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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

December 10, 2008  
Jefferson City, Missouri  
Volume 24

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

MORRIS L. WOODRUFF, Presiding,  
DEPUTY CHIEF REGULATORY LAW JUDGE.

JEFF DAVIS, Chairman,  
CONNIE MURRAY,  
KEVIN GUNN,  
COMMISSIONERS.

REPORTED BY:  
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1 PROCEEDINGS

2 JUDGE WOODRUFF: Welcome back, everyone,  
3 for another day of the AmerenUE rate hearing. I believe  
4 we're ready to go to the last issue, which would be the  
5 FAC, and anything we need to take up before we start mini  
6 openings on that? Mr. Dottheim?

7 MR. DOTTHEIM: Yes. Judge Woodruff, as set  
8 out in the list of issues, there are basically two pieces.  
9 There's the fuel adjustment clause issue itself as far as  
10 whether the Commission should authorize AmerenUE a fuel  
11 adjustment clause, and then the -- from a rate design  
12 perspective, various issues.

13 I don't know if you want to address how we  
14 might structure proceeding. I mean, the Staff has a  
15 preference of handling those separately. Other parties  
16 may prefer to handle those at the same time.

17 JUDGE WOODRUFF: Makes no difference to me.  
18 What does anybody else think about it?

19 MR. LOWERY: Well, your Honor, I think the  
20 company, I guess, has the opposite preference. Rather  
21 than having a witness take the witness stand and then go  
22 off and two days later take the witness stand again, it  
23 seems to me that all the testimonies are on the FAC. Some  
24 of them mix both issues, and it just seems to be a much  
25 more efficient process if we handle them together, have

1 all the cross-examination be handled on both FAC-related  
2 issues together. That's what we were going to do on  
3 off-system sales. We typically have done that, I think,  
4 on other issues.

5 JUDGE WOODRUFF: What's the reasons for  
6 Staff's preference?

7 MR. DOTTHEIM: We thought that it might set  
8 the issue more clearly. Also, too, we were thinking --  
9 and we certainly have no idea how much cross each of the  
10 parties have, but when we look at the witnesses for the --  
11 for the rate design of the fuel adjustment clause, it's  
12 very limited.

13 JUDGE WOODRUFF: It's the same people  
14 again?

15 MR. DOTTHEIM: It's the same people again,  
16 but it's very limited, and it doesn't -- it doesn't  
17 include in particular the outside consultants which  
18 AmerenUE has brought in. So the thought was that it  
19 certainly would speed things along, and their outside  
20 consultants could get on and off the stand even quicker.

21 But that was just the Staff's thinking, and  
22 we hadn't visited with any of the other parties on that.  
23 And again, we have no idea how much cross any of the  
24 parties might have. I don't know that we're going to even  
25 need three days for the issue, even though we have a

1 considerable list of witnesses.

2 JUDGE WOODRUFF: Mr. Lowery, you wanted to  
3 say something else?

4 MR. LOWERY: Your Honor, I don't know if  
5 we're going to need three days either, but we do have, I  
6 believe, 18 witnesses, and it just does seem to me that  
7 it's more efficient to handle the issues when they take  
8 the witness stand and err on the side of being more  
9 efficient rather than perhaps a little bit less efficient,  
10 and if it turns out we're done at noon on Friday or  
11 something, I'm sure everybody would be happy about that,  
12 but we don't know that.

13 We still have a preference for just  
14 handling the witnesses when they're -- when they're on the  
15 stand. There's one witness for our side that's  
16 denominated as separate and there are three on the other,  
17 including a couple of outside folks, Mr. Brubaker and  
18 Mr. Johnstone. So I think we still have a preference of  
19 doing them together.

20 JUDGE WOODRUFF: All right.

21 MR. CONRAD: Judge, I don't know that we  
22 have yet formulated a position on this because it just  
23 came up this morning, and you know me, I'm all for  
24 efficiency, but at the same time I'm reminded that  
25 Mussolini made the trains run on time.

1                   At the sacrifice of clarity, could counsel  
2 for Staff or company, one, articulate what they're seeing  
3 in the sense -- I guess it probably falls to  
4 Mr. Dottheim -- what you're seeing as different in the  
5 sense of the FAC issue? Are we talking about rate design  
6 of the FAC or something else? I'm kind of struggling as  
7 to how you would pull those apart.

8                   MR. DOTTHEIM: Well, I'm thinking more of  
9 tariff issues as far as accumulation periods, recovery  
10 periods, items of that nature. And I don't want to  
11 indicate that the Staff for one has extensive  
12 cross-examination or anything of that nature. I just  
13 wanted to address the matter from a structural perspective  
14 and see if any of the parties had focused on that -- on  
15 that matter.

16                   So I was viewing it from that -- from that  
17 perspective; in particular, tariff issues that are in the  
18 case and also tariff issues that have arisen in other  
19 cases where the Commission has dealt with the fuel  
20 adjustment clause.

21                   MR. CONRAD: That's helpful, Mr. Dottheim.  
22 Thank you. Judge, I guess after hearing that, I kind of  
23 have the sense that it might go better, even grant  
24 Mr. Lowery's point about people making repetitive trips to  
25 the stand, but we're probably only talking about two and



1 then perhaps not all the witnesses. So I guess if we had  
2 to state a position on that, I would line up with where  
3 Staff is.

4 MR. LOWERY: Your Honor, I think it would  
5 be three out of the four witnesses would be making  
6 repetitive trips to the stand.

7 MR. DOTTHEIM: And the three out of four  
8 witnesses, the only one -- only one of the four witnesses  
9 is an AmerenUE witness.

10 JUDGE WOODRUFF: Actually, I believe it  
11 would be all four of them are for both.

12 MR. LOWERY: I guess it is all four.

13 JUDGE WOODRUFF: And Mr. Brubaker and  
14 Mr. Johnstone are the outside consultants. Mr. Brubaker,  
15 your counsel's not here, so I'll ask you directly, would  
16 that cause problems for you?

17 MR. BRUBAKER: Either way you decide to go,  
18 Judge, would be fine.

19 JUDGE WOODRUFF: Let's keep them separate,  
20 then.

21 MR. CONRAD: I have another thing, Judge,  
22 before we move on that's housekeeping. The parties have  
23 been working on a stipulation on off-system sales.

24 JUDGE WOODRUFF: Yes.

25 MR. CONRAD: And I'm not really sure where

1 that is. We had some issues come up almost at the last  
2 minute, that at least seem to us came up at the last  
3 minute, that are causing a little bit of heartburn. I  
4 don't know where everybody else is on that, and I know  
5 you're expecting that, and reasonably so, because  
6 theoretically the time to try that has passed, and I think  
7 there are many aspects of the -- well, I won't get into  
8 the substance of it since it hasn't been filed, but maybe  
9 just if somebody that's privy to all that could elucidate  
10 where the status is.

11 MR. DOTTHEIM: The Staff was hopeful that  
12 now that a number of the key parties are here in Jefferson  
13 City, we will be able to meet face to face and hopefully  
14 be able to resolve the remaining points. We've been  
15 communicating by e-mail and telephone, and I think we are  
16 down to a very few items. That's not to say that parties  
17 don't feel strongly about those few items, but I'm very  
18 hopeful that now that we are all here in the same place,  
19 that is those parties that have been dealing with these  
20 items more than others, that we will be able to bring this  
21 to a conclusion.

22 Of course, this is complicated by the fact  
23 that we're in the hearing room. So hopefully we'll be  
24 able to work around that and resolve this, get a  
25 Stipulation & Agreement filed with the -- with the

1 Commission and, time permitting, if the Commission wants  
2 to convene an on-the-record conference with the parties  
3 while we're still here this week, hopefully that would be  
4 possible also.

5 JUDGE WOODRUFF: All right. Anything else  
6 before we get started on mini openings?

7 MR. LOWERY: I just had a couple of things,  
8 your Honor. We noticed -- and perhaps this is standard  
9 practice. We noticed that some of the -- our exhibits  
10 that were marked but not admitted are being filed in EFIS,  
11 and perhaps that's intentional that they're just being  
12 filed in the docket per se but they're not part of the  
13 record. I guess I had a clarifying question for the Bench  
14 about that.

15 JUDGE WOODRUFF: Yeah. Just because  
16 they're in EFIS does not make them part of the record.

17 MR. LOWERY: And then I wanted to -- the  
18 Staff has filed deposition designations for one witness,  
19 one of our witnesses, Mr. Arora. We filed designations  
20 for Ms. Mantle, Mr. Beck, Mr. Brubaker, Mr. Dauphinaia,  
21 Mr. Kind and Dr. Proctor. And with the exception of the  
22 Dauphinaia and Kind designations which I don't want to  
23 actually offer into evidence at this time because of  
24 issues related to the off-system sales settlement that  
25 Mr. Dottheim was talking about, I would like to move for

1 admission of designations of Ms. Mantle, Mr. Beck,  
2 Mr. Brubaker and Dr. Proctor. Move for admission of  
3 those. Presumably Mr. Dottheim wants to do the same with  
4 respect to Mr. Arora.

5 JUDGE WOODRUFF: Okay. Does anyone have  
6 any objection to that? Mr. Dottheim?

7 MR. DOTTHEIM: Judge, I haven't had an  
8 opportunity to review in particular the designations for  
9 Dr. Proctor, and I need again to take a look at the  
10 designations for Ms. Mantle. The only type of objection I  
11 would anticipate would be one of suggesting that more of  
12 the transcript should be included for placing the matter  
13 in context.

14 In fact, it's been indicated to me that --  
15 but I haven't been able to verify that -- that one of the  
16 designations in the -- from the Mantle transcript only has  
17 the question but not the answer. That's again the only  
18 type of objection I would anticipate raising.

19 So if -- I would just like -- you know, I  
20 don't know that we will move along so quickly today to  
21 literally get to Ms. Mantle, who would be the first Staff  
22 witness up. If that's the case, I will -- I will get  
23 those reviewed, but again, that's -- the nature of my at  
24 this point indicating no objection is of a very, very  
25 limited nature.

1                   JUDGE WOODRUFF: All right. Well, I know  
2 some of those designations were just filed late yesterday  
3 afternoon, so I'll give you a little bit more time to take  
4 a look at them.

5                   MR. CONRAD: Well, also, Judge, I'm mindful  
6 of the Latin phrase volunteer suffer no injury. I do have  
7 a deep and abiding affection for Mr. Brubaker, and his  
8 counsel is not here. So perhaps we might want to defer  
9 until --

10                  JUDGE WOODRUFF: Yeah. I'm not going to  
11 make any ruling on those until -- let's shoot for right  
12 after lunch tomorrow, have everything in by then. I  
13 assume there won't be any more designations coming in?

14                  MR. LOWERY: With the possible exception of  
15 some amended designations on Mr. Kind and Mr. Dauphinaia.  
16 Again, it's related to the fact that the off-system sales  
17 issue has settled and they have different issues.

18                  And, your Honor, I just had one more issue.  
19 Mr. Birk is scheduled to testify on the fuel adjustment  
20 clause, and given scheduling issues, if at all possible,  
21 he has a scheduling conflict -- he wouldn't get on today,  
22 but he has scheduling conflicts Friday right now. And  
23 we'd appreciate any accommodation the Bench could give us  
24 about getting him on tomorrow even if we had to move the  
25 order a little bit.

1 JUDGE WOODRUFF: That's no problem.

2 MR. CONRAD: And just so it's not unclear,  
3 I appreciate counsel's enthusiasm about the off-system  
4 sales stipulation as stating that it's settled. It is  
5 not.

6 JUDGE WOODRUFF: All right. Well, we'll be  
7 optimistic and hope that it does. Otherwise me may be  
8 here on Christmas Eve or something.

9 Okay. Let's go ahead and get started on  
10 mini openings on the FAC, then, beginning with Ameren.

11 MR. LOWERY: Good morning. May it please  
12 the Commission?

13 This is the fourth time the Commission has  
14 considered a fuel adjustment clause or FAC request since  
15 Senate Bill 179 was adopted, and it's the second time that  
16 you've considered one for AmerenUE. When AmerenUE made  
17 its request in the first case, the rules, FAC rules had  
18 not been finalized, and indeed AmerenUE's request at that  
19 time was the first request for an FAC in some 30 years.

20 A reading of the Commission's prior  
21 FAC-related orders reveals that in each prior case the  
22 Commission has considered three factors which the  
23 Commission has not applied in a mechanical or  
24 mathematically precise way, and it's also relied heavily,  
25 as it should, and as I think it must, on the fourth

1 standard, and that is the standard in Senate Bill 179,  
2 that is the impact of the costs and the revenues that are  
3 going to be tracked in that FAC on the utility's  
4 opportunity to earn a fair return on equity.

5 I want to first focus on Senate Bill 179  
6 and the evidence that will show that an FAC is critical to  
7 AmerenUE's ability to have a sufficient opportunity to  
8 earn a fair ROE. AmerenUE has faced and it continues to  
9 face substantial increases in the cost of all the fuels  
10 that it must burn to generate electricity to serve its  
11 load.

12 AmerenUE is a price taker as to every  
13 one -- as to the price of every one of those fuels. Coal  
14 is becoming increasingly volatile and more expensive over  
15 time, more and more so on both counts in just the last  
16 couple of years. Natural gas and uranium markets have  
17 also been volatile.

18 And as I will talk about more in a minute,  
19 since AmerenUE's proposed FAC includes off-system sales  
20 revenue and it tracks those revenues like it does those  
21 other fuel costs, the costs and the revenues that will be  
22 tracked in the FAC will also fluctuate significantly due  
23 to volatile power markets and, of course, there's issues  
24 regarding volume in terms of generation of volumes that  
25 you have and varying loads. All of those have a

1 substantial effect and create uncertainty in the  
2 off-system sales revenues and in the net fuel costs.

3                   The evidence in this case shows that  
4 despite being awarded a rate increase just about a year  
5 and a half ago, AmerenUE failed to recover about  
6 \$42 million of 2007 coal cost increases simply because the  
7 traditional historic test year rate case process can't  
8 keep up with the changes. The exact thing -- same thing  
9 is happening with regard to fuel cost increases that took  
10 effect the beginning of this year, where we're going to  
11 have 14 months of delay in recovering those costs,  
12 equating to approximately \$72 million.

13                   AmerenUE witnesses Lyons and Neff both  
14 address this continuing problem. Unless you think that  
15 there's other cost decreases or revenues that are  
16 offsetting these things, you must remember, as this chart  
17 shows, which we talked about a couple of weeks ago,  
18 AmerenUE has failed to earn even its authorized return on  
19 equity let alone what its current cost of capital is,  
20 which is higher today, and these numbers have continued to  
21 worsen since this chart was prepared a couple of months  
22 ago.

23                   The fact is that costs are rising in many  
24 parts of the business, and capital investment needs are  
25 consistently higher today than they were just a few years



1 ago, and the cost of that capital is also higher. These  
2 facts provide strong evidence that support the conclusion  
3 that the company cannot continue to under-recover tens of  
4 millions of dollars of fuel cost and still have a  
5 sufficient, indeed any reasonable opportunity at all to  
6 earn a fair ROE.

7                   That's the standard the Legislature gave  
8 you in Senate Bill 179, and you've recognized its  
9 application in your prior cases, most recently in the  
10 Empire case. In that case you recognized that Senate Bill  
11 179 transported Missouri back to the mainstream of  
12 regulation, and you also recognized the importance of the  
13 standard in Senate Bill 179 when you stated, and I quote,  
14 that the mainstream of regulation recognizes that it's  
15 impossible for a utility to earn its allowed return on  
16 equity in a rising cost environment without an FAC. And  
17 that's the situation that we find ourselves in today.

18                   Now, others will say nothing's changed  
19 since the last rate case. They're going to say UE's  
20 different than other utilities, UE has all those  
21 off-system sales, UE can get by. The fact is several  
22 things have changed. UE cannot just get by, and I don't  
23 believe the Commission wants UE to just get by.

24                   Those off-system sales revenues that others  
25 want to rely on, those revenues themselves are uncertain.

1 They may go up. They may go down. But in either case  
2 UE's proposed FAC in this case gives customers 95 percent  
3 of the benefit of whatever happens with those revenues.

4 One thing has changed since the company's  
5 FAC proposal in the last case. After listening to  
6 stakeholders in that case, this proposal includes  
7 off-system sales and it includes the same perfectly  
8 symmetrical 95/5 percentage sharing mechanism that you've  
9 already approved for both Aquila and Empire.

10 In the last case the company's proposal  
11 frankly changed many times. To be candid, the company, as  
12 the first Missouri utility in 30 years to seek an FAC,  
13 didn't do as good a job as it should have done thinking  
14 through what its proposal was and how it was designed and  
15 presenting the proper information to the Commission.

16 Another change is the increasing volatility  
17 of the markets that ultimately are going to dictate what  
18 AmerenUE's net fuel costs are going to be, what its  
19 off-system sales revenues are going to be.

20 Just one data point. AmerenUE witnesses  
21 Neff and Glaeser, in their direct testimony back in April,  
22 they presented their opinions about what the high --  
23 expected high and low ranges of prices for coal and gas  
24 would be for the next five years. Before we could file  
25 rebuttal testimony in this case, those prices had blown

1 through the highs and the lows of those ranges for both  
2 gas and coal.

3                   The fundamentals in these markets are  
4 changing significantly; coal, for example, with the  
5 international demand from Australia and China for steel  
6 and for coal itself. And power prices shot up earlier  
7 this year to very high levels, then precipitously fell  
8 down. Spot prices have fallen a great deal. Forward  
9 prices for 2009 are up more than 30 percent in just the  
10 last three or four months.

11                   Since the company's last rate case, even  
12 more utilities now have fuel adjustment clause, 93 percent  
13 of all of them in the other non-restructured states. All  
14 but one heavily -- utility in neighboring and Midwestern  
15 states who rely heavily on coal like AmerenUE have a fuel  
16 adjustment clause.

17                   And this is depicted again on this map that  
18 we looked at a couple of weeks ago where virtually all of  
19 those utilities have fuel adjustment clauses. And if you  
20 look in Mr. Lyons' rebuttal testimony, you look at this  
21 table that appears, you can see the more specific  
22 statistics regarding other utilities that have fuel  
23 adjustment clauses.

24                   Now, why is that important? Because of  
25 another thing that's continuing to change, and it is

1 becoming increasingly important, the importance of an FAC  
2 to the credit rating agencies and the bond and equity  
3 investors that we depend upon for the cash that we need to  
4 invest in our system, to do things like meet the  
5 Commission's new reliability rules.

6                   These things matter. FACs matter a great  
7 deal to them. Indeed, lack of an FAC is an existing real  
8 credit problem for AmerenUE in terms of its access to  
9 capital and what that capital's going to cost. UE's  
10 credit ratings have been downgraded since the last rate  
11 case, and both Moody's and S&P cited lack of a FAC as one  
12 of the key drivers in those downgrades.

13                   Now, we're not suggesting to you that you  
14 should in any way let Wall Street dictate to you what you  
15 should do about a matter of regulatory policy. But the  
16 facts are that mainstream regulatory treatment, including  
17 a mainstream FAC, is necessary if AmerenUE is going to  
18 have the financial health that it needs to invest in its  
19 system and meet its service obligations. You yourself  
20 stated that no one benefits when utilities are not  
21 financially healthy.

22                   As I noted earlier, the Commission also  
23 considers, in addition to the standard in Senate Bill 179,  
24 three other factors. I want to address each of those  
25 briefly now.

1                   The first one that you've looked at is  
2 whether or not the costs and revenues that are to be  
3 tracked in the FAC are substantial enough to have a  
4 material impact upon revenue requirements and the  
5 financial performance of the business between rate cases.

6                   I would respectfully submit that  
7 \$42 million and \$72 million of under-recovered fueled cost  
8 increases at a time when the company can't earn its  
9 authorized ROE, that locked-in fuel cost increases of tens  
10 of millions or hundreds of millions of dollars over just  
11 the next few years, net fuel cost, net base fuel cost of  
12 more than 300 million, gross fuel and purchased power cost  
13 of 7 to 800 million that are offset by more than  
14 400 million of off-system sales revenues in a normal year  
15 quite clearly support granting an FAC under that first  
16 factor.

17                   Second, you've looked at whether the costs  
18 and revenues are beyond the control of management where  
19 utility management has little influence over experienced  
20 revenue or cost levels. If UE could control its fuel  
21 costs, and it can't do so, but if it could, then it  
22 wouldn't have experienced the kind of cost increases that  
23 it is seeing and is continuing to see in coal commodity,  
24 coal transportation, nuclear, gas.

25                   UE tries to manage its fuel cost, but

1 management does not equal control. They are not the same  
2 thing. If UE could control power prices or the weather or  
3 the myriad of other factors that affect off-system sales  
4 revenues, UE wouldn't have missed its budget for  
5 off-system sales margins by \$50 million in 2007, but it  
6 did, and UE's off-system sales revenues would not have  
7 fallen precipitously in the last few months, but they  
8 have.

9                   Third, you've looked at whether or not the  
10 costs and revenues that are tracked are volatile in  
11 amount, causing significant swings in income and cash  
12 flows if not tracked. Now, you're going to hear a lot  
13 about statistical evidence, and you're going to hear how  
14 volatile is volatile and how uncertain do things have to  
15 be. And the company believes it's presented analyses that  
16 demonstrate clearly that its net fuel costs certainly are  
17 uncertain and volatile.

18                   But at the end of the day, you need to use  
19 your common sense. You don't need to referee the  
20 intricacies of a statistical debate to understand that  
21 when coal, gas, nuclear and power and volumes of  
22 off-system sales are all volatile in and of themselves,  
23 that the net fuel costs that are tracked in the FAC are  
24 going to be volatile and uncertain as well.

25                   There's certainly a lot more that could be

1 said about the FAC. It's obviously one of the bigger  
2 issues in the case. That's why you see a long witness  
3 list and you see three days of scheduled hearings.

4                   But I just want to conclude my remarks with  
5 a couple of thoughts. UE is investing in its system  
6 today. It needs a lot of capital to do that, and that  
7 capital costs more money than it did. UE's O&M costs, not  
8 just fuel, are rising just about like every other utility  
9 in the country.

10                   Bond and equity investors and the credit  
11 rating agencies that they rely on to make investment  
12 decisions about whose bonds they're going to buy, they  
13 matter. Like it or not, they do. And as the evidence in  
14 this case shows, UE's current credit ratings are near the  
15 bottom of the investment grade category. UE needs an FAC,  
16 and if it gets one and if we all get lucky and off-system  
17 sales jump up in a period, then customers are going to get  
18 the benefit of that.

19                   But if we don't get lucky, with an FAC,  
20 AmerenUE's financial health is far better off than without  
21 one, and the rates customers are paying are far closer to  
22 matching what it's actually costing to serve them than  
23 without an FAC. This is a fair mechanism, it's a  
24 mainstream mechanism, and it's one that UE needs at this  
25 time.

1 I appreciate your attention. Look forward  
2 to presenting the issue to you.

3 COMMISSIONER GUNN: Judge, can I ask a  
4 quick question?

5 JUDGE WOODRUFF: Go right ahead.

6 COMMISSIONER GUNN: Did you mean to say  
7 that Australia's demand for coal is creating a volatility  
8 in the market?

9 MR. LOWERY: Australia and China both are  
10 importing coal from the United States and taking some of  
11 the coal out of the United States market. Some of that's  
12 eastern coal. When eastern coal goes out of the market,  
13 then PRB coal tends to backfill the market overall, and  
14 that then creates price pressure and volatility in all the  
15 markets. And Mr. Neff talks about that in his testimony.  
16 I'm sure he'd be happy to talk with you about it when he  
17 takes the witness stand.

18 COMMISSIONER GUNN: Great. Thank you.

19 JUDGE WOODRUFF: Opening for Staff.

20 MR. DOTTHEIM: May it please the  
21 Commission?

22 In AmerenUE, Aquila and Empire rate cases,  
23 the Commission concluded that fuel and purchased power  
24 costs, revenues should be tracked and reflected in an FAC,  
25 a fuel adjustment clause, if they are, one, substantial



1 enough to have a material impact upon revenue requirement  
2 and the financial performance of the business between rate  
3 cases, two, beyond the control of management where utility  
4 management has little influence over experienced revenue  
5 or cost levels, and three, volatile in amount causing  
6 significant amounts in income and cash flows if not  
7 tracked.

8                   In AmerenUE's last rate case before this  
9 Commission, the Commission concluded in its Report and  
10 Order that AmerenUE's fuel and purchased power costs are  
11 not volatile enough to justify the implementation of a  
12 fuel adjustment clause at this time and that a future rate  
13 case and not a fuel adjustment clause is the proper means  
14 by which AmerenUE should recover its rising fuel costs.

15                   The fuel and purchased power costs and  
16 revenues of AmerenUE still do not meet these criteria set  
17 by the Commission. Therefore, the Staff recommends that  
18 the Commission not grant AmerenUE an FAC in this case.

