?

2 A Yes, I did.

3 Q And with the exception of the -- the one
4 particular issue that we're talking about now, which is
5 really more of a change than a correction, do you have any
6 corrections to make to your pre-filed testimony?

7 A Corrections in -- in -- in any area or just in
8 the area of the testimony that pertains to this issue?

9 Q Why don't we just focus on this issue for this
10 moment.

11 A Okay. I have one correction to make. And that
12 correction actually in the area of the language where our
13 recommendation is that we'll be talking about shortly.
14 That correction is on page 14 at line 20 --

15 Q Are you in your rebuttal testimony?

16 A Yes. I'm sorry. I'm in Exhibit 404, rebuttal
17 testimony, page 14, line 24. And at the end of the line,
18 there is the word "the," which should not be there. So
19 that word should be deleted.

20 So it would read, "company receives that are
21 associated with its implementation" rather than company
22 receives that are associated with the its implementation.
23 We're getting rid of that, the word "the."

24 Q Do you have any additional corrections to your
25 testimony?

1 A Well, yeah. The only other change would be the
2 change that we've -- you talked about in your opening this
3 morning.

4 MR. MILLS: Judge, is it -- is it -- at this
5 point, should I be offering only his testimony about the
6 DSM cost recovery mechanism or all of his testimony?

7 JUDGE WOODRUFF: It gets a little confusing when
8 we do this all piece meal. So --

9 MR. MILLS: I understand. I would be --

10 JUDGE WOODRUFF: Unless somebody objects, I
11 would suggest just offer all of his testimony.

12 MR. MILLS: At this time, I'd like to offer
13 Exhibits 402 through 405, including HC and NP versions of
14 two of those.

15 JUDGE WOODRUFF: All right. 402 through 405
16 have been offered. Any objections to their receipt?
17 Hearing none, they will be received.

18 (Exhibit Nos. 402, 403, 404 and 405 were offered
19 and admitted into evidence.)

20 Q (By Mr. Mills) Mr. Kind, I'd like to just sort
21 of ask you to explain in narrative form the change in the
22 proposal for the cost recovery language that I briefly
23 mentioned in my opening statement.

24 A Certainly. I mean, I -- should I actually
25 repeat the change one more time to make sure it's clear in

1 the record?

2 Q That's fine.

3 A Okay. All right. So the change -- if we
4 actually reference the page 14 of my testimony, we're now
5 in line 23. At the end of that line, there's the word
6 "funds." That single word would be replaced with three
7 additional words. And those words would be "capacity
8 related revenues." And should I briefly exchange the --
9 explain the reason for making that change?

10 Q Yes, please.

11 A Okay. Last night, as I was preparing for this
12 morning's hearing, I was reading Mr. Voytas' testimony a
13 little more closely than I had had a chance to do before
14 then.

15 And as I read his testimony on pages 4 and 5,
16 specifically starting with his answer on line 8 on page 4
17 and continuing through line 8 on page 5, in that passage
18 of his testimony, he has an example of how it would be
19 very difficult to track the -- what I -- the margins that
20 are made from additional energy sales.

21 And I thought he was referring largely to the
22 margin on energy sales as opposed to capacity sales, for
23 example, on page 4 at line 12 where he refers to the
24 margin that AmerenUE generates -- generating plants can
25 earn.

1 And in thinking about his example, I did think
2 that it -- it -- my language -- language could lead to a
3 situation where it was a -- a very administratively
4 difficult way to figure out how -- what exact precisely
5 the incremental amount of energy margins were that were
6 enabled through the energy efficiency and demand side --
7 I'm sorry -- demand response programs.

8 And so the change here is really intended to
9 then limit the type of margins that would count as an
10 off-set to demand side costs to only capacity related
11 margins and not -- not energy margins.

12 MR. MILLS: Thank you. Judge, with that, I
13 think I will tender the witness for cross-examination on
14 this limited aspect of his cross-examination. Or if you
15 would prefer, we can just leave him on stand to stand
16 cross on all aspects of this issue.

17 JUDGE WOODRUFF: Well, let's leave him on the
18 stand to deal with all aspects of this issue so we don't
19 have to bring him back again.

20 MR. MILLS: Okay.

21 JUDGE WOODRUFF: So for cross-examination, we
22 actually begin with Staff.

23 MR. REED: Judge, I have agreed to defer to Ms.
24 Tatro so that AmerenUE can ask him some questions, and
25 then we'll follow-up if we have any. Thank you.

1 JUDGE WOODRUFF: All right. Any other party
2 other than AmerenUE then want to do any cross? Then
3 AmerenUE.

4 CROSS-EXAMINATION

5 BY MS. TATRO:

6 Q Good morning, Mr. Kind.

7 A Good morning, Ms. Tatro.

8 Q I want to ask a couple questions just to make
9 sure I understand exactly what you're proposing here. All
10 right?

11 The language that you're using in this section
12 specifically referring to page 14, the proposed language
13 you are setting forth on lines 21 through 25. And you say
14 -- and it's talking about incremental costs of
15 implementing DSM.

16 I think the parties are aware DSM can mean a
17 couple different things, and I want to know exactly how
18 you're using that phrase. Are you using it as an
19 over-arching term for demand response and energy
20 efficiency programs, or are you using it to be a sub-set
21 of that?

22 A It would be the former. It's used here as an
23 over-arching term that would include both demand response
24 and energy efficiency programs.

25 Q And you're only proposing to off-set with

1 capacity revenues?

2 A Off-set the costs of those programs with
3 capacity revenues that are related to the implementation
4 of those programs. Yes.

5 Q Okay. Let's just explore that a little bit in
6 terms of -- you're using it to mean both, so let's take a
7 weatherization program of a home. Okay? Do you believe
8 that you would be making some kind of capacity sale based
9 on that program?

10 A That's very doubtful. Just -- if there -- just
11 for a couple of reasons. One, the -- the demand impacts
12 of -- if we're speaking about low income weatherization
13 programs --

14 Q Sure.

15 A -- are pretty small. And -- and there wouldn't
16 be much potential there, really, to -- to have any impact
17 that you'd want to look at what sort of capacity sales
18 would be enabled by that program.

19 And the -- the other reason I wouldn't expect at
20 least in the near term to see any revenues related to that
21 program is because the Midwest ISO is -- is not as
22 advanced as other RTOs in their consideration of -- of
23 these issues of how energy efficiency programs could get
24 credit through RTO capacity markets.

25 For instance, the PJM RTO has been having

1 discussions for the last six months in their demand
2 response steering committee about how to integrate energy
3 efficiency into the PJM capacity markets.

4 They don't actually have a tariff filed at FERC
5 yet for that. But they're -- they're moving in that
6 direction. And I -- I expect to see that other RTOs will
7 probably move in that direction, including the Midwest
8 ISO.

9 Q So is the thought that if at some point UE was
10 able to bid capacity into the market somehow because of
11 gains that it had from its energy efficiency, that would
12 be the kind of revenue you would want credited back?

13 A That's primarily the type of revenues that we're
14 talking about. The other type of revenues would be just
15 -- you know, up to this point, UE has not really been
16 involved in any large scale DSM program implementation.

17 If they are, if that ultimately occurs, as -- as
18 UE says its intends to do and they start getting, say,
19 hundreds of megawatts of reductions in load from DSM
20 energy efficiency programs and UE is still in a position
21 of having a considerable amount of excess capacity as they
22 do today, I think that's -- that we need a frame work to
23 consider how some additional revenues that -- that UE
24 would be able to earn under those circumstances should be
25 taken into account as an off-set to DSM costs.

1 Q Okay. Would you agree with me that whatever --
2 let's say energy efficiency program homes -- well, first
3 of all, are you familiar with the DSM programs that UE's
4 working on rolling out at some point in the future, you're
5 generally kind of aware what those programs are?

6 A Yes, I am.

7 Q All right. Do you expect any of those to create
8 additional capacity sales in that first year?

9 A No, I do not.

10 Q Okay. So any crediting that would have to
11 happen, I think I'm hearing, that you agree that that's
12 something more along the term after the program is
13 established and after its had an opportunity to start to
14 reduce demand? Do you agree with that?

15 A That's correct. After it's actually getting
16 some -- some measurable impacts. I think you would have
17 to be getting some verifiable and measurable impact from a
18 program before it would enable you to make additional
19 capacity sales. And those kinds of evaluations that could
20 be -- could verify that are a ways off for UE because they
21 -- they usually don't happen until at least a couple years
22 after the program has been implemented.

23 Q Okay. And if -- if UE continues to have to file
24 rate cases at a regular interval, some of that will
25 already be captured just in the rate-making process,

1 correct?

2 A That's correct. Yes. It -- it would be. To
3 the extent that there already are capacity sales being
4 made in a test year that were enabled by the impacts of
5 DSM programs.

6 Q Staff sets forth a standard that talks about
7 immediate, identifiable, measurable. Do you agree that's
8 the standard by how this should be judged?

9 A I believe so. I'd like to look at that specific
10 language. Do you -- are you referring to the staff
11 proposal in Mr. Warren's surrebuttal testimony?

12 Q Yeah.

13 A So that would be the --

14 Q I think it's also the position they set forth in
15 their statement of issues.

16 A Okay. But for instance, at the bottom of page 2
17 of Mr. Warren's testimony, if there's some specific
18 language in there that you're wanting me to look at or if
19 you just want -- or if there's just some specific terms?
20 I mean, measurable and verifiable, how does it fit
21 into --

22 Q Let's just talk about terms -- yeah.

23 A Okay.

24 Q Staff's position -- and you probably don't have
25 their statement of position in front of you, but Staff's

1 position, and they can correct me if I'm wrong, but it
2 seems to be that there should be an identifiable link
3 between that revenue that's coming back in the program
4 that a party may be claiming is generating that revenue,
5 the capacity crediting of that work. You don't disagree
6 with that, right?

7 A No, I don't.

8 Q Okay.

9 A I mean, it depends on what you mean by a link.
10 But the way I -- I think we might have different
11 interpretations of what a link might be.

12 Q That might be -- that might be the case.

13 A Yeah.

14 Q Let me ask you this question: If energy
15 efficiency measures are productive going forward and UE's
16 decreasing -- is effective in decreasing the demand, then
17 is there not also some revenues that will be lost by the
18 utility because it's not selling as many kilowatts as it
19 did the year before?

20 A I don't know. I'd have to look at load -- you
21 know, the rate of load growth and everything.

22 Q The whole point of DSM is to decrease the demand
23 on the system, right, whether it's at a peak or whether
24 it's over time, right?

25 A Well, it depends on the type of DSM.

1 Q Is there a DSM program that builds demand?

2 A No. But, for instance, demand response programs
3 are primarily aimed at decreasing demand at peak whereas
4 energy efficiency programs are generally more -- more
5 focused on reductions in load throughout the day,
6 throughout the --

7 Q Let's talk about those energy efficiency
8 programs that are focused on reducing load throughout the
9 day. If it's successful and the load is reduced
10 throughout the day, they sell, the customer consumes less
11 electricity, right?

12 A That's correct.

13 Q The thought is their bill will go down because
14 they'll use less electricity, right?

15 A That's one of the considerations for energy
16 efficiency programs.

17 Q Okay. And -- and AmerenUE rates are set
18 presuming a certain number of billing units, right,
19 meaning that they're going to sell a certain amount of
20 power throughout the year, correct?

21 A That's right.

22 Q So if the billing units are set in this case and
23 AmerenUE implements energy efficiency in the next year,
24 until it files another rate case where it resets what
25 those billing units are, the possibility is it's going to

1 lose some revenue, right?

2 A Yeah. I mean, the kind of lost revenues that,
3 say, UE could have addressed through a request for some
4 special rate-making treatment in its most recent IRP
5 filing.

6 Q But the answer to the question is yes?

7 A I already said that.

8 Q You're not disputing it?

9 A I already said that. Yes.

10 Q Okay. All right. And you're not proposing to
11 address that in your proposal?

12 A No. We're -- this is just a cost recovery.
13 You're talking about lost revenues.

14 Q I'm just making sure we're all clear on what our
15 positions are. Okay. Thank you.

16 JUDGE WOODRUFF: All right. For Staff?

17 MR. REED: Thank you. Thank you, Judge.

18 CROSS-EXAMINATION

19 BY MR. REED:

20 Q Mr. Kind, in the event that Ameren were to make
21 an off-system sale because of the curtailment of a large
22 industrial customer, for instance, would you consider that
23 -- and then there was a margin made on the off-system
24 sale, would you consider that a capacity-related revenue?

25 A If there's a margin made on the energy sale?

1 Q Yes.

2 A No, I would not.

3 Q And what -- in what circumstance would you
4 consider the off-system sale to somehow decrease the
5 regulatory asset?

6 A Well, in the circumstance where, for instance,
7 once -- once UE gets some experience with demand response
8 programs and gets comfortable with the -- and develops a
9 level of confidence about the amount of impacts that
10 they're getting from those programs in a manner similar to
11 the way other utilities do, that would enable them to --
12 if they're in a -- in an excess capacity situation to make
13 sales of capacity to other utilities.

14 Those sales of capacity could either -- could be
15 through -- they could be bilateral sales, as they most
16 frequently take place today for UE, or they could take
17 place through a market that's facilitated by the Midwest
18 ISO.

19 Q In the -- in the circumstance where there's a
20 curtailment of a large industrial customer at a peak time,
21 for instance, and that allows -- that actually frees up
22 capacity for Ameren to make the off-system sale, that
23 would be a circumstance where there's a capacity-related
24 revenue generated, isn't it?

25 A I'm sorry. could you repeat that, please?

1 Q Let's take it -- let's take a peak load time --

2 A Okay.

3 Q -- in mid summer, 5 p.m. And there's a
4 curtailment arrangement with a large industrial customer,
5 for instance. So at that time of day, Ameren asks the
6 large industrial customer to accept the curtailment. Of
7 course, there are -- there are funds exchanged. There's a
8 cost for that that will be paid to the industrial
9 customer, correct?

10 A That's correct.

11 Q Okay. And then that would allow -- that could
12 allow, then, Ameren to make a sale off-system at a time
13 when energy costs are very high, correct?

14 A That's correct.

15 Q Okay. And then in that circumstance, is that
16 the kind of netting that we're talking about? The
17 difference, for instance, between the margin made on the
18 sale, the off-system sale and the amount paid to the
19 industrial customer?

20 A I think that's an area that there could be some
21 frame work worked out where those type of energy sales
22 could be recognized as off-setting revenues. But that's
23 not what OPC's current language is proposing to do.

24 Q Okay. What about the circumstance where -- I
25 don't -- I don't think there's a program now for it. But

1 you could see that in Mr. Warren's surrebuttal, he talked
2 about -- in the language that he proposed, he talked about
3 the possibility of a credit from MISO, for instance, for
4 energy efficiency programs. Would that be the sort of
5 thing that would be captured by the language that you
6 proposed?

7 A I believe it would. I don't recall the specific
8 passage from Mr. Warren's testimony. But if it's a
9 capacity-related credit from MISO, that's the type of
10 thing I'd be talking about. Yes.

11 Q Okay. Just let me read the language that
12 Mr. Warren proposed.

13 A Okay.

14 Q He talks about -- this is in the middle of the
15 language. It's on his -- it's in his surrebuttal on page
16 2, if you want to take a look at that.

17 A Okay.

18 Q If you go about midway through that paragraph,
19 he talks about funds from any source that the company
20 receives. And then parenthetically, he talks about
21 bilateral sales of capacity and payments or credits from
22 MISO or demand response or energy efficiency programs.

23 A Yes. That -- I think that -- that language is
24 consistent with Public Counsel's proposal. It just spells
25 it out a little bit more completely. Or it's sort of

1 providing, I guess, almost an example. It says such as,
2 and that's exactly the type of thing that I'm talking
3 about. Yes.

4 Q Mr. Kind, I'm just looking at the last sentence
5 in the paragraph that Mr. Warren had talked about. He
6 talks about if a fuel adjustment clause is allowed, then
7 the -- the reimbursement would flow through the FAC.

8 Do you -- do you have an opinion about if --
9 what would happen to this particular provision regarding
10 your language, the capacity related revenues language, if,
11 in fact, a fuel adjustment clause were granted in this
12 case?

13 A Well, I think that I -- I might agree with this
14 statement at the end of page 2 of Mr. Warren's testimony
15 so long as the -- the terms in the fuel adjustment clause
16 mechanism are clearly defined that off-system sales
17 revenues would include the type of payments that are
18 described in this paragraph.

19 Q I guess what I'm -- just so I can be clear on
20 this, if there -- if there were a fuel adjustment clause,
21 then -- then the revenue generated from the off-system
22 sale would not actually flow into the regulatory asset
23 account; is that right? It would flow through the fuel
24 adjustment clause?

25 A That's correct.

1 Q And so if there -- if there were a regulatory
2 asset account, all of the incremental costs spent by
3 Ameren would serve to build up the regulatory asset
4 account, correct?

5 A Yes.

6 Q But there would -- there wouldn't -- there would
7 be no netting?

8 A No. The -- there would be a netting. But it
9 would be through -- through the combination of two
10 mechanisms rather than just in one single mechanism.

11 The -- the netting would occur by the fact that
12 these DSM programs would cause the companies periodic
13 adjustments under a fuel adjustment clause. They would be
14 cause upward adjustments to be smaller than they would
15 otherwise be. Or downward adjustments would be larger
16 than they would otherwise be.

17 So that would effectively be -- that would be a
18 netting. They wouldn't be netted in a single mechanism,
19 but the netting would still be accomplished, I believe.

20 MR. REED: Thank you, Mr. Kind.

21 MR. KIND: Thank you.

22 JUDGE WOODRUFF: All right. And we'll come up
23 for questions before from the Bench. Commissioner Murray?

24 COMMISSIONER MURRAY: I don't have questions.

25 Thank you.

1 JUDGE WOODRUFF: Commissioner Jarrett?

2 COMMISSIONER JARRETT: No questions.

3 JUDGE WOODRUFF: Commissioner Gunn?

4 COMMISSIONER GUNN: No questions.

5 JUDGE WOODRUFF: I have no questions, so no need
6 for recross. Any redirect?

7 MR. MILLS: Just -- just very briefly, your
8 Honor.

9 REDIRECT EXAMINATION

10 BY MR. MILLS:

11 Q Mr. Kind, in response to some questions from Ms.
12 Tatro about the way rates are set in one case based on
13 billing units -- do you recall those questions?

14 A Yes, I do.

15 Q And I believe you agreed that DSM may reduce
16 demand somewhat; is that correct?

17 A That's correct.

18 Q Is UE projecting significant load growth?

19 A Currently, they are projecting significant load
20 growth, even with the DSM programs that they have planned
21 to implement over the next, you know, five to ten years.

22 Q Is there any rate-making paradigm that captures
23 those increased revenues between rate cases, the increased
24 revenues from customer growth?

25 A I don't believe so.

1 Q And then you were asked some questions about the
2 -- the -- the DSM cost recovery in a scenario in which UE
3 is using an FAC by Mr. Reed. Do you recall those
4 questions?

5 A Yes, I do.

6 Q And you -- and you had some discussion about UE
7 having a fuel adjustment clause, and I just want to ask
8 you to clarify for the record whether or not Public
9 Counsel suggests awarding a fuel adjustment clause in this
10 case.

11 A No. Public Counsel is opposed to the fuel
12 adjustment clause mechanism proposal that UE has made in
13 this case.

14 MR. MILLS: Thank you, Judge. That's all I
15 have.

16 JUDGE WOODRUFF: Thank you. Then, Mr. Kind, you
17 can step down.

18 MR. KIND: Thanks.

19 JUDGE WOODRUFF: The Next witness will be
20 Mr. Voytas. And if you would please raise your right
21 hand.

22 RICHARD VOYTAS,
23 being first duly sworn to testify the truth, the whole
24 truth, and nothing but the truth, testified as follows:

25 DIRECT EXAMINATION

1 BY MS. TATRO:

2 JUDGE WOODRUFF: You may be seated, and you may
3 inquire.

4 Q (By Ms. Tatro) Good morning. Could you please
5 state your name and business address for the Commission?

6 A My name is Richard A. Voytas. My business
7 address is One Ameren Plaza, 1901 Chouteau Avenue, St.
8 Louis, Missouri, 63103.

9 Q And your title?

10 A My title is Manager of Energy Efficiency and
11 Demand Response.

12 Q Are you the same Richard Voytas who filed
13 surrebuttal test -- prefiled surrebuttal testimony in this
14 case?

15 A Yes, I am.

16 Q And do you have any corrections or additions to
17 that testimony?

18 A I have one correction. On my affidavit, my
19 title is incorrect. My title on the affidavit is Manager
20 of Corporate Analyses, and my correct title is Manger of
21 Energy Efficiency and Demand Response.

22 Q And if I were to ask you the questions that are
23 contained within this prefiled testimony, would you give
24 the same answers?

25 A Yes, I would.

1 MS. TATRO: I would like to offer his testimony
2 and tender him for cross-examination.

3 JUDGE WOODRUFF: Okay.

4 MS. TATRO: Actually, before I tender him, I
5 would like to have him offer UE's position on this
6 addition from OPC.

7 JUDGE WOODRUFF: That will be fine. Go ahead
8 and question.

9 Q (By Ms. Tatro) Mr. Voytas, you were in the room
10 when Mr. Kind set forth OPC's amended position?

11 A Yes, I was.

12 Q And can you offer AmerenUE's response to that
13 position, please?

14 A Well, I'll do my best with the -- with the
15 limited information that I have. But what appears to me
16 that -- that we've done is that we've put the focus on the
17 capacity payments as opposed to the energy payments, which
18 greatly changes the -- the issues that I addressed in my
19 surrebuttal testimony.

20 So pending further review, I think the AmerenUE
21 position is that this is an improvement definitely to the
22 DSM netting concept that's been expressed in testimony.

23 Q Do some of the concerns that you have with --
24 that you expressed in your pre-filed testimony with energy
25 sales and how you link them back, would that exist with

1 capacity as well?

2 A The devil is in the details. And, clearly,
3 there are things we can do to assign capacity to energy
4 efficiency.

5 But, for example, in the program planning that
6 we did, we used some national databases, some national
7 hourly load shapes for very specific end use measures,
8 some national coincidence factor.

9 Coincidence factor is a way to assign energy to
10 a peak period. And so, again, the devil is in the
11 details. To -- to take a program, an energy efficiency
12 program that basically operates or reduces load for all --
13 all or a large part of our 8,760 hours in a year is
14 difficult. But that's not to say that it can't be done.

15 so I think the devil is in the details. We'd
16 have to work through that. But it's -- it's an
17 improvement, but it's -- you know, it's still going to
18 require some -- some collaboration and some development of
19 those concepts.

20 Q And an example of the devil is in the details is
21 when Mr. Kind indicated it depends on what you mean by
22 link?

23 A It -- it -- that -- that is one example. And I
24 can -- I can give just a few other examples. But energy
25 efficiency options have a persistent -- have a lifetime.

1 and over their lifetime, there's some degradation,
2 insulation compacts, seals break, expand, things
3 deteriorate.

4 So how you set that capacity at one point in and
5 say that's true over the entirety life of the measure,
6 those things are difficult. Again, I think reasonable
7 people can get together, make some assumptions that they
8 agree to and put those systems in place.

9 But it's nothing that can be done readily. It's
10 something that's going to take some thought. And it's not
11 a black and white science for sure.

12 Q So your thought is outside of this hearing
13 process, perhaps there needs to be a discussion to see if
14 there's a -- a way to work this out?

15 A Clearly, there are ways to assign capacity to
16 energy efficiency. But what is the best way for AmerenUE
17 in the State of Missouri? I think that needs to be worked
18 out.

19 MS. TATRO: Okay. I have -- I have no further
20 questions. And now I tender him for cross-examination.

21 JUDGE WOODRUFF: All right. And his testimony
22 was No. 18, I believe, surrebuttal; is that correct?

23 MS. TATRO: That's correct.

24 JUDGE WOODRUFF: All right. 18 has been
25 offered. Any objections to its receipt? Hearing none, it

1 will be received.

2 (Exhibit No. 18 was offered and admitted into
3 evidence.)

4 JUDGE WOODRUFF: For cross-examination, then we
5 begin with -- does Noranda wish to --

6 MR. CONRAD: No. No questions.

7 JUDGE WOODRUFF: All right. State?

8 MR. IVESON: No questions.

9 JUDGE WOODRUFF: DNR interested?

10 MS. WOODS: No questions. Thank you.

11 JUDGE WOODRUFF: All right. Public Counsel.

12 CROSS-EXAMINATION

13 BY MR. MILLS:

14 Q Good morning, Mr. Voytas.

15 A Good morning.

16 Q Let me start just by making sure that we -- that
17 we're using terms and -- in a similar way. Did you hear
18 Mr. Kind define DSM as demand response plus energy
19 efficiency?

20 A I did.

21 Q And do you concur with that?

22 A I do.

23 Q Okay. Can I get you to turn to page 10 of your
24 testimony? And, specifically, the sentence that begins
25 towards the end of line 7, it states, The mere fact that

1 the Missouri Commission now has a framework for addressing
2 DSM cost recovery is a major step forward relative to the
3 past where the frame work for DSM cost recovery in
4 Missouri had not been addressed by the Commission. Is
5 that what you state in your testimony?

6 A That's what I state.

7 Q And when you refer to the past in that sentence,
8 are you talking about the time before when the Commission
9 began approving DSM regulatory asset deferral mechanisms
10 for Missouri utilities?

11 A That's correct.

12 Q Okay. And by saying that, are you saying that
13 prior to those approvals, the Missouri Commission has had
14 no framework whatsoever for DSM cost recovery?

15 A Well, the term that I struggle with in that
16 question is no term -- or no framework whatsoever. I
17 believe there -- there has always been a cost recovery
18 framework in Missouri.

19 But specifically for DSM as compared to other
20 states where there may be a pre-approval process, an
21 expensing pension mechanism, capitalization, amortization
22 mechanism clearly spelled out, no, those -- those rules
23 were not clearly defined in the State of Missouri.

24 MR. MILLS: Judge, I'd look to have an exhibit
25 marked.

1 JUDGE WOODRUFF: All right. 422 is your next
2 number.

3 (Exhibit No. 422 was marked for identification.)

4 Q (By Mr. Mills) Mr. Voytas, do you recognize
5 what's been marked as Exhibit 422 as a portion of the
6 Commission's utility resource planning rules,
7 specifically, 4 CSR 240-22.080?

8 A Yes. I recognize those.

9 Q And you have done a considerable amount of work
10 on UE's filings pursuant to that IRP rule, have you not?

11 A It depends what you mean by considerable, but I
12 have done work. Yes.

13 Q Have you been involved in all of UE's IRP
14 filings since the Rule was implemented?

15 A In varying capacities, I have.

16 Q Okay. Can I get you to turn to Section 2 of
17 080, which is on the second page of this exhibit? Does
18 that rule provide that the electric utility's compliance
19 filing may also include a request for non-traditional
20 accounting procedures and information regarding any
21 associated rate-making treatment to be sought by the
22 utility for demand side resource costs?

23 A That's what the rule states.

24 Q Has UE ever made this kind of a request as part
25 of its IRP compliance filings?

1 A I don't recall.

2 Q You're not aware of them making that request,
3 are you?

4 A No, I'm not.

5 Q Similarly, has UE ever requested any special
6 treatment for lost revenues pursuant to this rule?

7 A I am not aware that UE has.

8 Q Now, turning back to your testimony, still on --
9 on -- on page 10, at line 13, you state that incentives
10 for the performance of DSM programs should be designed to
11 truly put DSM and supply side investments on an equivalent
12 basis. Is that your testimony?

13 A That's my testimony.

14 Q Will UE be making greater efforts on acquiring
15 supply side resources than demand side resources because
16 the company believes the current level of incentives for
17 demand side resources is insufficient?

18 A UE will be making extensive efforts, its best
19 efforts on all demand side programs. And at this point,
20 with the mechanisms that are in place, it will be doing
21 everything that it can do to achieve the goals that it set
22 in its IRP.

23 Q And is that a yes or a no to my question?

24 A Could you repeat the question, please?

25 MR. MILLS: Can I have the question read back,

1 please?

2 (The previous question was read back.)

3 A Well, I think that question has got a two-part
4 answer. And the first answer is AmerenUE will not be
5 making greater efforts on the supply side than the demand
6 side.

7 And to the extent that in the future rate-making
8 proceedings there are some disincentives or things that
9 dis-incent AmerenUE to pursue DMS, things could change.
10 But, initially, in this plan AmerenUE will be putting
11 equal effort or perhaps more efforts on the demand side
12 than the supply side to get this initiative up and running
13 and make it available to all classes of AmerenUE
14 customers.

15 Q Okay. So it's your testimony here today that
16 the -- the -- any change in the level of incentives for
17 demand side management will not change the amount of
18 demand side resources that UE plans to deploy; is that
19 correct?

20 A Well, not necessarily. I mean, it depends on
21 the level of the incentive. If there -- AmerenUE, as in
22 any corporation, has got budget constraints, and we're
23 committed to a budget for DSM. To the extent that
24 incentive mechanisms could be changed, perhaps could allow
25 for immediate cost recovery, perhaps could allow for some

1 type of return on equity or things like that, those things
2 could change the plan, I'm sure.

3 MR. MILLS: Judge, I'd like to have another
4 exhibit marked.

5 JUDGE WOODRUFF: This will be 423.

6 (Exhibit No. 423 was marked for identification.)

7 Q (By Mr. Mills) Mr. Voytas, do you recognize
8 Exhibit 423 as the -- the cover sheet to part of your
9 integrated resource plan report and the introductory
10 letter from Ameren's CEO, Tom Voss, that accompanied that
11 filing?

12 A Yes, I do.

13 Q If I could get you to turn to the -- the first
14 page of Mr. Voss's letter, the second to last paragraph in
15 the first column, does Mr. Voss state that AmerenUE is
16 planning to increase spending on demand side measures from
17 24 million in 2009 to nearly 56 million by 2015?

18 A Yes, he does.

19 Q And in the paragraph immediately above that,
20 does he talk about a commitment -- However, we are also
21 committed to aggressively pursuing the development of
22 energy efficiency programs?

23 A Yes, he does.

24 Q Okay. So is it your testimony that if there
25 were greater incentives on the demand side that the levels

1 that Mr. -- Mr. Voss talks about here would actually
2 increase?

3 A My testimony is it depends on the nature of
4 those incentives and how they're implemented.

5 Q Could incentives be set in such a way to induce
6 a utility to favor demand side over supply side?

7 A I don't know the answer to that question. I
8 know Mr. Voss has stated in front of the collaborative
9 teams that developed the UE IRT plan that he is committed
10 to energy efficiency and demand response as the first
11 source in meeting future customer needs.

12 Q Well, if you don't know, you don't know. Now,
13 is it -- is it a correct reading in -- in general of your
14 testimony that UE is not completely satisfied by the DSM
15 cost recovery mechanism that it currently has in place?

16 A The intent of my testimony on the cost recovery
17 provision was to open the possibility for future
18 discussions to talk about alternative mechanisms that
19 could be put in place.

20 The intent was not to express satisfaction or
21 dissatisfaction. It was merely to open up the
22 possibilities that there are other states, there are other
23 frame works, there are other best practices that we might
24 want to look at and consider and then jointly decide which
25 way to go.

1 Q Do you have an opinion on whether UE is
2 satisfied or dissatisfied with the current DSM cost
3 recovery mechanism?

4 A I believe my testimony states my opinion, that I
5 believe AmerenUE feels it is a good first step towards the
6 process. And I agree with the position statement that Ms.
7 Tatro read at the beginning of this that it is that first
8 step in the process and we'd like to explore it further.

9 Q So you think improvements can be made?

10 A Yes, I do.

11 Q Okay. In its last rate case, ER-2007-0002, did
12 -- did UE propose any DSM cost recovery mechanism?

13 A My recollection of that case is -- is limited.
14 But what I recall is Staff witness Lena Mantle proposing
15 the DSM cost recovery framework.

16 Q Lena Mantle rather than UE, correct?

17 A Correct.

18 Q Okay. Did UE in this case make a specific
19 recover -- specific proposal for a change in the -- in the
20 recovery of DSM costs?

21 A I don't believe UE did make that request.

22 Q Has UE ever, as part of any PSC filing, made a
23 specific proposal for the recovery of its DSM costs in the
24 State of Missouri?

25 A I don't know.

1 Q Now, at the very beginning of our discussion, we
2 talked about DSM being composed of energy efficiency and
3 IDR. Do you recall that?

4 A I don't recall IDR. I recall demand response
5 and energy efficiency.

6 Q I'm sorry. IDR, industrial demand response,
7 which is the current program that UE has; is that not
8 correct?

9 A That's correct.

10 Q Okay. And I believe, and correct me if I'm
11 wrong, your testimony is that the kind of cost recovery
12 mechanism that Mr. Kind has proposed is more appropriate
13 for demand response than for energy efficiency; is that
14 correct?

15 A That's correct.

16 MR. MILLS: Judge, I'd like to have another
17 exhibit marked.

18 JUDGE WOODRUFF: This will be 424.

19 (Exhibit No. 424 was marked for identification.)

20 Q (By Mr. Mills) Mr. Voytas, are you familiar
21 with the -- the current demand response program that UE
22 has in place?

23 A I am not involved in the implementation of the
24 current program.

25 Q Are you familiar with the program?

1 A I'm familiar with the concept of the program.

2 Q Can you tell me your title again?

3 A My title is Manager of Energy Efficiency and
4 Demand Response.

5 Q Okay. Is there any other demand response
6 program currently in place at Union Electric other than
7 what's generally referred to as the Industrial Demand
8 Response or IDR program?

9 A AmerenUE has a voluntary curtailment program
10 form of demand response that's currently in place.

11 Q And is that the program that was approved in
12 Case No. ET-2007-0459?

13 A Was the voluntary curtailment program approved
14 in that case?

15 Q Yes.

16 A I don't know.

17 Q Okay. Are you familiar with the demand response
18 program that was approved in Case No. ET-2007-0459?

19 A I don't recall participating in this particular
20 case.

21 Q Well, that wasn't my question. My question was,
22 are you familiar with this program?

23 A I'm familiar with the concepts of the program.
24 Yes.

25 Q Okay. Are you aware that pursuant to an

1 agreement that was reached in Case No. ET-2007-0459 that
2 UE has ceased signing up new customers to that program?

3 A I am not aware.

4 Q Are you familiar with the review that AmerenUE
5 did in response to the -- the implementation of the MISO
6 Module E?

7 A No, I'm not.

8 Q Mr. Voytas, who -- who at UE, if not the manager
9 of demand response, is -- is responsible for reviewing
10 demand response programs?

11 A The program design phase of the -- and the
12 modeling aspect of it, my group gets involved. In the
13 development of tariffs and the negotiations, we've got an
14 operations staff and evaluations staff that takes it from
15 there.

16 Q So someone on your staff does this work?

17 A It's not on my staff. I work for Ameren
18 Services. There's an AmerenUE department that has those
19 responsibilities.

20 Q So with respect to AmerenUE's demand response,
21 you really -- demand response programs, can you tell me
22 again what your role would be?

23 A My role is on the quantitative analysis side,
24 looking at those measures that make up the demand response
25 program and analyzing the cost effectiveness of those

1 programs.

2 Q And so you would not be involved in analyzing
3 whether changes at the MISO level have any impact on -- on
4 programs at the UE level?

5 A Well, it depends on -- upon the -- the
6 particular changes. If the AmerenUE program managers who
7 are in charge of the program have questions, they'll come
8 to us. We'll make the appropriate runs and analyses that
9 they request.

10 Q Do you know how many customers UE currently has
11 signed up for any demand response programs?

12 A Well, for the voluntarily curtailment program,
13 I'm aware that roughly 200 customers are signed up for
14 that. And my understanding part of the IDR program is
15 that it's a -- a handful of customers, less than five.

16 Q Do you know whether UE has any current plans to
17 expand any of its demand response programs or implement
18 new demand response programs?

19 A I do.

20 Q And are there plans in place?

21 A Those plans, those programs were defined in the
22 AmerenUE IRP. And there are teams in the process now of
23 putting together the things that need to be put together
24 to put those programs in the field.

25 Q And do you have any knowledge about how the --

1 the assessment of MISO Module E affects those plans?

2 A The MISO Module E assessment has been an
3 integral part in the analyses of those plans. And that
4 pertains to the demand credit. One of the things that are
5 very important with MISO Module E is it's got specific
6 requirements for demand response resources, things of
7 notification, duration, things of those natures.

8 So to make the appropriate plans for the
9 customer side compatible with that, that is a
10 consideration in the development of those plans.

11 Q And if the current IDR program was not
12 compatible with those designs, what would your
13 recommendation be on the continuation of that program?

14 A Well, it depends. I mean, MISO is not the only
15 consideration. There are -- are load following aspects
16 that -- that also have value. MISO add additional value.
17 But we'd have to look at sum total. MISO's not the sole
18 governing criteria for whether or not Ameren UE puts a
19 demand response resource in place.

20 Q And turning back to what's been marked as
21 Exhibit 424, I take from your testimony that you're not at
22 all familiar with this document; is that correct, 424, the
23 filing of ET-2007-0459?

24 A I am not familiar with that document.

25 Q You're not familiar with either part, either the

1 cover pleading or the assessment attached; is that
2 correct?

3 A Well, my group had inputs into various aspects
4 of this. I do not recall putting this document together.

5 Q Now, turning back for a second to regulatory
6 incentives on DSM implementation, would you agree that the
7 level of UE's commitments in DSM is also related to the
8 likelihood of a carbon tax?

9 A By related, do you mean a threat of a
10 relationship, very strong relationship, or does it matter?

11 Q You can explain to me what relationship you
12 believe exists.

13 A I believe the impetus for the DSM programs has
14 got several aspects. One aspect is clearly the need to
15 build a new base load plant and look at options to
16 mitigate that need and look very seriously at maximizing
17 those options as Mr. Voss has stated. I believe that's
18 one aspect.

19 I believe another aspect that's different than
20 past history, at least past history over the past ten
21 years, is that AmerenUE is increasing cost environment as
22 opposed to a decreasing cost environment.

23 Options that we can give customers on the demand
24 side will help them control their energy consumption. I
25 believe that's another key criteria. But I also believe

1 that the level of awareness of climate change has
2 increased significantly from where it has historical
3 levels and that, too, has an influence.

4 What I would place that ahead of the prior to,
5 I'm -- I'm not certain.

6 Q Okay. So it has -- it has some relationship,
7 but you're not able to -- to quantify it very accurately;
8 is that correct?

9 A I think it's a factor.

10 Q Okay. Now, is another factor that plays into
11 UE's commitments in the DSM area the high cost of supply
12 side alternatives that have low carbon emissions?

13 A The fact that a supply side resource is high
14 cost or that it has low carbon emissions, I believe, is
15 what it is. Per the rule, what we do is we look at demand
16 side options and supply side options, whatever their
17 characteristics are, and evaluate those on equivalent
18 footing.

19 The fact that there is a high cost low carbon
20 supply side option out there is just one of several
21 alternatives. But I don't think it influences what we're
22 doing on the DSM side.

23 MR. MILLS: Judge, I would like to offer
24 Exhibits 422, 423 and 424.

25 JUDGE WOODRUFF: All right. 422, 423 and 424

1 have been offered. Are there any objections to their
2 receipt?

3 MR. CONRAD: No.

4 JUDGE WOODRUFF: Hearing no objections, they
5 will --

6 MS. TATRO: I -- just didn't have my mic.
7 turned on. I'm sorry.

8 JUDGE WOODRUFF: I'm sorry. What's your
9 objection?

10 MS. TATRO: I'm not sure there's a foundation
11 for the 424. Is that not the filing in ET-2007-0459 that
12 the witness indicated he wasn't familiar with it, hadn't
13 seen it?

14 JUDGE WOODRUFF: Your response?

15 MR. MILLS: I have no response.

16 JUDGE WOODRUFF: Okay. Well, I think that is
17 the case, that there is lack of foundation for that
18 document since the witness couldn't identify it and had no
19 knowledge of it. So it will not be received.

20 JUDGE WOODRUFF: Cross-examination for the
21 Staff, then.

22 (Exhibit Nos. 422 and 423 were offered and
23 admitted into evidence.)

24 CROSS-EXAMINATION

25 BY MR. REED:

1 Q Good morning, Mr. Voytas. My name is Steve Reed
2 representing the Staff.

3 A Good morning, Mr. Reed.

4 Q The DSM cost recovery mechanism that was
5 proposed by Lena Mantle in the last AmerenUE rate case is
6 still in effect, correct?

7 A That's my understanding.

8 Q The -- the issue of the netting of demand
9 response programs versus all demand side management
10 resources was brought out by Henry Warren in his direct
11 testimony, was it not?

12 A It was.

13 Q In -- in -- I think it was in -- in one of your
14 pieces of testimony. Maybe it was in your rebuttal. You
15 -- you agree with the position taken by Mr. Warren in his
16 direct testimony, do you not?

17 A My testimony is that Mr. Warren's testimony, as
18 it pertains to the IDR program, specifically the demand
19 response program, yes, we -- AmerenUE agrees to that.

20 Q All right. Thank you. I -- I think also this
21 morning we may -- there may be the deposition transcript
22 of Lena Mantle that was taken in this particular rate case
23 that may be offered into evidence. Are you familiar with
24 that deposition transcript?

25 A I have read it.

1 Q Have you read it?

2 A At least portions of it.

3 Q Have you read Staff's statement of position on
4 this issue?

5 A Yes. Yes.

6 Q And are -- are -- are you okay with that -- with
7 the position taken by Staff? Are you in agreement?

8 A Well, it -- it helps clarify things. I don't
9 know if I'm in total agreement. I believe the operative
10 word was that it was some -- I think the word immediate
11 was used.

12 Q Correct.

13 A And I'm still having difficulty actualizing the
14 circumstance what type of energy efficiency related things
15 have that immediate revenue flow associated with that.
16 But to the extent that there is, I think, you know,
17 ideologically, we're -- we're close.

18 Q All right. I think in response to Mr. Warren's
19 direct testimony regarding the need for netting, Mr. Kind
20 of the Office of Public Counsel proposed some language in
21 his rebuttal. You're familiar with that, are you not?

22 A I am.

23 Q In response to that, Mr. Warren in his
24 surrebuttal proposed a different set of language. You've
25 seen that, haven't you?

1 A I have.

2 Q And then this morning, Mr. Kind proposed a
3 little bit different language that you -- you were here
4 for, you heard the testimony, and you heard Mr. Kind
5 explain his basis for the change in language, correct?

6 A Correct.

7 Q All right. Now, at any point, has AmerenUE
8 proposed any language to address the issue of netting that
9 we need to address this morning?