19                   AmerenUE meets a much more smaller  
20 percentage of its net system input needs with gas-fired  
21 generation and spot purchased power than either Aquila or  
22 Empire. For AmerenUE, fluctuations in natural gas prices  
23 and spot purchased power prices have not been substantial  
24 enough to have as a material impact upon AmerenUE's  
25 revenue requirements. Since a larger percentage of --

1 since a large percentage of AmerenUE's capacity is low  
2 variable cost base load plants, AmerenUE makes significant  
3 off-system sales.

4                   Again, AmerenUE does not meet the criteria  
5 previously used by the Commission in determining the  
6 authorization of a fuel adjustment clause mechanism. It  
7 is clear that Section 386.266 is not automatic in  
8 requiring a fuel adjustment clause. It grants  
9 discretionary power to the Commission. As a consequence,  
10 the Staff recommends that the Commission not grant  
11 AmerenUE authorization for a fuel adjustment clause in  
12 this case.

13                   JUDGE WOODRUFF: Thank you.

14                   MR. DOTTHEIM: And I would expect that the  
15 parties when we move to the rate design part of the fuel  
16 adjustment clause would probably want to make opening  
17 statements at that point also.

18                   JUDGE WOODRUFF: That's fine. Public  
19 Counsel.

20                   MR. MILLS: Good morning. I agree in  
21 general with both Mr. Dottheim and Mr. Lowery about the  
22 criteria that the Commission should apply, so I won't go  
23 over that in any great detail. I do want to point out one  
24 thing that I think that neither of them focused on to the  
25 extent that I think should be focused upon, and that is

1 the Commission's application of the standard.

2                   The three points, I think both of them have  
3 read them into the record. I'm not going to do that  
4 again. But the prefatory language leading into the three  
5 points, there's a portion that I want to emphasize that  
6 neither of them did.

7                   In the most recent decision on this case,  
8 and I think it's word for word what the Commission said in  
9 the last UE rate case, the Commission said, the Commission  
10 concluded that a cost or revenue change, I want to  
11 emphasize that word change, should be tracked and  
12 recovered through a fuel adjustment clause only if that  
13 cost of revenue change is, and then the Commission goes  
14 into the three criteria that they've already talked about.

15                   So the standard is not whether or not the  
16 spot price for coal goes up and down. The question is  
17 whether that cost or revenue change for the utility under  
18 advisement changes in the ways according to these three  
19 factors. So it should be of little concern to this  
20 Commission what the market price does if the utility's  
21 able to control its exposure to that market price by  
22 hedging, by locking in contracts and things of that  
23 nature.

24                   It's the effect on the utility's revenues  
25 that the Commission is concerned about, whether the

1 revenues, the change in costs is volatile, whether it's  
2 substantial. And I think that's the point that the  
3 Commission has considered both in the UE -- the first UE  
4 rate case, the Aquila case, and the Empire case, and I  
5 think that's what the Commission should consider here.

6                   And as Mr. Dottheim pointed out, having  
7 made those considerations, I think the Commission will  
8 come to the conclusion that it did in UE's last rate case,  
9 which is that UE does not meet the criteria that the  
10 Commission has set forth.

11                   Now, the Commission has in every chance it  
12 has had to consider a fuel adjustment clause used the same  
13 criteria, and I think that's appropriate. I think the  
14 Commission should do it again. Mr. Lowery enunciated a  
15 third and perhaps a fourth factor that the Commission  
16 should look at, and I think it should not.

17                   He suggested that the Commission should, in  
18 addition to these three criteria, which explicitly and  
19 implicitly take into account all of the Senate Bill 179  
20 criteria, sort of double up and add in another criteria  
21 from Senate Bill 179 that I believe is subsumed in  
22 criteria one, which is the impact upon the financial  
23 performance of the business.

24                   He also said that the Commission should  
25 consider the view of Moody's and S&P on the lack of a fuel

1 adjustment clause for AmerenUE. That has never been a  
2 criteria of the Commission and should not be a criteria of  
3 the Commission in this case. Regardless of what the bond  
4 rating agencies believe about the importance of a fuel  
5 adjustment clause, the Commission has enunciated its  
6 criteria, and it should not add in a fourth or fifth  
7 criteria based on what the bond rating agencies think.

8                   Mr. Lowery talked about UE being a market  
9 price taker, and that's true to an extent, to the extent  
10 that UE does buy in the spot market and some of their  
11 fuels are bought in the spot price market, but very, very  
12 few. Almost all of their prices are set by contract.  
13 Even the ones that are on the spot price market are  
14 covered by hedges. So it's not true that when the market  
15 goes way up and way down, way up and way down, that UE's  
16 prices fluctuate to that extent.

17                   And finally, I'd like to emphasize one of  
18 the points that Mr. Dottheim made, which is that because  
19 UE has a significant amount of generation from coal and  
20 coal prices are historically and are predicted in the  
21 future to be much less volatile than some of the other  
22 prices, particularly natural gas, which is the fuel that  
23 the Commission considered most important in both the  
24 Empire and the Aquila case, UE just does not have the kind  
25 of exposure that Empire and Aquila have.

1                   The Commission should not award UE a fuel  
2 adjustment clause in this case. Thank you.

3                   JUDGE WOODRUFF: Thank you. Opening for  
4 the State.

5                   MR. IVESON: Good morning, Commissioners,  
6 Judge Woodruff. Point of clarification. In terms of rate  
7 design issue, would that include the sharing mechanism,  
8 whether 95/5, 80/20, or should that be part of this?

9                   JUDGE WOODRUFF: That would be part of this  
10 portion.

11                  MR. IVESON: That was my understanding.

12                  JUDGE WOODRUFF: The other portion was  
13 technical details of the tariff, is my understanding.

14                  MR. IVESON: Thank you. I too have a bit  
15 of a problem with the supposed standards that Mr. Lowery  
16 referred to from Senate Bill 179. That -- actually, the  
17 way that's stated in the statute is that the Commission  
18 may approve, may, not shall, approve a fuel adjustment  
19 clause after considering all relevant factors which may  
20 affect the costs or overall rates and charges of the  
21 corporation, in other words, after the Commission  
22 undertakes the kind of analysis that is done in a full  
23 rate case.

24                  Provided that, so it's a condition, that  
25 the adjustment mechanism is reasonably designed to provide

1 the utility with a sufficient opportunity to earn a fair  
2 return on equity. That's a requirement. It's not a  
3 standard. They have to do that or you can't approve it.  
4 If they do that, you then have the discretion to decide  
5 whether a fuel adjustment clause is appropriate in a given  
6 case.

7 I too don't want to repeat all of the  
8 standards. Sufficient to say there is quite a dispute  
9 about the issues of control and volatility. One thing  
10 that is important for you to pay attention to, though, is  
11 you will find in this company's testimony that they  
12 repeatedly try to make uncertainty synonymous with  
13 volatility, and those two words don't mean the same thing.

14 Uncertainty means I don't know what I'm  
15 going to pay unless I have a firm contract a year from now  
16 for any commodity, even if it's a stable commodity,  
17 because the price may go up a little bit, may go down a  
18 little bit. I don't know. It's uncertain.

19 Volatility, as the Commission identified it  
20 in each of the rate cases in which they've addressed the  
21 fuel adjustment clause, means that there are significant  
22 swings in income or there's enough volatility to cause  
23 significant swings in income and cash flow. I submit that  
24 that has not been demonstrated in the company's testimony.

25 Another issue that disturbs me is that the

1 company keeps referring to a rising cost environment. It  
2 struck me this morning. I was thinking about some of the  
3 testimony from last week in the vegetation management and  
4 infrastructure inspections, where the company witness  
5 testified that they were surprised to find that the  
6 biggest problem they had was that their copper wires,  
7 their grounding wires were being taken off the poles.

8 Well, your Honor, and Commissioners, over  
9 the last year, for most of 2008 copper was priced at well  
10 over \$3 a pound. And I checked on the Internet this  
11 morning. It's at \$1.42.

12 We need to go back to the first principles  
13 a bit. That's why rate cases are the best way to approach  
14 costs, because in the environment we are in now, it is  
15 very likely that reduced costs will be found in other  
16 areas of the company. A rate case allows you to balance  
17 those, the costs against -- any rising costs against any  
18 lower costs.

19 Assuming the Commission does decide that a  
20 fuel adjustment clause is appropriate in this case, it  
21 then must look at the sharing mechanism that is provided.  
22 And I won't go into a great deal of detail about it, but  
23 the Missouri Industrial Electric Consumers witness  
24 Brubaker has a chart attached to his direct testimony that  
25 demonstrates quite clearly the difference in effect that a



1 sharing mechanism has on Ameren as opposed to Empire and  
2 Aquila. And it demonstrates, that chart demonstrates that  
3 any sharing mechanism will result in a much lower impact  
4 on Ameren as a percentage of earnings than either of those  
5 other two entities.

6                   They must have an incentive to keep their  
7 costs down. If those costs are substantially all passed  
8 along to consumers, the thousands of business decisions  
9 that they make every day will not be driven by a desire to  
10 keep costs down. That is why it is important that even if  
11 you decide a fuel adjustment clause is necessary or  
12 appropriate in this case, that you make sure that there's  
13 still a substantial financial incentive for the company  
14 and that their share of any potential costs is great  
15 enough to drive their decision-making. Thank you.

16                   JUDGE WOODRUFF: Opening for MIEC.

17                   MS. VUYLSTEKE: Good morning. May it  
18 please the Commission?

19                   The MIEC does not take a position either  
20 supporting or opposing an FAC in this case for AmerenUE.  
21 The thrust of our evidence in the testimony of  
22 Mr. Brubaker is that there should be a strong incentive to  
23 ensure that the interests of shareholders and ratepayers  
24 are aligned.

25                   And accordingly, we take the position that

1 an 80/20 sharing would accomplish that goal, and that also  
2 it would be set at an amount equal to 50 basis points  
3 return on equity as of whatever rates are established as a  
4 result of this case. We think this is the best way to  
5 make sure that Ameren has skin in the game, to make sure  
6 the incentives are in the right place in the event that  
7 the Commission should choose to adopt an FAC for Ameren in  
8 this case. Thank you.

9 JUDGE WOODRUFF: For Noranda?

10 MR. CONRAD: Your Honor, may it please the  
11 Commission?

12 I grew up in Montrose, Missouri, which is a  
13 little town in Henry County. Had about 525 people. We  
14 often would go to Appleton City, which was seven miles  
15 away, for dinner at a place called the Dairy-Burg. And  
16 the gentleman who ran the Dairy-Burg had a love of  
17 aphorisms, and one that I remember that he had posted on  
18 his wall went something like this: When you're up to your  
19 neck in baby alligators, it's difficult to remember that  
20 your original objective was to drain the swamp.

21 It is a variation of that that has impelled  
22 Noranda to its present position. Its position in this  
23 case with respect to the FAC began as an opponent. Since  
24 then, the case has evolved, but more significantly the  
25 financial picture of this country has evolved, and one

1 might argue whether it has evolved in a Darwinian sense or  
2 in a less positive sense. Take no position on -- since I  
3 also live in Kansas, I take no position on evolution.

4                   But regardless of that, my client has  
5 looked at the evidence that has rolled in thus far, and it  
6 seems to my client that an evolution or a change in its  
7 position is desirable. Draining the swamp in my analogy  
8 here is keeping costs low, and that is of great importance  
9 to my client right now and for the foreseeable future.

10                   I mentioned before and counsel for the  
11 State mentioned the falling copper prices. As I think we  
12 were here last week, and I did not check this morning,  
13 last week's aluminum price was down at 68 cents per pound  
14 for primary aluminum. That's a considerable drop. So the  
15 company's indications that they're facing higher prices  
16 for aluminum wire are going to change. I think that's --  
17 that's fairly -- either that or they need to look at  
18 another supplier, which may have other implications on  
19 this issue.

20                   But in any event, we have moved to a  
21 position that we are seeing the potential for reduced cost  
22 for ratepayers from the adoption of an FAC. Now, we hope  
23 that that will materialize, and as a result, we have moved  
24 our position to one of conditional support for the  
25 company's proposal of an FAC.

1                   There are some significant conditions, most  
2 of which, your Honors, turn on the rate design aspects  
3 which I had asked Mr. Dottheim to elucidate for the Bench  
4 earlier in our discussion. Our areas of concern involve  
5 the preservation of incentives. It's very clear that if  
6 you decouple responsibility for cost payment from the  
7 responsibility for purchasing, that you do some potential  
8 damage to the incentives that otherwise would exist, and  
9 so we want to look at that.

10                   Another aspect that we will be looking at  
11 and hopefully will go into in greater detail when we get  
12 to the rate design positions and to the conditions that we  
13 would have concern how risks of catastrophic failures, an  
14 example obviously is Taum Sauk, but more specifically a  
15 failure as experienced by Kansas City Power & Light  
16 several years ago that just took out a major generating  
17 station somewhat unpredictably. Those have impacts on  
18 purchased power, and we need to address that.

19                   Again, the incentives are important.  
20 Mr. Dottheim, counsel for OPC, counsel for the State have  
21 mentioned the legal requirements. We don't disagree with  
22 their analysis of that, but we are going to leave that to  
23 them. It's important to Noranda that the legal  
24 requirements be met. I sense that there's not a lot of  
25 disagreement about that, but there obviously will be

1 disagreement between those parties and the company as to  
2 applicability and whether certain facts of this case fit  
3 within that.

4                   That permits me to be brief, but that's  
5 kind of where we are right now. We have not formulated a  
6 position on a particular percentage of sharing. We do  
7 want to talk with you about the second segment of this on  
8 the, what I would characterize the risk management aspect,  
9 some extent of insurance, that insurance proceeds are  
10 handled appropriately in the FAC.

11                   But we leave you with the thought that  
12 we -- if those conditions are met and premised on the idea  
13 that the swamp -- the swamp is drained and that that is  
14 the objective we all seek, which is lower costs, then we  
15 could conditionally support the FAC in this case. Thank  
16 you, your Honors.

17                   JUDGE WOODRUFF: Thank you. Opening for  
18 AARP?

19                   MR. COFFMAN: Good morning. May it please  
20 the Commission?

21                   I don't have much to add to the well-  
22 informed comments of the Public Counsel and the Attorney  
23 General's Office. We -- both my clients, AARP and the  
24 Consumers Council of Missouri, generally support the  
25 evidence that we've seen from them and would like to

1 reaffirm the concern about a fuel adjustment clause.

2                   We are firmly opposed to any risk-sharing  
3 mechanism and would ask that you -- once you've looked at  
4 all the volume of evidence, ponder what it is that you're  
5 doing. You're shifting risk from a monopoly electric  
6 utility onto captive customers. The question is, who is  
7 in a better position to bear this risk, who is in a better  
8 position to control the risk, and who is more likely to be  
9 impacted?

10                   AmerenUE is a very large company. They  
11 have thousands of choices that they make regarding fuel  
12 and purchased power, and as this Commission has noted in  
13 the past, off-system sales and other factors with this  
14 utility allow it to manage those costs such that they do  
15 not need an extraordinary mechanism to be subsidized by  
16 the ratepayers.

17                   I think I heard Mr. Lowery describe the --  
18 their fuel adjustment clause proposal in this case as  
19 symmetrical, a 95/5 fuel adjustment clause proposal as  
20 symmetrical. I suppose by symmetrical he means that it  
21 could go up or down. But to me, the -- the unfairness of  
22 95/5 sharing is not symmetrical to me. It's not  
23 symmetrical as to who's bearing the risk and whether  
24 that's fair.

25                   And at the risk of stating the overly

1 obvious, it is AmerenUE that has an opportunity to earn a  
2 return. The rates already reflect a sizeable generous  
3 opportunity to earn in order to bear risk. And it is the  
4 customers that have no choice as to how to manage that  
5 risk or to -- or to -- who they can go to for their  
6 electricity if they indeed want to continue to live or  
7 operate in the state of Missouri or within the Ameren  
8 service territory.

9                   So I hope that you do consider who's in a  
10 position better to bear this risk and consider the small  
11 businesses struggling to survive in this downward economy,  
12 the families that are struggling to meet their budgets and  
13 the senior citizens living alone on a limited or fixed  
14 income.

15                   The only significant factor that has been  
16 thrown out as a changed circumstance from this case to the  
17 last is the state of the capital markets, and frankly,  
18 that's impacting everyone, not just the electric industry.  
19 And as to what Standard & Poor's and Moody's say, frankly  
20 when have those guys gotten it right last?

21                   Please only consider a fuel adjustment  
22 clause if you believe it is absolutely necessary for the  
23 survival of this utility, and if you do, against those  
24 concerns and objections, please consider a sharing  
25 mechanism that is a 50/50 sharing risk. Thank you.

1                   JUDGE WOODRUFF: Thank you. I believe  
2 that's all the parties that wish to make openings. I  
3 guess we're ready for the first witness, then, which on  
4 the list is Mr. Lyons.

5                   MR. LOWERY: Correct, your Honor.

6                   JUDGE WOODRUFF: Before we get started, I  
7 do want to tell you that Chairman Davis this morning  
8 indicated that he would have questions for Mr. Lyons. He  
9 won't be here until this afternoon about 1:30. So if  
10 we're finished with Mr. Lyons by then, we may need to  
11 recall him at that point. Just wanted to forewarn you.

12                  MR. LOWERY: Call Mr. Lyons to the stand.

13                  JUDGE WOODRUFF: Good morning, Mr. Lyons.  
14 Is this the first time you've testified in this case?

15                  THE WITNESS: Yes.

16                  JUDGE WOODRUFF: Please raise your right  
17 hand.

18                  (Witness sworn.)

19                  JUDGE WOODRUFF: Thank you. You may  
20 inquire.

21 MARTIN J. LYONS testified as follows:

22 DIRECT EXAMINATION BY MR. LOWERY:

23                  Q. Good morning. Would you please state your  
24 name and business address for the record.

25                  A. Yes. My name is Martin J. Lyons. My



1 address is 1901 Chouteau Avenue, St. Louis, Missouri.

2 Q. Mr. Lyons, are you the same Martin J.  
3 Lyons, Junior who caused to be filed in this docket direct  
4 testimony, rebuttal testimony and surrebuttal testimony  
5 that have been marked as Exhibits No. 41HC and NP, 42HC  
6 and NP and 43?

7 A. Yes.

8 Q. Mr. Lyons, do you have any corrections or  
9 changes to any of those testimonies?

10 A. Yes, I do, to my rebuttal testimony.

11 Q. And what change is that?

12 A. I'd like to replace the first sentence  
13 starting on line 13 of page 24 of my rebuttal testimony  
14 with the following: For example, if one considers just  
15 the 137 million in increased coal costs for 2009 and 2010  
16 based upon Mr. Neff's budgeted figures as outlined in his  
17 direct and rebuttal testimony, Mr. Brubaker's sharing  
18 proposal taking his 50 basis point cap into account would  
19 force AmerenUE to absorb approximately 25 million of coal  
20 costs alone in 2010. And then strike the second sentence  
21 starting on line 16 of page 24 of the rebuttal testimony.

22 Q. And do you have any other changes or  
23 corrections?

24 A. No, I do not.

25 Q. If I were to ask you the same questions

1 posed in all three of those testimonies, would your  
2 answers today be the same, with that correction?

3 A. Yes.

4 Q. And the answers are true and correct to the  
5 best of your knowledge and belief?

6 A. Yes, they are.

7 MR. LOWERY: Your Honor, with that, I would  
8 offer into evidence Exhibit 41, 42 and 43, including the  
9 HC and NP versions of 41 and 42.

10 JUDGE WOODRUFF: All right. 42 and 43 have  
11 been offered. Are there any objections to their receipt?

12 (No response.)

13 JUDGE WOODRUFF: Hearing none, they will be  
14 received.

15 (EXHIBIT NOS. 41NP, 41HC, 42NP, 42HC AND 43  
16 WERE MARKED FOR IDENTIFICATION AND RECEIVED INTO  
17 EVIDENCE.)

18 MR. LOWERY: I tender the witness for  
19 cross-examination.

20 JUDGE WOODRUFF: For cross-examination, we  
21 begin with, AARP is the first one here.

22 MR. COFFMAN: I have no questions of this  
23 witness.

24 JUDGE WOODRUFF: Thank you. For Noranda?

25 MR. CONRAD: Yes, sir. And your Honor,

1 this is -- I'm finding that a good number of our questions  
2 for Mr. Lyons pertain to the rate design and the  
3 structure, so I will -- I will try to limit that to the  
4 more generic issues that we have before us in this first  
5 group.

6 CROSS-EXAMINATION BY MR. CONRAD:

7 Q. Mr. Lyons, good morning.

8 A. Good morning, Mr. Conrad.

9 Q. Do you know a person by the name of Lynn  
10 Barnes?

11 A. I do know Lynn Barnes, yes.

12 Q. Who is this person?

13 A. Lynn Barnes is the controller of AmerenUE.

14 Q. And what do you understand this person's  
15 responsibilities to be?

16 A. I understand Ms. Barnes' responsibilities  
17 to include coordinating the budgeting activities of  
18 AmerenUE, analyzing financial results, and presenting  
19 those financial results to the management team of UE.

20 Q. Would Ms. Barnes be expected to have  
21 knowledge of the company's plans regarding capital  
22 expenditures?

23 A. I would believe that she would, yes.

24 MR. CONRAD: Your Honor, I have some  
25 exhibits I think we'll need to mark at this point. I

1 have -- I'll confess to you, I've lost a little track of  
2 where our numbers are, but it would be the next --

3 JUDGE WOODRUFF: 759 would be the next one.

4 (EXHIBIT NO. 759 WAS MARKED FOR  
5 IDENTIFICATION BY THE REPORTER.)

6 BY MR. CONRAD:

7 Q. Mr. Lyons, I show you what has been marked  
8 at this point for identification as Exhibit 759. There  
9 are two pages to this. You'll see that first page again.  
10 This particular cover page came with a number of  
11 responses, and attached is Noranda 006 Data Request asking  
12 for current budget expense items, and you see the response  
13 there on the second page?

14 A. I do.

15 Q. Now, that's the reason I gave you the first  
16 page was so you'd understand the source of it. Do you  
17 have any reason to believe that that's not been prepared  
18 by Ms. Barnes?

19 A. I have no reason to believe that, no.

20 MR. CONRAD: Your Honor, we would move  
21 admission of 759.

22 JUDGE WOODRUFF: All right. 759 has been  
23 offered. Any objection to it's receipt?

24 (No response.)

25 JUDGE WOODRUFF: Hearing none, it will be

1 received.

2 (EXHIBIT NO. 759 WAS RECEIVED INTO  
3 EVIDENCE.)

4 MR. CONRAD: Your Honor, I have another  
5 exhibit.

6 JUDGE WOODRUFF: 760.

7 MR. CONRAD: And this one will be by the  
8 company's designation highly confidential, but I don't  
9 intend at this point to ask anything that should require  
10 us to go into in-camera.

11 (EXHIBIT NO. 760 WAS MARKED FOR  
12 IDENTIFICATION BY THE REPORTER.)

13 BY MR. CONRAD:

14 Q. Mr. Lyons, I show you now what has been  
15 marked as Exhibit 760HC, you'll see there the first page  
16 is the same, but the second and third pages are different,  
17 and you'll observe, please, sir, that they are marked as  
18 highly confidential, and attract your attention to the  
19 response and the preparator toward the bottom of the  
20 second page of the packet. Do you have any reason, sir,  
21 to believe, based on what you've been shown, that that was  
22 not prepared by Lynn Barnes?

23 A. I have no reason to believe it's not been  
24 prepared by Lynn Barnes.

25 Q. Of course, the first page shows the source

1 of it --

2 A. Correct.

3 Q. -- does it not?

4 A. Correct.

5 Q. I won't ask you anything about the HC stuff  
6 at this point.

7 MR. CONRAD: Your Honor, I would move  
8 admission of 760HC.

9 JUDGE WOODRUFF: 760HC has been offered.  
10 Any objection to its receipt?

11 MR. LOWERY: No.

12 JUDGE WOODRUFF: Hearing none, it will be  
13 received.

14 (EXHIBIT NO. 760HC WAS RECEIVED INTO  
15 EVIDENCE.)

16 MR. CONRAD: And your Honor, I will have  
17 another one.

18 JUDGE WOODRUFF: 761.

19 MR. CONRAD: I do not believe this one,  
20 your Honor, is marked as HC.

21 (EXHIBIT NO. 761 WAS MARKED FOR  
22 IDENTIFICATION BY THE REPORTER.)

23 MR. CONRAD: By your leave, your Honor.

24 JUDGE WOODRUFF: Go right ahead.

25 BY MR. CONRAD:

1           Q.       Mr. Lyons, I show you now what has been  
2 marked for identification at this point as  
3 Exhibit 761. The cover page is the same. One page  
4 follows, your response to Noranda Data Request 004. Do  
5 you see that, sir?