10 A At any point, have we addressed specific
11 language? I'm not familiar that we have proposed specific
12 language.

13 Q There was opportunity in surrebuttal for you to
14 propose -- you to have proposed some language, correct?

15 A If that is a legal question pertaining to what
16 my rights are in surrebuttal, I -- I don't know --

17 Q I didn't intend for it to be a legal question,
18 but --

19 A Yeah.

20 Q You have had an opportunity, have you not, since
21 before this morning to come up with some language and
22 propose something like Mr. Kind did? You have had that
23 chance, haven't you?

24 A The -- the opportunity to include additional
25 things in my testimony, that opportunity clearly exists.

1 Q And outside of the testimony like Mr. Kind did
2 this morning. I mean, he came here this morning with
3 additional language in an attempt to address the -- the
4 netting issue?

5 A Frankly, I am not -- I've got vast experience
6 testifying in Missouri. I'm not familiar with the process
7 where you walk into a hearing with a new proposal and vett
8 it. I've never seen that done before.

9 Q Well, that's not -- I understand. That's not
10 what I was getting at. But we did have language and we're
11 very close, would you agree, regarding the proposal that
12 Mr. Kind has made this morning?

13 A I think pending further review and making sure
14 we understand and talk with the other parties on this, I
15 think we are getting close.

16 Q Thank you.

17 JUDGE WOODRUFF: All right. We'll come up for
18 questions from the Bench. Commissioner Jarrett?

19 COMMISSIONER JARRETT: No questions. Thank you.

20 JUDGE WOODRUFF: Commissioner Gunn?

21 COMMISSIONER GUNN: I don't have any questions.
22 Thank you.

23 JUDGE WOODRUFF: Chairman Davis?

24 CHAIRMAN DAVIS: Good morning, Mr. Voytas. No
25 questions.

1 JUDGE WOODRUFF: All right. No questions from
2 the Bench, so no need for recross. Any redirect?

3 REDIRECT EXAMINATION

4 BY MS. TATRO:

5 Q I have just a couple questions for you,
6 Mr. Voytas. Do you remember when Mr. Mills was discussing
7 DSM cost recovery and he showed you the rule and asked you
8 about whether or not UE was proposing special treatment?
9 Do you recall that conversation?

10 A I do.

11 Q Can you just explain to the Commission what your
12 purpose was for even addressing that issue in your
13 testimony if it wasn't to propose some specific recovery
14 mechanism at this time?

15 A Well, certainly. The issue of cost recovery was
16 raised because, frankly, Mr. Kind raised the issue of the
17 State of Illinois and what was going on in Illinois. And
18 clearly, Illinois is a totally different regulatory
19 framework for DSM cost recovery than Missouri.

20 So using that, I wanted to make sure -- I
21 thought that was a very critical point to make before this
22 Commission. So we addressed that. And then as long as we
23 are on the subject of cost recovery, I mean, clearly,
24 across the nation, there are efforts to -- to promote --
25 to align utility incentives with investment and energy

1 efficiency. And there are -- are models and frameworks
2 and things out there.

3 And so the purpose of my testimony was to say,
4 you know, this is -- the frame work that we have is a good
5 starting point. We can take this other places. There are
6 other issues to consider. And let's do what we can to
7 make Missouri have the framework in place where we can
8 take energy efficiency from being a state that's
9 historically been ranked towards the bottom, make that
10 state ranked towards the top of the list.

11 Q So your goal wasn't to propose anything in
12 particular in this case, but, rather, to start a dialogue?

13 A That's exactly correct.

14 MS. TATRO: Okay. I have no further questions.

15 JUDGE WOODRUFF: All right. And, Mr. Voytas,
16 you can step down.

17 MR. VOYTAS: Thank you.

18 MR. MILLS: Judge, before we leave this issue,
19 can I ask that the Commission take official notice that in
20 Case No. ET-2007-0459, UE filed a pleading in which it
21 stated that, "AmerenUE has ceased entering into any new
22 contracts related to its current IDR tariff."

23 MS. TATRO: I think in order to take notice, it
24 still has to be relevant, and I'm not sure what the
25 relevance to this issue is.

1 MR. MILLS: The relevance to this issue is that
2 this issue applies not only to IDR or demand response in
3 general but to DSM. I mean, to energy efficiency as well.
4 And Mr. Voytas, in his testimony, has drawn a distinction
5 between the application of the language under discussion
6 between its application to energy efficiency as opposed to
7 in that response. And I think relevant to that is the
8 relative magnitude of the two aspects, the DR aspect and
9 the energy efficiency aspect.

10 MS. TATRO: The company -- the regulatory assets
11 are what they are. So whether or not UE enters into any
12 more IDR contracts with industrials for 2009 is of no
13 relevance.

14 JUDGE WOODRUFF: All right. Well, I believe the
15 Commission can take administrative notice of the -- of the
16 filings in the other case. So -- and your Exhibit 424 is
17 the filing that was made in that case?

18 MR. MILLS: That's correct.

19 JUDGE WOODRUFF: Which happens to be my case as
20 well, so I've seen it.

21 MS. TATRO: You denied my request to do the very
22 same thing yesterday.

23 JUDGE WOODRUFF: Well --

24 CHAIRMAN DAVIS: And, Judge, can I inquire --
25 can I inquire of the attorneys?

1 JUDGE WOODRUFF: Sure.

2 CHAIRMAN DAVIS: Okay. My question is, we can
3 take administrative notice of a document being filed. But
4 can we take administrative notice of the actual contents
5 of that document? I mean, because that was -- that was
6 left open in one of our previous discussions here. And I
7 still don't know that we know the answer to that.

8 MR. MILLS: If I may respond, my position is --
9 and I think it's backed up by Chapter 536 -- is that the
10 Commission can take administrative notice of facts. And
11 the fact that I'm asking be taken notice of here is the
12 fact that Ameren has made that statement in a pleading in
13 another Commission case.

14 CHAIRMAN DAVIS: But that doesn't necessarily
15 make it a fact. It just means that they made that
16 statement in another case.

17 MR. MILLS: That's correct. And, in fact, we
18 can certainly treat this if -- if -- and I really don't
19 think it is against their interest. But by the way that
20 AmerenUE is fighting, perhaps it is. And the Commission
21 can -- can take notice of it as an admission against
22 interest.

23 I think it's a relevant fact. I don't know that
24 it necessarily goes directly against Ameren's interests.
25 But I think it's important that the Commission know what's

1 going on in terms of demand response and energy efficiency
2 in terms of the -- the type of cost recoveries that we're
3 talking about going forward.

4 MR. BYRNE: I guess, your Honor, in our view,
5 the Commission can take administrative notice of documents
6 and their content from other cases. And that's -- you
7 know, we've argued that earlier.

8 JUDGE WOODRUFF: Now, I think in the earlier --
9 Ameren's request yesterday was for administrative notice
10 of testimony, not the case, if I recall.

11 MR. BYRNE: That was what happened earlier.

12 JUDGE WOODRUFF: Okay. Well, I'll -- I'll deal
13 with each case as they come up. In this case, I will take
14 administrative notice of the -- of the filing that -- that
15 Counsel brought to our attention.

16 MR. MILLS: Okay.

17 JUDGE WOODRUFF: All right. Next witness then,
18 I believe, is Henry Warren.

19 MR. REED: Is there a chance for a break before
20 we begin, Judge?

21 JUDGE WOODRUFF: If we need to.

22 MR. REED: Thank you.

23 JUDGE WOODRUFF: We'll take a break. Come back
24 in 15 minutes at 10:25.

25 (Break in proceedings.)

1 JUDGE WOODRUFF: Let's come to order, please.
2 All right. We're back from break. And I believe the next
3 witness is Mr. Warren for the Staff.

4 MR. REED: Oh, are we ready, Judge? I'm sorry.

5 JUDGE WOODRUFF: We are ready to get started.

6 MR. REED: Okay. Henry Warren.

7 JUDGE WOODRUFF: All right. And if you'd please
8 raise your right hand.

9 HENRY WARREN,
10 being first duly sworn to testify the truth, the whole
11 truth, and nothing but the truth, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. REED:

14 JUDGE WOODRUFF: You may be seated. You may
15 inquire.

16 MR. REED: Thank you, Judge.

17 Q (By Mr. Reed) Mr. Warren, tell us your name and
18 what you do for a living.

19 A Henry Warren. Employed by the Missouri Public
20 Service Commission as a Regulatory Economists.

21 Q In this case, as I understand it, you've filed
22 -- you prepared part of the Staff's cost of service report
23 at pages 9 and 10, correct?

24 A Yes.

25 Q I believe that's Exhibit No. 200. There's an HC

1 and NP version. And, MR. Warren, you also prepared
2 surrebuttal that's been marked as Exhibit No. 225; is that
3 correct?

4 A Yes.

5 Q Do you have any additions -- or, rather, do you
6 have any corrections that need to be made to either of
7 those two pieces of testimony?

8 A No.

9 Q If asked the same questions in preparing the
10 same report regarding the issues that you've addressed in
11 this case, would your -- would your testimony be the same
12 as it was in writing? Would it be the same today as it
13 was in writing?

14 A Yes, it would.

15 Q Mr. Warren, you've been present while Mr. Kind
16 testified, I take it, and also Mr. Voytas, correct?

17 A Yes.

18 Q So you've heard the discussion about the change
19 in OPC's position regarding capacity-related revenues?

20 A Yes, I have.

21 Q Do you -- do you -- do you feel you have
22 sufficient understanding of the issue to address for us
23 your opinions about the change in OPC's proposal from -- I
24 think the main change was changing the word "funds" to
25 "capacity-related revenues?"

1 A Yes. I am -- from my understanding at this
2 time, I would be in favor of -- I would -- I would support
3 that change and possibly with the reservation of needing
4 to define -- define the term capacity-related revenues,
5 with a little more specificity -- specificity.

6 Q All right. But do you think in -- do you think,
7 generally speaking, it -- it captures the position that
8 Staff took in the position statement in this case, subject
9 to some details, I guess?

10 A Yes.

11 MR. REED: All right. Thank you, Mr. Warren.

12 JUDGE WOODRUFF: Okay.

13 MR. REED: oh, I should move for admission, I
14 think, of -- at least Exhibit 225.

15 JUDGE WOODRUFF: And the portion of 200 that --

16 MR. REED: Is that how we do that, Judge?

17 JUDGE WOODRUFF: That's what we've been doing.

18 MR. REED: All right. That portion of Exhibit
19 200, pages 9 and 10, I believe, that Mr. Warren prepared.

20 JUDGE WOODRUFF: That's fine. The testimony of
21 Mr. Warren has been offered into evidence. Are there any
22 objections to its receipt? Hearing none, it will be
23 entered into evidence.

24 (Exhibit No. 225 was offered and admitted into
25 evidence.)

1 JUDGE WOODRUFF: And cross-examination, we begin
2 with Public Counsel.

3 MR. MILLS: No questions.

4 JUDGE WOODRUFF: All right. Any -- go to the
5 AmerenUE. But does anybody else want to cross? AmerenUE?

6 MS. TATRO: Thank you.

7 CROSS-EXAMINATION

8 BY MS. TATRO:

9 Q Good morning, Mr. Warren.

10 A Good morning.

11 Q I just want to make sure I have an accurate
12 understanding of what everyone's recommending here. So
13 let's start with your testimony that you just provided
14 orally on the stand about being -- accepting the proposal
15 of Ryan Kind. Okay?

16 Mr. Kind's testimony, I believe, is that the
17 off-set to costs that are placed in its regulatory asset
18 is limited to capacity revenues. Is that your
19 understanding?

20 A Yes. I believe that's the term,
21 capacity-related revenues.

22 Q Do you understand that term to include, to make
23 it simple, off-system sales revenues that might be related
24 to those programs?

25 A Probably simply stated, the -- that would be the

1 simplest way to state it, yes.

2 Q So you're defining capacity sale as energy
3 sales?

4 A Yes.

5 Q Or to include energy sales?

6 A Yes.

7 Q Do you -- do you think that's how Mr. Kind used
8 it when he proposed his language?

9 A Well, I think he -- yeah. I think he gave some
10 examples that indicated he was -- he was speaking of -- of
11 capacity type sales. Yes. Of -- of -- yes. Now, and --
12 and when you -- and I -- I'm assuming when you use the
13 term -- when you use the term energy, you're -- you're
14 speaking of -- of capacity?

15 Q All right. Let's use the word capacity sale.

16 A Okay.

17 Q All right. Even with that language, do you
18 believe that the revenues that used to off-set should
19 still meet the standards that were set forth by your
20 counsel in his opening statement when he used the words
21 immediate, identifiable and measurable?

22 A Yes.

23 Q Let's talk about some examples of energy
24 efficiency. Well, back up for a moment. On demand
25 response, do you think that identifying potential related

1 capacity sales -- you would apply that standard as well,
2 immediate, identifiable and measurable --

3 A Yes.

4 Q -- correct? All right. And then on energy
5 efficiency programs, let's kind of walk through some of
6 them, and tell me if you believe they would have such
7 revenue off-set. Okay?

8 On the residential side programs that work to
9 get more energy efficient lighting and appliances into
10 homes, do you see those types of programs as ones that
11 would have an immediate, identifiable and measurable
12 impact or revenue that should be used to off-set that
13 cost?

14 A No. Not in -- not in this context.

15 Q Okay. How about home energy audits?

16 A Well, of course, the home energy audit itself, I
17 guess without getting -- you know, is not a -- you know,
18 does not affect the -- the actual efficiency of the
19 household. It simply points out how the household could,
20 you know, do things better. So -- so the answer would be
21 no.

22 Q Okay. How about a program that gives incentives
23 to replace -- put in new heaters or air conditioning
24 systems that's more efficient?

25 A That would be -- that would be difficult to

1 quantify immediately. So I would say no.

2 Q Okay. Okay. How about critical peak pricing
3 demand response?

4 A Well, I'd probably need to know a few more -- a
5 few more details about that. But I believe that's --
6 that's more -- I think the -- the previous examples you'd
7 given are more -- more on the residential side. And I
8 believe that's more on -- you know, on a commercial,
9 industrial -- on a commercial industrial side. And I -- I
10 believe those would fall in the category of being able to
11 -- that there would be a -- a reduction in -- in capacity
12 as a result of those -- of that, yes.

13 Q So you think it's more likely that energy
14 efficiency programs that will have an immediate,
15 identifiable and measurable impact are going to be ones
16 related to -- are available to the commercial class or
17 maybe an industrial class versus residential?

18 A Well, I -- on -- I think we've kind of gone back
19 and forth between energy efficiency and demand response.
20 And --

21 Q And perhaps that was my error. I apologize.

22 A Okay.

23 Q Let's try to keep it with energy efficiency.

24 A Well, I -- no. I think any energy efficiency
25 program, it would be at this time difficult to identify an

1 immediate response. And when I say at this time, I mean,
2 given the -- not having some kind of advanced metering
3 capacity, which is not generally in place at this time.

4 Q So a -- energy efficiency program for a
5 commercial customer that incents them to change to a more
6 efficient motor, would that have an immediate,
7 identifiable and measurable impact, in your mind?

8 A Not on -- not as far as a capacity -- I don't
9 think it would be say -- on the overall capacity of the --
10 of the AmerenUE system, no.

11 Q So can you -- can you give me an example of what
12 energy efficiency program might have an immediate,
13 identifiable and measurable impact that would result in a
14 revenue that should be credited back?

15 A I -- I don't have an example of an energy
16 efficiency program.

17 Q Okay. So at this point, in your mind, it's kind
18 of a theoretical idea, but you haven't heard of an energy
19 efficiency program at this point in time that you would
20 recommend crediting capacity revenues back against those
21 costs?

22 A Not -- not with the -- I don't believe with the
23 -- you know, like I said, with the current ability to --
24 to meter and measure. I know that -- I guess I -- I am
25 aware that -- that there are programs for the -- the --

1 there are -- there are attempts to measure these programs
2 -- these programs, but I am not -- not aware of -- of that
3 being done, you know, in the context of -- you know, in
4 the context of -- of programs here in Missouri.

5 Q And -- and I ask these questions because, if
6 you'll turn to page 2 of your testimony, and you offer
7 what you call a modified version of Ryan's language,
8 which, of course, is a modified version of the version
9 he's already modified.

10 But on line 20 of that, you -- you talk about
11 the cost of low income weatherization programs. And then
12 later on, you're talking about the off-set. And I just
13 want to make sure there's no confusion here.

14 You're not saying that with the weatherization
15 program there will be any off-setting revenue that should
16 be put into that regulatory asset account; is that
17 correct?

18 A Well, I think in terms -- as I say later, it
19 would -- unless some -- unless something is -- is
20 developed where there would be, you know, a MISO credit
21 for something like that -- and I -- and I don't -- you
22 know, I don't have immediate knowledge of how that would
23 -- how that would occur.

24 But I -- at this time, I'm not aware of -- of
25 any -- you know, of a -- of a transaction of that type

1 that exists.

2 Q So at this point, you're just asking the
3 Commission to hold open that option in case theoretical
4 possibility develops in the future?

5 A Yes.

6 Q Okay. Now, Mr. Warren, who do you report to?

7 A My immediate supervisor is Tom Imhoff.

8 Q And who does he report to?

9 A His immediate supervisor is Lena Mantle.

10 Q And, in fact, she's the Director of the Energy
11 Division for Staff, right?

12 A Correct.

13 Q So she sets the policy for staff for your
14 portion of Staff?

15 A I -- yes.

16 Q And do you know what her position is on netting
17 energy efficiency versus demand response?

18 A I've had -- I've had discussions with her on --
19 on -- on this issue. And I've -- I believe that she is in
20 favor of the -- the netting of demand response programs to
21 the regulatory asset account.

22 Q What about energy efficiency?

23 A I'm not aware of any energy efficiency activity
24 that would be -- that we've discussed that would be for
25 the regulatory asset account.

1 MS. TATRO: Okay. Your Honor, may I approach?

2 JUDGE WOODRUFF: You may.

3 MS. TATRO: I'm going to hand Mr. Warren a
4 deposition of Ms. Mantle that I previously showed counsel.
5 Because I didn't have the ruling this morning that you
6 made, I didn't do it as early as I otherwise would. But
7 I'm just going to ask him to read a portion of that that's
8 on this topic.

9 JUDGE WOODRUFF: Okay.

10 MR. REED: If I -- if I might, Judge, I'll
11 preface this with I have no objection. But I think with
12 regard to designations that they need to be done more
13 timely, and I hope that we develop some procedure to that
14 effect. It shouldn't be a surprise. And I should have
15 the opportunity to counter designate or object. So with
16 that, let's read the testimony.

17 JUDGE WOODRUFF: All right.

18 MS. TATRO: And I don't disagree with the
19 statement.

20 MR. MILLS: And, Judge, before we get -- she
21 gets into this too deeply, I -- it was my understanding
22 that what we were talking about with depositions is using
23 portions of depositions of the current witness to either
24 count as an admission against interest or impeachment or
25 something. Here we're talking about, as I understand it,

1 a deposition of a different Staff employee who was not a
2 witness on this issue.

3 And if we're reading the statements of Ms.
4 Mantle in her deposition into the record here, I mean, I
5 think it's hearsay and I don't have the opportunity to
6 cross-examine Ms. Mantle today. And I'm not sure that --
7 that what we're doing here is really what you were talking
8 about earlier in the day when we were talking about the
9 use of depositions.

10 JUDGE WOODRUFF: Well, at this point, I don't
11 know what the portion of the deposition is going to be.
12 So I'll allow it to go forward. If you have an objection
13 after we hear what is stated, then we'll -- we'll deal
14 with it then.

15 MR. MILLS: Okay.

16 Q (By Ms. Tatro) Mr. Warren, can you read the
17 highlighted portion, both the questions and the answers,
18 please?

19 A All right. This is -- I see on page -- it's
20 page 78, line 16. Okay. Are you -- and the question is,
21 Okay, are you familiar with -- you've testified on DSM
22 cost recovery, to jump to a whole different topic. I
23 guess that's a question.

24 Answer, yes. In the previous case, right? Yes,
25 I have. But in this case, I think Henry Warren is

1 testifying on that; is that true? That's correct. And
2 did you work with him in putting this testimony together
3 on DSM cost recovery? Yes, I did.

4 Okay. And so you -- your -- and what's his
5 position? I'm not familiar with it. What's his position
6 on DSM cost recovery, if you know? Answer, his position
7 -- his DSM cost should be recovered in regulatory asset
8 account, but demand response programs were a reduction in
9 customer's usage is able to be -- to -- is used to be able
10 to earn more on the market. That should be a net
11 question.

12 Okay. Answer: For the cost and the revenues.
13 Question: So like -- and that goes into that account?
14 Question: So, for example, I think maybe an example would
15 be our IDR tariff. Is that an example of -- of that where
16 you would make a -- ask certain customers to curtail for
17 economic reasons because you could sell power on the
18 market and then in that situation the revenues would get
19 netted against the cost of the program? Answer: That's
20 correct.

21 Okay. Answer: That's what we're talking about.
22 Question: Other programs where there is not this direct
23 connection, like if you just had a -- as you know, a
24 weatherization program or some energy efficiency program
25 where there's not an obvious connection to a revenue

1 source, there would be no netting in those cases; is that
2 correct? Is that right?

3 Answer: That's correct. Okay. And you support
4 that, and Henry Warren supports that? Answer: Yes.

5 MS. TATRO: People are going to object?

6 MR. MILLS: Well, I'm going to object that that
7 be stricken. What we have there is an out of court
8 statement by some person who is not a witness on this
9 issue as to what she thinks Mr. Warren's testimony is.

10 We have Mr. Warren here on the stand. We have
11 his testimony on the record. And I don't believe that
12 it's appropriate to -- to read into the record what some
13 other person from Staff said at some other time about what
14 she thought Mr. Warren's testimony was. It's hearsay, and
15 it's not admissible.

16 JUDGE WOODRUFF: Ms. Tatro, what is the purpose
17 of offering this?

18 MS. TATRO: It's an admission of a party
19 opponent, your Honor. It's a deposition taken in this
20 case, and it's an admission that she believes as Staff in
21 her position as the manager of the Energy Department that
22 the -- what the appropriate policy and approach is on the
23 netting issue.

24 JUDGE WOODRUFF: Was her position any different
25 than what Mr. Warren has already testified to?

1 MS. TATRO: You know, things have really morphed
2 in this case just in the last hour, so perhaps I'm a bit
3 unsure. It certainly is different than his initial filed
4 position.

5 JUDGE WOODRUFF: Okay.

6 MR. MILLS: And I think we're -- we're beginning
7 to get into -- into some areas that I -- that I fear we're
8 going to tread a lot more deeply into, which is what
9 exactly is an admission against interest.

10 Not every statement by somebody who -- on behalf
11 of another party is going to be admission against
12 interest. This, for example, I think, was -- if I hear
13 the questions correctly, were simply asking Ms. Mantle
14 what she thought Mr. Warren's testimony was. That, by
15 definition, can't be an admission against interest. It's
16 simply her description of what she thinks he said in
17 pre-filed testimony.

18 I don't think this qualifies as an admission
19 against interest, and I think it's simply hearsay.

20 JUDGE WOODRUFF: Well, I'm -- I'm going to
21 overrule the objection and allow this testimony in. I
22 don't want to be -- I don't want this thrown back at me
23 when another objection comes up.

24 As I indicated earlier this morning, we'll deal
25 with each situation as it comes up. I'll go ahead and

1 allow this testimony to remain in the record.

2 MR. REED: And, Judge, I -- I realize I said
3 let's read it into the record. But, you know, after
4 hearing it, it's actually -- as Mr. Mills points out, it's
5 improper bolstering. So take that into account for the
6 next --

7 JUDGE WOODRUFF: Okay.

8 MR. REED: -- deposition statement.

9 JUDGE WOODRUFF: Okay. Well, I've made my
10 ruling, so we can move on.

11 MS. TATRO: I have no further questions. Thank
12 you.

13 JUDGE WOODRUFF: Okay. And I guess I was -- oh,
14 for the cross-examination, then, questions from the Bench,
15 then? Commissioner Jarrett?

16 COMMISSIONER JARRETT: No questions.

17 JUDGE WOODRUFF: Commissioner Gunn?

18 COMMISSIONER GUNN: I don't have anything.

19 JUDGE WOODRUFF: Chairman Davis?

20 CHAIRMAN DAVIS: (Chairman Davis shakes head.)

21 JUDGE WOODRUFF: I have no questions, so no need
22 for recross. Any redirect?

23 MR. REED: I think I just have one -- I just
24 have one question, Mr. Warren.

25 REDIRECT EXAMINATION

1 BY MR. REED:

2 Q When you talked about energy efficiency programs
3 and how they would not meet -- they would not be -- I
4 guess they would not be immediate -- the revenues would
5 not be immediate enough in order to be included in the
6 regulatory aspect as a set-off, there is possibility that
7 there might be future programs where in the -- there could
8 be more immediately, identifiable and linkable revenues
9 that would relate to, for instance, an energy efficiency
10 program?

11 A Yes. That's my understanding, that there are
12 efforts to be able to make a determination of what the
13 capacity impact is of some energy efficiency programs.
14 But I'm not -- so I think that might be a possibility in
15 the future.

16 Q Well, you -- you mentioned in your surrebuttal
17 testimony credits or payments from MISO for certain energy
18 programs that might be developed in the future. Is that
19 what you had in mind? Is that what you're talking about?

20 A Yes. That's what I had in mind. Yes.

21 Q So it's not a reality, but it could be someday?

22 A That's my understanding. Yes.

23 Q Just for clarification, is Ms. Mantle's title
24 the Manager of the Energy Department?

25 A I believe that's her title. Yes.

1 MR. REED: All right. Thank you.

2 JUDGE WOODRUFF: All right. Then, Mr. Warren,
3 you can step down. And I believe that concludes this
4 issue.

5 The next issue on the list is the low income
6 weatherization program. And I assume we'll start with
7 mini openings on that as well, beginning with AmerenUE.

8 MS. TATRO: Your Honor, I think maybe it would
9 make sense for DNR to give their opening first because
10 they're the one making the request.

11 JUDGE WOODRUFF: That's fine.

12 MS. TATRO: So I have no objection to that.

13 LOW INCOME WEATHERIZATION

14 OPENING STATEMENT

15 BY MS. WOODS:

16 MS. WOODS: Good morning. The Department is
17 here today on the -- the issue of low income
18 weatherization. And the evidence in this case will show
19 that in AmerenUE's last rate case, Case No. ER-2007-0002,
20 the Commission ordered Ameren to fund a low income
21 weatherization program in the amount of \$1.2 million.

22 The Commission further ordered that 600,000 of
23 that 1.2 million was to come from the ratepayers with the
24 additional 600,000 coming from Ameren shareholders. And
25 that \$1.2 million was to be funded on an annual basis.

1 Following the Commission's report and order in
2 that case, Ameren, the Commission Staff and the Missouri
3 Department of Natural Resources Energy Center entered into
4 a cooperation and funding agreement.

5 In that agreement signed by Mr. Richard J. Mark
6 on behalf of AmerenUE, Ameren agreed to submit its first
7 payment of approximately \$1.2 million on or before
8 September 1st, 2007. It agreed to make all future
9 payments on July 5 of each subsequent year.

10 Ameren did make the first payment of not quite
11 \$1.2 million because a certain percentage was set aside
12 for a -- a evaluation of the low income weatherization
13 program, but all the parties has agreed when necessary.
14 But they did make that payment on September 1, 2007.

15 On July 5, 2008, AmerenUE submitted \$900,000.
16 The evidence is clear that there is a need for a low
17 income weatherization program in Ameren's service
18 territory.

19 Department witness, Laura Wolfe, has offered
20 testimony in her pre-filed testimony, direct and
21 surrebuttal showing how disruptive to the provision of low
22 income weatherization services Ameren's failure to submit
23 the full \$1.2 million was and how disruptive any failure
24 to provide annual funding in the future would be
25 predominately to those local community action agencies

1 that actually implement the program and deliver the
2 services.

3 The Department will, finally, offer testimony
4 recommending that the low income weatherization program
5 continue in effect unless or until the Commission orders
6 that the program terminate or that it continue at a lesser
7 or greater amount in some future rate case.

8 Contrary to the argument advanced by Ameren,
9 this proposal addresses the situation we find ourselves in
10 today. When Ameren decides unilaterally to withhold
11 \$300,000 of the \$1.2 million ordered by the Commission and
12 agreed to by Ameren, nothing in the Department's proposal
13 would bind future Commissions.

14 You may always revisit the terms of the program
15 in a future rate case should that be their desire. Thank
16 you.

17 JUDGE WOODRUFF: Opening for Ameren?

18 OPENING STATEMENT

19 BY MS. TATRO:

20 MS. TATRO: Ms. Woods for -- on behalf of DNR is
21 correct. In the last rate case, this Commission ordered
22 AmerenUE to contribute \$1.2 million to weatherization
23 efforts. Half that revenue was built into the company's
24 -- half of that amount was built into the company's
25 revenue requirement. The other half was funded by

1 shareholders.

2 Now the report and order in that case was issued
3 in June of 2007. And I know dates and numbers are not
4 fun, but they're the basis and the reason for what
5 happened.

6 The company made its first payment in July of
7 that year. It paid \$1.2 million. The 600,000 was
8 included in rate base, and then it was collected each
9 month. 50,000 would be collected through rates in June,
10 50,000 would be collected through rates in July, and so on
11 where over a year, we would collect the \$600,000. That's
12 how it was built to work.

13 Now, July of 2008 rolls around, and it's time to
14 make another payment. Well, now there's a twist. There's
15 a new rate case pending and the rates that are currently
16 in effect aren't going to be in effect for June, for
17 March, April, May or June of 2009. And we don't know
18 whether this Commission is going to continue the 600,000
19 in the new rate.

20 So AmerenUE paid the amount that was due for
21 June through February, essentially nine months of that
22 total \$1.2 million, treating the ratepayer portion and the
23 shareholder portion the same.

24 We know they're in effect through March. We
25 don't know what happens after March 1st. Now, the

1 contract that she talks to you about is irrelevant to this
2 portion of the proceeding.

3 This Commission's duties do not include
4 enforcing a contractual arrangement between DNR and UE.
5 And you're not bound by what might be in that contractual
6 arrangement. If DNR thinks we're in violation of a
7 contract, they have a remedy. And you all are not that
8 remedy.

9 The company has asked you to continue the
10 \$600,000 that's in its revenue requirement going forward.
11 And if this Commission grants that request, then they're
12 -- then DNR is owed another \$150,000.

13 This company has asked you not to continue the
14 600,000 that is -- has been ordered to come from
15 shareholders as we don't believe that's an appropriate
16 exercise of your discretion or your powers and that
17 150,000 would not be paid.

18 Now, AmerenUE understands DNR's predicament and
19 their need for constant funding. Obviously, it's easier
20 to plan if you know what dollars are coming in. And we're
21 not disputing any of that, nor are we disputing that the
22 weatherization program that DNR funds is a good program,
23 and we've supported it in the past.

24 But because of the intricacies of the way the
25 rate-making process works, it appeared to us that was the

1 most prudent course of action and was not intended by
2 anyone to be in violation of any Commission order, but,
3 rather, it was consistent with that order and the way the
4 rate-making process works.

5 And we will ask you to continue that 600,000
6 that is already paid by ratepayers going forward. Thank
7 you.

8 JUDGE WOODRUFF: Opening for Staff?

9 CHAIRMAN DAVIS: May I inquire of Ms. Tatro for
10 a moment?

11 JUDGE WOODRUFF: Sure.

12 CHAIRMAN DAVIS: Is your -- and we may have to
13 have this issue briefed. But is it your opinion that this
14 Commission does not have the statutory authority to order
15 you to spend shareholder money on energy efficiency
16 programs?

17 MS. TATRO: I believe that's right. I believe
18 if it's a prudent expenditure that you can order, that we
19 should have -- we have the right to recover that cost.
20 And to require us to expend money and not have the
21 opportunity to recover it, I -- I don't think that's
22 correct.

23 CHAIRMAN DAVIS: Okay. And your basis for that
24 brief is statutes, case law?

25 MS. TATRO: Both. You want me to give you a

1 citation?

2 CHAIRMAN DAVIS: That would be nice.

3 MS. TATRO: I don't have that with me. I'd be
4 glad to brief that for you.

5 CHAIRMAN DAVIS: Okay. All right. Thank you.

6 MS. TATRO: Thank you.

7 JUDGE WOODRUFF: Opening for Staff?

8 MR. REED: Thank you.

9 OPENING STATEMENT

10 BY MR. REED:

11 MR. REED: And I think the issue will have to be
12 briefed with regard to what authority the Commission has
13 over the shareholder contribution on this issue. The
14 Commission certainly has jurisdiction over that portion of
15 the contribution to the low income weatherization program
16 that the ratepayers will make because that will be
17 included in the late rates.

18 But whenever I look at this particular issue,
19 contrary to what Ms. Tatro says, we'll take a look at the
20 contract that was entered into by AmerenUE, that was
21 entered into by the EIERA, and that is the State
22 Environmental Improvement and Energy Resources Authority
23 and the Missouri Public Service Commission, not the Staff,
24 but the Commission, this Commission, the Commission
25 itself.

1 This contract calls for AmerenUE to fund this
2 program at \$1.2 million per year. The contract, and
3 you'll get to take a look at it this morning, is not
4 conditional. It is not limited in time. It is not
5 limited in any way.

6 The contract calls for AmerenUE to fund this
7 program at \$1.2 million per year. There is no limitation
8 with regard to where the money comes from. It hasn't been
9 challenged in court. The contract hasn't been challenged
10 in court, and Ms. Tatro says it can't be challenged here.

11 But I submit to you that that's not the case.
12 Take a look at the contract and make a decision about this
13 low income weatherization program based upon what AmerenUE
14 committed to do just a short time ago.

15 The only question, really, is what the source of
16 funds will be for this \$1.2 million. If you look at the
17 contract itself, AmerenUE is -- is obligated to provide
18 the \$1.2 million. But if the Commission says nothing else
19 about the contract or where the money comes from, we know
20 that Ameren are -- the money will come from ratepayers.

21 So the issue of -- of who pays for what has to
22 be addressed. And that's what we'll ask you to do this
23 morning. Thank you.

24 JUDGE WOODRUFF: Any other party wish to make an
25 opening?

1 MR. CONRAD: Judge, I -- just listening to this,
2 I'm at some point curious as to whether or not what you
3 have before you is really more of a legal question. I
4 mean, a contract instruction problem -- maybe I'm
5 misunderstanding something.

6 And the question I guess I have is -- is it
7 possible to stipulate facts here that -- I mean, the --
8 the Commission, I think, can construe tariffs. I'm not
9 sure the Court can go so far as to say you can engage in
10 contract instruction.

11 You know, I'm -- we're not taking a position on
12 the issue at this point. I -- it just struck me as I was
13 listening to the presentations.

14 JUDGE WOODRUFF: Well, if -- if the parties
15 could -- could stipulate to the facts, that would be
16 wonderful. But apparently they haven't been able to. So
17 I guess we'll hear the evidence, which leads to the first
18 witness, I believe, which would be Mr. Mark.

19 MS. WOODS: Your Honor, I think if we had maybe
20 five or ten minutes, we might be able to stipulate to
21 sufficient facts that -- that would chew this up for legal
22 arguments in the briefs.

23 JUDGE WOODRUFF: Okay. Well, let's go ahead and
24 take a 15-minute break, and we'll come back at 11:20.

25 (Break in proceedings.)

1 JUDGE WOODRUFF: All right. Let's go ahead and
2 get started again. All right. Ms. Woods, do you want to
3 tell me if you've been able to reach an agreement?

4 MS. WOODS: I believe that we have a
5 stipulation. And since Ms. Tatro was the secretary for
6 the group, I will allow her to read the stipulations that
7 -- I believe it's three key stipulations of fact.

8 JUDGE WOODRUFF: Okay. Go ahead, Ms. Tatro.

9 MS. TATRO: Yeah. We've stipulated to three
10 facts, the first of which is that in the Commission's
11 report and ordered issued in ER-2007-0002, they ordered
12 that, "The Commission directs that the low income
13 weatherization program continue with funding provided
14 600,000 by ratepayers and 600,000 by AmerenUE
15 shareholders." And that's on page 113 of the report and
16 order.

17 The second fact is that a contract was entered
18 into among the parties and a true and correct copy of that
19 contract is attached to the direct testimony of DNR
20 witness Wolfe marked as Exhibit LW-2.

21 And the third fact is that AmerenUE paid
22 \$900,000 on or around June 26, 2008, towards this
23 obligation.

24 JUDGE WOODRUFF: And do we want to go ahead and
25 admit the testimony of the witnesses?

1 MS. TATRO: I think we would like to go ahead
2 and admit the testimony of the all the parties' witnesses.

3 JUDGE WOODRUFF: That would be Mr. Mark,
4 Ms. Wolfe and Mr. Warren?

5 MS. TATRO: I don't know if I can move for
6 admission of all three or -- I could stipulate they all
7 could be admitted.

8 JUDGE WOODRUFF: And no one will have any
9 cross-examination on those witnesses?

10 MS. WOODS: Not at this time.

11 JUDGE WOODRUFF: Okay. All right. Which
12 particular -- let's go through the exact numbers of the
13 witnesses here. Mr. Mark is 19 and 20, I believe?

14 MS. TATRO: That's correct. That's correct.

15 JUDGE WOODRUFF: All right. 19 and 20 have been
16 offered into evidence. Are there any objections to their
17 receipt?

18 MS. WOODS: None.

19 JUDGE WOODRUFF: Then they will be received into
20 evidence.

21 (Exhibit Nos. 19 and 20 were offered and
22 admitted into evidence.)

23 JUDGE WOODRUFF: And Ms. Wolfe?

24 MS. WOODS: That would be -- her direct
25 testimony is Exhibit 550, and her surrebuttal testimony is

1 Exhibit 551.

2 JUDGE WOODRUFF: 550 and 551 have been offered
3 into evidence. Any objection to their receipt? Hearing
4 none, they will be received.

5 (Exhibit Nos. 550 and 551 were offered and
6 admitted into evidence.)

7 JUDGE WOODRUFF: And Mr. Warren, I believe we
8 have already admitted his surrebuttal, and he had a
9 portion of the Staff report as well?

10 MR. REED: Yeah. The Staff report didn't
11 address this issue, so it's only Exhibit 225. And that's
12 been admitted, Judge.

13 JUDGE WOODRUFF: Okay. Very good. And that
14 should take care of that issue until we get the briefs,
15 then; is that correct?

16 MS. TATRO: Yes, your Honor.

17 JUDGE WOODRUFF: Okay. Let's move on, then, to
18 power on and other advertising expense. And I assume
19 we'll do mini openings for that, I guess beginning with
20 AmerenUE.

21 MS. TATRO: Well, good morning once again.

22 JUDGE WOODRUFF: Yes.

23 POWER ON AND OTHER ADVERTISING EXPENSE

24 OPENING STATEMENT

25 BY MS. TATRO:

1 MS. TATRO: The last time AmerenUE was before
2 this Commission requesting a rate increase, there was a
3 very different approach used by AmerenUE in a lot of
4 areas, including communication with our customers.

5 They were our customers. There is electric
6 choice in the case State of Missouri, communication by
7 what we were doing in terms of investment in the system
8 wasn't on the top of our priority list.

9 But 2006 and between changed a lot of things,
10 and the company's recognized it needed to make a lot of
11 changes. We hope this Commission recognizes those
12 changes, including our renewed commitment to improving the
13 reliability of our distribution system and reliability of
14 service to our customers.

15 Part of that commitment on the part of AmerenUE
16 is to increase the information we share about this work so
17 that the public knows what's happening. Mr. Mark's
18 testimony points out that AmerenUE had over 500 meetings
19 with customers and community leaders.

20 Again and again, he was told to improve the
21 reliability of service and tell us, communicate with us
22 about what you're doing to reach that goal.

23 The advising that is in question today is the
24 company's response to our customer's request that we tell
25 them what we are doing to improve the reliability.

1 Generically, people refer to it as advertising. But in
2 reality, it is the best method to communicate information
3 to our customers.

4 These ads don't seek to obtain new customers.
5 It isn't done for that purpose. We believe this
6 communication is a valid and prudent expenditure and that
7 it should be allowed to be recovered in our revenue
8 requirement. Thank you.

9 JUDGE WOODRUFF: Okay. Opening for Staff?

10 OPENING STATEMENT

11 BY MR. DEARMONT:

12 MR. DEARMONT: May it please the Commission.
13 The advertisements at issue in this part of the case are
14 part of the marketing campaign that is designed to
15 increase AmerenUE's reputation in the community.

16 For the past 20-plus years, the Commission has
17 adhered to the policy that customers should not be forced
18 to pay for these type of ads. Specifically, the amount at
19 issue relates to advertising expenses that can be
20 attributed to AmerenUE's Power On program and the Ameren
21 administered Dollar More program.

22 As the testimony shows, the disallowed
23 advertisements related to these two programs provide
24 absolutely no benefit whatsoever to any of the customers
25 in AmerenUE's service area. As a matter of fact, all the

1 Dollar More advertisements are more of an endorsement of
2 the St. Louis Rams than they are of the Dollar More
3 program itself.

4 To be clear, Staff has no contention with the
5 substance of either Power On or the Dollar More program.
6 In fact, the Power On program involves roughly 1 billion
7 dollars of system improvements. That's 1 billion dollars
8 that Missouri ratepayers are already going to have to pay.

9 The reconciliation sheet in this case states
10 that the issue of advertising is worth about \$1.4 million.
11 Now, I understand that in the grander scheme of this case
12 that \$1.4 million may not appear to be that significant.

13 However, this issue is not just about
14 advertising. and it's not just about \$1.4 million. This
15 issue is about forcing ratepayers to foot the bill for
16 public image ads that are aimed at cushioning a one
17 billion dollar blow. Thank you.

18 JUDGE WOODRUFF: Thank you. Any other parties
19 wish to make an opening on this issue? I don't see anyone
20 else. All right. The first witness then is Mr. Mark for
21 UE. Please raise your right hand.

22 RICHARD MARK,
23 being first duly sworn to testify the truth, the whole
24 truth, and nothing but the truth, testified as follows:

25 DIRECT EXAMINATION

1 BY MS. TATRO:

2 JUDGE WOODRUFF: You may be seated, and you may
3 inquire.

4 MS. TATRO: Thank you.

5 Q (By Ms. Tatro) Could you please state your
6 name, your business title and your business address for
7 the Commission?

8 A Richard J. Mark, Senior Vice President, Missouri
9 Energy Delivery for AmerenUE, 1901 Chouteau, St. Louis,
10 Missouri.

11 Q And are you the same Richard Mark who filed both
12 direct and rebuttal testimony, pre-filed in this case?

13 A Yes.

14 Q Do you have any additions or corrections to make
15 to your testimony?

16 A No.

17 Q If I asked you the questions that are contained
18 within your pre-filed testimony, would your answers remain
19 the same?