6           A.       I do.

7           Q.       You see the preparator's electronic  
8 signature?

9           A.       I do, sir.

10          Q.       Do you have any reason to believe that  
11 that's not been prepared by Ms. Barnes?

12          A.       I have no reason to believe, that's  
13 correct.

14                   MR. CONRAD: Your Honor, we would move  
15 admission of 761.

16                   JUDGE WOODRUFF: 761 has been offered. Any  
17 objections to its receipt?

18                   (No response.)

19                   JUDGE WOODRUFF: Hearing none, it will be  
20 received.

21                   (EXHIBIT NO. 761 WAS RECEIVED INTO  
22 EVIDENCE.)

23                   MR. CONRAD: Your Honor, I have one -- an  
24 additional one. I guess this would be --

25                   JUDGE WOODRUFF: 762.

1 MR. CONRAD: -- 762.

2 (EXHIBIT NO. 762 WAS MARKED FOR  
3 IDENTIFICATION BY THE REPORTER.)

4 MR. CONRAD: By your leave, your Honor.

5 JUDGE WOODRUFF: Go right ahead.

6 BY MR. CONRAD:

7 Q. Mr. Lyons, I have placed before you what  
8 has been marked at this point for identification only as  
9 Exhibit 762. The cover sheet again is the same, but a  
10 different second page being your response -- the company's  
11 response rather to Noranda Data Request No. 3. Can you  
12 confirm that, please?

13 A. Yes.

14 Q. And do you see the preparator of that is  
15 indicated to be Lynn Barnes?

16 A. I do.

17 Q. Do you have any reason, sir, to believe  
18 that that was not prepared by Lynn Barnes?

19 A. No.

20 MR. CONRAD: Move admission of 762.

21 JUDGE WOODRUFF: 762 has been been offered.  
22 Any objection to its receipt?

23 (No response.)

24 JUDGE WOODRUFF: Hearing none, it will be  
25 received.



1 (EXHIBIT NO. 762 WAS RECEIVED INTO  
2 EVIDENCE.)

3 MR. CONRAD: Your Honor, I have one more.

4 JUDGE WOODRUFF: 763.

5 MR. CONRAD: This would be highly  
6 confidential based on the company's designation. Again, I  
7 don't intend to query the witness at this point about the  
8 highly confidential material, so I don't think to do this  
9 we need to go in camera.

10 (EXHIBIT NO. 763HC WAS MARKED FOR  
11 IDENTIFICATION BY THE REPORTER.)

12 MR. CONRAD: Again, your Honor, by your  
13 leave.

14 JUDGE WOODRUFF: Go right ahead.

15 BY MR. CONRAD:

16 Q. Mr. Lyons, I have laid before you what has  
17 been marked for identification at this point as  
18 Exhibit 763HC. You'll notice that the cover page is the  
19 same, but I draw your attention to the two pages that  
20 follow, both of which are marked as highly confidential by  
21 your company. Can you confirm that?

22 A. Yes.

23 Q. And would you agree with me that that is  
24 your company's response to Noranda Data Request 2?

25 A. Yes.

1           Q.       Appears to have been prepared by Lynn  
2 Barnes?

3           A.       Correct.

4           Q.       Do you have any reason to believe that it  
5 was not?

6           A.       No.

7                   MR. CONRAD: Your Honor, I would move  
8 admission of 763 at this time.

9                   JUDGE WOODRUFF: 763 has been offered.

10                  MR. CONRAD: 763HC.

11                  JUDGE WOODRUFF: Yes, HC. Any objections  
12 to its receipt?

13                           (No response.)

14                  JUDGE WOODRUFF: Hearing none, it will be  
15 received.

16                           (EXHIBIT NO. 763HC WAS RECEIVED INTO  
17 EVIDENCE.)

18 BY MR. CONRAD:

19           Q.       Now, let me direct you to the very last  
20 exhibit that we marked, Mr. Lyons. I believe it's 763.  
21 And would you agree -- I want to stay in public session if  
22 we can, sir, so work with me. We'll try to do that.  
23 Would you agree with me that we're inquiring about changes  
24 in cap ex projects that may have resulted from the, let's  
25 say the current economic circumstances that our country

1 faces?

2 A. Yes. You've asked about projects that are  
3 under review and consideration for change during 2009.

4 Q. And actually the final page of that details  
5 in several columns the changes that you have indicated are  
6 being -- well, that's your response to that DR?

7 A. It is.

8 Q. Okay.

9 MR. CONRAD: A moment, your Honor. Your  
10 Honor, in consultation with counsel for the company, maybe  
11 it is appropriate here, I might have one or two questions  
12 that might necessitate us going in camera. I apologize.

13 JUDGE WOODRUFF: That's not a problem.

14 MR. CONRAD: That's their call.

15 JUDGE WOODRUFF: All right. Well, we'll go  
16 in camera at this time, then. If you'll look around, if  
17 there's anybody in the back of the room that needs to  
18 leave, please do so. I don't see anybody getting up to  
19 leave.

20 MR. LOWERY: Judge, just for clarification,  
21 the reason we felt we need to go in-camera is not  
22 necessarily that Mr. Conrad's going to ask about numbers,  
23 but the list that he's looking at has certain items and  
24 talking about whether other items may or may not be on  
25 there, that reveals confidential information, or could in

1    itself.

2                               (REPORTER'S NOTE:  At this point, an  
3    in-camera session was held, which is contained in Volume  
4    25, pages 2153 through 2157 of the transcript.)

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1 JUDGE WOODRUFF: And we're back in regular  
2 session.

3 BY MR. CONRAD:

4 Q. Now, Mr. Lyons, do you have before you a  
5 copy of your direct testimony? I believe that has been  
6 marked as 41.

7 A. I do.

8 Q. Would you turn with me to page 12, and it's  
9 my understanding that beginning there and carrying on for  
10 a couple more pages you talk in general terms about the  
11 concept of regulatory lag, correct?

12 A. Yes.

13 Q. Now, would you agree with me that a utility  
14 at least in this state -- I understand you're not a  
15 lawyer, so I'm not asking you a legal opinion  
16 intentionally. Do you agree that a utility is not  
17 entitled to guarantee of a particular level or amount of  
18 return?

19 A. I do agree.

20 Q. And would you agree with me that in this  
21 state a utility's entitled only to an opportunity to earn  
22 a return on the investment that it has?

23 A. I agree.

24 Q. And would you also agree with me that the  
25 opportunity that is provided needs to be exploited by the

1 utility in order for the utility to earn that authorized  
2 return?

3 A. Could you clarify what you mean by  
4 exploited?

5 Q. You need to be able to manage your way  
6 successfully to achieve an authorized return? You need to  
7 capitalize on that opportunity; isn't that right?

8 A. Yes, we need to --

9 Q. Take advantage of it?

10 A. -- run our business in a manner which helps  
11 to provide a fair opportunity to earn our allowed rate of  
12 return.

13 Q. And you indicate, I believe, in portions of  
14 that testimony that you did not earn your authorized  
15 return in the several months after the last rate case; is  
16 that correct?

17 A. Could you point me to the --

18 Q. I'll sure try.

19 A. -- specific statement?

20 Q. Well, let's try it this way, since I can't  
21 pull up the actual cite that caused my question to be  
22 developed. Is it the company's position that following  
23 the last rate case, that you earned your authorized rate  
24 of return?

25 A. I believe it's my position in the testimony

1 that prior to receiving a rate increase in the last rate  
2 case, that we experienced regulatory lag because of higher  
3 coal and coal transportation costs, and subsequent to  
4 receiving those -- that rate increase, due to further  
5 increases in coal and coal transportation costs, we  
6 experienced further regulatory lag.

7 Q. So is that a yes?

8 A. I believe my response was responsive to  
9 your question. Could you repeat the question?

10 Q. Let's try it another way. Do you contend  
11 that following the last rate case, that your company  
12 earned its authorized rate of return?

13 A. No.

14 Q. So your position is that the company fell  
15 short on the authorized rate of return, correct?

16 A. Yes.

17 Q. And that is by the company's calculation,  
18 not that of the Staff; would you agree with that?

19 A. I agree with that.

20 Q. And indeed, the Staff probably would have  
21 made adjustments that would have even lowered the amount  
22 that the company received as an award in that last rate  
23 case; would you agree?

24 MR. LOWERY: Objection, calls for  
25 speculation about what Staff would or wouldn't have done.

1                   JUDGE WOODRUFF: I'll have to sustain that  
2 objection.

3 BY MR. CONRAD:

4           Q.       What was the company's position in the last  
5 rate case, Mr. Lyons, if you know?

6           A.       I don't recall the specific.

7           Q.       Had they come in and asked that the  
8 Commission award you some additional money or had they  
9 suggested that the company's rates were already too high?

10          A.       We had suggested that a rate increase was  
11 appropriate.

12          Q.       How about Staff?

13          A.       My -- my recollection of that case was that  
14 the Staff had recommended a rate decrease.

15          Q.       So would you agree with me that if the  
16 Staff had prevailed on all its issues, Union Electric's  
17 rates would have been reduced?

18                   MR. LOWERY: Objection, relevance.

19                   JUDGE WOODRUFF: Overruled. You can  
20 answer.

21                   THE WITNESS: I believe so, yes.

22 BY MR. CONRAD:

23          Q.       So now to return more targeted to the  
24 regulatory lag issue, do I understand your testimony to be  
25 that you believe the lack of an FAC was a source of



1 regulatory lag?

2 A. Yes.

3 Q. I'd like for you to assume with me now that  
4 the FAC you proposed in this proceeding was in effect.

5 Can you do that with me?

6 A. Yes.

7 Q. And what would have been the impact on the  
8 earnings of the increase in fuel costs? I'm not talking  
9 about specific numbers, but in magnitude or order of  
10 direction.

11 A. Can you repeat the question?

12 MR. CONRAD: Maybe the reporter could be  
13 persuaded to read it back.

14 THE REPORTER: "Question: And what would  
15 have been the impact on the earnings of the increase in  
16 fuel costs? I'm not talking about specific numbers, but  
17 in magnitude or order of direction. "

18 THE WITNESS: I don't know.

19 BY MR. CONRAD:

20 Q. If you do not know a number that we  
21 could -- would it be possible to agree that we would have  
22 eliminated all but 5 percent of the negative effect of the  
23 net fuel cost increases?

24 A. Mr. Conrad, is your question whether if we  
25 applied the FAC as we've proposed it in this case --

1 Q. Yes, that was the assumption.

2 A. -- historically? Then any increase or  
3 decrease in our actual fuel costs versus the net base fuel  
4 cost established in a rate case, any of those increases or  
5 decreases, 95 percent of those changes would flow through  
6 the FAC, and the company would retain 5 percent of those  
7 increases or decreases.

8 Q. And that was the assumption that I asked  
9 you.

10 A. Okay.

11 Q. If that had been the case, would that have,  
12 Mr. Lyons, substantially solved the regulatory lag problem  
13 at least as pertains to net fuel costs?

14 A. Yes, it would have.

15 Q. Now, we just had a discussion of the impact  
16 of regulatory lag on earnings. So I want you to -- I'd  
17 like to ask you to help me understand what we're talking  
18 about here in other parts of your testimony there  
19 beginning at page 12. Would you agree with me, Mr. Lyons,  
20 that in the normal course of operating your business, that  
21 there are always timing differences between the time when  
22 cash is spent to cover expenses and the time when revenues  
23 come in to cover those expenses?

24 A. Generally there are timing differences,  
25 yes.

1           Q.       And it strikes me that one of the things  
2 you're talking about there in your testimony is that  
3 timing difference between when a fuel cost is incurred and  
4 when you collect the revenue that would cover that cost;  
5 is that right?

6           A.       Yes.

7           Q.       And would you agree with me that that cash  
8 flow issue or cash flow effect is an issue that is  
9 separate and apart from the earnings impact effect?

10          A.       I don't believe so.

11          Q.       Let's try it this way. Are you familiar  
12 with the concept of what sometimes goes by the term of a  
13 lead lag study?

14          A.       I'm familiar with the term.

15          Q.       What is that study intended to address?

16          A.       I'm not an expert in lead lag studies,  
17 but --

18          Q.       Just general terms, what you know, sir.

19          A.       I believe you're looking at working capital  
20 fluctuations and the timing of cash flows and looking at  
21 whether you're typically behind in terms of utilizing cash  
22 or have a cash surplus based upon working capital  
23 fluctuations.

24          Q.       Would it be fair to say that if there was  
25 a -- as a result of that study, there was a positive cash

1 working capital requirement, that would indicate an amount  
2 of money that the investors would be providing in order  
3 that the company could go on a day-to-day basis and take  
4 care of that lead lag? Am I correct in that  
5 understanding?

6 A. Yes.

7 Q. Now, would you agree with me that the  
8 Commission approved revenue requirement should allow you  
9 to recover carrying costs associated with cash working  
10 capital that's provided?

11 A. Yes.

12 Q. And is there any disagreement that you're  
13 aware of among the parties in this case as to the proper  
14 cost recovery for cash working capital?

15 A. I'm not aware of disagreement.

16 Q. So while a fuel rider would have an impact  
17 on cash flows, Mr. Lyons, at least in this case the impact  
18 on cash working capital and the cost to be recovered in  
19 rates is really not in dispute?

20 A. Not that I'm aware of.

21 Q. Now, Mr. Lyons, would you advance, please,  
22 to page 14 in your direct, I think some questions and  
23 answers that begin about line 16 and carry over, it looks  
24 to me to page 16. Let me know when you're there.

25 A. We're starting on page 14, line 16?

1           Q.       Thereabouts, yes, sir. And then you might  
2 put your finger there on page 14 and let me direct you  
3 back very quickly just at the beginning of this, I note in  
4 your job description, which shows up on page 2, line 7,  
5 that you're the senior VP in charge of, and then you list  
6 commodities risk management. You find that?

7           A.       I'm aware of that, yes.

8           Q.       Could you summarize for me your activities  
9 in regard of commodity risk management that you're talking  
10 about there?

11          A.       As it relates to commodity risk management,  
12 the department reports to me. As part of that department,  
13 we develop our risk management policies for various  
14 functions and work to coordinate Risk Management Steering  
15 Committee meetings, coordinate presentations for Risk  
16 Management Steering Committee meetings and the like.

17          Q.       And I may have misdirected you earlier, but  
18 let me ask you please to look at, I believe it is your  
19 page 17, and line 20, and I apologize if I misdirected you  
20 earlier, Mr. Lyons. Talking there about your hedging  
21 approach, which I take it is a part of that commodity risk  
22 management function?

23          A.       That is correct.

24          Q.       And I note there that you partially hedge  
25 both fuel and purchased power to stabilize its costs, and

1 then I wanted to look at those next few words, to the  
2 extent feasible and cost effective. That carried over to  
3 line 21, I think. Are you with me so far?

4 A. Yes.

5 Q. Now, by the term extent feasible, what do  
6 you mean by that two-word phrase?

7 A. I mean, for example, that going into any  
8 given year, we have, for example, megawatt hours that we  
9 can sell off system. However, we can only hedge a very  
10 small percentage of those off-system sales, those megawatt  
11 hours prior to going into that year because of the  
12 uncertainties with respect to our load, meaning our  
13 customer load, given weather conditions or other factors  
14 that may influence the amount of megawatt hours that we  
15 have available for sale, as well as the megawatt hours  
16 that are required to meet our customer load.

17 So because of that uncertainty about the  
18 number of megawatt hours that we'll be able to sell off  
19 system, we -- you know, as they say there, some extent --  
20 it's not feasible to hedge a significant portion of those.

21 Q. So the hedging and the comment then about  
22 extent feasible I take it applies only to the off-system  
23 sales, or does it apply to both fuel and purchased power?

24 A. It would also apply to elements of our fuel  
25 and purchased power.

1           Q.       With respect to the element of fuel, would  
2 you clarify for me what you mean by extent feasible?

3           A.       Yes.   During any given year, there are  
4 changes in generation mix.  It's -- it's difficult to know  
5 exactly how much coal may be burned or how much  
6 transportation costs will vary over the course of the  
7 year.  It's even more difficult, I would say, to determine  
8 the amount of gas that we're going to burn in a given  
9 year, given that oftentimes the gas is used to burn to  
10 dispatch peaking generation, which is both weather  
11 sensitive as well as sensitive to prices around the  
12 Midwest Independent System Operator.

13          Q.       Now, the statement also went on to talk  
14 about cost effective.  Do you see that on line 21?

15          A.       Yes.

16          Q.       In the context of fuel and purchased power,  
17 which is the statement that's made, what do you mean by  
18 cost effective?

19          A.       What I mean by cost effective is, for  
20 instance, in our fuel contracts -- I should say our  
21 transportation contracts, there are diesel fuel adjustment  
22 provisions, and we do look for opportunities to hedge  
23 exposure to diesel fuel price fluctuations using option  
24 contracts.  And when we look at those option contracts, we  
25 consider the cost of those option contracts as well as the

1 protection that they may afford with respect to mitigating  
2 price volatility. And so that kind of analysis is  
3 performed.

4 Q. Now, is it typically true with respect to  
5 the hedging activity that you would expect to pay a little  
6 bit more for the fuel in order to obtain that price  
7 stability?

8 A. Pay -- I'm sorry. Pay a little bit more  
9 versus what?

10 Q. Well, the hedge would cost something in  
11 itself, would it not?

12 A. Sometimes hedges do have a cost.

13 Q. And the price stability that is referenced  
14 on line 20 is important because the company wanted to  
15 stabilize its earnings; am I correct?

16 A. The company wanted to do what it could to  
17 stabilize -- stabilize costs and mitigate volatility.

18 Q. So if we had a fuel rider, would you agree  
19 with me that the deferred account associated with that  
20 fuel rider would more or less by definition eliminate that  
21 volatility in earnings due to variations in fuel cost?

22 A. A fuel adjustment clause would  
23 substantially eliminate the volatility associated with  
24 changes in fuel costs and off-system sales.

25 Q. So in a historical context, the company



1 would determine the value of stabilizing earnings in the  
2 sense of these hedging instruments, would it not?

3 A. Can you repeat that question?

4 Q. So in a historical context, the company  
5 would make a determination as to the value of stabilizing  
6 earnings in the form of these hedging contracts, correct?

7 A. I'm not sure. I'm sorry, Mr. Conrad. I'm  
8 not sure what you mean by an historical context.

9 Q. That's kind of where you are now. You  
10 don't have a fuel adjustment, right?

11 A. I agree we don't have a fuel adjustment.

12 Q. And we had talked before about feasibility  
13 and cost effectiveness, and in some general terms you have  
14 indicated that you usually would have to pay something for  
15 a hedge, right?

16 A. Sometimes, yes.

17 Q. So in that historical context, the company  
18 would have to make a determination as to whether  
19 purchasing that hedge was worth it, right?

20 A. Yes.

21 Q. And the purpose would be to stabilize  
22 earnings?

23 A. The purpose of a hedge would be to  
24 stabilize earnings and cash flows.

25 Q. Do you have a sense of how much the company

1 was willing to spend?

2 A. I don't understand the question. How much  
3 we were willing to spend for what?

4 Q. To stabilize earnings by purchasing hedges?

5 A. No, not specifically.

6 Q. So your answer is you don't know?

7 A. I don't.

8 Q. How many people, if you know, work on coal  
9 cost hedging?

10 A. You know, I believe the -- I believe  
11 Mr. Neff would be the best to answer that question. I  
12 believe there are about four people that do coal  
13 procurement.

14 Q. Again, if you know, how many people work on  
15 gas cost hedging?

16 A. I'm not sure. Mr. Glaeser would be the  
17 appropriate person to ask.

18 Q. Okay. But you are their -- you're kind of  
19 their supervisor, aren't you?

20 A. I am not, no.

21 Q. VP in charge of commodity risk management?  
22 How do you sort that out?

23 A. Commodity, the commodity risk management  
24 department works independently from the people who  
25 actually do the coal procurement and gas procurement and

1 actually carry out the hedging functioning for those  
2 areas.

3 Q. Let me ask you if you know how many folks  
4 would work on transportation cost hedging associated with  
5 natural gas?

6 A. I believe, again, Mr. Glaeser would be the  
7 appropriate person to ask that question.

8 Q. So you don't know?

9 A. I don't know.

10 Q. Would your answer be the same with respect  
11 to how many folks worked on purchased power cost issues?

12 A. That's correct. I don't know. I would be  
13 speculating.

14 Q. Who would that be, Neff or Glaeser?

15 A. That would be neither of them. That would  
16 be Mr. Schukar.

17 Q. If you know, how many folks worked on  
18 off-system sales margin hedging?

19 A. I believe your previous question was about  
20 off-system sales, correct?

21 Q. It was purchased power.

22 A. Oh, purchased power. I'm sorry. It would  
23 be the same thing, with Mr. Schukar.

24 Q. And you don't know?

25 A. I don't know.

1           Q.       Now, on your proposed FAC, have you made  
2 any study of what the new level of hedging activity that  
3 would be required?

4           A.       I'm not sure about new level of hedging.  
5 Our intention with an FAC would be to continue the hedging  
6 programs that we have in place today for coal procurement,  
7 for gas procurement, transportation procurement as well as  
8 off-system sales management, purchased power management.

9           Q.       Now, you had, I thought, indicated to me  
10 that you agree that the FAC as you have proposed it would  
11 minimize rate volatility, right?

12          A.       I -- could you repeat the question?

13          Q.       I'm corrected. Let's try this. I thought  
14 you had agreed with me that we were trying through the FAC  
15 proposal that you had to minimize earnings volatility; is  
16 that fair?

17          A.       A.    Yes, it would help to reduce earnings  
18 volatility.

19          Q.       If you could by virtue of having an FAC in  
20 place as you have proposed, would it be possible to reduce  
21 the cost of the hedging program?

22          A.       I don't believe so, no.

23          Q.       So neither the cost of the hedges  
24 themselves or any of the folks that work in those areas  
25 could be reduced, that's your testimony?

1 A. That is my testimony.

2 Q. Now, look with me, please, sir on page 18,  
3 and you talk there about -- on line 3 you begin, items  
4 that would be tracked are coal, coal transportation,  
5 natural gas, oil, fuel, purchased power and off-system  
6 sales, right?

7 A. Yes.

8 Q. How much of AmerenUE's generation comes  
9 from natural gas as a percentage?

10 A. I'm not sure of the specific percentage,  
11 but it's a small percentage.

12 Q. Would you look for just a moment with me,  
13 please, at your schedule, I believe it's designated  
14 MJL-E4.

15 A. Uh-huh.

16 Q. And what I have as Attachment D.

17 A. Attachment?

18 Q. D, for dog.

19 A. D. Thank you.

20 Q. And do you see the column labeled  
21 percentage of 2007 annual generation?

22 A. I do.

23 Q. Now, there's a horizontal break point in  
24 the tabular data. Do you see that?

25 A. I do.

1 Q. And below that break point it looks like  
2 most if not all gas generation, CTs, combustion turbines,  
3 right?

4 A. Yes, it is.

5 Q. Lots of zeros down there?

6 A. Yes.

7 Q. And did I understand your exhibit there to  
8 suggest that that's about 1.3 or 1.4 percent, somewhere in  
9 that range?

10 A. Yes, that's what I add it up to be as well.

11 Q. And that's -- that's for gas generation?

12 A. That's correct, for -- as a percentage of  
13 2007 annual generation.

14 Q. Now, Mr. Lyons, if you know, do you know  
15 what the corresponding percentage of generation from  
16 natural gas is for Empire District Electric?

17 A. Off the top of my head, I do not.

18 Q. Mr. Lyons, if you know, what is the  
19 corresponding percentage of generation from natural gas  
20 for what used to be called Aquila and now is KCPL GMO or  
21 some such like that?

22 A. I don't know off the top of my head.

23 Q. So you haven't looked at those, have no  
24 idea about those companies?

25 A. No. We actually have done a comparison,

1 and it's contained in Mr. Arora's testimony, of the fuel  
2 mix as well as exposure to purchased power and off-system  
3 sales and have actually compared our exposure to gas, gas  
4 price volatility as well as power price volatility for UE  
5 as compared to Aquila and Empire.

6                   While I don't recall the specific  
7 percentages that you requested, I do recall that his  
8 finding was that our exposure to gas and purchased power  
9 price volatility was not dissimilar to the exposure that  
10 Aquila and Empire have when considering both our purchased  
11 power as well as our off-system sales, and I believe we  
12 did those comparisons to total fuel and net purchased  
13 power or sales as well as a comparison to our revenues of  
14 Aquila and Empire and found the percentages to be  
15 consistent.

16               Q.       But you'd agree with me, I take it, that  
17 the percentage of generation from natural gas for Empire  
18 District would likely be something higher than 1.3  
19 or 1.4 percent, wouldn't you?

20               A.       I do believe it is, yes.

21               Q.       And same for Aquila?

22               A.       I do believe it is, although I don't recall  
23 specifically.

24               Q.       I understand you don't recall the specific  
25 numbers, but you'd agree with me that it's somewhat

1 higher?

2 A. Yes.

3 MR. CONRAD: One moment, please, your  
4 Honor. Your Honor, as we mentioned, I do have some more  
5 questions for Mr. Lyons when we get to the other section  
6 about some of the specifics of his proposal and how that  
7 works, but that would be all that I have at this point on  
8 the generic.

9 JUDGE WOODRUFF: Okay. Very good. Cross  
10 for MIEC?

11 CROSS-EXAMINATION BY MS. VUYLSTEKE:

12 Q. Good morning, Mr. Lyons.

13 A. Good morning.

14 Q. I want to refer you to page 21 of your  
15 rebuttal testimony. You identify there the coal pool --  
16 are you with me on 21?

17 A. Thank you. I am on 21, yes.

18 Q. Okay. You identify the coal pool as an  
19 incentive for UE to do an effective job of buying coal  
20 since the unregulated operations pay the same fuel cost.  
21 Do you see that?

22 A. I do.

23 Q. Is it true that the pooling is for the coal  
24 and does not include the transportation?

25 A. That is correct.



1 Q. Is it also true that transportation is the  
2 majority of the cost?

3 A. It is.

4 Q. Who negotiates the transportation contracts  
5 for AmerenUE?

6 A. People under Mr. Neff's direction.

7 Q. Can you give me any specific names other  
8 than telling me that they work for Mr. Neff?

9 A. No, I cannot.

10 Q. Okay. And who negotiates the  
11 transportation contracts for the unregulated operations?

12 A. I believe those would also be individuals  
13 under Mr. Neff's direction.

14 Q. I take it from your rebuttal testimony that  
15 you are familiar with the MIEC's sharing proposal; is that  
16 correct?

17 A. I am.

18 Q. Isn't it correct that under the MIEC's  
19 sharing proposal, the earnings exposure that UE would have  
20 is 50 basis points ROE or less than 5 percent of earnings  
21 on an annual basis?

22 A. It is -- it is correct that, as I  
23 understand it, Mr. Brubaker's proposal, MIEC's proposal is  
24 that there be an 80/20 sharing in the FAC with a cap of 50  
25 basis points, which is equivalent to \$25 million pre tax.

1           Q.       Would you agree with me that if AmerenUE  
2 were to receive an FAC but using -- receive an FAC with  
3 the MIEC's sharing proposal instead of the one proposed by  
4 AmerenUE, would AmerenUE be better off than it is with the  
5 status quo today?

6           A.       Yes. An FAC as proposed by Mr. Brubaker  
7 would be better than no FAC, though I do believe that it  
8 would place us still outside the mainstream of what other  
9 utilities across the country are utilizing in terms of  
10 FACs.

11                   MS. VUYLSTEKE: Thank you.

12                   JUDGE WOODRUFF: All right. Cross for the  
13 state?

14       CROSS-EXAMINATION BY MR. IVESON:

15           Q.       Good morning, Mr. Lyons. Just a few  
16 questions.

17           A.       Good morning.

18           Q.       Still on page 21 of your rebuttal  
19 testimony, you refer to individual employee incentives.  
20 Can you describe what those incentives are?

21           A.       Not all of them, but I think some of our  
22 other witnesses that will be here this week can explain  
23 some of those further. However, there are things, for  
24 example, for the power operations group, there are KPIs we  
25 call them, key perform indicators related to generation

1 levels, generation availability, cost of generation,  
2 things of that nature.

3 Q. And is there incentive compensation  
4 associated with those?

5 A. Yes.

6 Q. Do you know what percentage?

7 A. I don't know. I believe it would vary  
8 based upon the individual and their responsibilities.

9 Q. And you also have incentive compensation in  
10 your compensation plan, don't you?

11 A. Yes, I do.

12 Q. And what level of -- or what percent of  
13 your compensation is based on incentive compensation?

14 A. My short-term incentive compensation is  
15 roughly what it is, it's 50 percent of my annual  
16 compensation.

17 Q. And does that motivate you to do a better  
18 job?

19 A. It does. It does motivate me, yes.

20 Q. Just I want to clarify. I was a little  
21 confused by your testimony. You don't have a law degree,  
22 do you?

23 A. I do not.

24 Q. And you're not admitted to practice law in  
25 any jurisdiction?

1           A.     No, sir.

2           Q.     So you're not qualified to provide a legal  
3 opinion to the Commission?

4           A.     I would agree that I would have a  
5 layperson's opinion about a legal matter.

6                     MR. IVESON:  I have nothing further, your  
7 Honor.

8                     JUDGE WOODRUFF:  All right.  Before we go  
9 on to further cross, we've been going for almost two  
10 hours, so we need to go ahead and take a break.  We'll  
11 come back at 10:45.

12                             (A BREAK WAS TAKEN.)

13                     JUDGE WOODRUFF:  All right.  We're back  
14 from break, and Mr. Lyons is back on the stand, so we're  
15 ready for cross-examination from Office of Public Counsel.

16                     MR. MILLS:  Thank you, your Honor.

17 CROSS-EXAMINATION BY MR. MILLS:

18           Q.     Mr. Lyons, I'd like to start at the  
19 beginning here.  If I could get you to turn to your direct  
20 testimony, page 1.

21           A.     Yes.

22           Q.     At lines 10 through 12, you point out that  
23 you are senior vice president and chief accounting officer  
24 of AmerenUE Corporation, Union Electric Company, d/b/a and  
25 other Ameren subsidiaries; is that correct?

1           A.       That's correct.

2           MR. MILLS:  I'd like to have an exhibit  
3 marked.

4           JUDGE WOODRUFF:  All right.  Your number is  
5 430.

6           MR. LOWERY:  Pardon me, your Honor.  What  
7 number was this, please?

8           JUDGE WOODRUFF:  430.

9           MR. LOWERY:  Thank you.

10           (EXHIBIT NO. 430 WAS MARKED FOR  
11 IDENTIFICATION BY THE REPORTER.)

12 BY MR. MILLS:

13           Q.       Mr. Lyons, do you recognize what's been  
14 marked as Exhibit 430 as a Form 561 filed with the FERC  
15 and the third page of which shows your responsibilities  
16 for various Ameren Corporation subsidiaries and  
17 affiliates?

18           A.       Yes, I do.

19           MR. MILLS:  Judge, I'd like to offer  
20 Exhibit 430.

21           JUDGE WOODRUFF:  430 has been offered into  
22 evidence.  Are there any objections to its receipt?

23           (No response.)

24           JUDGE WOODRUFF:  Hearing none, it will be  
25 received.

1 (EXHIBIT NO. 430 WAS RECEIVED INTO  
2 EVIDENCE.)

3 BY MR. MILLS:

4 Q. Now, on the third page of this exhibit,  
5 does this form accurately reflect all of the positions at  
6 Ameren and its subsidiaries that you hold today?

7 A. To my knowledge, yes.

8 Q. Can you tell me which of these companies  
9 that are shown on Exhibit 430 own generation assets?

10 A. I believe so, yes. Ameren Corporation owns  
11 subsidiaries which own generation assets. The first one  
12 on the left, Central Illinois Light Company, owns  
13 generation through a subsidiary, Ameren Energy Resources  
14 Generating Company, which is on the right. Central  
15 Illinois Public Service Company owns Central Illinois  
16 Light Company, which again in turn owns Ameren Energy  
17 Resources Generating Company, which owns generation.  
18 Union Electric Company owns generation.

19 Illinois Power does not own any generation.  
20 Ameren Energy Generating Company owns generation. Ameren  
21 Energy Medina Valley Cogen owns generation. I already  
22 mentioned Ameren Energy Resources Generating, which is a  
23 subsidiary of SILCO, it does own generation. Ameren  
24 Illinois Transmission Company does not.

25 Q. Now, with the exception of Ameren Energy --

1 is it Medina or Medina?

2 A. Medina.

3 Q. -- Medina Valley Cogen have at least  
4 several large generating units?

5 A. No, I do not believe they do.

6 Q. I said with the exception of Medina.

7 A. Oh, I'm sorry. With the exception of  
8 Medina.

9 Q. Do with the others own large generating  
10 units?

11 A. Yes, they own fairly large generating  
12 units, yes.

13 Q. Now, from the way that you understand your  
14 role in each of these companies, do you believe that you  
15 have a fiduciary responsibility to each company's  
16 shareholders to see that each of these companies optimizes  
17 the value of their respective generation portfolios?

18 A. Yes.

19 Q. Do you believe that there is an unlimited  
20 ability to sell generation and capacity into the market?

21 A. No.

22 Q. Are you aware that in this case Mr. Shawn  
23 Schukar on behalf of AmerenUE has testified that the only  
24 period of time that AmerenUE had sold all of its available  
25 excess capacity was during the summer months of July and

1 August?

2 A. I don't recall specifically.

3 Q. Do you have any information that would lead  
4 you to believe that Mr. Schukar's statements, if he did in  
5 fact make those statements in the record, are inaccurate?

6 A. No.

7 Q. Now, returning to all of the companies with  
8 generation that you are an officer for, do you know if all  
9 of those companies have the same ability to get their  
10 excess capacity sold in the market?

11 A. Can you clarify what you mean by that?

12 Q. Well, are they all able to sell -- do they  
13 all have equal opportunity to sell their excess capacity  
14 into the market?

15 A. Not exactly, no. They're constrained by  
16 the loads that they serve, the availability of their  
17 generation and the like.

18 Q. How do the loads that they serve impact  
19 their excess capacity?

20 A. Because to the extent that they have load  
21 that they need to serve that they've either contracted to  
22 serve or they're required to serve, as UE is with its  
23 native load customers, they have to commit the generation  
24 to serving that load. And that load has a shape, a  
25 general shape, and it has a variability, and so depending



1 upon the load or the contracts that they're required to  
2 serve, they do or don't have the ability to sell forward  
3 into the MISO market or sell in the spot market, et  
4 cetera.

5 Q. Let me back you up and ask you how you  
6 understood me to use the phrase excess capacity when I  
7 asked you the question.

8 A. When you said excess capacity, I may have  
9 misunderstood, but I understood it to mean the capacity to  
10 sell energy beyond that which is committed to serving load  
11 requirements.

12 Q. And so by definition isn't it capacity  
13 that's not needed to serve native load?

14 A. That's correct.

15 Q. So again, do you agree or disagree that all  
16 of those companies have the same ability to sell their  
17 excess capacity into the market, keeping in mind your  
18 distinction that some of them may have more excess  
19 capacity than others depending on their native load  
20 shapes?

21 A. Mr. Mills, I suppose I disagree because,  
22 again, I think that they are -- their ability to sell  
23 generation is impacted by the load that they -- and the  
24 load profile that they are required to serve.

25 Q. Now, do all of these companies sell into

1 the same markets?

2 A. No, not -- predominantly, however, the  
3 Midwest ISO; however, some of these -- some of this  
4 generation may be dispatched in PJM.

5 Q. Most of it is in the Midwest ISO; is that  
6 correct?

7 A. The majority is, yes.

8 Q. Now, assume with me that it's the case that  
9 not all of these companies can sell all of their energy  
10 all of the time. As an officer of all of these companies,  
11 which companies do you try to make sure sell as much as  
12 possible?

13 A. Well, none of these generating units or the  
14 traders that sell the generation are specifically under my  
15 direction. However, we as a company would expect all  
16 of -- and these companies would expect all of these  
17 generation assets and the traders that market them to do  
18 their best to try to sell all of that generation that's --  
19 that they can sell.

20 Q. Now, with respect -- and I should clarify  
21 this. With respect to Exhibit 430, the position codes are  
22 VP and on some VP/OEP. VPI I assume is vice president; is  
23 that correct?

24 A. I assume that as well.

25 Q. What is OEP?

1 A. I don't recall.

2 Q. What other positions do you hold with these  
3 companies other than vice president?

4 A. Chief accounting officer. Senior vice  
5 president and chief accounting officer is my title.

6 Q. For Ameren Energy Medina, what is your  
7 position?

8 A. I believe there as well, senior vice  
9 president and chief accounting officer.

10 Q. But Exhibit 430 doesn't show VP for that  
11 company, does it?

12 A. It does not. I don't recall why.

13 Q. How about for Ameren Energy Resources  
14 Generating Company?

15 A. I believe -- I believe the same thing.

16 Q. Your position with each of these companies  
17 is the same?

18 A. Yes.

19 Q. If you know, if there's a limited market  
20 for the sale of excess capacity, will the sales made by  
21 some of these companies where you're an officer affect the  
22 amount of sales that can be made by other companies where  
23 you're an officer?

24 MR. LOWERY: Just a clarifying question.  
25 I'm going to object unless the question is posed in a

1 hypothetical. He said if there is, and I can't tell if  
2 he's posing hypothetically there is or whether he's trying  
3 to state a fact that there is.

4 JUDGE WOODRUFF: Can you clarify?

5 MR. MILLS: The question was, if there is a  
6 limited market.

7 JUDGE WOODRUFF: That sounds hypothetical.

8 MR. MILLS: Yes.

9 JUDGE WOODRUFF: Fair enough.

10 THE WITNESS: Can you repeat the question?

11 BY MR. MILLS:

12 Q. Yes. If there is a limited market for the  
13 sale of excess capacity, will the sales made by some of  
14 these companies affect the amount of sales that can be  
15 made by other of these companies?

16 A. If hypothetically there's a limited market,  
17 then yes, hypothetically the sale by one entity would  
18 diminish the opportunity for another entity.

19 Q. Okay. And now let's explore the basis for  
20 that hypothetical. Is it your understanding that there is  
21 a limited market for excess capacity?

22 A. I believe so.

23 Q. Now, turning to another topic, is it UE's  
24 position that an FAC will have no impact on the manner in  
25 which it maintains and operates its generation units?

1           A.       That is -- I believe that is -- would you  
2 repeat the question? I'm sorry.

3           Q.       Is it UE's position that an FAC will have  
4 no impact on the manner in which it maintains and operates  
5 its generation units?

6           A.       That is correct. With an FAC we would  
7 intend to maintain and improve our generation units as we  
8 have worked to do in the past.

9           Q.       Is it UE's position that an FAC will have  
10 no impact on the manner in which it pursues off-system  
11 sales of energy and capacity?

12          A.       That is correct. We would as aggressively  
13 pursue opportunities for off-system sales as we have in  
14 the past.

15          Q.       Mr. Lyons, do you have a copy of your  
16 direct testimony there?

17          A.       Yes.

18          Q.       Can I get you to turn to the exemplar FAC  
19 tariff sheets that are attached to your testimony, and  
20 specifically sheet 98.3, which just so the record is  
21 clear, is also marked as MJL-E1-3; is that correct?

22          A.       Yes, it is.

23          Q.       About two-thirds, three-quarters of the way  
24 down that sheet there's a definition of OSSR. Do you see  
25 that?

1           A.       I do.

2           Q.       And is it accurate that it includes all  
3 sales transactions associated with power purchases made to  
4 serve Missouri retail load?

5           A.       Maybe I'm not following along well. I  
6 apologize.

7           Q.       I skipped some of the phrases and tried to  
8 tie in together the parts that are in it just to hit on  
9 this one point. Okay. It says off-system sales shall  
10 include all sales transactions, and then it goes on to say  
11 a little bit further down, that are associated with 1, 2  
12 and 3, and 2 is power purchases made to serve Missouri  
13 retail load?

14          A.       Yes.

15          Q.       So my question is, is it accurate to  
16 paraphrase that in part by saying that the OSSR factor  
17 includes all sales transactions associated with power  
18 purchases made to serve Missouri retail load?

19          A.       Yes.

20          Q.       Will U -- will UE be making some power  
21 sales that it does not intend to reflect in the OSSR  
22 factor?

23          A.       No, other than those that we say excluding  
24 Missouri retail sales and long-term full and partial  
25 requirements sales.

1 Q. So there are some exclusions?

2 A. Yes, they're stated here.

3 Q. And how do we distinguish between those  
4 sales that are excluded and those sales that are included?

5 A. Generally speaking, the sales that are  
6 excluded are those wholesale sales that are excluded in  
7 the ratemaking in this case, the nonjurisdictional sales  
8 subject to generally, I believe, to FERC jurisdiction.

9 Q. Are those the only sales that are excluded?

10 A. Yes, other than our retail sales.

11 Q. Now, if UE bought additional capacity for  
12 certain months to enable it to sell its excess capacity in  
13 other months, would the cost of purchasing this additional  
14 capacity and the revenues enabled by purchasing it flow  
15 through the FAC?

16 A. The revenues would be, and the capacity  
17 purchases would be as well as long as the capacity --  
18 duration of capacity was less than one year.

19 Q. So capacity sales of greater than one year  
20 would be excluded?

21 A. No.

22 Q. Or capacity purchases of greater than one  
23 year would be excluded?

24 A. That is correct.

25 Q. Are you a member of the Ameren Risk

1 Management Steering Committee?

2 A. I am.

3 Q. And how long have you been a member of the  
4 RMSC?

5 A. Six or seven years.

6 MR. MILLS: Judge, I'd like to have another  
7 exhibit marked.

8 JUDGE WOODRUFF: All right. This will be  
9 41.

10 MR. MILLS: And, in fact, it's HC.

11 JUDGE WOODRUFF: 431HC.

12 (EXHIBIT NO. 431HC WAS MARKED FOR  
13 IDENTIFICATION BY THE REPORTER.)

14 MR. MILLS: And Judge, the questions that  
15 I'm going to ask with respect to this exhibit will also be  
16 highly confidential, so we'll need to go in camera.

17 JUDGE WOODRUFF: Is there anyone in the  
18 back that needs to leave?

19 (REPORTER'S NOTE: At this point, an  
20 in-camera session was held, which is contained in  
21 Volume 25, pages 2194 through 2230 of the transcript.)

22

23

24

25



1 JUDGE WOODRUFF: We're back in regular  
2 session.

3 MR. MILLS: Judge, I'd like to have another  
4 exhibit marked. This will be non-highly confidential.

5 JUDGE WOODRUFF: This will be 436.

6 (EXHIBIT NO. 436 WAS MARKED FOR  
7 IDENTIFICATION BY THE REPORTER.)

8 BY MR. MILLS:

9 Q. Mr. Lyons, do you recognize what's been  
10 marked as Exhibit 436 as a Public Counsel Data Request and  
11 your response in this case to that Data Request?

12 A. Yes.

13 Q. And the question is, regarding the OSSR  
14 term that is defined on Schedule NJL-E1-3 -- and that's  
15 Sheet 98.3 of the proposed tariff; is that correct?

16 A. Yes.

17 Q. -- is this term intended to include  
18 revenues from capacity sales that are made by UE? If not,  
19 please fully explain why not. Is that the question?

20 A. Yes.

21 Q. And your response was an unqualified yes;  
22 is that correct?

23 A. Yes.

24 Q. Is that still your response?

25 A. Yes, subject to the tariff attached to my

1 testimony.

2 Q. How do you mean -- explain what you mean by  
3 that, subject to.

4 A. Earlier we talked about the definition of  
5 off-system sales revenue, and it excluded native load  
6 sales and it excluded long-term full and partial  
7 requirement sales. We talked about the wholesale sales,  
8 and it excludes speculative activity.

9 Q. So the answer isn't really yes, it's yes  
10 but with some exceptions; is that correct?

11 A. Yes, with the limitations noted in the  
12 tariff.

13 Q. If you -- and if you bought capacity and  
14 then resold it, would it be included?

15 A. As I said before, if we -- we went through  
16 the example, if we bought capacity and added it to the  
17 capacity that UE has and was able to then resell a larger  
18 amount of capacity, yes.

19 MR. MILLS: Judge, with that I'll offer  
20 Exhibit 436.

21 JUDGE WOODRUFF: 436 has been offered. Any  
22 objections to its receipt?

23 (No response.)

24 JUDGE WOODRUFF: Hearing none, it will be  
25 received.

1 (EXHIBIT NO. 436 WAS RECEIVED INTO  
2 EVIDENCE.)

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

5 JUDGE WOODRUFF: 437.

6 (EXHIBIT NO. 437 WAS MARKED FOR  
7 IDENTIFICATION BY THE REPORTER.)

8 BY MR. MILLS:

9 Q. Mr. Lyons, do you recognize Exhibit 437 as  
10 a Public Counsel Data Request and your response to that  
11 Data Request?

12 A. Yes.

13 Q. And the question asks, and I'm going to  
14 basically summarize here, under your proposal will changes  
15 in the level of revenues from the sale of coal combustion  
16 products be reflected in the periodic adjustment in the  
17 fuel adjustment clause? Is that an accurate way to  
18 paraphrase the question?

19 A. That is correct.

20 Q. And your answer is yes; is that true?

21 A. That is true.

22 Q. And your answer also refers to Sheet 98.3;  
23 is that correct?

24 A. Yes.

25 Q. Can you explain to me which term on that

1 sheet would include revenues from UE's sales of coal  
2 combustion products?

3 A. In a set example in the question fly ash  
4 and bottom ash, and on the term the definition of CF  
5 starting on Sheet 98.2 and continuing on to the top of  
6 Sheet 98.3, what you'll see is items that are in fossil  
7 fuel for hydroelectric plants, and at the top of 98.3 on  
8 the third line down it says ash disposal revenues and  
9 expenses.

10 Q. So with respect to the sale of any of the  
11 coal combustion products, they would all be included  
12 within the CF factor; is that correct?

13 A. I believe so. Obviously ash disposal  
14 revenues and expenses are, yes.

15 MR. MILLS: Okay. Judge, with that, I'll  
16 offer Exhibit 437.

17 JUDGE WOODRUFF: 437 has been offered. Any  
18 objections to its receipt?

19 (No response.)

20 JUDGE WOODRUFF: Hearing none, it will be  
21 received.

22 (EXHIBIT NO. 437 WAS RECEIVED INTO  
23 EVIDENCE.)

24 MR. MILLS: I'd like to have another  
25 exhibit marked.

1 JUDGE WOODRUFF: 438.

2 MR. MILLS: And Judge, just for your  
3 information, I probably have another ten minutes or so at  
4 the most.

5 (EXHIBIT NO. 438 WAS MARKED FOR  
6 IDENTIFICATION BY THE REPORTER.)

7 BY MR. MILLS:

8 Q. Mr. Lyons, do you recognize what's been  
9 marked as Exhibit 438 as a press release that was issued  
10 by AmerenUE on April 4th when you filed this rate case?

11 A. Yes.

12 Q. And are you familiar with that press  
13 release?

14 A. Haven't looked at it in quite some time,  
15 but yes.

16 Q. If I can have you look at the second page.  
17 And again, we have different sizes of bullets. If I can  
18 have you look at the second -- the first small bullet,  
19 which is the second bullet on the page, is that a  
20 discussion about the fuel adjustment clause mechanism?

21 A. Yes, it is.

22 Q. Is that bullet, is it a fair reading of  
23 that that UE would expect to file fewer rate cases if the  
24 Commission approves an FAC for UE?

25 A. Under the FAC, we may be able to do that.

1 We've seen significantly rising costs in fuel and fuel  
2 transportation over the past couple of years and continue  
3 to expect to see them in 2009 and 2010. With the fuel  
4 adjustment clause --

5 MR. MILLS: Judge, if I may, I'm asking  
6 about the frequency of rate cases, not about fuel cost  
7 trends, and my question was a fairly simple one about  
8 whether this particular passage indicates that UE will be  
9 filing fewer rate cases with a fuel adjustment clause than  
10 without.

11 JUDGE WOODRUFF: I think you have answered  
12 the question, and wait 'til the next question before going  
13 on and saying a narrative.

14 BY MR. MILLS:

15 Q. Was your answer to that question yes?

16 A. Can you repeat the question?

17 MR. MILLS: Could you read it back, please?

18 THE REPORTER: "Question: Is that bullet,  
19 is it a fair reading of that that UE would expect to file  
20 fewer rate cases if the Commission approves an FAC for  
21 UE?"

22 THE WITNESS: It wasn't an unqualified yes,  
23 no. It was that we may be able to defer certain rate  
24 cases. There are other elements of costs that are rising  
25 throughout our business that may cause us to have to file

1 for a rate case even with an FAC.

2 BY MR. MILLS:

3 Q. Now, the third bullet states that the fuel  
4 and purchased power adjustment clause would not generate  
5 additional profits for UE. Do you see that?

6 A. That is correct.

7 Q. And indeed the phrase not generate  
8 additional profits for UE is underlined; is that correct?

9 A. I see that, yes.

10 Q. Are you aware of any analysis that UE has  
11 performed of the level of profits it would have with and  
12 without an FAC?

13 A. I'm not aware specifically. I believe this  
14 statement was more or less indicating that the fuel  
15 adjustment clause would allow us to recover our prudently  
16 incurred fuel costs, no more, no less.

17 Q. Is it your testimony on the stand today  
18 that a fuel and purchased power adjustment clause would  
19 not generate additional profits for UE?