20 A Yes.

21 MS. TATRO: I'd like to -- actually, I believe
22 his testimony has already been put into evidence.

23 JUDGE WOODRUFF: Yes.

24 MS. TATRO: So I will tender the witness for
25 cross-examination.

1 JUDGE WOODRUFF: All right. And for
2 cross-examination -- well, does anyone other than Staff
3 want to do cross?

4 MR. MILLS: No cross.

5 JUDGE WOODRUFF: Go to Staff.

6 CROSS-EXAMINATION

7 BY MR. DEARMONT:

8 Q Good morning, Mr. Mark.

9 A Good morning.

10 Q Now, the amount at issue related to advertising
11 is roughly 1.36 million dollars; is that correct?

12 A Approximately, I believe that is correct, yes.

13 Q And that amount deals with the advertisements
14 for the Power On program and the Dollar More program,
15 correct?

16 A Correct. Yes.

17 Q And the Power More program, we'll talk about
18 that first, is -- that's Ameren's project design to
19 improve the reliable delivery of electricity, is it not?

20 A Yes, it is.

21 Q And that program involves things -- I think I
22 read involves things like burying power lines, trimming
23 trees, inspecting circuits, and a large portion of it
24 involves installing environmental controls; is that
25 correct?

1 A Yes, it does.

2 Q But we're not talking about the cost of the
3 actual program today. I believe we're just talking about
4 the cost of the ads that are related to that program,
5 right?

6 A Correct.

7 Q And, really, we're not even talking about all of
8 the ads. I mean, Staff has already allowed recovery of a
9 number of the Power On ads, correct?

10 A There -- yes. There has been a number of them
11 that have been approved and allowed. But there's, I
12 believe, 1.3 million in the Power On that is still at --
13 in dispute and about 40 to 50,000, I believe, of the
14 Dollar More ads that are being questioned.

15 Q Okay. Thank you. And related to -- to Power
16 On, what type of ads are we talking about? Did you do --
17 did you do mailings about the program?

18 A With Power On, the advertising for the campaign
19 of Power On is a broad-based, very comprehensive program.
20 There are direct mail. There is TV, radio, print ads,
21 billboard ads.

22 As Ms.Tatro stated in her comment, you know,
23 after the 2006 -- 2006/2007 storms, we met with, you know,
24 hundreds of customers, thousands of customers, with
25 customers who wanted us to tell us -- tell them what we

1 were doing with reliability.

2 Q Okay.

3 A And there's no single way of communicating with
4 1.2 million customers.

5 Q Okay. Then so this program did involve
6 advertisements in the form of TV ads, radio ads,
7 billboards and other types of media, correct?

8 A Just about any type that we could think that
9 there would be a -- interested customers that would be --
10 that would get their attention and we could -- they could
11 see a what we're doing with our reliability improvements.

12 Q And your direct testimony, you said that these
13 ads, and I quote, "Explain what projects are being
14 conducted and why they are being conducted." Does that
15 sound correct?

16 A Correct.

17 Q And in your rebuttal testimony, you stated that,
18 and I quote, "These communications provide important
19 information to customers which benefit the customers, the
20 company and the Commission." Does that sound correct?

21 A Yes.

22 Q Now, let's take a look at some of these ads.
23 The ads that I'm going to show you and -- and put up on
24 the projector are attached to Ms. Carle's surrebuttal
25 testimony.

1 A Okay.

2 MR. DEARMONT: May I approach the witness?

3 JUDGE WOODRUFF: You may.

4 Q (By Mr. Dearmont) This is the same copy.

5 A Okay. Thanks. Thank you.

6 Q Now, this ad has been marked as Schedule 2-14.

7 Do you recognize this ad?

8 A Yes.

9 Q And do you know the cost associated with this
10 ad?

11 A Well, it's indicated -- at the bottom, if that's
12 correct, \$70,200 for outdoor advertising, which is
13 billboards.

14 Q Okay. Now is that -- is that \$70,000 per what?
15 Is it per year, per --

16 A I'm not for sure the length of time that that ad
17 was taken out. But you usually do a billboard for blocks
18 of time, three months, six months, twelve month period of
19 time.

20 Q I see.

21 A That \$70,000 is what is -- what was included for
22 this particular ad during the test year.

23 Q I see. Now, per your quote that we just
24 discussed, does this ad explain what projects are being
25 conducted?

1 A This project refers to the environmental portion
2 of Power On.

3 Q But it doesn't --

4 A Improving air quality.

5 Q But it doesn't specifically mention the
6 environmental portion of it, does it?

7 A No, it doesn't.

8 Q Okay. Now, does this ad explain why the
9 environmental portion of Power On is being conducted?

10 A To improve air quality.

11 Q Okay. But it -- even the fact that it says
12 improving air quality, it doesn't specifically mention
13 that it's related to the environmental portion of the
14 program, does it?

15 A No. But that's why we indicate that it's with
16 Power On. And the whole idea -- this is one ad of a full
17 campaign. This -- the whole idea is to get people to find
18 out more about the Power On campaign to learn all the
19 components of it.

20 Q Right. But they -- they can't -- they can't
21 learn about the different components specifically from
22 this \$70,000 ad, can they?

23 A No. Driving down the highway, it would be very
24 difficult to read all the components of -- of the ad and
25 of what Power On is.

1 Q Okay.

2 A So the whole idea is to get people's attention
3 and interest to forward -- to get them to look into more
4 information about Power On.

5 Q Right. Thank you. I'm going to go ahead and
6 put up another -- another advertisement. Here you go.
7 Here's a copy.

8 A Okay.

9 Q This ad has been marked as Schedule 2-15?

10 A Uh-huh.

11 Q And, again, I believe that this one cost the
12 same, \$70,200. Does that sound correct?

13 A Yes, it does.

14 Q Okay. Does this ad explain what projects are
15 being conducted?

16 A This one talks about strengthening the power
17 grid. Yes.

18 Q But it doesn't say specifically how it's being
19 strengthened, does it?

20 A It doesn't say that, no.

21 Q Okay. Does it explain why it's being conducted,
22 the project?

23 A I'm not for sure.

24 Q Excuse me. Did it explain why the power grid is
25 being strengthened?

1 A It doesn't explain that. But it answers the
2 customer's questions that in our focus groups and our
3 surveys customers, they said and told us, We want to know
4 what you're doing to, quote, strengthen the power grid.
5 That's exactly where that comment came from.

6 Q This ad doesn't specifically explain why the
7 power grid is being strengthened, does it, self-contained?

8 A I think the customers in St. Louis that were
9 faced with the outages in '06 and '07, you know, know and
10 have some context with the comment of what strengthening
11 the power grid means.

12 Q Okay. Let's look at -- let's look at one --
13 let's look at one more ad here.

14 A Okay.

15 Q And this ad -- this ad relates to the Dollar --
16 Dollar More program as opposed to the -- the Power On?

17 A Okay.

18 Q There you are.

19 A Thank you.

20 Q I'm sorry. I know that's -- I know that's
21 difficult to read up there. But do you recognize the ad
22 that you have in front of you?

23 A Yes.

24 Q Now -- and is that ad associated with the Dollar
25 More program?

1 A Yes. It's part of the Dollar More. Yes.

2 Q Okay. And for everyone else, this ad was marked
3 as Schedule 1-2. Now, this ad costs approximately
4 \$120,000; is that correct?

5 A No. That's not correct.

6 Q Okay. How much does this ad cost?

7 A There's a couple ads like this. And the
8 approximate amount of the Dollar More ads that were
9 contained in the overall Rams sponsorship was
10 approximately \$40,000.

11 Q Okay. It was a Rams sponsorship, you said?

12 A Right. We -- you have -- we have a package of
13 Rams for the Rams games, a sponsorship package.

14 Q Okay.

15 A The total package was \$120,000.

16 Q I see.

17 A Only \$40,000 that we asked for recovery in this
18 rate case of that package was for these ads with the Power
19 On program.

20 Q Okay. Now, looking specifically at this ad,
21 does this ad explain what projects are being conducted?

22 A Well, Dollar More isn't a project.

23 Q Okay.

24 A It's basically a -- a program that people, our
25 customers or anyone can contribute to. And the dollars

1 that are contributed to the Dollar More program then go to
2 -- for energy assistance to those customers in need. And
3 it's administered through the United Way.

4 Q Does this ad explain that?

5 A No, it doesn't. It says, While Ameren powers
6 the home of the Rams, you can get power -- you can help
7 power the home of a family in need.

8 It does talk about powering a family in need,
9 and then it -- again, it pushes -- we try to push
10 customers to visit the -- the web site for more
11 information.

12 Q How do you try and push that?

13 A It says, Visit the promotion section of the Rams
14 to enroll in Dollar More.

15 Q What else --

16 A And when they would go there, that's when they
17 find out more about Dollar More program.

18 Q Does that ad say anything else?

19 A And enter to win, -- and enter to win a road
20 trip with the Rams.

21 Q Okay. Thank you. At this time, I'd like to
22 review the ads that we just -- that we just talked about.

23 A Okay.

24 Q And the others associated with the programs.

25 I'd like to review them in terms of the Commission's

1 traditional approach to advertising expenses. I assume
2 that you're familiar with the KCPL 1986 rate case that set
3 the Commission's standard for allowing advertising
4 expenses?

5 A Not really. No, I'm not.

6 Q Did you read Ms. Carle's testimony?

7 A Yes.

8 Q Okay. And did you read the portion of that
9 testimony that dealt with the standard that was set in
10 that KCPL --

11 A Are you referring to these five issues?

12 Q Yes.

13 A Yes, sir, I am.

14 Q Okay. And then seeing as you're familiar with
15 those issues -- or with that -- with that five category
16 approach --

17 A Right.

18 Q -- I assume that you know, then, that that's the
19 approach that the Commission has followed for the last 22
20 years ever since that KCPL case came out?

21 A That's what I understand. Yes.

22 Q Okay. Okay. I'm going to go ahead and place
23 this on the overhead as well for everyone else. Would you
24 like a copy of this also, or do you --

25 A I can read that if that's -- if that's the same

1 thing.

2 Q Okay. At this time, I'd like to talk about the
3 five categories of advertising.

4 A Okay.

5 Q And that approach, I believe, as you said, was
6 -- you're familiar that that approach was introduced by
7 the Commission in that 1986 case, correct?

8 A Correct.

9 Q Okay. Now, the first -- the first category --
10 there are five categories of advertising. That's -- you
11 understand that, correct?

12 A I understand that.

13 Q Okay. And the first category -- I'll just go
14 ahead and read it. It's general advertising, and that's
15 informational advertising that is useful in the provision
16 of adequate services.

17 The second is advertising related to safety, and
18 that is advertising which conveys the ways to safely use
19 electricity and to avoid accidents.

20 The third is promotional. That's advertising
21 used to encourage or promote the use of electricity. The
22 fourth is institutional advertising used to improve the
23 company's public image.

24 And the fifth is political advertising
25 associated with political issues. Is that your

1 understanding of the framework that was introduced in that
2 case?

3 A (Witness nods head.)

4 Q Are you familiar with those?

5 A Yes, I've read them.

6 Q Okay. Then as I'm sure you know from reading
7 Ms. Carle's testimony and being familiar with the issues
8 that the Commission has utilized a standard that says that
9 a revenue requirement should always include the reasonable
10 and necessary costs of general and safety advertisement,
11 that would be a Categories 1 and 2.

12 A revenue requirement should never include the
13 cost of institutional or political advertisements, that
14 would be Category 4 and 6. And it should include the cost
15 of promotional advertisements only to the extent that the
16 utility can provide cost justification for the
17 advertisement. Are you familiar with those standards?

18 A I've read it. Yes.

19 Q Okay. Well, the power ad -- excuse me. The
20 Power On ads, they do not deal with safety, do they?

21 A No.

22 Q They don't deal with the use of electricity, do
23 they? They don't -- they don't promote the use of it,
24 correct?

25 A I don't know -- I don't know if you would say it

1 promotes the use of it, no.

2 Q They aren't political?

3 A No.

4 Q So I guess that means they're either general or

5 institutional if we're utilizing this framework?

6 A Probably. Yes.

7 Q Okay. Now, what's an estimate for the total

8 price tag of project Power On or the Power On project?

9 Excuse me?

10 A The total price tag?

11 Q Total.

12 A Is a billion dollars over three years.

13 Q And that billion dollars will be attempted to be

14 recovered from ratepayers, correct?

15 A For investments in our system and its legitimate

16 costs to be recouped as with a rate case. Yes.

17 Q And in your direct testimony on page 15, you

18 stated that, and I quote, informing the customers about

19 these critical improvements in our system is absolutely

20 essential if we expect customers to accept the rate

21 increase necessary to fund these improvements. Does that

22 sound correct?

23 A Yes.

24 Q okay. So, in essence, you want the ratepayers

25 to pay another \$1.3 million for Power On advertising so

1 that they complain less about the one billion dollars that
2 they have to pay for the Power On program itself; is that
3 an adequate summary?

4 A No. Would you like my summary?

5 Q No, thank you.

6 A Okay. Didn't think so.

7 MR. DEARMONT: I have no further questions.

8 JUDGE WOODRUFF: All right. We'll come up for
9 questions from the Bench, then. Commissioner Jarrett?

10 COMMISSIONER JARRETT: I have no questions.

11 JUDGE WOODRUFF: Commissioner Gunn?

12 COMMISSIONER GUNN: I don't have anything.

13 JUDGE WOODRUFF: Chairman Davis?

14 CHAIRMAN DAVIS: No questions.

15 JUDGE WOODRUFF: And I have no questions, so we
16 will -- there's no need for recross. Any redirect?

17 REDIRECT EXAMINATION

18 BY MS. TATRO:

19 Q I -- I think the obvious redirect is, Mr. Mark,
20 I'd like to hear your summary.

21 A After the 2006 summer storms and the 2007
22 storms, we held a number of community meetings, talked to
23 our customers about what they expected from our company,
24 what they want us to do.

25 And what we heard time and time again,

1 reliability was their top priority. In fact, in our focus
2 groups and surveys, our customers said to us, we're
3 willing to pay more for reliability, but we want you to
4 tell us what you're doing and what you're doing to
5 strengthen the power grid.

6 And so the whole campaign -- when you take it
7 out of context, you can take one ad and says, well, this
8 doesn't mean anything. You put all of those links
9 together, like a chain, it does mean something. It
10 reinforces to our customers what we're doing to strengthen
11 the power grid, to improve reliability for them by
12 trimming trees, by undergrounding critical services, by
13 circuit inspections, improving their quality.

14 All of those things are part of the Power On
15 program. And all the ads that we looked at today
16 contribute and -- and talk to customers and explain to
17 customers what we're trying to do to improve our service.

18 If you -- and then, obviously, in that ad, you
19 cannot put all of that information in any type of print
20 ad, any type of commercial. So you have to try to force
21 people to -- to your web site where they can get more
22 information.

23 They go to our Power On web site, they can see
24 specifically the neighborhoods that we're undergrounding
25 projects in. They can go to that web site and they can

1 find out about if they have a power outage, when the
2 expected time of restoration would be. They can find out
3 much -- a lot of information by going to the web site.

4 The whole idea of each one of these
5 advertisements was to do that. And, also, no matter if
6 it's safety, general, promotional or institutional or
7 whatever category you want to have up there -- and I think
8 it's a proven fact that unless a company does have a
9 positive image and credibility in the community that -- no
10 one's going to even listen to a safety ad.

11 And I think J.D. Powers and the studies that
12 we've seen and the -- the analysis that we've done with
13 J.D. Powers through our surveys company image and -- up
14 until recently was the second most important driver in
15 customer satisfaction of any -- in the utility surveys
16 that were conducted.

17 And just this past year, they've taken the --
18 the company image piece of that driver out and -- and
19 divided it into two pieces; one, communication, 'and the
20 second, corporate citizenship. That's 26 percent of the
21 driver of customer service. And so it's important to let
22 the customers know what we're doing and respond to what
23 they said.

24 They wanted to know what we were doing about
25 reliability, and we responded to that.

1 Q Okay. All right. I -- and you were -- several
2 ads were placed in front of you, specific ads, and
3 questions were asked. What do you believe is the
4 appropriate framework for the Commission to evaluate this?
5 Is it to look at it ad by ad, or is it to look at it on a
6 more global level, such as the entire campaign?

7 A I think you have to look at it as -- as the
8 entire campaign. You know, you look the one ad, and you
9 may not understand it. But when it's put in the context
10 of the total campaign, it does make sense. And it does --
11 it has been effective.

12 Our customers in Missouri now know what Power On
13 is. And when I'm out in the community meeting with
14 various groups, they know that we have a Power On
15 campaign, and they even know to go to the web site about
16 Power On. So I think it is achieving what some of our
17 goals are to try to get people to find out more about
18 reliability.

19 Q And of those four -- I'm sorry -- five
20 categories that you see in front of you, which category do
21 you believe these ads are properly classified?

22 A I would think that it's -- it's classified as
23 general. You know, it talks about the useful and adequate
24 service. Obviously, the customers want to make sure they
25 have adequate service, and this is a way of promoting it

1 and letting them know what we're doing to make sure they
2 do have adequate service.

3 MS. TATRO: Okay. Thank you. I have no further
4 questions.

5 JUDGE WOODRUFF: All right. Mr. Mark, you may
6 step down. It's now ten minutes till 12, and the
7 Commission has an agenda meeting at 12:00. So we'll take
8 a break now for lunch. Let's come back at 1:30.

9 (Lunch recess.)

10 JUDGE WOODRUFF: All right. Let's go ahead and
11 get started. Before we get started with the first
12 witness, I do have one housekeeping matter to take care
13 of.

14 The first day of the hearing, Mr. Conrad
15 indicated that he -- he requested of the Commissioners
16 indicate whether they would have questions for five
17 Noranda witnesses, Mr. Mare, Hodges, Baker, Cooper and
18 McPheeters.

19 I can now report that I have spoken with all of
20 the Commissioners, and none of them have questions for
21 those witnesses. So if they do not wish to appear,
22 assuming parties do not have questions for them, they do
23 not need appear.

24 MR. WOODSMALL: Thank you, your Honor.

25 JUDGE WOODRUFF: Okay. All right. Let's go

1 ahead and call the next witness, although we don't have a
2 Staff attorney here. Oh, I'm sorry. You are the Staff --
3 never mind.

4 MR. BYRNE: Get no respect.

5 JUDGE WOODRUFF: I'm sorry. You did a good job
6 this morning, too.

7 MR. DEARMONT: Thank you, your Honor.

8 JUDGE WOODRUFF: I was looking for Mr. Reed.

9 MR. DEARMONT: He'll be with us shortly, but we
10 can get started again.

11 JUDGE WOODRUFF: My apologies.

12 MR. DEARMONT: That is all right.

13 JUDGE WOODRUFF: We need to call Erin Carle.
14 Please raise your right hand.

15 ERIN CARLE,
16 being first duly sworn to testify the truth, the whole
17 truth, and nothing but the truth, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. DEARMONT:

20 JUDGE WOODRUFF: Thank you. You may inquire.

21 MR. DEARMONT: May it please the Commission.

22 Q (By Mr. Dearmont) Good afternoon. Would you
23 please state your name?

24 A Erin M. Carle.

25 Q And what do you do for a living, Ms. Carle?

1 A I work for the Public Service Commission as a
2 Utility Regulatory Auditor.

3 Q Have you prepared any testimony on behalf of
4 Staff in this case?

5 A Yes, I have.

6 Q Were you the individual that prepared the
7 advertising testimony found in Staff's cost of service
8 report marked as Exhibit 200?

9 A Yes.

10 Q Do you have any corrections to that testimony?

11 A No, I do not.

12 MR. DEARMONT: At this time, I would like to
13 offer page 53 and the portion of page 54 concerning
14 advertising found in Staff's cost of service report.

15 JUDGE WOODRUFF: All right. A portion of Staff's
16 report on cost of service has been offered. Any
17 objections to its receipt? Hearing none, it will be
18 received.

19 Q (By Mr. Dearmont) Did you prepare any other
20 testimony in this case?

21 A Surrebuttal.

22 Q Okay. Do you have any corrections to that
23 testimony?

24 A We have since allowed under the canopy -- it's a
25 tree trimming canopy advertisement. We have since allowed

1 that, but no other changes.

2 Q Okay. And were those changes -- was that
3 related to either Power On or the Dollar More program?

4 A No.

5 Q Outside of that, if you were asked the same
6 questions today as you were asked in that surrebuttal
7 testimony, would your answers be the same?

8 A Yes.

9 MR. DEARMONT: Okay. Judge, at this time, I
10 move for the admission of Exhibit 219 representing
11 surrebuttal testimony of Staff witness Erin Carle.

12 JUDGE WOODRUFF: 219 has been offered. Any
13 objections to its receipt? Hearing none, it will be
14 received.

15 (Exhibit No. 219 was offered and admitted into
16 evidence.)

17 MR. DEARMONT: I have no further questions at
18 this time.

19 JUDGE WOODRUFF: Okay. And for
20 cross-examination, we'll begin with Public Counsel.

21 MR. MILLS: Just a few.

22 CROSS-EXAMINATION

23 BY MR. MILLS:

24 Q Were you -- were you here this morning for the
25 questioning of Company Witness Mark?

1 A Yes.

2 Q And did you hear his response to the questions
3 about whether it's sometimes difficult to distinguish
4 between general and institutional advertising?