20 A. Yes, it is. The fuel adjustment clause as  
21 we've designed it that has the fuel costs in it and the  
22 off-system sales revenues in it, to the extent that they  
23 fluctuate over time, we would seek to recover 95 percent  
24 of those fluctuations which are prudently incurred costs  
25 and would be asking to recover those, no more, no less.

1 Q. So with or without a fuel adjustment  
2 clause, UE's profit level would remain the same?

3 A. No, that is not correct.

4 Q. Okay. So then let me ask you this again.  
5 Is it your testimony here today that the fuel and  
6 purchased power adjustment clause would not generate  
7 additional profits for UE as compared to not having a fuel  
8 adjustment clause?

9 A. That is my testimony.

10 MR. MILLS: Judge, that's all I have.

11 JUDGE WOODRUFF: All right. Thank you.

12 It's time for a lunch break. Before we go to lunch,  
13 though, I do want to mention that obviously we're going  
14 very slowly today so far, and during lunch I'd like the  
15 parties to discuss amongst themselves whether we need to  
16 go this evening, take an evening session like we did the  
17 last rate case, go from say six 'til no later than nine.  
18 I'm not sure how the parties are going to go  
19 cross-examining the other witnesses. We'll ask you that  
20 when we come back from lunch. We'll adjourn until 1:30.

21 (A BREAK WAS TAKEN.)

22 JUDGE WOODRUFF: Welcome back from lunch.  
23 It's 1:30. Before lunch we completed the  
24 cross-examination from Office of Public Counsel, and we  
25 were going to go into the cross-examination from Staff.



1 Before we do that, I know you all had discussions about  
2 whether we needed to go late this evening. Does anyone  
3 want to report on that? Mr. Dottheim, whoever?

4 MR. DOTTHEIM: Judge, what we discussed is  
5 I think generally the thought is that lucky Mr. Lyons may  
6 be one of the few fuel adjustment clause witnesses for  
7 which there's extensive cross-examination. The thought is  
8 that we go 'til five or thereabouts today, and if we need  
9 to go long, we go long tomorrow, and if necessary Friday.  
10 But at the moment, I think we believe that if we need to  
11 go long, going long tomorrow would address it, that is if  
12 the Bench, if that -- if going long tomorrow accommodates  
13 the Bench.

14 Also, too, it would permit us to discuss  
15 the unresolved matters on off-system sales that we're  
16 trying to wrap up the loose ends on, and so our suggestion  
17 is that we not go long today but, if necessary, go long  
18 tomorrow.

19 JUDGE WOODRUFF: All right. Anybody else  
20 want to address that?

21 MR. LOWERY: I think we agree that that's  
22 the -- that's a reasonable approach based on what I  
23 understand to be the amount of cross-examination people  
24 expect to have.

25 JUDGE WOODRUFF: Well, we'll see how things

1 are looking tomorrow, then.

2 MR. CONRAD: We very strenuously agree.

3 MR. LOWERY: Now, that's a first.

4 MS. VUYLSTEKE: Judge Woodruff, there's  
5 another matter I wanted to bring up at this time, a  
6 procedural matter. Jim Dauphinaia is listed on the list  
7 of witnesses as a fuel adjustment witness. We don't  
8 intend to call him as a witness. His testimony solely  
9 pertains to OSS in our view, and I just wanted to clarify  
10 that we don't intend to call him.

11 JUDGE WOODRUFF: Okay.

12 MR. LOWERY: Your Honor, on that point,  
13 Mr. Dauphinaia has been listed as a fuel adjustment clause  
14 witness since the schedule was filed some weeks ago, and  
15 he has limited testimony on the fuel adjustment clause, I  
16 agree with that, just like Mr. Weiss had very limited  
17 testimony on the COLA, but parties indicated that they had  
18 some questions for Mr. Weiss on the COLA, and so Mr. Weiss  
19 testified. And while we don't have extensive questions,  
20 we have some questions for Mr. Dauphinaia that are  
21 relevant to the fuel adjustment clause issue, and he's  
22 been listed for weeks, and I don't believe that it's  
23 appropriate that there be some unilateral decision at  
24 least to pull him off the witness list. I don't think  
25 that's up to Ms. Vuylsteke. I think that's up to the

1 Commission. That pleading was filed weeks ago on behalf  
2 of all the parties, and this is the first time this has  
3 come up.

4 JUDGE WOODRUFF: Ms. Vuylsteke?

5 MS. VUYLSTEKE: Your Honor, the OSS issue  
6 is settled, and I think any argument that could have been  
7 made that Mr. Dauphinaia's testimony was relevant to FAC  
8 issues has disappeared since the OSS issue was settled.

9 But I would add that the real question is  
10 whether or not there is any testimony at all from Mr.  
11 Dauphinaia that can be considered to pertain to the FAC  
12 issue. We don't see that that's there. I guess I would  
13 ask Mr. Lowery to point out to us what area of  
14 Mr. Dauphinaia's testimony pertains to it.

15 MR. LOWERY: I'll address the Bench. I'm  
16 not going to address MIEC. But Mr. Dauphinaia talks about  
17 the structure of the FAC and what's appropriate, and I  
18 deposed Mr. Dauphinaia, and Mr. Dauphinaia does have  
19 information and opinions that are relevant to issues that  
20 are at issue in the FAC. And in Missouri we have wide  
21 open cross, and what questions we can ask him aren't  
22 limited to the off-system sales issue per se. And while  
23 I'm very hopeful it is settled, actually at this moment  
24 it's not settled, unfortunately.

25 But I think the point remains, just like

1 the point was for some of the company's witnesses. He's  
2 been on the schedule, and if this was an issue, this  
3 should have been handled weeks ago. We have intended to  
4 ask him questions and still do, and I think he's  
5 appropriately listed on the list.

6 MS. VUYLSTEKE: Your Honor, we would  
7 certainly be willing to withdraw the testimony of  
8 Mr. Dauphinaia if that's necessary to resolve any dispute  
9 as to whether or not there is FAC testimony on the record.  
10 But I think the difference between Mr. Dauphinaia's  
11 testimony and perhaps some of the other witnesses that  
12 Mr. Lowery mentioned is that Mr. Dauphinaia does not have  
13 testimony on this issue. He simply does not.

14 And I think that that's really the issue  
15 that's being presented to the Commission here is whether  
16 or not there is any testimony that Mr. Dauphinaia even has  
17 that could be questioned about that's relevant to the  
18 issue.

19 JUDGE WOODRUFF: Well, I'm not going to  
20 make a ruling on anything at this point. In fact, there's  
21 not any certain motion in front of me at the moment. But  
22 discuss amongst yourselves. We'll deal with it when it  
23 comes time for Mr. Dauphinaia's turn on here, and as you  
24 indicated, if necessary, his testimony can be struck or  
25 withdrawn.

1                   MS. VUYLSTEKE: Your Honor, I know that  
2 you're not going to make a ruling right now, and I don't  
3 mean to go against that, but I did want to mention that  
4 Mr. Dauphinaia was not intending to appear. So it would  
5 be useful for us, I guess, to go ahead and decide if we're  
6 going to withdraw that testimony sooner rather than later  
7 so he doesn't have to show up in Jefferson City  
8 unnecessarily.

9                   JUDGE WOODRUFF: Where would he be coming  
10 from?

11                   MS. VUYLSTEKE: St. Louis. I'm not --  
12 frankly not sure of his availability, but he would be  
13 coming from St. Louis. So I think we'll make a decision  
14 quickly about withdrawing his testimony.

15                   JUDGE WOODRUFF: All right. Discuss it  
16 with counsel for Ameren at the next break and bring it up  
17 then again.

18                   MR. MILLS: Judge, I hesitate to get into  
19 this because it's not really my issue, but I do know that  
20 at least on one other topic one of my witnesses was listed  
21 by mistake under an issue on which she had no testimony,  
22 and I would hate to see some sort of precedent set that if  
23 we don't immediately and strenuously object to minor  
24 errors in the witness list, that we're going to be forced  
25 to bring witnesses on issues for which they have no

1 testimony.

2                   So I think to the extent that UE insists  
3 that Mr. Dauphinaia does have some testimony on the fuel  
4 adjustment clause, I think it's incumbent on UE to  
5 identify what that is and why Mr. Dauphinaia is properly  
6 listed under this issue as opposed to simply being a  
7 mistake. If he's listed by mistake, there's no reason to  
8 bring him in and subject him to cross on a topic he's not  
9 testifying on. If there's some testimony there, then it's  
10 a whole different story.

11                   JUDGE WOODRUFF: Before I make any ruling  
12 on this, I would want to see an explanation of exactly  
13 what testimony is involved.

14                   MR. LOWERY: Certainly.

15                   JUDGE WOODRUFF: We'll save that for this  
16 afternoon later. All right. I believe then we're ready  
17 for cross-examination from the Staff.

18                   MR. DOTTHEIM: Thank you.

19 CROSS-EXAMINATION BY MR. DOTTHEIM:

20                   Q. Good afternoon, Mr. Lyons.

21                   A. Good afternoon.

22                   Q. Mr. Lyons, AmerenUE filed its tariff sheets  
23 in the direct case in April of this year, did it not?

24                   A. That's correct.

25                   Q. The -- the test year that was adopted was

1 12 months ending March 31, 2008, was it not?

2 A. That is correct.

3 Q. And the true-up period that was adopted was  
4 September 30, 2008, was it not?

5 A. That is correct.

6 Q. It is true, is it not, that AmerenUE has  
7 coal costs that increase on January 1, 2009, does it not?

8 A. Yes, it does.

9 Q. And the bulk of AmerenUE's coal cost  
10 increases occur on the date of January 1 on an annual  
11 basis, do they not?

12 A. Yes, they do.

13 Q. January 1, 2009 is outside of the true-up  
14 period in this case, is it not?

15 A. Yes, it is.

16 Q. And I'd like to refer you back to  
17 AmerenUE's most immediately preceding rate case,  
18 ER-2007-0002. Do you recall that AmerenUE filed its  
19 tariff sheets in the direct case in July of 2006?

20 A. That sounds correct.

21 Q. Do you recall whether the test year in that  
22 case was the 12 months ending June 30, 2006?

23 A. Yes, I believe it was.

24 Q. And do you recall whether the true-up  
25 period in that case was through January 1 of 2007?

1           A.       Yes, it was.

2           Q.       Mr. Lyons, were you here on the first day  
3 of the hearings when Mr. Voss testified, I believe it was  
4 November 20, 2008?

5           A.       No, I was not.

6           Q.       You're not aware of his testimony regarding  
7 the decision being made concerning the selection of April  
8 2008 for the filing of the presently pending rate case,  
9 are you?

10          A.       I am not.

11                   MR. DOTTHEIM: May I approach the witness?

12                   JUDGE WOODRUFF: You may.

13 BY MR. DOTTHEIM:

14          Q.       Mr. Lyons, I'm going to give you a copy of  
15 the transcript from the first day of the evidentiary  
16 hearing, November 20, 2008, and I'd like to direct you to  
17 page 179, and that part of the transcript Mr. Voss was on  
18 the stand, and you might be able to verify that from the  
19 index in the back of -- of the transcript which would  
20 indicate that he was being cross-examined.

21          A.       Okay.

22          Q.       Pardon me. Mr. Lyons, I should have had  
23 that marked for you, but I turned to the index at the back  
24 of the transcript which indicates the pages that Mr. Voss  
25 testified, and I'd like to again direct you to page 179



1 where Kevin Thompson, I believe, was cross-examining  
2 Mr. Voss and he asked him some questions about the  
3 selection of the April date for the filing of the  
4 presently pending rate case, and I'd like to ask you to  
5 read that, that page if you would, in particular starting  
6 at line 3 going to line 20.

7 A. You want me to read it aloud?

8 Q. No.

9 A. Just to myself?

10 Q. To yourself.

11 A. I've read it.

12 Q. Have you had a chance to read that?

13 A. Yes, I have.

14 Q. And if -- I'd like to ask you, Mr. Voss  
15 indicates that he made the final decision on the filing  
16 date of the case, did he not?

17 A. Yes.

18 Q. But he indicates that his immediate staff  
19 participated in making the decision?

20 A. He does indicate that.

21 Q. Would you happen to know whether he  
22 considers you part of his immediate staff?

23 A. Yes, I believe he does.

24 Q. Were you involved in the decision to file  
25 the presently pending case in April of this year?

1           A.       It was Mr. Voss' decision, but I was part  
2 of discussions about the case.

3           Q.       What is your understanding as far as the  
4 rationale for filing the case in April of this year as far  
5 as the selection of the month of April of 2008?

6           A.       Consistent with Mr. Voss' testimony, we've  
7 been experiencing rising costs since the time of our last  
8 rate case, and based upon those rising costs, we were  
9 under-earning the allowed ROE in the last rate case. And  
10 as we looked out to the future, we projected, as I recall,  
11 declining returns on equity.

12                       And it was Mr. Voss' conclusion that we  
13 needed to file immediately given the rising costs, which  
14 are due to not only fuel costs that we began to incur at  
15 the beginning of 2008, but also the substantial  
16 investments that we're making in the system, which are  
17 increasing depreciation expense and financing costs and  
18 the like.

19           Q.       Was there any consideration given to the  
20 possibility or even the likelihood or probability of not  
21 getting January 1, 2009 within the true-up period for the  
22 rate case?

23           A.       Yes.

24           Q.       And the decision was made to file the case  
25 in April regardless?

1           A.       Again, we were under-earning the allowed  
2 ROEs from the last rate case, and the severity of the  
3 impact of the investments we were making in the system and  
4 the costs that were escalating caused Mr. Voss to believe  
5 that the appropriate time to file the case was in April.

6           Q.       Mr. Lyons, do you still have a copy of what  
7 was marked this morning Public Counsel's Exhibit 433HC?

8           A.       I'm sure that I do. I may need it referred  
9 to as something else.

10          Q.       All right. I think we're -- as soon as I  
11 get into questions regarding this, we're probably going to  
12 have to go in-camera, but it's -- on the first page, it's  
13 Data Request OPC 2115.

14          A.       Yes.

15          Q.       And I'd like to ask you to turn to page 17.

16                   MR. DOTTHEIM: And Judge Woodruff, I think  
17 we're probably going to need to go in camera because of  
18 the questions I'm going to ask.

19                   JUDGE WOODRUFF: Go in camera at this  
20 point. If anyone needs to leave, please do so.

21                   (REPORTER'S NOTE: At this point, an  
22 in-camera session was held, which is contained in  
23 Volume 25, pages 2250 through 2256 of the transcript.)

24

25

1                   JUDGE WOODRUFF: And we are back in regular  
2 session.

3 BY MR. DOTTHEIM:

4                   Q.       And as a point of reference, I would state  
5 that I've directed Mr. Lyons to his direct testimony,  
6 schedules MJL-E5 and MJL-E6.

7                             And Mr. Lyons, in that I don't see or find  
8 a utility from Michigan in either of those two schedules.  
9 Would that be an indication that Michigan is a  
10 restructured state?

11                   A.       Yes, that would be a correct conclusion.

12                   Q.       Okay. And I don't see an electric utility  
13 from either Massachusetts or Maine. Would that also be an  
14 indication that Massachusetts and Maine are restructured  
15 states?

16                   A.       Yes, that's correct.

17                   Q.       Mr. Lyons, I'd also like to direct you to  
18 some questions that Kevin Thompson directed to Mr. Voss on  
19 November 20, which Mr. Voss was only able to answer in  
20 part, and I suspect you may be able to answer. Have you  
21 still got before you the transcript Volume 13?

22                   A.       Yes, I do.

23                   Q.       I'd like to direct you to pages 162 and  
24 163, and I would suggest to you that those are pages where  
25 Mr. Thompson is still conducting cross-examination of

1 Mr. Voss, and I'd like to ask you to read those pages, not  
2 into the record, but if you'd just take a look at those,  
3 I'd like to ask you a few questions.

4 A. I've read it.

5 Q. Mr. Lyons, at page 162 and just continuing  
6 to the top of 163, Mr. Thompson asked Mr. Voss some  
7 questions regarding Electric Energy, Inc., did he not?

8 A. He did.

9 Q. And I'll just refer to Electric Energy,  
10 Inc. as EE, Inc. And in 2008, AmerenUE transferred its  
11 ownership of EE, Inc., did it not?

12 A. In what period? I'm sorry.

13 Q. I think that occurred in 2008.

14 A. I believe sometime in the first quarter.  
15 That's correct.

16 Q. And as senior vice president and chief  
17 accounting officer of Ameren Corporation and Union  
18 Electric Company and other American subsidiaries, might  
19 you be able to answer questions regarding that --

20 A. Perhaps.

21 Q. -- transaction?

22 Okay. Well, I'm going to also hand you a  
23 copy of the Ameren Corporation Form 10Q.

24 A. Okay.

25 MR. DOTTHEIM: If I may approach the

1 witness?

2 JUDGE WOODRUFF: Go ahead.

3 BY MR. DOTTHEIM:

4 Q. Mr. Lyons, I've handed you a partial copy  
5 of the Ameren Corporation Form 10Q. On its cover it says  
6 filed November 10, 2008 for the period September 30, 2008.  
7 Do you recognize that document?

8 A. I do.

9 Q. You have some familiarity with that  
10 document?

11 A. I do.

12 Q. I'd like to direct you to page 30, but  
13 unfortunately, as the document prints out, it can be  
14 somewhat challenging locating the page. Have you been  
15 able to find what is page 30? It's the --

16 A. I have.

17 Q. Okay. And it's -- I'm looking under  
18 note 1, summary of significant accounting policies  
19 general, and I'm looking at the second large paragraph  
20 after the kind of bullet points and -- and boxes, and it  
21 states, Ameren has various other subsidiaries responsible  
22 for the short and long-term marketing of power procurement  
23 of fuel, management of commodity risk and provisions of  
24 other shared services.

25 Ameren has an 80 percent ownership interest

1 in EEI, which until February 29, 2008 was held  
2 40 percent by UE and 40 percent by Development Company.  
3 Ameren consolidates EEI for financial reporting purposes,  
4 while UE reported EEI under the equity method until  
5 February 29, 2008.

6                   Effective February 29, 2008, UE's and  
7 Development Company's ownership interests in EEI were  
8 transferred to Resources Company through an internal  
9 reorganization. UE's interest in EEI was transferred at  
10 book value indirectly through a dividend to Ameren. See  
11 note A, related party transactions for additional  
12 information. Did I read that accurately?

13           A.       You did.

14           Q.       Okay. And I would like to direct you to  
15 note 8, the part that appears on page 49, which is like a  
16 page from the end of -- page or two from the end of the  
17 excerpt that I have given to you, and I'd like to refer  
18 you to a paragraph in note A, right above the heading  
19 money pools. Have you found that?

20           A.       Yes.

21           Q.       And that paragraph states, on February 29,  
22 2008, UE contributed its entire 40 percent ownership  
23 interest in EEI at book value to Resources Company, valued  
24 at 39 million, in exchange for 50 percent interest in  
25 Resources Company, and then immediately transferred its

1 interest in Resources Company to Ameren by means of a  
2 39 million dividend in kind.

3 Also, on February 29, 2008, Development  
4 Company, which formerly held a 40 percent ownership  
5 interest in EEI, merged into Ameren Energy Resources  
6 Company, which then merged into Resources Company. As a  
7 result, Resources Company now has an 80 percent ownership  
8 interest in EEI and consolidates it accordingly.

9 If you just bear with me for a couple more  
10 minutes, I'd like to refer you to several pages into the  
11 Form 10Q, in the glossary of terms and abbreviations, and  
12 first to page 6, the -- the term Resources Company.  
13 Resources Company. Ameren Energy Resources Company, LLC a  
14 Ameren Corporation subsidiary that consists of non-rate-  
15 regulated corporations, including Genco Marketing Company,  
16 EEI, AFS and Medina Valley. It is the successor to  
17 American Energy Resources Company which was eliminated in  
18 an internal reorganization in February 2008.

19 Again, in the glossary of terms and  
20 abbreviations, the very first page of the glossary of  
21 terms and abbreviations, I'd like to refer you to Genco.  
22 Genco, Ameren Energy Generating Company, a Resources  
23 Company subsidiary that operates a non-rate-regulated  
24 electric generation business in Illinois and Missouri.  
25 Did I read that accurately?



1           A.       Yes.

2           Q.       Do you know what rate, what non-rate-  
3 regulated electric generation business Genco operates in  
4 Missouri?

5           A.       You know, I don't recall offhand what asset  
6 it has in Missouri.

7           Q.       And finally, the last item I'd like to  
8 refer you to is on that same page, EEI.

9           A.       Yes.

10          Q.       EEI, Electric Energy, Inc., an 80 percent  
11 owned Ameren Corporation subsidiary that operates  
12 non-rate-regulated electric generation facilities and FERC  
13 regulated transmission facilities in Illinois. Prior to  
14 February 29, 2008, EEI was 40 percent owned by UE and  
15 40 percent owned by Development Company. On February 29,  
16 2008, UE's 40 percent ownership interest and Development  
17 Company's 40 percent ownership interest was transferred to  
18 Resources Company. The remaining 20 percent is owned by  
19 Kentucky Utilities Company.

20                   Did I read that accurately?

21          A.       Yes.

22                   MR. DOTTHEIM: Thank you, Mr. Lyons.  
23 You've been very patient.

24                   JUDGE WOODRUFF: All right. We'll come up  
25 for questions from the Bench. Commissioner Murray?

1 QUESTIONS BY COMMISSIONER MURRAY:

2 Q. Good afternoon.

3 A. Good afternoon.

4 Q. You were asked some questions earlier about  
5 the deferrals of the outages, the scheduled outages and  
6 some other proposed deferrals.

7 A. Potential deferrals, yes.

8 Q. Potential deferrals. Does that have -- do  
9 those deferrals have anything at all to do with the FAC  
10 request?

11 A. No, they don't have anything to do with the  
12 FAC request. What they really have to do with is the  
13 financial crisis that we're all well aware of and the need  
14 to identify options to conserve cash to the extent that we  
15 need to conserve cash because of limited access to  
16 borrowing and high cost of borrowing.

17 Q. Okay. And then I wanted to ask you one  
18 other question if I can find it. In terms of the  
19 commodity costs and purchased power costs and any hedging  
20 costs, are carrying costs for any of those, how are they  
21 treated with the FAC?

22 A. I'm not sure what you mean by carrying  
23 cost. The hedging costs that we will incur, to the extent  
24 that there are costs associated with hedging, will be  
25 included as they are today in the cost of the fuel that we

1 procure or the cost of the gas that we procure, and  
2 through the FAC tariff the fuels cost as well as any costs  
3 that are incurred associated with hedging volatility fuel  
4 costs would flow through the FAC.

5 Carrying costs, however, associated with,  
6 say, maintaining the coal inventory, those would be  
7 incorporated, I believe, in a lead lag study in future  
8 rate proceedings.

9 COMMISSIONER MURRAY: Thank you.

10 JUDGE WOODRUFF: Chairman Davis?

11 QUESTIONS BY CHAIRMAN DAVIS:

12 Q. Good afternoon, Mr. Lyons.

13 A. Good afternoon.

14 Q. I did not have the benefit of listening to  
15 all of your cross-examination, but rest assured I have  
16 part of it on DVD and I will be able to read the  
17 transcript for the highly confidential portions of it.

18 You recall Mr. Dottheim's questions on cross-examination  
19 about when Ameren chose to file its rate case?

20 A. I do.

21 Q. Do we live in the United States?

22 A. Yes, we do.

23 Q. Is it still a free country?

24 A. Yes, it is.

25 Q. And AmerenUE can file a rate case whenever

1 it wants to, can't it?

2 A. I believe that it can.

3 Q. Now, assume for a moment that you, AmerenUE  
4 being you, took Mr. Dottheim's advice and waited three  
5 more months to file that rate case. Can you estimate how  
6 much money that would cost AmerenUE?

7 A. Commissioner, I don't have the amount off  
8 the top of my head.

9 Q. Would you like some help?

10 CHAIRMAN DAVIS: Mr. Dottheim, do you have  
11 a copy of the Staff's latest reconciliation? Whatever it  
12 is that's been filed in this case, can you provide it to  
13 this witness?

14 MR. DOTTHEIM: It might take me a few  
15 minutes to find it, Mr. Chairman.

16 CHAIRMAN DAVIS: That's all right,  
17 Mr. Dottheim.

18 MR. LOWERY: Your Honor, I do believe that  
19 I do.

20 CHAIRMAN DAVIS: Show it to Mr. Dottheim  
21 and verify it. Is that the November 19th or the --

22 MR. LOWERY: It's the November 19th one,  
23 yes.

24 CHAIRMAN DAVIS: November the 19th. Okay.  
25 So everyone should have a copy of that.

1 BY CHAIRMAN DAVIS:

2 Q. All right. Have you seen this document  
3 before, Mr. Lyons?

4 A. I have, Commissioner.

5 Q. Okay. All right. Now, looking at that  
6 reconciliation, can this Commission infer that if the PSC  
7 Staff prevails on all of their positions in this case  
8 against all the other parties, then AmerenUE is entitled  
9 to \$68 million? Can we infer that?

10 A. Yes.

11 Q. Okay. Now, so if we were to divide that  
12 number by 12, that would be roughly --

13 A. Five and a half million.

14 Q. -- five and a half million a month. So --

15 A. About 17 million over three months.

16 Q. 17 million?

17 A. 17 million over three months.

18 Q. Now, I'm not asking you if you read their  
19 testimony in depth, but did you recall the testimony or do  
20 you know what the ROE recommendations were by the expert  
21 witnesses in this case?

22 A. I'm only aware of two. I'm aware that our  
23 witness has recommended 10.9 and I'm aware that the  
24 Staff's witness -- or I believe the Staff's witness has  
25 recommended 9.5.

1 Q. So if this Commission were to find that  
2 both Dr. Morin and -- and Mr. Hill were credible in this  
3 case and we just split the difference at 10.2, that would  
4 be roughly another \$34 million, wouldn't it?

5 A. Yes, that seems -- 68.9 a year, about half  
6 of that's 34 million, yes.

7 Q. So if AmerenUE is under-earning  
8 \$102 million a year on an annual basis, you know, a  
9 three-month delay would be approximately a quarter of that  
10 amount or a little more than \$25 million, wouldn't it?

11 A. That is correct.

12 Q. Is \$25 million a significant amount of  
13 money?

14 A. Absolutely.

15 Q. Do you have a fiduciary duty to your  
16 shareholders?

17 A. I do.

18 Q. Can you describe fiduciary duty?

19 A. Sure. Our -- my fiduciary duty is to  
20 maximize profits for the shareholder.

21 Q. Okay. Now, let's say, keeping in -- you  
22 know, with Mr. Dottheim's assumptions, keeping in line  
23 with that, if you don't have a fuel adjustment clause and  
24 you wait another three months after your new coal contract  
25 clause kicks in -- well, I don't know if it's in a new

1 contract. It's just the escalator clause in the contract,  
2 is it not?

3 A. The new coal cost increases, you mean?

4 Q. Yes.

5 A. Yes, once they kick in.

6 Q. So they'll kick in January 1st. So if  
7 rates were delayed three more months, that number would  
8 actually be larger, wouldn't it?

9 A. Yes.

10 Q. Now, you're a CPA, senior vice president,  
11 chief accounting officer, all that stuff?

12 A. All of the above, yes.

13 Q. Okay. Now, you'd be familiar with the debt  
14 issued by all of the American subsidiaries, would you not?

15 A. Yes.

16 Q. Now, I believe it's a matter of public  
17 record, SILCO issued some senior secured notes last week?

18 A. Yes, it was last week we issued some senior  
19 secured notes.

20 Q. What is a senior secured note?

21 A. It's a note that's secured by utility  
22 assets, in this case SILCO's utility assets.

23 Q. Okay. So it was secured by assets, and  
24 what were the terms?

25 A. I can't remember the tenure, the length. I

1 believe it was \$150 million worth of bonds at just under  
2 9 percent interest.

3 Q. Just under. And that's for secured?

4 A. That's correct.

5 Q. Okay. Did Illinois Power also issue some  
6 debt?

7 A. They also issued debt in the fourth  
8 quarter.

9 Q. Okay. And do you recall what that debt was  
10 issued at?

11 A. That debt was issued at 9.75 percent  
12 coupon, issued at a discount yielding 10 percent.

13 Q. Okay. Obviously we read in the paper that  
14 the Federal Government keeps lowering borrowing rates, but  
15 that really doesn't seem to be having any effect on  
16 Illinois Power or SILCO's ability to attract capital, does  
17 it?

18 A. Unfortunately, while I think the  
19 government's intentions are good and well intentioned, and  
20 I believe based upon what I've read, like everybody else,  
21 that they've made money available to financial  
22 institutions, we are still seeing money pulled out of the  
23 market. The buyers, the folks that buy our bonds tend to  
24 be big investment firms like Fidelity, Pemco, Capital  
25 Research. Those firms are seeing money pulled out of



1 funds, and they have reduced borrowing capacity.

2 We're also observing sort of a flight to  
3 high quality, for instance, governmental type of  
4 securities, and therefore there's less of an appetite for  
5 the kind of debt that we're issuing, and it's become much  
6 more -- much more competitive, and as you can see, the  
7 costs of that debt have increased.

8 Q. Was it Ameren or AmerenUE that tried to  
9 sell some commercial paper not too long ago?

10 A. We're not able to actually sell commercial  
11 paper at this time.

12 Q. Okay. So that didn't go so well, did it?

13 A. No, sir.

14 Q. Did you try?

15 A. There was really no use in trying. There  
16 was no market for commercial paper for a utility with our  
17 credit rating, sir.

18 Q. Okay. Now, was that Ameren or AmerenUE  
19 or --

20 A. Either one of them actually.

21 Q. Okay. What is -- are there -- do the  
22 credit rating agencies attach different ratings to SIPS,  
23 SILCO, Illinois Power and AmerenUE?

24 A. Yes, they do.

25 Q. And what are SILCO and Illinois Power's

1 credit ratings relative to AmerenUE?

2 A. They are similar. There are slight  
3 differences, but they are similar.

4 Q. Now, when you couldn't issue commercial  
5 paper, did you have to go get money from a bank?

6 A. Yes. We have credit facilities that we've  
7 preestablished and negotiated with banks, and when we're  
8 unable to sell commercial paper, then we borrow against  
9 those bank credit facilities until such time we're able  
10 to, what we call term those out by selling long-term  
11 secured bonds to replace that short-term borrowing.

12 Q. Okay. Have you done that in the last  
13 quarter?

14 A. We have -- we've not done that at UE the  
15 last quarter, no.

16 Q. Okay. So let me ask you this. Do you  
17 anticipate doing that in the near future?

18 A. We do. I can't tell you off the top of my  
19 head the exact month when we anticipate needing to do  
20 that. However, given the capital expenditures that we're  
21 planning to make over the next few years, it's my  
22 understanding that we anticipate needing to access the  
23 capital markets over the next three years for about  
24 \$1.3 billion worth of debt.

25 Q. Okay. Now, I think from reading Michael

1 O'Bryan's testimony, the cost of Ameren's short-term debt  
2 at least during the test period and the update in this  
3 case was something like 3.34 percent or something. Does  
4 that sound right?

5 A. It must be right if it's in his testimony.

6 Q. Must be right. Do you think if you are  
7 going out trying to get short-term capital today, that you  
8 can get it at 3.4 percent?

9 MR. MILLS: Judge, I'm going to have to  
10 object. First of all, I'm not sure there's any relevance  
11 to the issue at hand here, and second of all, I don't  
12 think there's any foundation that Mr. Lyons is an expert  
13 in the cost of debt. There's no foundation for his  
14 testimony on this issue.

15 MR. LOWERY: I'd be happy to respond if you  
16 are even beginning to think about sustaining that  
17 objection.

18 But clearly, clearly there is loads of  
19 evidence in this case that the cost of debt and access to  
20 capital and credit ratings and fuel adjustment clause are  
21 all very closely intertwined and related issues.

22 Mr. Lyons is the chief accounting officer  
23 and a CPA and a utility executive that's been in the  
24 business for a decade or more, and if he knows and has  
25 information about those things, then he can answer those

1 questions. If he doesn't know, he doesn't know, but he's  
2 certainly qualified to answer the questions to the extent  
3 of his knowledge.

4 MR. MILLS: The question calls for his  
5 expert opinion. There's been nothing in this case that  
6 qualifies him as an expert in the cost of debt.

7 CHAIRMAN DAVIS: Well, Judge, I'll tell you  
8 what, let me back up and ask Mr. Lyons a few more  
9 questions and then I think in the end I'll be able to tie  
10 this altogether and help Mr. Mills understand since he's  
11 having problems.

12 BY CHAIRMAN DAVIS:

13 Q. Mr. Lyons, in your job as senior vice  
14 president, chief accounting officer, you are in charge of  
15 accounting, financial reporting, tax, commodities, risk  
16 management, commodities back office. What is commodities  
17 risk management and commodities back office?

18 A. Commodities risk management, Commissioner,  
19 which is what we call middle office, is an independent  
20 function that manages our risk management policies and  
21 informs the Risk Management Steering Committee of risk  
22 management topics and coordinates Risk Management Steering  
23 Committee meetings. The back office is a function that  
24 actually processes the settlements of our commodities  
25 transactions.

1 Q. And what are -- what are commodities?

2 A. Commodities would include power, power  
3 sales and power purchases, as well as settlements of coal  
4 contracts or gas purchases and sales.

5 Q. And you also have investor relations, do  
6 you not?

7 A. I do.

8 Q. And does investor relations include debt?

9 A. Yes, it does. In fact, in November of this  
10 year at an EEI financial conference we had an opportunity  
11 to visit with investors and analysts, and I answered their  
12 questions, and, in fact, we met with over 20  
13 representatives of buyers of utility debt.

14 Q. And how long have you been doing that?

15 A. I've been doing that for really the past  
16 seven years since I came to Ameren.

17 Q. Okay. Now, is it your impression that you  
18 can go out and get short-term debt for 3.4 percent today?

19 A. I don't know the exact cost of short term  
20 debt today. It does fluctuate with LIBOR, and as of  
21 today, I don't know where that stands.

22 Q. Okay. Mr. Lyons, I don't recall, do you  
23 recall what the cost of Ameren's long-term debt is in  
24 their rate case?

25 A. I'm sorry, Commissioner. I don't know off

1 the top of my head.

2 Q. Okay. That's fine. So when you are  
3 meeting with investors, and that includes people that hold  
4 Ameren debt secured notes, whatever, have they ever asked  
5 you about fuel adjustment?

6 A. Yes. Yes, they have.

7 Q. How often does that come up?

8 A. Every time that we meet with them.

9 Q. Have you ever been given the impression  
10 that AmerenUE could attract money at a lower interest rate  
11 if the company had a fuel adjustment mechanism?

12 A. They don't directly say that you'd be able  
13 to get money at a lower cost. What they do say is that we  
14 are competing for capital with all of the other utilities  
15 in the country that are also competing for capital. They  
16 remind us that the entire industry is investing large sums  
17 of money and that there is a scarcity of capital, and what  
18 they remind us is that fuel adjustment clause would  
19 positively effect our competitiveness in attracting that  
20 capital.

21 MR. MILLS: Judge, I'm going to have to  
22 object to that whole last answer as hearsay.

23 JUDGE WOODRUFF: Objection's overruled.

24 BY CHAIRMAN DAVIS:

25 Q. Based on your experience as the chief

1 accounting officer at AmerenUE, is it fair to say that  
2 attracting capital is necessary to fund your  
3 infrastructure improvements there at Ameren?

4 A. Yes, it is. It's necessary to refinance  
5 our debt as it comes due, and it is necessary to continue  
6 to invest in our infrastructure, especially when we're  
7 spending in excess of historical levels and in excess of  
8 depreciation levels built into rates.

9 Q. AmerenUE just shelved or postponed some  
10 infrastructure improvement expenditures, didn't it?

11 A. We have not shelved or postponed any  
12 infrastructure investments, Commissioner. What we've done  
13 is identified certain projects that might be deferred in  
14 the event that there is either not cash available to make  
15 those expenditures or in the event that the cost of  
16 capital is severely high.

17 Q. So you've identified projects that you're  
18 going to delay if you can't get the capital?

19 A. That's correct.

20 Q. And what projects are those and what's the  
21 cost?

22 A. The total cost of those projects -- excuse  
23 me, Commissioner, while I look for a Data Request that was  
24 presented to me earlier.

25 JUDGE WOODRUFF: Are these numbers going to

1 be highly confidential?

2 MR. LOWERY: Yes, the numbers would be.

3 JUDGE WOODRUFF: Mr. Chairman, those  
4 numbers were in a document that was presented earlier  
5 today.

6 CHAIRMAN DAVIS: Is the identity of the  
7 projects highly confidential as well?

8 MR. LOWERY: Yes, it is.

9 CHAIRMAN DAVIS: Okay, then I guess we need  
10 to go in camera then.

11 JUDGE WOODRUFF: All right. We'll go in  
12 camera at this time. Anybody that needs to leave, please  
13 do so.

14 (REPORTER'S NOTE: At this point, an  
15 in-camera session was held, which is contained in  
16 Volume 25, pages 2278 through 2279 of the transcript.)

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1 JUDGE WOODRUFF: We're back in regular  
2 session.

3 BY CHAIRMAN DAVIS:

4 Q. So Ameren being an investor-owned utility,  
5 you know -- this is my understanding, and please tell me  
6 if this is correct -- the company invests capital in  
7 infrastructure. When the infrastructure is completed, the  
8 company files a rate case. The prudently incurred  
9 infrastructure costs go into rate base. The investors,  
10 shareholders, have an opportunity to earn a fair return on  
11 that investments. Is that a fair summary?

12 A. That is, Commissioner.

13 Q. Okay. And of the -- did you know that  
14 there are four ROE witnesses in this case?

15 A. I wasn't aware of the exact number.

16 Q. Did you know that three of them recommended  
17 at least a 10.2 percent return on equity with some  
18 differences?

19 A. I wasn't aware of that. I was just aware  
20 of the two.

21 Q. So AmerenUE wouldn't pull back from  
22 investing in infrastructure very lightly given the  
23 opportunity to earn maybe 10 percent or more on its  
24 investments, would it?

25 A. No. And frankly, the investments, many of

1 the investments we're making we believe -- well, all of  
2 investments we're making we believe are appropriate to be  
3 made, and to the extent that we are forced to defer some  
4 of these projects, we anticipate that we'd be trying to  
5 complete these in short order in 2010.

6 Q. Is it -- is it fair to say that the  
7 proposed reductions in capital spending are about cash  
8 flow and surviving the current credit crisis?

9 A. That is correct.

10 Q. Now, Mr. Lyons, some people here that work  
11 at the Missouri Public Service Commission would say that  
12 you could just slash dividends to fund your capital  
13 expenditures. Do you think that's a good idea?

14 A. No. No, I do not.

15 Q. Why not?

16 A. My experience again has been, working with  
17 investors in the investor relations function, that our  
18 company's shareholder base counts on that dividend. It's  
19 a large part of the investment decision that they make.  
20 To the extent that we were forced to reduce that dividend,  
21 we do believe that it would have a negative impact on our  
22 shareholders and that shareholder base, and that we would  
23 alienate some of those shareholders.

24 Q. Is AmerenUE trading below book value right  
25 now?

1           A.       I can't say at the moment. I haven't  
2 looked at the stock price, but it has been bouncing up and  
3 down, above and below book value for the past month or  
4 longer.

5           Q.       Do you think it's a good idea to issue  
6 stock when a company is trading below book value?

7           A.       No, it's not.

8           Q.       Why not?

9           A.       Because it undermines the shareholder value  
10 of the shareholders that currently own the stock.

11          Q.       Would that get you sued?

12          A.       I'm not sure. I'd have to consult with an  
13 attorney.

14          Q.       Okay. Do you know if Union Electric issued  
15 stock in the early '80s when the company was trying to  
16 complete Callaway Unit 1?

17          A.       I don't know specifically, Commissioner. I  
18 wasn't with the company at that time.

19          Q.       Right. So you wouldn't know if the company  
20 was trading below book value at that time either then,  
21 would you?

22          A.       I don't know, Commissioner.

23          Q.       But it's possible that they might have done  
24 so if that was the only way they had to finish Callaway,  
25 wasn't it?

1           A.       I would imagine so.

2           Q.       Okay. Mr. Lyons, in your capacity as chief  
3 accounting officer/senior vice president, do you follow  
4 the stock market regarding electric utilities?

5           A.       I do.

6           Q.       Do you know of any vertically integrated  
7 utilities issuing stock in the last six months?

8           A.       I do recall, I believe it was -- I believe,  
9 Commissioner, it was Pepco that had to -- that issued  
10 stock.

11          Q.       Do you recall what it cost them to issue  
12 that stock?

13          A.       I don't specifically recall.

14          Q.       Okay. Are you aware of any other utilities  
15 that tried to issue stock in the last six months and then  
16 pulled back their offerings?

17          A.       I wouldn't be aware, Commissioner, if it  
18 was considered and then pulled back. I think that would  
19 be confidential information for that company, so I'm not  
20 aware of that.

21          Q.       I think I recall reading in your direct  
22 testimony that you said fuel adjustment was absolutely  
23 necessary for the company to earn its allowed return; is  
24 that a fair statement, or is that a fair characterization  
25 of some of your direct testimony?

1           A.       I believe that it is necessary for UE's  
2 ability to earn a fair rate of return.

3           Q.       We've got your, obviously three rounds of  
4 your testimony, but could you restate for me why that is  
5 again?

6           A.       Commissioner, we have rising fuel costs.  
7 We've had rising fuel costs, as you know, in 2007 of  
8 \$100 million of coal and coal transportation costs. In  
9 2008, they went up again another approximately  
10 \$60 million. And as we look ahead to 2009 and 2010, we're  
11 projecting further increases in coal and coal  
12 transportation costs of about we estimate 40 million in  
13 2009, and, of course, those are largely hedged with  
14 purchases of coal and transportation, and then another  
15 100 million in 2010, which is also largely hedged. And  
16 then we foresee further increases in '11 and '12.

17                   And without an FAC, we don't have an  
18 opportunity to earn our allowed rate of return. Between  
19 the last case where we waited to get the \$100 million coal  
20 increase into rates, we had regulatory lag I think of  
21 about in my testimony of around 40 to 45 million. And  
22 then the 2008 costs that we incurred and we're still  
23 incurring today are going to add to that regulatory lag.  
24 Between the coal price increases in '07 and '08, and this  
25 is in my testimony, but over 200 basis points of

1 regulatory lag from coal cost increases.

2                   And as we look forward to '09, '10 and '11  
3 we see further under-recovery of coal costs and  
4 under-earning associated with the coal cost increases  
5 absent utilization of an FAC. In fact, in Mr. Neff's  
6 testimony he has a table, and he shows over a, I think  
7 it's a six-year period with five rate cases without an  
8 FAC, that the under-recovery would amount to over  
9 250 million or 500 basis points, which is about a half a  
10 year of UE's earnings.

11                   This is all happening at the same time that  
12 we're making large investments in the infrastructure of  
13 Union Electric. We're spending more for the materials  
14 that we're using. I believe you've heard testimony about  
15 that. And it's at the same time when there is tremendous  
16 turmoil in the capital markets, and we're trying to  
17 attract capital to fund these investments that we're  
18 making in our infrastructure to improve customer service,  
19 to improve our system for our customers.

20                   And so at the end of the day, a fuel  
21 adjustment clause is necessary to provide us that  
22 opportunity to earn our allowed rate of return in spite of  
23 these fuel cost increases, which we've done our best to  
24 manage but which are increasing nonetheless.

25                   Q.       Mr. Lyons, you may have already answered

1 this question, but I'm going to ask it maybe in a little  
2 bit different way. When unemployment is rising, when you  
3 have more than 125,000 households in your service  
4 territory earning less than \$20,000 a year, can you tell  
5 me again in your own words why earnings are important?

6 A. When we talk about earnings, again, with  
7 the FAC what we're seeking to be able to do is recover our  
8 prudently incurred costs, no more, no less, to give us an  
9 opportunity to earn a fair rate of return, and we want to  
10 do that because our financial health has been  
11 deteriorating, and we believe that an FAC will provide us  
12 an opportunity to be a more healthy utility, which we  
13 believe is in the long-term best interests of our  
14 customers.

15 Q. Now, I believe in the testimony in the --  
16 it was rebuttal and surrebuttal, you responded to some  
17 assertions by Mr. Johnstone that it was Ameren's  
18 relationship to SIPS, SILCO, Illinois Power, that was --  
19 that -- I guess it was his opinion that it was, you know,  
20 AmerenUE's relationships with those Illinois affiliates of  
21 AmerenUE that were responsible for your low credit rating,  
22 and you took issue with that. Would you care to restate  
23 that for the record, ?is there anything else you wish to  
24 add?

25 A. When you look at the published reports of

1 Moody's, for example, and -- which rates UE on a  
2 standalone basis, they point out that, you know,  
3 something -- a fuel adjustment clause matters  
4 considerably. In fact they indicated in a report, I  
5 believe it was in August, that coming out of this rate  
6 case, the presence of a fuel adjustment clause was a  
7 factor that could move the ratings up. The lack of a fuel  
8 adjustment clause was a factor that could move the ratings  
9 down, and Moody's rates union Electric on a standalone  
10 basis.

11 Standard & Poor's, as you may know, looks  
12 at Ameren on more of a consolidated basis. It does have  
13 separate ratings for each of the issuers and does rate --  
14 Standard & Poor's rates UE separately. S&P's rating is  
15 one notch lower than the Moody's rating, but when Moody's  
16 looks and Moody's publishes on UE, Moody's cites the --  
17 the lack of an FAC as a significant concern.

18 CHAIRMAN DAVIS: No further questions,  
19 Judge.

20 JUDGE WOODRUFF: All right. Before we go  
21 to recross, I do have one matter I want to back up on.  
22 Mr. Mills, 438 was your last exhibit, and I don't believe  
23 you ever offered it. Do you wish to offer it?

24 MR. MILLS: Yes, please. I'd like to offer  
25 that exhibit at this time. Thank you.



1 JUDGE WOODRUFF: 438 has been offered. Any  
2 objections to its receipt?

3 (No response.)

4 JUDGE WOODRUFF: Hearing none, it will be  
5 received.

6 (EXHIBIT NO. 438 WAS RECEIVED INTO  
7 EVIDENCE.)

8 JUDGE WOODRUFF: Then for recross based on  
9 questions from the Bench, we'll begin with, looks like  
10 Noranda?

11 MR. CONRAD: Nothing further, your Honor.

12 JUDGE WOODRUFF: MIEC?

13 MS. VUYLSTEKE: No, thank you.

14 JUDGE WOODRUFF: For the State?

15 MR. IVESON: Yes, your Honor. Just a  
16 couple questions, I think.

17 RE-CROSS-EXAMINATION BY MR. IVESON:

18 Q. I believe, Mr. Lyons, in response to  
19 questions from the Chair, you identified that SIPS and  
20 SILCO had similar credit ratings to AmerenUE; is that  
21 correct?

22 A. I believe I did say that, yes.

23 Q. And SIPS and SILCO are transmission and  
24 distribution companies, aren't they?

25 A. Yes, they are.

1 Q. They have no generation?

2 A. That is correct.

3 Q. So they have no exposure to fuel costs?

4 A. They -- they have purchased power costs  
5 which they flow through an automatic adjustment mechanism.

6 MR. IVESON: Nothing further.

7 JUDGE WOODRUFF: Public Counsel?

8 MR. MILLS: No questions. Thank you.

9 JUDGE WOODRUFF: For Staff?

10 MR. DOTTHEIM: No questions.

11 JUDGE WOODRUFF: Redirect?

12 REDIRECT EXAMINATION BY MR. LOWERY:

13 Q. Mr. Lyons, some time ago, it seems,  
14 Mr. Conrad asked you some questions about capital  
15 expenditures that might be under consideration for  
16 deferral and associated O&M. Do you recall those  
17 questions?

18 A. Yes, I do.

19 Q. And I'm going to try not to ask about the  
20 numbers, but has any decision been made about those?

21 A. No. As I've said, there are projects,  
22 there are expenditures that are under consideration, but  
23 no decisions have been made.

24 Q. And without stating the numbers, there was  
25 a particular number, I think, of O&M that was under

1 consideration for deferral. Do you have in mind and do  
2 you know approximately what percentage of the company's  
3 O&M that potential deferral might reflect, even just a  
4 rough estimate?

5 A. I believe approximately 3 percent.

6 Q. Do you have any information or  
7 understanding about what the expectations for the  
8 company's O&M expenditures would be next year and the year  
9 after even if those deferrals were made?

10 A. Yes. While I don't know the exact number,  
11 our capital expenditures and our O&M expenses are all  
12 forecast to increase, and, you know, particularly with the  
13 capital expenditures, even with these reductions, we'd be  
14 spending it says here \$734 million. But O&M expenses are  
15 increasing, and I would imagine that the O&M expenses  
16 would still be going up even after potentially reducing --  
17 reducing these -- these expenditures.

18 Q. I believe Mr. Conrad might have asked you  
19 some questions about whether fuel costs were under  
20 consideration for deferral. Do you remember that?

21 A. I do.

22 Q. Is there a reason why fuel costs might not  
23 be under consideration for deferral?

24 A. Well, because we have -- well, we have to  
25 burn the fuel to provide power to our customers and run

1 the power plants. I don't believe that's an option.

2 Q. I think Mr. Conrad also asked you about  
3 whether you have to manage your business to have the  
4 opportunity to earn your authorized ROE. Do you recall  
5 those questions?

6 A. Yes.

7 Q. Does the company have control over all the  
8 items and issues and factors that relate to running this  
9 business?