5 A Yes, I do.

6 Q Do you have -- sometimes have difficulty
7 distinguishing between those two?

8 A No.

9 Q Would it help to categorize between those two
10 categories if you had information that the company
11 considered a particular program to be image enhancing?

12 A I'm not sure what you mean by that.

13 Q Well, if the company considered advertising to
14 be related to image, which is part of institutional as
15 opposed to advertising that is useful in the provision of
16 service, which is general, would that help categorize the
17 advertising?

18 A I'm not sure if that would be beneficial. I
19 mean, having the actual advertisement in front of you, I
20 think that's the most beneficial.

21 MR. MILLS: No further questions.

22 JUDGE WOODRUFF: All right. State wish to
23 cross?

24 MR. IVESON: No questions.

25 JUDGE WOODRUFF: Noranda?

1 MR. WOODSMALL: Nothing, your Honor.

2 JUDGE WOODRUFF: AmerenUE.

3 CROSS-EXAMINATION

4 BY MS. TATRO:

5 Q Good afternoon.

6 A Good afternoon.

7 Q And your last name is pronounced Carle?

8 A Yes.

9 Q Okay. Let's start by talking about your
10 background.

11 A Okay.

12 Q What's your degree in?

13 A Accounting.

14 Q Accounting?

15 A Yes.

16 Q Okay. That's an undergraduate degree?

17 A Yes.

18 Q Do you have any graduate degrees?

19 A I'm in the process of getting my MBA, but I have
20 not completed it as of yet.

21 Q Okay. Great. Let's talk about these -- the ads
22 at issue -- I think what you said in your clarification is
23 we're down to just the two Dollar More ads and then the
24 Power On ads which are attached to your surrebuttal
25 testimony. Is that fair classification?

1 A Yes.

2 Q All right. And what's the total dollar amount
3 that's at issue?

4 A Including both categories is approximately 1.366
5 million.

6 Q How many customers does AmerenUE have?

7 A Customers?

8 Q Yeah.

9 A I believe it's around two -- two million.

10 Q Maybe 1.2?

11 A 1.2.

12 Q So we're talking about just over a dollar per
13 customer that's at issue here, right?

14 A Approximately.

15 Q Okay. Now, let's start with your -- your
16 portion of the Staff report. Do you have that in front of
17 you?

18 A Yes. Actually -- yes.

19 Q And you're the only staff witness on
20 advertising, right?

21 A Yes.

22 Q Okay. So your position of the staff report is
23 approximately a page long; is that correct?

24 A Yes.

25 Q And it says you categorize the ads according to

1 the categories set forth in the KCPL case, those ones that
2 are up on the screen behind you, right?

3 A Yes.

4 Q And it says you excluded institutional and
5 promotional advertising, right?

6 A Yes.

7 Q It doesn't provide an explanation of what
8 standards you used to decide whether something is
9 institutional or promotional, does it?

10 A Just what's in the guidelines there.

11 Q Okay. And you found no political advertising?

12 A Correct.

13 Q And did this portion of the report address any
14 of the explanation in Mr. Marks' direct testimony about
15 why he thought Power On ads should be recoverable?

16 A Not in the cost of service report. No.

17 Q Okay. Let's talk about rebuttal. Did you file
18 any rebuttal testimony responding to Mr. Marks' direct
19 testimony?

20 A Not rebuttal, no.

21 Q Did you file any rebuttal testimony on
22 advertising at all?

23 A No.

24 Q Did any staff accounting witness file rebuttal
25 testimony at all on advertising?

1 A No.

2 Q Do you know how the Commission rules define
3 rebuttal testimony?

4 A I don't have the exact wording of the rule, no.

5 Q Let me help you.

6 A Okay.

7 MS. TATRO: May I approach?

8 JUDGE WOODRUFF: You may.

9 Q (By Ms. Tatro) I've handed you a copy of
10 Commission Regulation 4 CSR 240-2.130. Do you recognize
11 that as a Commission regulation?

12 A Yes.

13 Q And do you see sub 7 on the far right-hand
14 corner, right-hand column?

15 A Yes.

16 Q Sub B, can you read that for me?

17 A "Where all parties file direct testimony,
18 rebuttal testimony shall include all testimony which is
19 responsive to the testimony and exhibits contained in any
20 other party's direct case."

21 Q Did all parties file direct testimony in this
22 case?

23 A We filed a cost of service report.

24 Q You don't consider that direct testimony?

25 A I'm not sure if it's classified as direct

1 testimony or not.

2 Q Analogous to direct testimony? It certainly
3 contains Staff's position, right?

4 A Our position on the issues, yes.

5 Q Okay. Read sub point D of that same subsection
6 for me, please.

7 A "Surrebuttal testimony shall be limited to
8 material which is responsive to matters raised in other
9 parties' rebuttal testimony."

10 Q You didn't do that, did you?

11 A I did not file any rebuttal testimony, no.

12 Q Did you file surrebuttal testimony?

13 A Yes, I did.

14 Q Was it limited to rebutting what was in the
15 other party's rebuttal testimony?

16 A I based my surrebuttal on Mr. Mark's rebuttal
17 testimony, yes.

18 Q You didn't respond to anything in his direct
19 testimony?

20 A I answer all the questions in his rebuttal
21 testimony. I did not go off of his direct testimony while
22 typing my surrebuttal testimony, no.

23 Q So you've offered absolutely no argument or
24 evidence to refute Mr. Marks' direct testimony; is that
25 what you're saying?

1 A Yes.

2 Q Okay. All right. Let's talk about your
3 surrebuttal. We'll start with the Dollar More ads, which
4 you, indeed, did attach, correct?

5 A Yes.

6 Q So let's turn to the first one, please. And I
7 believe you have that marked Schedule 1-1. And not to
8 flip back and forth, but you discussed this on page 7,
9 line 23 where you say the -- well, starting on line 22,
10 this advertisement, and I guess you mean both of them?

11 A Uh-huh.

12 Q Are part of the St. Louis football Rams
13 sponsorship. There is very little detail about the Dollar
14 More program. Correct?

15 A Yes.

16 Q So your objection is that they contain very
17 little detail, right?

18 A Correct.

19 Q It isn't the fact that it's about Dollar More?

20 A It's the fact that they're really not telling
21 the customer what Dollar More is.

22 Q So the topic of Dollar More is a topic that
23 would be acceptable. It's just that this particular ad
24 didn't meet your criteria?

25 A Correct.

1 Q Okay. Did you make that determination by
2 yourself?

3 A Yes, I did.

4 Q Let's talk about what information they contain.
5 And we'll start with that first one. The ad asks the
6 public to make a donation to Dollar More, doesn't it?

7 A Actually, it's telling them that when they make
8 a donation to Dollar More they have an opportunity to win
9 a road trip with the St. Louis Rams.

10 Q Is that your complaint, that they have a chance
11 to go to a football game? Are you a football hater?

12 A No, I'm not. My complaint is it doesn't tell
13 the customer exactly what they're doing. It's pretty
14 much telling them to donate just for the chance to win a
15 chance with the Rams.

16 It's not promoting the program at all. It's not
17 telling them what the program does exactly. It's very
18 little information whatsoever.

19 Q Okay. What does the last sentence of that first
20 paragraph on that ad say?

21 A Starting reading in here, actually --

22 Q How about if I read it for you and you can tell
23 me if you agree? And cheer on the Rams knowing you helped
24 a family in need pay their utility bills.

25 A Okay.

1 Q You accept that's what it says?

2 A Why.

3 Q And what does Dollar -- what does the Dollar
4 More program do?

5 A I assume it goes into a fund to help people who
6 can't pay their utility bills.

7 Q That would be a good explanation. And it has
8 the web site where they can go to to make that actual
9 donation, correct?

10 A Yes.

11 Q Okay. Let's look at the second ad. Again, the
12 ad asks the public to make a donation to Dollar More,
13 correct?

14 A Yes.

15 Q Okay. It provides the web site for the
16 donation?

17 A It takes you to the St. Louis rams web site,
18 actually.

19 Q Oh, you're right. It does -- you're right on
20 that one. And it points out the donation helps a family
21 in need again, right?

22 A Yes. But, once again, the message portrayed by
23 the advertisement is pretty much football. It is not the
24 program.

25 Q And football makes is not recoverable?

1 A No. The -- what makes an advertisement
2 recoverable is the message portrayed through the
3 advertisement, that when a customer looks at it, the first
4 message they see or the main point they get out of the
5 advertisement.

6 Q You're changing the standard on me. You told me
7 earlier it's the information that's conveyed. And this
8 conveys the who, what, wheres and, you know, all those
9 things that --

10 MR. DEARMONT: I have to object here, your
11 Honor. I believe counsel is testifying.

12 MS. TATRO: I'll rephrase my question.

13 JUDGE WOODRUFF: Thank you.

14 Q (By Ms. Tatro) What's the standard that you're
15 applying, Ms. Carle? Is it just your initial impression
16 when you look at the ad?

17 A No. I'm using the standards set in place by the
18 Commission.

19 Q Are you an advertising expert?

20 A Yes, I am.

21 Q You are?

22 A When it comes to --

23 Q And where did you derive that expertise?

24 A When it comes to rate-making process, I am an
25 advertising expert.

1 Q Where did you derive that expertise?

2 A While working with the Commission.

3 Q You're an accountant by trade?

4 A By degree. Yes, I am.

5 Q Okay. Which means you're much better with

6 numbers than I am. Have you ever taken any advertising

7 courses?

8 A No, I have not.

9 Q Not even in your MBA work?

10 A No.

11 Q Okay. How have you been trained at the

12 Commission to deal with advertising? Have you undergone

13 education?

14 A No. I have done research into past cases with

15 advertising expense as well as looking into this

16 advertising expense for this case.

17 Q And you looked at this ad, and you saw football?

18 A Yes.

19 Q And so it's not recoverable?

20 A You go off of the main message portrayed in the

21 ad.

22 Q Interesting. Okay. But you like the Rams?

23 A Not so much this season.

24 Q Is it possible that the audience UE's attempting

25 to reach is the same demographic that attends Rams games?

1 Did you consider that factor?

2 A I'm sure that is where the advertisement is.
3 It's a Rams sponsorship.

4 Q Okay. Let's talk about project Power On. I
5 think I understand where you're coming from on Dollar
6 More.

7 Now, in your testimony, you use the word "image"
8 to describe these ads as -- as its promoting the company's
9 image. So I'm presuming you have kicked these out as
10 institutional advertising. Would that be correct?

11 A Yes, it would.

12 Q All right. And you'll have to tell me if the
13 standard -- if I have the standard wrong, but I think the
14 standard you're applying is they don't have -- they don't
15 contain information?

16 A Correct.

17 Q Is there any other standard you're using to
18 judge these ads?

19 A Just going off of they don't supply any useful
20 information for the ratepayer.

21 Q Okay. So how much information does an ad have
22 to supply, in your viewpoint, for it to be appropriate to
23 be recovered?

24 A It has to be something the ratepayer can
25 actually use. What is in these ads, the ratepayer --

1 Q I asked you what the standard was. Let's do it
2 one step at a time. Okay?

3 A Okay. It doesn't necessarily have to be a
4 standard. It just has to be what's in the advertisement
5 has to be useful for the ratepayer.

6 Q That's not a standard.

7 A I believe it's what would make it general.

8 Q Okay. Maybe this is just semantics, but I want
9 to make sure that we're not talking about completely
10 different things. Where we call the standard not a
11 standard, that's how you judge these ads --

12 A Okay.

13 Q -- is whether it provides information? Is that
14 what you're telling me?

15 A Yes. I look at the ads and determine if it is
16 useful to the ratepayer or not, if they can gain anything
17 from the advertisement.

18 Q And just so we're clear, I just call that your
19 standard.

20 A Okay.

21 Q Okay? All right. The first group of ads are
22 marked Schedules 2-1 through 2-10. And these are all
23 very similar, right?

24 A Yes.

25 Q What type of ads are these?

1 A They were ads that were put on an online web
2 site.

3 Q Okay. Do you know what happens if you click on
4 the ad?

5 A I have never clicked on those types of ads.

6 Q And would it surprise to you learn that it takes
7 you to the Power On web site?

8 A No. But it does not say that on the
9 advertisement.

10 Q That wasn't the question. If it took you to the
11 Power On web site, would that be information that is
12 useful to the customer?

13 A I'm sure the web site is very useful to the
14 customer.

15 Q Okay. Do you think that technology -- and when
16 I say technology, I'm talking about the ability to click
17 on an ad for it to automatically link -- take to you
18 another site on the web. Do you think that's something
19 that existed 20 years ago when they standard were put into
20 place?

21 A I wouldn't think so.

22 Q Okay. Now, several of the ads in this grouping
23 have the words "Strengthening the power grid," right?

24 A Yes.

25 Q And several of them say, UE's bowing -- burying

1 power lines, right?

2 A Yes.

3 Q And those are both things that UE's doing as
4 part of its project Power On; is that not correct?

5 A Those are portions of the Power On program, yes.

6 Q Okay. Now, knowing that AmerenUE is burying
7 power lines as part of its work to strengthen the power
8 grid, you don't consider that information?

9 A The phrase "burying power lines" by itself is
10 not useful information.

11 Q Do you think they think someone else is burying
12 the power lines?

13 MR. DEARMONT: That's -- I'm going to have to
14 object to that. That's speculation. She can't know what
15 the customers are --

16 JUDGE WOODRUFF: I'll overrule the objection.
17 You can answer that.

18 A I'm not sure what the customer would think when
19 they read that. But it's -- I would not think they would
20 be able to get any useful information out of that. No.

21 Q (By Ms. Tatro) Okay. Let's go to Schedule
22 2-11. What type of ad is this?

23 A It is a newspaper ad.

24 Q Can you read the text of the ad for me, please?

25 A "Early detection, a high stakes game of hide and

1 seek. The power grid is only as strong as its weakest
2 link. This phase of the Power On project is devoted to
3 preventative maintenance. Dedicated teams inspect all
4 equipment for signs of weakness caused by wear and tear
5 corrosion. Then strengthen the system for replacement
6 repair. See the full scope at Power On."

7 Q And then it has the Power On web site, right?

8 A Yes.

9 Q That sounds like a lot of information. Don't
10 you agree?

11 MR. DEARMONT: I'm going to have to object.
12 Counsel's testifying again.

13 MS. TATRO: No. It's a leading question, and I
14 can do that on cross.

15 JUDGE WOODRUFF: It's overruled.

16 A It's more of an encouraging the customers to be
17 patient while Ameren gets their items in order to
18 encourage -- to make the service more reliable.

19 Q (By Ms. Tatro) The ad says Power On project is
20 devoted to preventative maintenance. Dedicated teams will
21 inspect all equipment for signs of weakness caused by wear
22 and tear or corrosion, then strengthen the system through
23 replacement or repair. How familiar are you with project
24 Power On?

25 A I have not done the project Power On portion of

1 this case. I have not studied the project Power On.

2 Q So when you say it doesn't convey information,
3 you don't really even know what information is out there
4 to convey, do you?

5 A I have a basic understanding of Power On, but I
6 have not done an in-depth study of Power On.

7 Q Okay. You know, what are the four major
8 components of project Power On?

9 A Well, they're cleaning the environment, they're
10 strengthening -- obviously, strengthening the grid,
11 they're burying the lines, and they're doing vegetation
12 management.

13 Q You did learn something by reading the ads.

14 A No. I didn't get that from the ads.

15 Q All right. You really -- you're not changing
16 your mind on this particular ad I'm talking about, 2-11?
17 You believe it doesn't convey information?

18 A This one conveys more information than the
19 others.

20 Q Okay. So -- but still not enough?

21 A It conveys information about the program. Yes.

22 Q Does it convey enough information about the
23 program that you believe it should be recoverable?

24 A This one, possibly.

25 Q Okay. I'll take a possibly. Turn the page.

1 Schedule 2-12. Ducks and deer don't have power, but they
2 still have a say. Can you read the text of that ad for
3 me?

4 A Delivering reliable energy to the land means
5 lessening our impact on it as we explore sources of
6 renewable energy. This phase of Power On project helps
7 our Sioux plant in St. Charles County to improve air
8 quality years ahead of federal standards. See full scope
9 on Power On at Ameren.com/PowerOn.

10 Q Again, does this convey information?

11 A It conveys some information. Yes.

12 Q Okay. Enough information? It talks about the
13 Sioux plant. It says it's being done to improve air
14 quality.

15 A It really doesn't say what they're doing to
16 improve the air quality, though.

17 Q And that critical piece of evidence -- statement
18 is the only thing necessary -- missing to make this
19 evidence -- I cannot talk today -- to make this
20 advertisement recoverable in your mind?

21 A I think it needs to be a little more
22 informative, yes.

23 Q All right. So you're sticking by your
24 recommendation to disallow this one?

25 A Yes.

1 Q All right. 2-13. I don't know if you can read
2 the text this one or not.

3 A No, I can not.

4 Q Overhead lines -- oh, this is bad. Hang on. I
5 have another copy. Can you read that? I guess I don't.
6 A-ha. I do. "Overhead lines leave the reliability of the
7 power grid exposed to the elements. Wherever feasible,
8 this phase of Power On project marks a sizable investment
9 in the relocation of lines below ground. See the full
10 scope at Ameren.com/Power On. I'll give this to you so
11 you can verify that's indeed what it says.

12 MS. TATRO: May I approach?

13 JUDGE WOODRUFF: (Judge Woodruff nods head.)

14 MS. TATRO: Thank you.

15 Q (By ms. Tatro) Did I read that correctly?

16 A Yes, you did.

17 Q Does that contain information?

18 A It contains some information, yes.

19 Q It says that we're burying lines underground?

20 A Yes.

21 Q Which is part of Power On?

22 A Yes.

23 Q Do you reconsider your recommendation? It's got
24 the web site, right?

25 A I'd have to think more about this one.

1 Q Can I mark it as a possibly?

2 A You can mark it as a possibly.

3 Q When -- when are you going to decide? Because

4 of course the Commission needs to know what your

5 recommendation is in order for their decision.

6 A I'm not sure. I mean --

7 Q Okay. Now, there -- although they weren't

8 attached to your testimony, for obvious reasons, you

9 excluded cost of television and radio ads that follow this

10 same pattern, right?

11 A Yes.

12 MS. TATRO: I'd like to mark an exhibit.

13 JUDGE WOODRUFF: All right. Your number is 72.

14 (Exhibit No. 72 was marked for identification.)

15 Q (By Ms. Tatro) Do you recognize that document?

16 A I've never seen the actual document. No.

17 Q It wasn't provided to you?

18 A No, it was not. I got a CD with these on it,

19 but I never got an actual document like this.

20 Q So you got a CD with the actual radio

21 advertisement on it?

22 A Yes.

23 Q Okay. Can you take a moment and read through --

24 did you listen to those advertisements?

25 A Yes.

1 Q Okay. Because you had to in order to determine
2 whether or not they included information, didn't you?

3 A Yes.

4 Q All right. Can you read through this and see
5 whether or not you believe it to be what you heard on --
6 what you listened to in the actual ads?

7 Q Do you think they -- oh, sorry about that. Are
8 you done reading through them?

9 A The first one, yes.

10 Q Okay. Is it the same as the ad you listened to?

11 A I can't say for sure word for word. I didn't
12 listen to the ads today to have them in front of me.

13 Q I have some of the ads with me. Do we want to
14 listen to them? Or are you willing to accept that this is
15 the same language?

16 A I would assume they're the same language.

17 Q Okay. Let's look at the first page.

18 A Okay.

19 Q It talks -- obviously, this is read by an
20 employee, right?

21 A Yes.

22 Q And it talks about Power On?

23 A It mentioned the four areas.

24 Q So it provides information on what the four
25 areas of Power On are, correct?

1 A Yes.

2 Q It says we're working hard with one specific
3 goal in mind, to ensure power is there when you need it,
4 right?

5 A Yes.

6 Q And it gives the Power On web site if people
7 want even more information, correct?

8 A Yes.

9 Q Do you believe there is not information
10 contained within this advertisement?

11 A I believe it's more of improving the company's
12 image by how they're doing this.

13 Q All right. Let's read it, then.

14 A Okay.

15 Q The first bullet under Power On focuses on four
16 areas. It says, We're trimming trees before they can
17 interfere with connections. That's information, isn't it?

18 A Yes.

19 Q That's what -- part of what project Power On
20 does, isn't it?

21 A Yes.

22 Q So it's conveying information.

23 A Yes.

24 Q Second one, we're inspecting lines on a regular
25 basis to identify poles and equipment that need replacing

1 or repair, correct?

2 A Yes.

3 Q That's part of project Power On?

4 A Yes.

5 Q So that's conveying information?

6 A Yes.

7 Q Third bullet, We're increasing the number of

8 lines buried underground so they're better protected from

9 the elements. That's -- that's part of project Power On?

10 A Yes.

11 Q So it's conveying information?

12 A Yes.

13 Q And the fourth bullet, We're taking immediate

14 steps to lessen our plant's impact on the environment

15 ahead of federal mandates. That's part of project Power

16 On?

17 A Yes.

18 Q Conveying information?

19 A Yes.

20 Q So what information do you think is missing to

21 make this recoverable?

22 A Just the tone of the ad appears to be more of a

23 boost to the company image.

24 Q So if the company says anything good about

25 itself, it's image advertising?

1 A I wouldn't necessarily say that. But, I mean,
2 it's just --

3 Q Let's look at the second. Again, this would be
4 read by another UE employee, correct?

5 A Yes.

6 Q And it talks about Power On, right?

7 A Yes.

8 Q It says it's a billion dollar plan, right? Do
9 you see that in the --

10 A Yes.

11 Q -- fourth paragraph down? The goal is to
12 increase reliability, right? Right underneath billion
13 dollar plan, to increase reliability?