10 A. No. No, it does not.

11 Q. Could you describe for the Commission some  
12 factors over which the company doesn't have control?

13 A. For example, if there are storms, if there  
14 are decreases in the stock market that impact the value of  
15 pension and post retirement medical trust funds, there are  
16 changes in interest rates which raise the cost of our debt  
17 or changes in interest rates which affect the cost of the  
18 pension and OPEB expenses that we are seeking. There are  
19 -- you know, there are a number of factors.

20 Q. On the revenue side, are there some factors  
21 that are outside your control there as well?

22 A. On the revenue side, certainly changes in  
23 power prices definitely affect it, as well as changing  
24 levels of consumption due to weather or other things like  
25 that.

1           Q.       Mr. Conrad asked you some questions, I  
2 think, about regulatory lag, and there were quite a few  
3 questions I think about cash working capital and timing  
4 differences. Do you remember those?

5           A.       I believe so. It's been a long time ago,  
6 as you note.

7           Q.       I realize that. What happens to fuel cost  
8 increases, if you know, that occur between rate cases that  
9 were not included in rates from your last rate case?

10          A.       Those expenses reduce the company's ROE.  
11 We have to absorb those, yes.

12          Q.       You don't -- you don't get that ROE that  
13 you have absorbed and lost back; is that right?

14          A.       No. The costs -- absent an FAC, those  
15 costs are not referred for any future recovery. They're  
16 sort of lost forever.

17          Q.       It's not a timing issue, they're just lost?

18          A.       That's correct.

19          Q.       I think Mr. Conrad also asked you some  
20 questions about hedging, and I think you testified that  
21 the company intends to continue to hedge fuel and power to  
22 the extent it can exactly the same way it does today if it  
23 gets a fuel adjustment clause. Do you remember that?

24          A.       That is my testimony, yes.

25          Q.       Does the company have other business

1 operations where the same issue -- where hedging  
2 activities exist and the same issue exists?

3 A. Yes.

4 Q. And what would those be?

5 A. Other aspects of the regulated business or  
6 the business as a whole?

7 Q. Yeah. The company's regulated business  
8 that's regulated by the Commission.

9 A. The companies regulated by the Commission.  
10 Certainly. We have a PGA for our gas business, and as it  
11 relates to the PGA, I think we have longstanding practices  
12 of hedging the customers' exposure to changing commodity  
13 prices. The gas costs run through the PGA, but  
14 nonetheless, we work hard to make sure that we hedge those  
15 costs and minimize volatility for the customer.

16 Q. Is there any sharing in that PGA?

17 A. There is no sharing in the PGA.

18 Q. Do you recall that the company was one of  
19 the early utilities in the state to engage in a pilot  
20 program for hedging gas cost a few years ago?

21 MR. CONRAD: I'm going to object. I didn't  
22 ask him anything about PGA. This is an electric company.

23 MR. LOWERY: He asked whether or not the  
24 company's going to continue to hedge in the same way and  
25 would still have the incentive to hedge, and we have a PGA

1 for many years that's a pass through mechanism just like a  
2 fuel adjustment clause, and I think it's relevant if our  
3 practices have continued in that area and we've been  
4 prudent in that area, it's relevant to whether we would do  
5 the same in the electric business.

6 MR. CONRAD: Once again, I didn't ask  
7 anything about PGA.

8 JUDGE WOODRUFF: I'll overrule the  
9 objection. You can answer the question.

10 BY MR. LOWERY:

11 Q. Do you recall the question, Mr. Lyons?

12 A. I don't recall the question.

13 Q. Do you recall that the company a few years  
14 ago was one of the first in the state to engage in a pilot  
15 project in terms of how it hedges gas costs?

16 MR. CONRAD: I'll object to that. It's  
17 leading. If he wants to comment or wants to rephrase it,  
18 that's fine.

19 JUDGE WOODRUFF: I'll sustain that  
20 objection.

21 THE WITNESS: I'm actually not aware of  
22 that.

23 MR. CONRAD: I move that that be struck.

24 JUDGE WOODRUFF: All right. The answer  
25 will be struck.

1 BY MR. LOWERY:

2 Q. I believe you were asked some questions  
3 about the interplay of a fuel adjustment clause and  
4 earnings volatility. Do you remember those questions?

5 A. I do. Again, it's been a while.

6 Q. Does the fuel adjustment clause address  
7 earnings volatility alone or does it address other issues  
8 as well?

9 A. The fuel adjustment clause, as I said in  
10 response to the Commissioner, would allow us to have a  
11 better opportunity, a sufficient opportunity to earn our  
12 allowed rate of return. So it does address earnings  
13 issues. It also, however, importantly helps us with cash  
14 flow volatility and providing the cash flows necessary to  
15 be supportive of a higher credit quality to attract the  
16 capital we need to the state and make the infrastructure  
17 investments that we're endeavoring to make.

18 Q. Does it have any effect on customers?

19 A. Could you expand the question or repeat the  
20 question?

21 Q. Well, I think you talked about cash flows  
22 and those types of things, but in terms of managing issues  
23 for customers, does the fuel adjustment clause allow the  
24 company to manage customer rates or other issues for  
25 customers in any way?



1           A.       Well, with an FAC, we would continue our  
2 hedging programs to mitigate the volatility of our fuel  
3 costs that flow through the FAC as we have in the past,  
4 and over the long term we believe that having an FAC will  
5 again allow us a more sufficient opportunity to earn our  
6 allowed rate of return, which will decrease our cost of  
7 capital and in the long run produce a more financially  
8 stable and healthy utility and lower costs to consumers.

9           Q.       I think Mr. Conrad asked you some questions  
10 about the percent of gas generation that the company had,  
11 I believe that was in 19 -- excuse me, 2007; do you  
12 remember that?

13          A.       Can you repeat the question again? I  
14 apologize.

15          Q.       Sure. Mr. Conrad, I believe, asked you  
16 some questions about what percent of the company's  
17 generation was from gas-fired units as opposed to coal or  
18 other units. Do you remember that?

19          A.       I do, yes.

20          Q.       Do you know how much of the company's fuel  
21 costs in dollars, not megawatt hours, gas generation  
22 represents relative to other sources of fuel?

23                   MR. CONRAD: Your Honor, when I asked the  
24 questions, the witness generally indicated that he didn't  
25 know and referred those questions to other people, such as

1 Mr. Neff, Mr. Schukar and one other gentleman whose name  
2 escapes me at the moment.

3 MR. LOWERY: If he doesn't know, I guess he  
4 can say that. He is an accountant --

5 MR. CONRAD: I would have thought that,  
6 too, counsel, but I was surprised when he didn't know  
7 before, so I'm presuming that he still doesn't know having  
8 not been informed by counsel outside.

9 MR. LOWERY: He was asked about megawatt  
10 hours, which is something that might not be within his  
11 area, but dollars, given that he's a chief accounting  
12 officer, might very well be.

13 JUDGE WOODRUFF: Let's hear his answer  
14 before I --

15 THE WITNESS: Our gas costs are in the tens  
16 of millions of dollars, but I don't recall the specific  
17 amount or percentage.

18 BY MR. LOWERY:

19 Q. Fair enough. I think Ms. Vuylsteke asked  
20 you the question about whether you would be better off in  
21 an 80/20 sharing versus no fuel adjustment clause at all,  
22 and I think you said we'd be better off versus none. Do  
23 you recall that?

24 A. I do.

25 Q. Why is it important that -- in your view,

1 why does the company believe its proposal, the 95/5 is  
2 more appropriate and that the company needs that proposal  
3 as opposed to 80/20?

4 A. It goes back to our ability to successfully  
5 compete for capital. 95 percent of the companies in  
6 nonrestructured states have fuel adjustment clauses, and a  
7 minority of those that have fuel adjustment clauses have a  
8 sharing mechanism like the one that has been adopted in  
9 Missouri for Aquila and Empire and as we propose here, the  
10 95/5. The minority have that. And when you do see that  
11 practice, you typically see smaller sharing percentages  
12 like the 5 percent sharing.

13 And what we're endeavoring to have here is  
14 a, what we call a mainstream FAC, which we believe will  
15 allow us to more successfully compete for capital. It's,  
16 again, we try to attract capital to make the  
17 infrastructure investments that we're making.

18 Q. I think you talked about in connection with  
19 that issue addressing financial concerns. Do you have an  
20 opinion about whether an 80/20 sharing mechanism is going  
21 to adequately address those concerns?

22 A. I don't believe so, no.

23 Q. Your opinion is that you don't believe it  
24 will adequately address them?

25 A. Can you repeat the question?

1           Q.       I asked you if you had an opinion about  
2 whether an 80/20 sharing mechanism would adequately  
3 address those concerns. Was your answer that it would not  
4 adequately address them?

5           A.       That was my answer, yes.

6           Q.       Okay. Thank you. Mr. Mills asked you a  
7 number of questions about capacity. Do you remember there  
8 was an exhibit, he showed you an exhibit with what the  
9 company's capacity position was, and asked you a number of  
10 questions about that. Do you recall that?

11          A.       I do.

12          Q.       And I think he asked you a question  
13 about -- a hypothetical about if there was a limited  
14 market, how that might affect UE's ability to sell  
15 capacity versus other -- other sellers of capacity in that  
16 market. Do you recall that?

17          A.       I do.

18          Q.       If there was a -- if there's a limited  
19 market but the capacity available to that market is less  
20 than whatever that limit is, would it affect the  
21 generator's ability to sell capacity in that market, that  
22 limitation?

23          A.       If there is a limit or if -- can you repeat  
24 the question?

25          Q.       If the market has -- there's this limit on

1 market depth. At some point you won't be able to sell any  
2 more. Let's say it was 10,000 megawatts, just as a  
3 hypothetical. And let's say there was only 8,000  
4 megawatts of capacity available to sell. Would the limit  
5 make any difference on all of those generators' ability to  
6 sell their capacity?

7 A. In that case, no.

8 Q. Because the limit wouldn't be breached,  
9 correct?

10 A. That's correct.

11 Q. And do you know whether or not there's a  
12 limit that actually has any effect in the markets that UE  
13 competes in in selling capacity?

14 A. I don't know.

15 Q. Do you have -- and I know you don't have  
16 the exhibit numbers. Let me find the DR number because  
17 you were asked some questions by Mr. Mills about this.  
18 It's the company's response to OPC DR No. 2115, which is  
19 Exhibit 433HC. Do you have that one?

20 A. I'm sure I do.

21 MR. LOWERY: And your Honor, I'm afraid we  
22 may have to go in camera in order to answer these  
23 questions.

24 JUDGE WOODRUFF: All right. We'll go in  
25 camera. Anyone that needs to leave, please do so.

1                   (REPORTER'S NOTE: At this point, an  
2 in-camera session was held, which is contained in  
3 Volume 25, pages 2302 through 2304 of the transcript.)

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1 JUDGE WOODRUFF: We're back in regular  
2 session.

3 BY MR. LOWERY:

4 Q. Mr. Lyons, there's another exhibit I'd like  
5 to point you to as soon as I find it. It's the news  
6 release. It's Exhibit 438. Do you have that?

7 A. Yes, I do.

8 Q. And you were asked questions by Mr. Mills  
9 about on the second page the first square bullet or the  
10 first big square bullet and then the third small square  
11 bullet. Do you remember that?

12 A. Yes, I do.

13 Q. When you were talking before about this not  
14 generate additional profits for UE, how does the FAC  
15 relate to the company's earnings? If you have an FAC  
16 versus if you don't have an FAC in the situation where  
17 you've had regulatory lag and your fuel costs are rising,  
18 how does that relate to the company's profits?

19 A. What the FAC would allow us to do is give  
20 us an opportunity, better opportunity to earn our allowed  
21 rate of return, not generate profits in excess of our rate  
22 of return.

23 Q. Stop losing dollars as quickly?

24 A. That's a way of saying it, yes.

25 Q. Mr. Dottheim asked you a number of

1 questions, a long series of questions about the timing of  
2 a rate case filing. Do you recall those?

3 A. I do.

4 Q. What would have happened to the 1/1/08 fuel  
5 cost increases the company had experienced if the company  
6 had delayed its filing this rate case?

7 A. We would -- if we never filed the rate  
8 case, we'd be continuing to experience the costs of that  
9 increase and the impact of that on our ROE.

10 Q. What if you waited three months, for  
11 example?

12 A. We would have experienced a regulatory lag  
13 nonetheless. We would have experienced the full year of  
14 2008, which was about 60 million, plus an additional five  
15 months of regulatory lag in 2009. On that 60 million  
16 plus, we would have had to, in 2009, absorb 5/12 of an  
17 additional \$40 million increase.

18 Q. So the regulatory lag you talk about in  
19 your testimony, the numbers would have been bigger than  
20 they already are; is that right?

21 A. I believe that's correct.

22 Q. Do you know if the January 1st, '08 fuel  
23 cost increases are greater or less than those expected on  
24 January 1, 2009?

25 A. Can you repeat that question?



1           Q.       Sure. Do you know if the January 1, 2008  
2 fuel cost increases the company has already experienced  
3 are more or less than the January 1, 2009 fuel cost  
4 increases the company expects to increase, expects to  
5 incur?

6           A.       My recollection is that the increases in  
7 January 2008 are greater than those we expect to have in  
8 terms of increases January 1 of '09.

9           Q.       So the impact of regulatory lag month by  
10 month is greater for the '08 ones than it will be for the  
11 '09 ones?

12          A.       That's true.

13          Q.       Now, just I think for clarity of the  
14 record, Mr. Dottheim asked you some questions about moving  
15 the rate case filing one month and then whether that would  
16 move the true-up date. I think he was talking about  
17 moving the rate case filing, his hypothetical, from April  
18 to May, which was a one-month move, and then he said would  
19 that move the true-up date to November 30th, which I  
20 believe would be two months. Did you understand his  
21 question or would, in fact, the true-up date only move one  
22 month if you moved the rate case filing by -- forward by  
23 one month?       A.   We may have both been confused, but if

24 you remove -- if you move the rate case filing date one  
25 month, you would presumably move the true-up date a month.

1 Q. Do you have the response to OPC DR 2115,  
2 which has been marked as Exhibit 433HC?

3 A. Okay.

4 Q. Could you turn to slide 17? And I'm not  
5 going to ask you to state the information, so we don't  
6 have to go in camera. Do you have it now?

7 A. I do.

8 Q. Do any of those dates, and don't state the  
9 dates, but do any of those dates reflect any concrete  
10 plans that have been decided upon about when future rate  
11 cases will or will not be filed?

12 A. No, I don't believe they do, and it's  
13 labeled at the top timing considerations.

14 Q. Mr. Dottheim again, going back to the  
15 discussion that he had with you about the timing of the  
16 rate case, and you testified that the last rate case was  
17 filed in July and there was a true-up through January 1.  
18 Do you recall that?

19 A. Yes.

20 Q. Which means that the fuel cost increases on  
21 January 1, 2007 were reflected in the rates when those  
22 rates took effect, right?

23 A. Yes.

24 Q. When did the company actually start  
25 recovering the 1/1/07 fuel cost increases?

1           A.       Not until the rates went into effect after  
2 that case, which was in June of 2007.

3           Q.       Is the point that it's difficult to  
4 perfectly time a rate case just for fuel costs?

5           A.       Well, absolutely.

6           Q.       Commissioner Murray asked you some  
7 questions, just a couple questions. One of them was about  
8 hedges and how the hedging costs would be handled in the  
9 fuel adjustment clause. Do you recall that?

10          A.       I do.

11          Q.       Are there sometimes revenues associated  
12 with hedging?

13          A.       Yes, sometimes there are revenues, meaning  
14 that we place a hedge on and those hedges provide  
15 benefits. For example, if you have an option contract on  
16 heating oil or hedge diesel fuel, when those contracts  
17 expire, you'll receive moneys to help offset or reduce the  
18 diesel fuel cost, and those would flow through the fuel  
19 rider.

20          Q.       That was my question. So those positive  
21 benefits from hedging, those dollars that come back, those  
22 also will flow through the fuel riders and actually reduce  
23 fuel costs, net fuel costs, correct?

24          A.       Absolutely.

25          Q.       Chairman Davis asked you some questions

1 about borrowing and commercial paper and you gave a  
2 number. I think maybe he asked you the number and you  
3 confirmed that it was correct. I can't remember which.  
4 But you gave a number of 1.3 billion over the next, I  
5 don't remember, two or three years of borrowing at Ameren  
6 -- well, that was my question, is that AmerenUE borrowing,  
7 that 1.3 billion?

8 A. Yes.

9 MR. LOWERY: I believe that's all I have,  
10 your Honor.

11 JUDGE WOODRUFF: Thank you. Then,  
12 Mr. Lyons, you can step down.

13 THE WITNESS: Thank you, Judge.

14 JUDGE WOODRUFF: We're due for a break,  
15 let's come back at 3:45.

16 (A BREAK WAS TAKEN.)

17 JUDGE WOODRUFF: We're back from break, and  
18 I believe we're ready for the next witness, which should  
19 be Mr. Gordon, and he has taken the stand.

20 MR. LOWERY: I guess I won't call him to  
21 the stand, because he's there. Good afternoon, sir.

22 JUDGE WOODRUFF: I need to swear him in  
23 first.

24 (Witness sworn.)

25 JUDGE WOODRUFF: You may proceed.

1 KENNETH GORDON testified as follows:

2 DIRECT EXAMINATION BY MR. LOWERY:

3 Q. Good afternoon.

4 A. Good afternoon.

5 Q. Please state your name for the record.

6 A. Kenneth Gordon.

7 Q. Dr. Gordon, did you cause to be prepared in  
8 this docket two pieces of testimony, direct testimony and  
9 also surrebuttal testimony that has been premarked as  
10 Exhibit 44 and 45?

11 A. Yes, I did.

12 Q. And do you have any changes or corrections  
13 to that testimony?

14 A. I do have some corrections.

15 Q. Could you please tell us which testimony  
16 and what the corrections are?

17 A. Okay. With the direct testimony, on page  
18 14, lines 15 and 16, the numbers labeled as percents  
19 should read as follows: 34.63, 29.43, and on line 16,  
20 15.66. And matching that in the table that they came  
21 from, over on page 15, Table 1, going to the first column  
22 labeled 2000 to 2003, the first number should be 12.88.  
23 The other two remain as they are. In the column labeled  
24 2004 to 2007, the first one should be 15.66. The second  
25 one should be 29.43, and the last one remains as it is.

1                   The other correction is on line 8 in the  
2 same page, there's a reference to Figure 3. It should be  
3 to Figure 4, which appears on the next page.

4           Q.       And were those the only corrections you had  
5 to your testimonies?

6           A.       Those are the only ones. Those are the  
7 only ones on the direct. There's a minor one on the  
8 supplemental. On page 8 --

9           Q.       And when you say supplemental, you meant  
10 surrebuttal?

11          A.       I'm sorry. Surrebuttal, yes.

12          Q.       Thank you.

13          A.       Page 8, Footnote 5 should refer to  
14 Schedule MJL-E1-5.

15          Q.       And are those the only corrections that you  
16 have?

17          A.       Those -- that's them.

18          Q.       Dr. Gordon, if I were to ask you the same  
19 questions that were posed in these two testimonies, would  
20 your answers be the same today with the corrections that  
21 you've put into the record?

22          A.       Yes, they would.

23          Q.       And with those corrections, your  
24 testimonies as prefiled are true and correct to the best  
25 of your knowledge and belief; is that correct?

1           A.       Correct.

2                   MR. LOWERY:  With that, your Honor, I would  
3 offer Exhibits 44 and 45 and tender the witness for  
4 cross-examination.

5                   JUDGE WOODRUFF:  44 and 45 have been  
6 offered.  Any objections to their receipt?

7                   (No response.)

8                   JUDGE WOODRUFF:  Hearing none, they will be  
9 received.

10                   (EXHIBIT NOS. 44 AND 45 WERE MARKED FOR  
11 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

12                   JUDGE WOODRUFF:  And for cross-examination,  
13 beginning again with Noranda?

14 CROSS-EXAMINATION BY MR. CONRAD:

15           Q.       Is it Mr. or Dr. Gordon?

16           A.       Doctor.

17           Q.       Ph.D. in what, sir?

18           A.       Economics.

19           Q.       As an economist, I take it that you're  
20 concerned about price signals?

21           A.       I am.

22           Q.       Let's -- if we could, sir, let's talk about  
23 that for just a moment in the context of wholesale.

24           A.       Context of what?

25           Q.       In the context of wholesale power markets.

1 With me so far?

2 A. Okay.

3 Q. When market prices go up, would you like to  
4 see the retail rates go up at the same time?

5 A. Generally speaking, cost increases that are  
6 real and not artificial in some way should be reflected on  
7 through to the final market.

8 Q. Is that important so customers can react to  
9 those price signals?

10 A. That is an important reason. It's not the  
11 only reason, but it's certainly an important reason to  
12 give a clear price signal as to what's really going on in  
13 the supply of the service.

14 Q. So then I take it, sir, that you're saying  
15 that retail rates should go up and down according to  
16 changes in the wholesale market price, right?

17 A. They should certainly follow them. Just  
18 how fast they should fluctuate is another question, but  
19 yes, they should follow them.

20 Q. Now, under your scenarios and your  
21 recommendations, would retail rates potentially increase  
22 more and sooner?

23 A. Under which proposal?

24 Q. Your proposal.

25 A. Under the company proposal?



1 Q. Well, I think that's the one you're  
2 commenting on, isn't it?

3 A. Yeah.

4 Q. Yeah.

5 A. I don't know. It depends what happens in  
6 the wholesale power market and in the fuels markets. They  
7 go up sometimes. They've been going up lately obviously,  
8 a cause for concern to Ameren. But if they went down, the  
9 proposal of the company would mean the prices would --  
10 retail prices would follow the wholesale prices down as  
11 well. So up or down.

12 Q. And one of the basic principles I kind of  
13 remembered, you remember a fellow named Samuelson?  
14 Perhaps not personally, but --

15 A. I remember him, yes.

16 Q. -- wrote a textbook about that?

17 A. Third edition, yes, that's the one I  
18 remember.

19 Q. May be out of print now for both of us,  
20 sir?

21 A. Could be.

22 Q. One of the things I remember from that was  
23 that economists assume rationality, correct?

24 A. The basic microeconomic model that we've  
25 used over the last few decades, yeah, tends to assume

1 people behave in their own interests and rationally, at  
2 least on average. It doesn't mean every single person  
3 does.

4 Q. And as an economist you're familiar with  
5 the phrase and meaning of it when somebody says to you all  
6 other things being equal?

7 A. Yes, I am familiar with that phrase.

8 Q. So all other things being equal, if retail  
9 prices went up, how would you expect customers to react  
10 rationally?

11 A. They would reduce their consumption, but at  
12 different rates for different things, and the adjustment  
13 would not necessarily be a quick or easy one.

14 Q. Now, I'd like for you to make a couple of  
15 assumptions with me. Assume that there is an energy  
16 intensive customer out there that is struggling  
17 financially. So far so good?

18 A. Yeah.

19 Q. Is it possible that the higher market  
20 prices could cause or would cause such a customer to shut  
21 down production?

22 A. The shut down decision is a very  
23 substantial one, so the change might have to be quite  
24 substantial. It's conceivable. Shutting down, however,  
25 is a major decision, major commitment, and it wouldn't be

1 taken lightly.

2 Q. But that could be within the universe of  
3 rational decisions that the customer might make?

4 A. It could be.

5 Q. And there are other things a customer can  
6 do, such as take internal measures of their own short of  
7 that, right?

8 A. Sure. They could try to achieve some  
9 energy efficiencies whatever ways were available.

10 Q. Might possibly achieve some savings in  
11 salaries, is that included in your scenario?

12 A. They could have savings in just about  
13 anything. I would suspect they'd look at all aspects of  
14 the business.

15 Q. Would you agree that it's appropriate to  
16 design rates in a way that would potentially have such a  
17 reaction in the retail community or on that assumed  
18 customer?

19 A. Generally what's desirable is to have rates  
20 driven by costs insofar as possible, in fact, guided by  
21 the marginal costs of serving the various consumer  
22 classes. So I think, yes, that is desirable.

23 MR. CONRAD: Thank you, Dr. Gordon. Thank  
24 you, Judge.

25 JUDGE WOODRUFF: Cross for the State?

1 CROSS-EXAMINATION BY MR. IVESON:

2 Q. Good afternoon, Dr. Gordon.

3 A. Good afternoon.

4 Q. Are you familiar with the three factors  
5 that the Commission has considered in this -- this  
6 Commission has considered in prior rate cases in  
7 determining whether an FAC was appropriate?

8 A. Yes, I am.

9 Q. And do you agree that those factors are  
10 appropriate for the Commission to consider?

11 A. They certainly are worth consideration,  
12 along with perhaps other things as well.

13 Q. Do you have your surrebuttal testimony?

14 A. Yeah, I have it.

15 Q. If you could find page 15, and let me know  
16 when you're there.

17 A. Yes, I have it.

18 Q. Okay. Beginning at line 5, you state, it  
19 is my understanding that SB 179, and then you go on to  
20 state what your understanding is. What's the basis of  
21 your understanding?