14 A Yes.

15 Q Do you see that? It has the four elements. It
16 says we're trimming trees, right?

17 A Yes.

18 Q It says running lines underground?

19 A Yes.

20 Q Upgrading the power grid?

21 A Yes.

22 Q And lessening the plant's impact on the
23 environment?

24 A Yes.

25 Q At the bottom, it says, For more information, go

1 to Ameren.com/PowerOn, right?

2 A Yes.

3 Q That's all information?

4 A Yes.

5 Q Do you think it's recoverable?

6 MR. DEARMONT: I have to object here, Judge. I
7 think that -- I think that opposing counsel is losing
8 track of the standard in that it's the provision of useful
9 information as opposed to the conveyance of information.

10 MS. TATRO: I don't think that's an objection.

11 JUDGE WOODRUFF: I agree. The objection is
12 overruled.

13 A This does convey information, yes.

14 Q (By Ms. Tatro) So should it be recoverable?

15 A Yes.

16 Q Thank you. Let's turn the page. Carl Blank.
17 Great name. All right. This person talks about
18 overseeing operations at the Sioux power plant, right?

19 A Yes.

20 Q And he's -- he's on our radio to talk about
21 Power On, right?

22 A Yes.

23 Q And he has four bullet points there. The first
24 one is trimming trees before they cause trouble?

25 A Yes.

1 Q Second one is running lines underground to
2 protect them from the elements?

3 A Yes.

4 Q The third one is hitting the streets to
5 strengthen the power grid long before the arrival of bad
6 weather?

7 A Yes.

8 Q The fourth one is lessening the plant's impact
9 on the environment ahead of federal mandates, right?

10 A Yes.

11 Q Underneath that, it says it's a billion dollar
12 plan of action, right?

13 A Yes.

14 Q And it's designed to increase the reliability
15 and environmental stewardship, correct?

16 A Yes.

17 Q And, of course, at the very end, like all of
18 them, it says Ameren.com/PowerOn for more information,
19 correct?

20 A Yes.

21 Q So that's conveying useful information, isn't
22 it?

23 A Yes.

24 Q So should this one be recovered?

25 A Yes.

1 Q Okay. I'm going to go through all of them
2 unless you just want to stipulate that you're willing to
3 allow all of them in.

4 A Can I read through them all?

5 Q Absolutely. We can walk through them if you
6 like.

7 A I'm almost finished.

8 Q You'd say the majority of them have information
9 in them?

10 A Yes.

11 Q Useful information? Useful information?

12 A As far as offering the web site where they can
13 look up more information, yes.

14 Q So your recommendation as to recoverability?
15 Shouldn't we recover those?

16 A Yes.

17 Q Okay. Now, I think you already said there's
18 also television ads that you did not -- you excluded --

19 A Uh-huh.

20 Q -- correct? And those television ads follow
21 much the same theme, do they not?

22 A Yes.

23 Q I have the television ads here. I don't know if
24 we have the ability to play them. But if they convey the
25 same information, wouldn't you agree that they should also

1 be recoverable?

2 A Yes.

3 Q Okay. Thanks. Let's turn to Schedule 2-17. Do
4 you know what those are?

5 A They're the Power On logos.

6 Q It says stencil on there?

7 A Yes.

8 Q Do you know what they're used for?

9 A I guess to paint Power On different areas and
10 stencil them onto the wall or --

11 Q Maybe on equipment?

12 A I'd say probably trucks and --

13 Q Do you think it's important that -- well, first
14 of all, let me ask you this question: When AmerenUE is
15 having tree trimming done in various neighborhoods, do you
16 know if UE employees are doing that work or if that's
17 contracted labor?

18 A Well, I've seen contracted tree trimmers as well
19 as AmerenUE trimmers. Usually, they have their AmerenUE
20 vehicle out there.

21 Q And if contract labor -- if it's Ray's Tree
22 Service that's doing it, that's not going to say UE on it,
23 is it? It's going to say Ray's Tree Service?

24 A I would assume.

25 Q But if this is a logo that's a magnetic plaque

1 that they can put on the vehicle, doesn't that convey
2 useful information to the public?

3 A Not really if it's just the word Power On. It's
4 not --

5 Q Do you think people associate the word Power On
6 with AmerenUE?

7 A It doesn't mean they're getting any information
8 out of this advertisement.

9 Q But they know that UE is in their neighborhood
10 trimming trees, correct?

11 A I would -- I can't assume every customer who
12 sees the sign Power On is going to assume that's AmerenUE
13 trimming a tree in front of my house.

14 Q Okay. If it says -- if the truck only says
15 Ray's Tree Service, it's pretty likely they don't know
16 it's AmerenUE's work being done. Wouldn't you agree with
17 that?

18 A Not necessarily. No, I wouldn't agree with
19 that.

20 Q How would they know?

21 A Who else is going to hire them to trim trees
22 along power lines?

23 Q Well, you know, there's phone lines that go
24 along there. What if it's Charter? AT&T? There are
25 more -- do you think UE is the only company that trims

1 trees?

2 A I've -- I wouldn't know.

3 Q Okay. If we accept for a moment that these
4 stencils were used at least in part to put a plaque on a
5 contractor so that it was tied back to the individuals who
6 saw it knew that it was part of UE's project Power On, do
7 you believe that cost is recoverable?

8 A No. The actual ad itself is not conveying any
9 type of useful information for the customer. It doesn't
10 have the web site on there where they can go to look up
11 more information about Power On.

12 Q Okay. Let's go to 2-21. And before I
13 specifically address this, I believe there were also some
14 -- some direct mail letters which UE included as part of
15 its request that you did agree should be recovered,
16 correct?

17 A Yes.

18 Q Okay. What is Schedule 2-21?

19 A It is a -- an envelope.

20 Q And if it was the envelope those letters were
21 mailed in, would that make it recoverable, in your mind?

22 A No.

23 Q Why not?

24 A The envelope -- how many customers actually look
25 at an envelope? They rip it up, and they read what's

1 inside of it. The envelope conveys no useful information
2 at all. It just says Power On.

3 Q So everything we mail out needs to be a plain,
4 white envelope with no printing on it?

5 A I didn't say that. But I'm saying you don't get
6 recovery for this because it conveys no useful information
7 to the ratepayer.

8 Q It says it's from AmerenUE, right?

9 A Yes. But AmerenUE is not trying to recover all
10 of their other envelopes which has AmerenUE logos on it.

11 Q Are you sure about that?

12 A Yes.

13 Q All right. So the fact it has Power On on it --
14 Power On on it, makes it not recoverable?

15 A The other ones weren't recoverable either.

16 Q Okay. Letters are fine. Envelopes are not?

17 A The envelope is not telling the customer
18 anything. It doesn't have information on it.

19 Q I understand. I just want to make sure I
20 understand the distinction. I've got your reasoning.
21 That's fine.

22 Let's talk a little more generally now about the
23 appropriate manner to judge advertisements. Is an
24 advertising campaign -- to the best of your knowledge,
25 because I understand you don't have an education or a

1 background really in advertising other than what you've
2 done at the Commission.

3 But is an advertising campaign, typically, a
4 coordinated effort of multiple ads?

5 A It can be an ad campaign, or it can be a single
6 ad.

7 Q Okay. If you're trying -- if you ran a single
8 ad, do you have any idea what percentage of -- let's say
9 you ran a single newspaper ad. Do you have any idea of
10 what percentage of individuals would actually retain any
11 information from it?

12 A No. I've never doned a study to --

13 Q And you've never done any research on it, to
14 find out about that?

15 A I have -- no.

16 Q Okay. So do you think it's more likely that
17 someone retains information that they are given that, that
18 message multiple times versus one time?

19 A Well, repetition is learning.

20 Q Okay. And many of these ads we just went
21 through are all very similar in terms of they use some of
22 the same visual images and they use some of the same tag
23 lines, don't they?

24 A As far as which ads are you referring? There
25 were several.

1 Q And it was kind of a repetition of about four
2 themes, wasn't it?

3 A Well, some of the ads, which just say
4 strengthening the power grid, how am I to know that the
5 ratepayer is going to see the whole series of those ads
6 and not just that ad one time?

7 The one ad -- you have to look at it on an ad by
8 ad basis. You can't look at it as a series compiled into
9 one. It's not how the order is written up to put them
10 into the five categories.

11 Q What part of the order says that?

12 A Right above -- I'm not sure of the exact
13 wording. I can't say it word for word.

14 Q You didn't quote that in your portion of the
15 staff report or in your surrebuttal, do you?

16 A No. But --

17 Q And you -- this -- these -- five categories were
18 set out in 1986?

19 A Yes.

20 Q Okay. But you're not denying that when you have
21 a campaign where you have multiple ads that send out the
22 message that it's easier for individuals to retain the
23 information, right?

24 A I'm not agreeing or disagreeing with that.

25 MS. TATRO: Okay. Thank you. I have no further

1 questions.

2 JUDGE WOODRUFF: All right. We'll come up for
3 questions from the Bench. Commissioner Jarrett.

4 CROSS-EXAMINATION

5 BY COMMISSIONER JARRETT:

6 Q Good afternoon.

7 A Good afternoon.

8 Q I want to make sure -- clarify the exact
9 standard we're talking about. I believe the standard is
10 under General, informational advertising that is useful in
11 the provision of adequate service. Is that the standard
12 that you reviewed --

13 A Yes.

14 Q -- these under? For example, if a company -- if
15 a company were to run an ad saying, you know, don't climb
16 up our poles and touch our lines because that -- then you
17 can blow the circuit and a whole neighborhood could be out
18 of power for several hours, so please don't climb on our
19 poles, would that be an advertisement that is useful in
20 the provision of adequate service?

21 A To tell a ratepayer not to climb an electric
22 pole?

23 Q Right. Because it might cause the power to go
24 out to the neighborhood? That would be useful, right?

25 A I would say it would, yeah.

1 Q In the provision of adequate service, right?

2 A Yes.

3 Q Or AmerenUE running -- or any company running an
4 ad saying, you know, call us before you dig because if you
5 dig and cut our lines, then you could cut power to the
6 neighborhood?

7 A Yes.

8 Q That would be useful in the provision of
9 adequate service?

10 A Yes.

11 Q Now, Ms. Tatro has given you Exhibit 72.

12 A Which one was that? I don't have it numbered.

13 Q That was -- that was the one with all the radio
14 spots, the transcript.

15 A Okay.

16 Q And, you know, she talked -- do you recall this,
17 in your testimony, discussing these -- these bullet
18 points? And the first bullet point was, We're trimming
19 trees before they can interfere with connections.

20 I mean, I understand trimming trees is useful in
21 the provision of adequate service. But how is advertising
22 that we're trimming trees? How is that useful in the
23 provision of adequate service? Can you tell me?

24 Or in your opinion, is that -- just telling
25 people that you're trimming trees, is that useful in the

1 provision of adequate service?

2 A That portion of the ad, I wouldn't deem as
3 useful to adequate service. But the Ameren.com/PowerOn
4 where you get more information about this program on how
5 they're supplying the adequate service, that's why I
6 decided to change my position on it.

7 COMMISSIONER JARRETT: No more questions. Thank
8 you.

9 JUDGE WOODRUFF: I have no other questions.
10 Going back, Ms. Tatro, did you want to offer 72?

11 MS. TATRO: Yes.

12 JUDGE WOODRUFF: All right. Exhibit 72 has been
13 offered. Any objections to its receipt? Hearing none, it
14 will be received into evidence.

15 (Exhibit No. 72 was offered and admitted into
16 evidence.)

17 MS. TATRO: Thank you, your Honor.

18 JUDGE WOODRUFF: Does anyone wish to recross
19 based on questions from the Commissioner? Redirect,
20 then?

21 MS. TATRO: No thank you.

22 JUDGE WOODRUFF: Redirect?

23 MR. DEARMONT: Thank you.

24 MS. TATRO; oh, thought he said recross. I'm
25 sorry.

1 REDIRECT EXAMINATION

2 BY MR. DEARMONT:

3 Q I think most people here know that this is my
4 first time presenting evidence in front of the Commission.
5 It's your first time testifying in front of the Commission
6 as well, isn't it?

7 A Yes.

8 Q Probably, like me, you're a little nervous?

9 A Yes.

10 Q Yes. I know I am. That's why I'm going to sit
11 down now as opposed to stand up. I got more nervous when
12 I stood up. So is that all right?

13 A That's fine. Yeah.

14 Q I want to talk to you about this -- this
15 standard that's -- that's here. And category one, we've
16 been talking a lot about this general advertisements.

17 A Uh-huh.

18 Q And you looked at that. Is that standard that
19 was introduced in that case, is that the same as an
20 advertisement which conveys information? I mean, is there
21 a difference between advertisement that is useful in the
22 provision of adequate service and an advertisement which
23 conveys information?

24 A There is a difference.

25 Q Okay. But just to be clear, the standard is,

1 then, advertisement that is useful in the provision of
2 adequate service and not just advertisements that convey
3 information?

4 MS. TATRO: Your Honor, I have to interject. I
5 think he's impeaching his own witness. She's already
6 testified that the standard that she uses to determine
7 that is whether it's useful information.

8 JUDGE WOODRUFF: I'm going to overrule the
9 objection. You can go ahead and answer the question.

10 A That's correct.

11 Q (By Mr. Dearmont) What is it -- what
12 information could an ad contain that would make it useful
13 in the provision of adequate service?

14 A I think it would be letting them know, you know,
15 we're going to be in your area or different -- hm-mm.
16 Like actually different things that are going to affect
17 the ratepayer while Power On is going on.

18 I think that would be adequate -- a provision
19 for adequate service, how it's actually good to go affect
20 the ratepayer individually, not as a whole of we're going
21 to be trimming trees to --

22 Q So -- sorry. Go ahead and --

23 A I was finished.

24 Q So if an ad conveyed when a utility company was
25 going to be in an area, that would, at least in part, be

1 useful in the provision of adequate service?

2 A Yes.

3 Q What if an ad stated specifically what the
4 utility company would be doing in an customer's area?

5 A Then, most definitely, it would fit into the
6 general category.

7 Q What if it stated when the company was going to
8 be doing those things?

9 A Again, that would be information the ratepayer
10 could actually use.

11 Q Okay. Ms. Carle, I'm going to hand you some
12 information here. Okay. Sure.

13 MS. TATRO: Are these -- are these questions all
14 tied back to Commissioner Jarrett's two questions about
15 tree trimming and how that was useful information?

16 JUDGE WOODRUFF: This is -- this is redirect,
17 not necessarily based on questions -- Commissioner
18 questions.

19 MS. TATRO: That's a very good point.

20 MR. REED: The exhibits will be 230, a letter.
21 What's the date on that?

22 MS. TATRO: Can I get a copy of that?

23 MR. DEARMONT: November -- November 15.

24 MR. REED: 231 is another ad, different ad.

25 JUDGE WOODRUFF: The first one, November 15th,

1 is 230?

2 MR. REED: Yes.

3 Q (By Mr. Dearmont) First, I want to talk to you
4 about what we marked as Exhibit 230. It's the November
5 15, 2007, letter.

6 A Okay.

7 Q Have you seen this letter before?

8 A Yes, I have.

9 Q When was that?

10 A It was response from Ameren with all the other
11 advertisements.

12 Q Okay. And was this -- is this an advertisement
13 that relates to Power On?

14 A Yes, it is.

15 Q Okay. Now, is this an advertisement that was
16 allowed or disallowed?

17 A This one was allowed.

18 Q And why is that?

19 A Because it clearly states to the ratepayer that
20 when they're going to be in their area and what they're
21 going to be doing in their area at that time.

22 Q Okay. And those are important to you?

23 A Yes. It's something the ratepayer can actually
24 use.

25 Q I'd like to talk to you about what we marked as

1 Exhibit 231. Have you seen this advertisement before?

2 A Yes, I have.

3 Q When did you see it?

4 A Along with the DR, the advertisements from the
5 company.

6 Q Okay. And is this an example of an ad --

7 A Yes.

8 Q -- that was allowed or disallowed?

9 A It was allowed.

10 Q And why was this ad -- advertisement allowed?

11 A Because it actually goes through and explains to
12 the customer exactly what is going to be -- I believe
13 there's a couple pages missing. Was it front and back
14 print, or is this it? But it explains exactly what is
15 going to be changing on their house and that they have the
16 option to change their exact personal line from above
17 ground to below ground and gives them a little more -- it
18 gives them in-depth information that they can make a
19 decision on what they would like to have done.

20 Q Okay. How are these ads different than, say,
21 for example, the -- the radio transcripts that were
22 presented to you by Ms. Tatro?

23 A The radio transcripts just keep reiterating
24 steps of the Power On program to whereas these ones
25 actually give the customers what they can do with -- when

1 they're in the area or like the putting power lines
2 underground and gives them the option of what they can do
3 with it.

4 MR. DEARMONT: Okay. I'd like to move for the
5 admission of Exhibit 230 and Exhibit 231.

6 JUDGE WOODRUFF: 230 and 231 have been offered.
7 Are there any objections to see their receipt? Hearing
8 none, they will be received.

9 (Exhibit Nos. 230 and 231 were offered and
10 admitted into evidence.)

11 MR. DEARMONT: I have no further questions.

12 JUDGE WOODRUFF: Thank you.

13 MR. WILLIAMS: Judge, may I approach?

14 JUDGE WOODRUFF: Yes.

15 MR. WILLIAMS: Are you web streaming still?

16 JUDGE WOODRUFF: Recording. To answer your
17 question, yes, the stream should still be going, although
18 we're having problems recording is what -- the question
19 was there. You can step down.

20 MS. CARLE: Thank you.

21 JUDGE WOODRUFF: Mr. Reed, I did have a question
22 for you. What happened to Exhibit 229?

23 MR. REED: Judge --

24 JUDGE WOODRUFF: I think you marked that earlier
25 this morning and -- but never offered it or told me what

1 it was.

2 MR. REED: Did I -- did I say what it was?

3 Because I can't remember right now, Judge.

4 JUDGE WOODRUFF: I heard you during the break
5 telling the court reporter that you were going to mark
6 229.

7 MR. REED: Oh, I was going to use that during
8 the low income weatherization, but now it's come back to
9 me. We ended up stipulating to the set of facts. It was
10 actually the contract that is in evidence anyway. So
11 thank you for --

12 JUDGE WOODRUFF: We'll just leave it as a gap.
13 That's fine.

14 MR. REED: Right. Okay. And I believe that
15 takes care of the Power On and advertising expense issue,
16 which leads us into deferred income taxes. And I assume
17 we'll want to do mini openings on that. Okay. Beginning
18 with AmerenUE, then.

19 DEFERRED INCOME TAX

20 OPENING STATEMENT

21 BY MR. BYRNE:

22 MR. BYRNE: Thank you, your Honor. May it
23 please the Commission. The issue that we're here to
24 address this afternoon is the treatment of book tax timing
25 differences associated with uncertain tax positions that

1 AmerenUE has taken.

2 These are situations where AmerenUE has taken
3 tax positions in areas where the tax law is not clear. We
4 take these positions in an effort to keep the customers'
5 rates as low as possible.

6 Because it takes years in some cases for these
7 uncertain issues to be resolved through tax audits, IRS
8 administrative proceedings and sometimes even in court,
9 the outcome is often uncertain for many years.

10 Staff has included the full amount of AmerenUE's
11 uncertain tax positions in its calculation of deferred
12 taxes in this case. Since deferred taxes are deducted
13 from rate base, the effect of staff's position is to give
14 customers full credit for all of the uncertain tax
15 positions as though AmerenUE will prevail on every single
16 one of them.

17 If Staff's position is adopted and if AmerenUE
18 does not prevail on every single uncertain position it has
19 taken, customers will improperly get the benefit of tax
20 deferrals related to those issues, and AmerenUE will be
21 unable to recover the interest it must pay the IRS related
22 to the issues that it loses in rates.

23 Staff's position is bad policy for two reasons.
24 First, it's un -- unreasonable to subject AmerenUE to the
25 virtual certainty that it will under-recover its prudently

1 incurred tax costs in this case just because it is taking
2 uncertain tax positions in an effort to benefit customers.

3 Second, if Staff's position is adopted, it will
4 discourage all utilities in this state from taking
5 uncertain tax positions because they will be justifiably
6 afraid they will not be permitted to recover their costs
7 of doing so.

8 AmerenUE's position on this issue is much more
9 reasonable than the Staff's. As AmerenUE witness Gregory
10 Nelson has testified, the company is required pursuant to
11 Financial Accounting Standards, Board Interpretation No.
12 48 to estimate the amount that it will ultimately have to
13 pay to the IRS for issues on which it has taken uncertain
14 tax positions.

15 In other words, it has to calculate the portion
16 of the uncertain positions that the company expects to
17 lose. This estimate is re-evaluated quarterly, and it is
18 audited by an outside auditor.

19 We are proposing to remove the estimate of the
20 amount we will ultimately have to pay from deferred taxes
21 so that both the customers and the company are treated
22 fairly and there is no disincentive for the company to
23 pursue uncertain tax positions. Thank you.

24 JUDGE WOODRUFF: Okay. Opening for Staff?

25 OPENING STATEMENT

1 BY MR. WILLIAMS:

2 MR. WILLIAMS: May it please the Commission.
3 AmerenUE took intax -- income tax deductions for power
4 plant repairs, casualty loss and research costs.

5 This is the Staff's position that unless and
6 until these deductions are disallowed or conceded, the
7 income tax associated with the deductions should be
8 applied as an off-set to AmerenUE's rate base.

9 The company would have the ratepayers bear all
10 of the risk of any uncertainty on whether AmerenUE will
11 continue to get the benefit of these deductions. It's the
12 Staff's position that until and unless those deductions
13 are disallowed, it should be the company that bears that
14 risk.

15 JUDGE WOODRUFF: Okay. Any other party want to
16 make an opening on this issue? All right. First witness,
17 then, is Mr. Nelson for UE. Please raise your right hand.

18 GREGORY NELSON,
19 being first duly sworn to testify the truth, the whole
20 truth, and nothing but the truth, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. BYRNE:

23 MR. BYRNE: Thank you.

24 JUDGE WOODRUFF: You may inquire.

25 MR. BYRNE: Thank you.

1 Q (By Mr. Byrne) Good afternoon, Mr. Nelson?

2 A Good afternoon.

3 Q Can you please state your name for the record?

4 A Gregory L. Nelson.

5 Q And what's your business address, Mr. Nelson?

6 A 1901 Chouteau Avenue, St. Louis, Missouri.

7 Q And by whom are you employed?

8 A Ameren Services Company.

9 Q And are you the same Gregory Nelson that caused

10 to be filed in this case pre-filed rebuttal testimony

11 that's been marked Exhibit 12 with a highly confidential

12 and a -- and a -- and a non-proprietary version?

13 A Yes, I am.

14 Q Do you have any corrections that you'd like to

15 make that prefiled testimony?

16 A No, I don't.

17 Q Is the information contained in that pre-filed

18 testimony true and correct to the best of your knowledge

19 and belief?

20 A Yes, it is.

21 Q And if I was to ask you the questions contained

22 in that pre-filed testimony here today when you're under

23 oath, would your answers be the same?

24 A Yes, they would.

25 MR. BYRNE: Okay. I would offer Exhibit 12-HC

1 and NP.

2 JUDGE WOODRUFF: It's actually 21.

3 Q (By Mr. Byrne) Okay. I'm sorry. Are all those
4 -- I guess I named the wrong exhibit. Are all the answers
5 that you gave true applicable to Exhibit 21, which is I
6 guess, what your testimony has been marked?

7 A Yes. Yes, they are. My copy doesn't have the
8 exhibit number on it, but, yes, my answers would be the
9 same.

10 MR. BYRNE: Okay. I would offer Exhibit 21 and
11 tender Mr. Nelson to be cross-examined.

12 JUDGE WOODRUFF: 21-HC and NP has been offered.
13 Any objections to its receipt? Hearing none, it will be
14 received.

15 (Exhibit No. 21-HC and 21-NP were offered and
16 admitted into evidence.)

17 JUDGE WOODRUFF: For cross-examination, does
18 anyone other than Staff want to cross-examine?

19 MR. IVESON: I -- I have a couple of quick
20 questions.

21 JUDGE WOODRUFF: Go ahead.

22 MR. IVESON: Thank you, your Honor.

23 CROSS-EXAMINATION

24 BY MR. IVESON:

25 Q Good afternoon, Mr. Nelson. These taxes have

1 not yet been paid; is that correct?

2 A That -- that's correct.

3 Q And the -- the uncertainty estimate that do you
4 for purposes of your continual accounting, that's just an
5 estimate, correct?

6 A That's correct.

7 Q There's no assurance that that's the amount that
8 will ultimately be paid, correct?

9 A There is no assurance.

10 Q Could be more, could be less?

11 A Could be more and it could be less. That's
12 right.

13 Q Maybe I missed it in your testimony, but what is
14 the provision for the ratepayers to recover in the event
15 that it's less?

16 A In -- in Staff's position or our own position?

17 Q In your position.

18 A In our position, if -- if the actual tax due is
19 less, then there is -- there is no provision for -- for
20 ratepayers to recover. And, conversely, if it's more,
21 there is no provision for the converse.

22 Q Although if -- if it was more, you could file
23 another rate case and have it included in the rate base at
24 that point in time, couldn't you?

25 A If -- if it were in a test year, sure.

1 MR. IVESON: Thank you. No further questions.

2 JUDGE WOODRUFF: All right. Then we'll go to
3 Staff.

4 MR. WILLIAMS: Thank you.

5 CROSS-EXAMINATION

6 BY MR. WILLIAMS:

7 Q Good afternoon, Mr. Nelson.

8 A Good afternoon.

9 Q AmerenUE did take a power plant repair
10 deduction, did it not?

11 A Yes, it did.

12 Q Why did it take a deduction?

13 A The -- it -- we -- we believe that under the tax
14 law that we were justified and had substantial authority
15 to take the position.

16 Q And what position did you take?

17 A We took the position that the power plant
18 repairs that are expensed for book purposes would be
19 deductible for tax purposes.

20 Q And are you still taking that position?

21 A Yes, we are.

22 Q And has the IRS disallowed that position?

23 A In prior audits, they have -- they have
24 disallowed that position. They are auditing right now.
25 They have not proposed their position yet.

1 Q At this point, have they disallowed that income
2 tax deduction with regard to AmerenUE?

3 A As of today, no, they have not. The audit is --
4 is still in progress. And they are -- you know, we're
5 exchanging information right now on the -- on the issue.

6 Q And when do you expect that the IRS will give
7 you its audit results in the form of a notice of
8 adjustment or however they do that at the end of the
9 audit?

10 A We would expect their audit adjustments to be
11 conveyed to us mid 2009.

12 Q And what -- did AmerenUE also take a casualty
13 loss deduction?

14 A Yes, we did.

15 Q Why did it take that casualty loss deduction?

16 A We believed we had substantial authority under
17 the tax law to do so.

18 Q And what was the nature of the deduction taken?
19 Was it an expense or something else?

20 A This was a -- a -- a loss resulting from damage
21 to our system due to storms. And we claimed a casualty
22 loss to the diminution in value to our -- to our system
23 due to the storms. And we claimed the deduction and
24 reduced our tax basis accordingly.

25 Q Are you still claiming that deduction?

1 A Yes.

2 Q And like the power plant repair deduction, are
3 you expecting the audit results of that no earlier than
4 mid 2009?

5 A Same time period. Yes.

6 Q Did you also take a research cost deduction?

7 A Yes, we did.

8 Q And was that also an expense deduction?

9 A Right. That was -- these were amounts that were
10 capitalized on the books that we -- we analyzed and have
11 taken the position that they are deductible for tax
12 purposes and research costs.

13 Q Is it still your -- it's still AmerenUE's
14 position that the research costs are deductible --

15 A Yes.

16 Q -- for tax purposes?

17 A Yes.

18 MR. WILLIAMS: No further questions.

19 JUDGE WOODRUFF: Okay. We'll come up for
20 questions from the Bench, then. Commissioner Clayton, did
21 you have any questions?

22 COMMISSIONER CLAYTON: No questions.

23 JUDGE WOODRUFF: Commissioner Jarrett?

24 COMMISSIONER JARRETT: No questions. Thank you.

25 JUDGE WOODRUFF: I have no questions, so there's

1 no need for recross. Any redirect?

2 MR. BYRNE: Just briefly, your Honor.

3 REDIRECT EXAMINATION

4 BY MR. BYRNE:

5 Q Mr. Nelson, in response to questions from
6 Mr. Iveson, I think you testified that the taxes have not
7 yet been paid related to these uncertain positions; is
8 that correct?

9 A That's correct.

10 Q Okay. But -- but what happens if we -- if we
11 lose our position on the uncertain positions?

12 A We -- when we claimed the deductions, we record
13 a current tax benefit and a deferred tax liability. The
14 -- the -- in a situation where a position is certain that
15 deferred tax liability, in essence, represents just
16 basically a timing difference with no -- no interest
17 attached to it.

18 What we have to do for the accounting rules is
19 we have to distinguish between the uncertain portion of
20 the position and the certain portion of the position. So
21 with respect to, for example, the -- the research
22 deduction, we would look at that -- that deduction and
23 evaluate it against the accounting standard and estimate
24 the portion that we expect to -- to lose.

25 That portion is the portion that we expect to

1 pay back with interest to the -- the government. The
2 Staff's position treats that position as if we win the
3 entire issue, and, therefore, the entire -- the entire
4 deduction is treated as nothing more than a timing
5 difference with no interest.

6 The estimate that we're making is -- is the --
7 is our estimate under the GAAP rules, under the Generally
8 Accepted Accounting Principle rules of the part that we
9 expect to have to repay with interest.

10 And so our -- our problem is that we're -- we're
11 treating it as no cost capital amounts that we expect to
12 pay back with interest. They're not properly in the cost
13 capital.

14 MR. BYRNE: Okay. Thank you very much.

15 JUDGE WOODRUFF: Thank you, sir. You may step
16 down. Next witness is Mr. Cassidy.

17 JOHN CASSIDY,
18 being first duly sworn to testify the truth, the whole
19 truth, and nothing but the truth, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. WILLIAMS:

22 JUDGE WOODRUFF: Thank you. You may inquire.

23 Q (By Mr. Williams) Please state your name.

24 A John P. Cassidy.

25 Q Who is your employer?

1 A Missouri Public Service Commission.

2 Q And what position do you hold with Missouri
3 Public Service Commission?

4 A I'm a Utility Regulatory Auditor 5.

5 Q And what's the nature of your job duties as a
6 Utility Regulatory Auditor 5?

7 A To conduct audits and examinations of books and
8 records of the utilities operating within the State of
9 Missouri.

10 Q Did you prepare portions of Staff's report on
11 cost of service that's been marked for identification as
12 Exhibit 200 and pre-filed in this case?

13 A I did.

14 Q And as part of the material that you prepared,
15 did you prepare the section that's titled Deferred Income
16 Taxes that appears on pages 11 and 12 of that report?

17 A Yes.

18 Q Do you have any changes to that section of the
19 report?

20 A Just one typographical error on the second to
21 last line in parentheses. IRC should be changed to IRS.

22 Q You're referring to page 11?

23 A Yes.

24 Q And did you also provide, I guess I would call
25 it, a resume that's part of Exhibit 200 that appears, I

1 guess, on pages -- starts on page 4 of -- I believe it's
2 designated attachment -- Appendix 1?

3 A Yes.

4 Q That continues through page 10?

5 A Yes.

6 Q Do you have any changes to that appendix?

7 A I do not.

8 Q Did you also prepare surrebuttal testimony
9 that's been marked for identification purposes as Exhibit
10 226?

11 A I did.

12 Q Do you have any changes to that exhibit?

13 A Yes. Just on page 1. Lines 18 and 19, on line
14 18, I'd like to strike the word "and." On line 19, strike
15 the words "under-forecasting error."

16 Q With the changes you've made to those portions
17 of Exhibit 200 that you prepared and to Exhibit 226, is
18 that your testimony here today?

19 A Yes.

20 MR. WILLIAMS: I'd offer Exhibit --make sure I
21 get the pages right. I offer the section on deferred
22 income taxes on pages 11 and 12 and pages 4 through 10 of
23 Appendix -- Appendix 1 to Exhibit 200, and Exhibit 226.

24 JUDGE WOODRUFF: All right. The testimony of
25 Mr. Cassidy has been offered. Any objections to its

1 receipt? Hearing none, it will be received into evidence.

2 (Exhibit No. 226 was offered and admitted into
3 evidence.)

4 MR. WILLIAMS: Tender the witness.

5 JUDGE WOODRUFF: Thank you. Anyone other than
6 AmerenUE wish to cross?

7 MR. IVESON: Just one for the State.

8 CROSS-EXAMINATION

9 BY MR. IVESON:

10 Q Good afternoon. Just following up, you were
11 here while I was asking questions while the prior witness
12 was on the stand, weren't you?

13 A Yes.

14 Q Assuming that there was a payment out of these
15 -- of these deferred taxes and assuming that a rate case
16 was filed during -- using that as test year to when those
17 taxes were paid and also assuming that the procedures that
18 they used for determining the amount of these deferred
19 taxes was reasonable and prudent, are those costs that
20 could be recovered in that rate case?

21 A Certainly.

22 MR. IVESON: Nothing further.

23 JUDGE WOODRUFF: All right. Cross for Ameren,
24 then?

25 MR. BYRNE: Thank you.

1 CROSS-EXAMINATION

2 BY MR. BYRNE:

3 Q Mr. Cassidy, in your opinion, should AmerenUE
4 pursue uncertain tax positions?

5 A AmerenUE should pursue appropriate tax positions
6 before the IRS. When you say uncertain, it's -- in this
7 context, I view that as something that's developed after
8 the time that you've taken this deduction.

9 Q Well --

10 A At the time that you took -- at the time that
11 you took these deductions, I think you believed them to be
12 appropriate tax deductions.

13 Q Well, let me -- let me try to define uncertain
14 -- what I -- what I view as uncertain tax positions. I --
15 I view as uncertain tax positions tax positions where
16 AmerenUE is not certain if the IRS will accept them or if
17 we appeal within the administrative proceeding or to
18 court, whether the -- whether the positions will
19 ultimately be accepted. That's what I define as uncertain
20 tax positions. Is that -- can we use that in my
21 questioning?

22 A I -- I would accept that.

23 Q Okay. And with that definition, do you believe
24 AmerenUE should take uncertain tax positions?

25 A AmerenUE should pursue positions that are --

1 yes. I -- I would say that, yes, they should be
2 encouraged to pursue those types of positions.

3 Q I mean, isn't it true that pursuing those types
4 of conditions -- or positions can benefit AmerenUE's
5 customers when the company wins some or all of them?

6 A Yes, they can.

7 Q Okay. And would you agree that it can be
8 prudent for the company to pursue those positions?

9 A It can be.

10 Q Okay. But -- but by their very nature, the
11 company can't know what's going to happen with them when
12 it -- when it takes those uncertain tax positions, can it?

13 A There's -- there are times when the company
14 probably takes deductions for which there is not a
15 guarantee that they will ultimately prevail.

16 Q I mean, by -- by it's -- by the definition I
17 gave you, you know, doesn't that definition suggest that
18 the uncertain tax positions might be resolved in favor of
19 the company and they might be resolved against the
20 company? Isn't that inherent?

21 A Yes. The IRS can rule both ways.

22 Q Would you agree that in either instance, either
23 when it's resolved in favor of the company or when it's
24 resolved against the company, ultimately, the company
25 ought to be able to recover the prudently incurred costs

1 of pursuing uncertain tax positions?

2 A Certainly, the company should. And in this
3 instance, if the company doesn't prevail in its uncertain
4 tax positions, it has the opportunity in subsequent rate
5 cases to get recovery from those positions.

6 And, also, when the company took these
7 deductions, which they thought were appropriate at the
8 time, they earned interest on --

9 Q I don't think there's -- I think you answered
10 the question. I don't think -- I don't think you're
11 answering a question I asked.

12 Is -- let me ask you this: Isn't it true that
13 the Staff's adjustment in this case presumes that the
14 company will win 100 percent of the uncertain tax
15 positions that its taken?

16 Let me, -- let me try to add -- help by asking
17 it another way. Aren't you putting all the money that
18 AmerenUE would win if it prevails in its uncertain tax
19 positions in your calculation of deferred taxes?

20 A The Staff has reflected the entire amount of
21 those positions as a reduction to rate base because the
22 company has earned some amount of return on those
23 deductions since the time they took those deductions.

24 Q I didn't ask you why did it. I asked if you did
25 it. And I think your answer is yes; is that correct?

1 A That is correct.

2 Q Okay. Wouldn't it be possible to go the other
3 way? Wouldn't it be possible to assume that AmerenUE will
4 lose all the uncertain tax positions and -- and completely
5 take all the money associated with those uncertain tax
6 positions out of deferred taxes? Wouldn't that be
7 possible to do?

8 A Yes. That -- that possibility could occur.

9 Q But that wouldn't be reasonable, would it?

10 A It wouldn't be reasonable in what context?

11 Q Well, you don't know if it would be reasonable.

12 A I -- I don't understand the question.

13 Q Well, the question is couldn't you do the
14 opposite of what the Staff has done in this case and take
15 all of the money out of deferred -- of deferred taxes
16 that's associated with uncertain tax positions?

17 A If you -- if you were to do that, then the
18 ratepayer would be put in the position of not being able
19 to recover those items. But keep in mind the ratepayer
20 has never earned any return on these items.

21 Q Well, I guess the question I had pending is
22 would that be unreasonable? And is the answer yes or no?

23 A I believe that's unreasonable to -- to --

24 Q Okay. That answers my question. Let me ask you
25 this: Isn't it better to use an estimate reflecting the

1 best information that's available regarding the outcome of
2 the uncertain positions rather than assuming that AmerenUE
3 will win them all or lose them all?

4 A No. Because you're project -- you're trying to
5 apply in a future outcome of an IRS audit or an appeals
6 process in the future and applying that to rates today.

7 Q Okay. So you think it's better to build in an
8 amount that assumes that 100 percent of the issues will be
9 would be by AmerenUE?

10 A Yes. Because AmerenUE has reflected those
11 deductions and earned a return on that cost free source of
12 funds.

13 Q Okay. Are you familiar with Financial
14 Accounting Standards, Board Instruction No. 48?

15 A Yes.

16 Q Have you read it?

17 A Yes.

18 Q Okay. And wouldn't you -- would you agree with
19 me that Financial Accounting Standards, Board Instruction
20 No. 48, which I think some people refer to as FIN 48; is
21 that correct?

22 A Right.

23 Q That requires AmerenUE to make an estimate of
24 what the result of its uncertain tax positions will be?

25 A Yes. For financial rewarding purposes under

1 GAAP.

2 Q And isn't it true that the instructions in FIN
3 48 contain some instructions as to how to make that
4 estimate?

5 A Yes.

6 Q And isn't it true that FIN 48 requires that
7 estimate to be updated and re-evaluated quarterly?

8 A Yes.

9 Q And isn't it true that that estimate is audited
10 by an outside auditor?

11 A It is.

12 Q Okay. Wouldn't it be possible for the Staff to
13 calculate a different estimate of the likely outcome of
14 the uncertain tax positions that it disagreed with the
15 estimate that the company has under FIN 48? Wouldn't that
16 be possible to do?

17 A I think it would be impossible to predict what
18 that amount would be because --

19 Q Okay.

20 A -- we don't know what the IRS is going to do.

21 Q Okay. Let me ask you -- let me jump to another
22 topic a little bit and ask you, wouldn't it be possible to
23 use a tracker to keep track of the wins and losses on
24 uncertain tax positions? Wouldn't it be possible to use a
25 tracker to do that?

1 A A tracker could be used. But I don't view that
2 as being something that would be appropriate for this
3 item. It's not really a very significant amount of money
4 that we're talking about here. You know, there are other
5 items that aren't tracked.

6 Q Okay.

7 A And Staff --

8 Q I understand. But -- but wouldn't it -- if you
9 did use a tracker, wouldn't a tracker make sure that the
10 company recovers no more and no less than what it actually
11 spends in pursuing uncertain tax positions if you had a
12 tracker?

13 A A tracker would assist with that.

14 MR. BYRNE: Okay. Thank you. That's all the
15 questions I have.

16 JUDGE WOODRUFF: Okay. Come up for questions
17 from the Bench. Commissioner Clayton?

18 COMMISSIONER CLAYTON: I have no questions at
19 this time.

20 JUDGE WOODRUFF: Okay. Commissioner Jarrett?

21 COMMISSIONER JARRETT: No questions.

22 JUDGE WOODRUFF: I have no recross -- or no
23 questions, so there's no need for recross. Any redirect?

24 MR. WILLIAMS: Thank you.

25 REDIRECT EXAMINATION

1 BY MR. WILLIAMS:

2 Q Do you remember when Mr. Byrne asked you if
3 pursuing uncertain tax positions was beneficial to
4 ratepayers?

5 A Yes.

6 Q Is pursuing uncertain tax positions beneficial
7 to shareholders?

8 A Certainly.

9 Q Why is that?

10 A Because they get the benefit of the deduction
11 and the cost for use of those funds by taking that
12 deduction. And that benefit continues until the time that
13 an IRS ruling occurs or its implemented in rates.

14 MR. WILLIAMS: No further questions.

15 JUDGE WOODRUFF: All right. You can step down.
16 And I'm -- that takes care of the deferred income tax
17 issue. And I believe that was the last issue on the
18 schedule for today.

19 Is there anything else anyone wants to bring up
20 before we adjourn until Monday?

21 MR. BYRNE: Are we at 8:30 on Monday, your
22 Honor?

23 JUDGE WOODRUFF: 8:30 on Monday with the hot
24 weather safety program.

25 MR. BYRNE: Great.

1 JUDGE WOODRUFF: All right. Then we are
2 adjourned.

3 (The proceedings were adjourned at 2:55 p.m. on
4 November 25, 2008.)

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1 REPORTER'S CERTIFICATE

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3 STATE OF MISSOURI)
)ss.
4 COUNTY OF OSAGE)

5

6 I, Monnie S. VanZant, Certified Shorthand Reporter,
7 Certified Court Reporter #0538, and Registered
8 Professional Reporter, and Notary Public, within and for
9 the State of Missouri, do hereby certify that I was
10 personally present at the proceedings as set forth in the
11 caption sheet hereof; that I then and there took down in
12 stenotype the proceedings had at said time and was
13 thereafter transcribed by me, and is fully and accurately
14 set forth in the preceding pages.

15

16 IN WITNESS WHEREOF, I have hereunto set my hand and
17 seal on December 1, 2008.

18

19

20

21 _____
Monnie S. VanZant, CSR, CCR #0539

22 Registered Professional Reporter

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24

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