22 A. The fact that I read the SB 179.

23 Q. So that's -- the basis is that you read the  
24 SB --

25 A. That I read it, and that's how I took its

1 meaning.

2 Q. You don't have a law degree, correct?

3 A. I do not.

4 Q. You're not admitted in any jurisdiction to  
5 practice law?

6 A. No, I'm not.

7 Q. And so -- are you qualified to give a legal  
8 opinion?

9 A. Not a legal opinion.

10 Q. Thank you.

11 A. My opinion is --

12 Q. Excuse me, sir. That was the answer to the  
13 question. Thank you.

14 JUDGE WOODRUFF: All right. Public  
15 Counsel?

16 MR. MILLS: I have no questions for this  
17 witness.

18 JUDGE WOODRUFF: For the Staff?

19 MR. DOTTHEIM: Yes, thank you.

20 CROSS-EXAMINATION BY MR. DOTTHEIM:

21 Q. Good afternoon, Dr. Gordon.

22 A. Good afternoon.

23 Q. Dr. Gordon, is Massachusetts an electric  
24 restructured state?

25 A. It is, yes.

1 Q. And is Maine also an electric restructured  
2 state?

3 A. It is as well.

4 Q. I'd like to refer you to your direct  
5 testimony, and actually, I'd like to refer you to your  
6 Schedule KG-E1-8.

7 A. Page 8?

8 Q. Yes.

9 A. Okay.

10 Q. You have a number of entries there.  
11 Let's -- I'll first make note of them. Like, the first  
12 one for -- where you testified before the Public Service  
13 Commission of Maryland on behalf of Baltimore Gas and  
14 Electric, Inc., and you indicate that the issues were code  
15 of conduct. In the fifth entry is code of conduct. And  
16 there's an entry further, about the middle of the page,  
17 before the West Virginia Commission on behalf of Allegheny  
18 Power and American Electric Power, code of conduct. And a  
19 couple entries below that, I assume it was the same case,  
20 it was just direct testimony, whereas the previous entry  
21 is rebuttal testimony.

22 If I could return to the top of the page,  
23 where the first entry, it's Baltimore Gas and Electric,  
24 and then a little bit further down -- the first entry is  
25 for reply testimony. About a third of the way down it's

1 for direct testimony. It looks like it's the same case  
2 before the Maryland Commission?

3 A. As far as I can remember.

4 Q. Okay. Do you -- do you recall what those  
5 code of conduct issues were?

6 A. Not with any detail. That's been some  
7 years since I did that, but they dealt with -- one large  
8 piece of what they dealt with was affiliate relations in a  
9 corporate -- overall corporate structure. Some people  
10 call it ring fencing, but transfer pricing might be  
11 included and things of that sort.

12 Q. Okay. And for the entries elsewhere on  
13 that page, for your testimony before the West Virginia  
14 Public Service Commission on behalf of Allegheny Power and  
15 American Electric Power, do you recall what your testimony  
16 on the code of conduct issues were in that proceeding?

17 A. Not specifically, no. It's in the same  
18 general area. It varied. That testimony varied from  
19 state to state according to what they were interested in.

20 Q. I'd like to refer you to your surrebuttal  
21 testimony, and it's your Schedule KG-SE-2.

22 A. I do have it.

23 Q. And you quote in that schedule from a  
24 number of rating agency reports, do you not?

25 A. Yes. That's correct.

1                   MR. DOTTHEIM: At this time I'd like to  
2 have several exhibits marked.

3                   JUDGE WOODRUFF: Your next number is 243.

4                   MR. DOTTHEIM: And for Exhibit 243, I'd  
5 like to have for the same exhibit two documents, the  
6 Standard & Poor's Ratings Direct, Union Electric Company.  
7 It's a Ratings Direct of Standard & Poor's respecting  
8 Union Electric Company, d/b/a AmerenUE. One document has  
9 the date of May 27, 2008, and the other has the date  
10 May 28, 2008. They are not quite identical.

11                   (EXHIBIT NO. 243 WAS MARKED FOR  
12 IDENTIFICATION BY THE REPORTER.)

13                   MR. IVESON: I'm sorry, your Honor. What  
14 were these marked as?

15                   JUDGE WOODRUFF: 243. My understanding is  
16 the two documents are a single exhibit.

17                   MR. IVESON: Thank you.

18 BY MR. DOTTHEIM:

19                   Q. Dr. Gordon, have you had a chance to take a  
20 look at what's been marked as Exhibit 243? Do you need  
21 any more time to take a look?

22                   A. I skimmed it through once. If you direct  
23 me to places in it.

24                   Q. Do you recognize either of those two  
25 documents?



1           A.       Yeah. I believe they are included in the  
2 back of my testimony.

3           Q.       Okay. And to me they seem to be the  
4 document that you were referring to, although one contains  
5 more information than the other. The narrative in the two  
6 documents appears to be the same.

7           A.       Similar, certainly.

8           Q.       Okay. Although the date does not quite  
9 match up. I believe in the footnote -- in your Schedule  
10 KG-SE-2, you've got, for example, I think it is in  
11 Footnote 17, the date May 24, 2008, and on the date on  
12 these two documents is the -- the one document, which is a  
13 two-page document which I have copied, duplexed, has a  
14 date on it of May 27, 2008, and the document which is five  
15 pages has a date on it of May 28th, but again, it appears  
16 to be a document from which the quotations come from that  
17 you have in your schedule.

18          A.       I'm having trouble seeing exactly what  
19 you're looking at as I look at mine.

20          Q.       All right. You think they are different  
21 documents?

22          A.       The two you gave me?

23          Q.       Yes. And different from -- from the  
24 document that you reference in your schedule, for example,  
25 on page 2 of 4 where you have Footnote 17, and you have

1 the quote from S&P, the Footnote 17, Standard & Poor's  
2 research Union Electric Company, d/b/a AmerenUE May 24,  
3 2008, page 1.

4 A. I see it. I see it. See if I can find it  
5 here.

6 Q. Okay. I find it, if I --

7 JUDGE WOODRUFF: And Mr. Dottheim, you can  
8 approach if you want to to point it out to him.

9 THE WITNESS: It's possible these things  
10 have gotten mixed up in my binder. I have my page, page 2  
11 of 4. Yeah, I have that on what you gave me. Whether I  
12 have it in here, it looks like the Moody's has gotten  
13 mixed in with it. Okay. I'm finding that now. Yes, I  
14 find these two that you just gave me and the one you're  
15 asking about.

16 BY MR. DOTTHEIM:

17 Q. I was asking about the five-page document  
18 where I match up on page 2 of 4 of your Schedule KG-SE-2,  
19 the quote that cited as Footnote 17 challenging regulatory  
20 climate in Missouri and current lack of a fuel adjustment  
21 clause?

22 A. I have them.

23 Q. Okay. Okay.

24 A. Yeah. Sorry. There's a lot of quotations  
25 from ratings agencies here --

1 Q. Yes.

2 A. -- scattered in.

3 Q. And on that Standard & Poor's Ratings  
4 Direct which has the -- the May 28th, 2008 date, which the  
5 section that you quoted on page 2 of 4 appears as a -- a  
6 bullet point under the weaknesses heading, does it not?

7 A. Yes, it does.

8 Q. And --

9 A. Yes, it does.

10 Q. Okay. And the item that you've quoted is  
11 the first bullet point, is it not?

12 A. Just a second. I want to be sure.

13 Q. Certainly. Of course. Take your time.

14 A. Yes.

15 Q. Okay. The second bullet point under  
16 weaknesses states inherent operating and financial  
17 challenges of owning a nuclear unit whose performance has  
18 been mixed, does it not?

19 A. It's the fourth bullet, I think.

20 Q. The -- the fourth bullet?

21 A. Maybe I'm looking at the wrong day. There  
22 are two days here. What date are you on?

23 Q. May 28th, 2008.

24 A. That's what I'm on, too. That's what I  
25 have.

1 Q. Okay. And you have it under the fourth  
2 bullet?

3 A. Under weakness.

4 Q. And I have it under the second.

5 A. Challenging regulatory climate is the first  
6 one.

7 Q. And I have under the second in the document  
8 that I had marked as Exhibit 243 inherent operating and  
9 financial challenges of owning a nuclear unit whose  
10 performance has been mixed.

11 A. I do have that. It's the fourth bullet  
12 among the weaknesses on the piece of paper I have in front  
13 of me.

14 MR. DOTTHEIM: May I approach the witness?

15 JUDGE WOODRUFF: You Certainly may.

16 BY MR. DOTTHEIM:

17 Q. And -- yes.

18 A. Same message.

19 Q. Yes. It's -- the copy that you have in  
20 your book, it is the fourth bullet point.

21 A. It is the what?

22 Q. It is the fourth bullet point. Yes. It is  
23 the second, though, under the document which I marked as  
24 Exhibit 243, is it not?

25 A. That's the 28th May. That is several pages

1 long?

2 Q. Yes.

3 A. That's five pages? That's correct.

4 Q. Okay. Dr. Gordon, do you recall whether  
5 your copy of the Standard & Poor's Ratings Direct was --  
6 was provided as a copy of your work papers along with your  
7 surrebuttal testimony?

8 A. I don't believe so.

9 Q. Okay. Under rationale, there is a heading  
10 rationale, is there not?

11 A. Yes, there is.

12 Q. And on Exhibit 243, both copies of  
13 Exhibit -- both documents for Exhibit 243 that I've had  
14 marked, the first sentence reads, ratings on Union  
15 Electric Company, Ameren Corporation's largest subsidiary,  
16 are based on the consolidated credit profile of the Ameren  
17 family of companies. Did I read that accurately?

18 A. You did.

19 Q. I'd like to ask you to look at the fourth  
20 paragraph under rationale, and that fourth paragraph  
21 reads, Union Electric is in a -- is in healthier financial  
22 condition on a standalone basis than its parent owing to a  
23 lower debt burden. In addition, the company has a  
24 slightly better business position of strong, reflecting  
25 the absence of the unregulated generation businesses but

1 encompassing many of the aforementioned attributes and  
2 weaknesses. Did I read that accurately?

3 A. You did read it accurately, but I confess  
4 I'm having trouble finding it in my own binder.

5 Q. Okay.

6 A. Following under that general reference, I  
7 have the first short version, but the second one I have is  
8 dated August 12th, and I'm not sure why that is. So this  
9 is -- I'm not sure that I submitted this document, this  
10 second document.

11 MR. DOTTHEIM: At this time I'd like to  
12 offer into evidence Exhibit 243.

13 JUDGE WOODRUFF: All right. 243 has been  
14 offered. Any objections to its receipt?

15 (No response.)

16 JUDGE WOODRUFF: Hearing none, it will be  
17 received.

18 (EXHIBIT NO. 243 WAS RECEIVED INTO  
19 EVIDENCE.)

20 MR. DOTTHEIM: And I'd at this time like to  
21 have marked as an exhibit another Standard & Poor's  
22 Ratings Direct.

23 JUDGE WOODRUFF: All right. That will be  
24 244.

25 MR. DOTTHEIM: Titled Fuel and Power

1 Adjustors Underpin Post Crisis Credit Quality of Western  
2 Utilities. It bears a publication date of October 14,  
3 2004. May I approach the Bench?

4 JUDGE WOODRUFF: You certainly may.

5 (EXHIBIT NO. 244 WAS MARKED FOR  
6 IDENTIFICATION BY THE REPORTER.)

7 BY MR. DOTTHEIM:

8 Q. Dr. Gordon, have you had a chance to look  
9 at what's been marked Exhibit 244?

10 A. I have.

11 Q. Do you recognize that document?

12 A. No.

13 Q. Okay.

14 A. It's similar in date and somewhat similar  
15 in appearance, but it's not the same document that I have  
16 in my testimony.

17 Q. Okay. And if I would -- I'd like to refer  
18 you again to your Schedule KG-SE-2, page 1 of 4.

19 A. I have it.

20 Q. Okay. And I'd like to refer you to  
21 Footnote 14 where you cite an article or a document  
22 Standard & Poor's Fuel and Power Adjustors Underpin Post  
23 Crisis Quality of Western Utilities, October 14, 2004, do  
24 you not?

25 A. I have such a document in there. It's not

1 the same as the same dated document that you gave me.

2 Q. Okay. And the document that I gave you has  
3 an additional word in its title. It has the word credit  
4 between the words crisis and quality, does it not?

5 A. It does have it, but so does mine.

6 Q. Okay. Your document also has it?

7 A. Yes.

8 Q. Okay. Because your footnote I think has  
9 that word missing.

10 A. It does. You're correct. I missed that.

11 MR. DOTTHEIM: At this time I'd like to  
12 offer Exhibit 244.

13 JUDGE WOODRUFF: 244 has been offered. Any  
14 objections to its receipt?

15 (No response.)

16 JUDGE WOODRUFF:Hearing none, it will be  
17 received.

18 (EXHIBIT NO. 244 WAS RECEIVED INTO

19 EVIDENCE.)

20 BY MR. DOTTHEIM:

21 Q. Dr. Gordon, do you recognize the name of  
22 David Swanda?

23 A. Yes, .I believe he was a commissioner, I  
24 can't recall from which state, sometime in the relatively  
25 distant past.



1 Q. Do you know whether he filed testimony on  
2 behalf of AmerenUE in AmerenUE's last rate increase case  
3 before the Missouri Commission?

4 A. I'm not aware of that.

5 Q. Do you know whether he filed testimony on  
6 fuel adjustment clause in AmerenUE's last rate increase  
7 case?

8 A. No, I don't.

9 Q. Do you recognize the name Steven Fetter,  
10 F-e-t-t-e-r?

11 A. I do.

12 Q. Who is Mr. Steven Fetter?

13 A. He is a former Commissioner who I believe  
14 went to work for Fitch.

15 Q. Do you know whether he filed testimony on  
16 behalf of AmerenUE in a Staff earnings complaint case  
17 against AmerenUE in 2001-2002? It was Case No.  
18 EC-2002-1.

19 MR. LOWERY: Your Honor, I'm going to  
20 object just on relevance grounds. I don't know whether it  
21 makes any difference whether Dr. Gordon knows whether  
22 these individuals did or didn't file testimony in a prior  
23 case ,in this case seven years ago.

24 JUDGE WOODRUFF: I'll sustain that  
25 objection.

1 MR. DOTTHEIM: Could I have a moment,  
2 please?

3 JUDGE WOODRUFF: Sure.

4 MR. DOTTHEIM: Dr. Gordon, thank you.  
5 You've been very patient.

6 JUDGE WOODRUFF: Thank you.

7 THE WITNESS: Thank you.

8 JUDGE WOODRUFF: Now we'll come up for  
9 questions from the Bench. Chairman Davis?

10 CHAIRMAN DAVIS: No questions, Dr. Gordon.  
11 Thank you.

12 JUDGE WOODRUFF: All right. No recross.  
13 Any redirect?

14 REDIRECT EXAMINATION BY MR. LOWERY:

15 Q. Dr. Gordon, let's go back to Exhibit 244  
16 that Mr. Dottheim was talking with you about a moment ago.

17 A. Okay. Now, I don't have them marked, so  
18 which one is it?

19 Q. It's the October 14th, 2004 Standard &  
20 Poor's documents. It's the last one that Mr. Dottheim  
21 asked you about.

22 A. Got it.

23 Q. Do you have that one?

24 A. Yeah.

25 Q. Could you turn to the second page of that

1 document?

2 A. Yes.

3 Q. Do you see the heading that says which  
4 western IOUs have instituted FPPA, question mark?

5 A. Yes, I do.

6 Q. Could you read the sentence right  
7 underneath that heading?

8 A. Starting in 2000?

9 Q. Correct.

10 A. In the year 2000, the largest IOUs in the  
11 western U.S., did not have FPPA , and their credit ratings  
12 generally suffered as a result of the market disruptions  
13 that occurred beginning in 2001, reference to the table  
14 below. Today the majority of western utilities have some  
15 form of FPPA.

16 Q. Is it fair to say that FPPA is roughly a  
17 descriptor of what we've been calling FAC in this case?

18 A. Yes. Fuel and purchased power adjustments  
19 that stands for.

20 Q. Is it fair to say that to the extent  
21 utilities in other states didn't have fuel and purchased  
22 power adjustment mechanisms seven or eight years ago,  
23 virtually all of them do now?

24 A. Virtually all of the non-restructured  
25 states.

1 Q. Would you consider this information to be  
2 dated?

3 A. A little bit, yes.

4 Q. Mr. Dottheim was also asking you about  
5 Exhibit 243, and now that's the May 28th, 2008 Standard &  
6 Poor's document. Do you recall that?

7 A. I have it.

8 Q. Now, there were four weaknesses listed for  
9 AmerenUE; is that correct?

10 A. Yes, there are.

11 Q. What's the very first one that's listed?

12 A. Challenging regulatory climate in Missouri  
13 and current lack of a fuel adjustment clause.

14 Q. Mr. Iveson asked you some questions about  
15 the three factors that the Commission's considered in  
16 prior cases. Do you recall that?

17 A. Yes.

18 Q. And he asked you about reading Senate Bill  
19 179, right?

20 A. Yes.

21 Q. Have you read the Commission's Orders  
22 respecting fuel adjustment clauses? There's been three  
23 Orders, is that your understanding?

24 A. There have been three, and I have read  
25 them.

1           Q.       Do they address Senate Bill 179 and the  
2 standard that Mr. Iveson was asking you about that you had  
3 talked about in your testimony?

4           A.       Yes, they do.

5           Q.       Has your reading of those Orders, has it  
6 informed your understanding about Senate Bill 179 and what  
7 that standard means?

8           A.       Certainly helps understand it.

9           Q.       Could you share with the Commission your  
10 understanding of how the Commission has applied that  
11 standard based on your reading of those Orders?

12          A.       In the case of Aquila and Empire, they  
13 decided to have a fuel adjustment clause. The recognition  
14 that one of the reasons for doing that is to allow the  
15 companies a reasonable opportunity to earn their  
16 authorized rate of return is clearly in there. That, of  
17 course, is an overarching requirement of regulation, never  
18 mind just something that happens to be incident to a fuel  
19 clause. But it recognizes it, and that was a good thing.

20          Q.       And these three factors, I think you  
21 answered in answer I think to one of Mr. Iveson's  
22 questions, you talked about there are other  
23 considerations, and I think he cut you off. You didn't  
24 finish explaining to the Commission what those other  
25 considerations are. What are some of the other

1 considerations the Commission needs to be thinking about  
2 in making a decision on an FAC in this case?

3 A. Well, I think at the core of this is  
4 maintaining the credit quality of the company so that it  
5 can pursue various and sundry projects, environmental,  
6 reliability related, whatever they might be, but  
7 ultimately if it's done well will be to the benefit of  
8 electric consumers.

9 MR. LOWERY: No further questions. Thank  
10 you, Dr. Gordon.

11 JUDGE WOODRUFF: Dr. Gordon, you can step  
12 down.

13 THE WITNESS: Thank you.

14 JUDGE WOODRUFF: Call your next witness.

15 MR. BYRNE: Yes, your Honor. I would call  
16 Gary M. Rygh.

17 JUDGE WOODRUFF: Mr. Rygh, if you'd please  
18 raise your right-hand.

19 (Witness sworn.)

20 JUDGE WOODRUFF: You may inquire.

21 MR. BYRNE: Thank you.

22 GARY M. RYGH testified as follows:

23 DIRECT EXAMINATION BY MR. BYRNE:

24 Q. Mr. Rygh, could you please state your name  
25 and business address for the record.

1           A.       Gary Rygh, 745 7th Avenue, New York,  
2 New York, 25th Floor.

3           Q.       And by whom are you employed, Mr. Rygh?

4           A.       Barkley's Capital.

5           Q.       And are you the same Gary M. Rygh who  
6 caused to be filed in this case rebuttal testimony that's  
7 been marked Exhibit 46?

8           A.       Yes.

9           Q.       And do you have any corrections to that  
10 prefiled testimony?

11          A.       No.

12          Q.       And is the information contained in that  
13 prefiled testimony true and correct to the best of your  
14 knowledge and belief?

15          A.       Yes, it is.

16          Q.       And if I was to ask you the questions  
17 contained in that prefiled testimony today when you're  
18 here under oath, would your answers be the same?

19          A.       Yes.

20                   MR. BYRNE: Your Honor, I would offer  
21 Exhibit 46 into evidence, and tender Mr. Rygh for  
22 cross-examination.

23                   JUDGE WOODRUFF: All right. Exhibit 46 has  
24 been offered. Any objections to its receipt?

25                   (No response.)

1 JUDGE WOODRUFF: Hearing none, it will be  
2 received.

3 (EXHIBIT NO. 46 WAS MARKED FOR  
4 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

5 JUDGE WOODRUFF: Cross-examination,  
6 beginning again with Noranda?

7 MR. CONRAD: Your Honor, we don't have  
8 questions for this witness.

9 JUDGE WOODRUFF: For the State?

10 CROSS-EXAMINATION BY MR. IVESON:

11 Q. Good afternoon, Mr. Rygh. My name is Todd  
12 Iveson. I'm an attorney for the State of Missouri.

13 MR. IVESON: I would like to mark as, I  
14 believe it's Exhibit 503, isn't it, your Honor?

15 JUDGE WOODRUFF: Yes, 503.

16 (EXHIBIT NO. 503 WAS MARKED FOR  
17 IDENTIFICATION BY THE REPORTER.)

18 BY MR. IVESON:

19 Q. Do you recognize that document, Mr. Rygh?

20 A. Yeah. I think I submitted this as a  
21 response to a question after I submitted my testimony.

22 Q. Can you tell me what's reflected on the  
23 second page of Exhibit 503?

24 A. Sure. The question was effectively what  
25 business have you done, I think it was over the last five-



1 year period with AmerenUE and its subsidiaries, and here  
2 we listed loan transactions, the bond transactions, and  
3 then the equity offerings which would comprise the  
4 business an investment bank would do.

5 Q. And were you personally involved in all of  
6 these transactions?

7 A. A fair amount of them. The '08s and the  
8 '07s. Nothing before that, no.

9 Q. So you would not have been involved in the  
10 '06 transaction where Barkley's was a lead arranger?

11 A. On the bank deal, no, or the loan  
12 transaction. Sorry.

13 Q. Under the bond transactions, though, you  
14 would have been involved in most of the transactions in  
15 '07 and '08; is that correct?

16 A. Yes. Uh-huh.

17 Q. Can you tell me what a book runner is?

18 A. Yeah. They're -- effectively they're sort  
19 of the senior leads when it comes to placing the debt.  
20 They're the ones that communicate to the market. They are  
21 the ones that take the orders and then effectively  
22 syndicate the bond offering.

23 Q. Similar to a lead underwriter in a straight  
24 equity deal?

25 A. Yeah. Book runner is sort of a term, they

1 are the ones that actually are in charge of taking the  
2 orders, processing the orders, and eventually the  
3 allocation of the bonds.

4 Q. And either Barkley's or Lehman Brothers was  
5 the -- one of the book runners on each of those '07 '08  
6 transactions?

7 A. Yes.

8 Q. How do the book runners get compensated in  
9 a bond transaction?

10 A. Just a gross spread off of the proceeds.  
11 Generally for investment grades it's 65 basis points.

12 Q. And let me see. The --

13 A. You know, 65 basis points for the entire  
14 transaction. That's, you know, one book runner may get  
15 20, 25 percent of that at the most.

16 Q. So these were relatively large  
17 transactions? For example, the October 20, 2008 was  
18 400 million; is that correct?

19 A. Yes, it was 400 million.

20 Q. So the three book runners would have split  
21 65 basis points?

22 A. So roughly, what, \$3 million, yeah. Well,  
23 it would have been the three book runners plus whatever  
24 co-managers. There's other people in the deal other than  
25 the book runners. I mean, typically I would think of that

1 \$3 million of total proceeds, probably 20 percent to any  
2 book runner, so 600,000 each.

3 Q. And were you involved in any of the equity  
4 offerings?

5 A. No.

6 MR. IVESON: I would like to mark as  
7 Exhibit 504 -- let me consult with Ameren's counsel for  
8 just a minute.

9 JUDGE WOODRUFF: Sure.

10 MR. IVESON: Your Honor, I apologize for  
11 one, which is an error. Apparently all the copies of this  
12 were miscopied except for my original. It's missing the  
13 one page I actually want to ask him about. So I will have  
14 additional copies made and get those back, but we'll just  
15 have this one marked. The other -- Staff may be able to  
16 help me out on that. But the other thing is we're going  
17 to have to go in camera.

18 JUDGE WOODRUFF: So this will be 504HC.

19 MR. IVESON: Yes.

20 (EXHIBIT NO. 504HC WAS MARKED FOR  
21 IDENTIFICATION BY THE REPORTER.)

22 JUDGE WOODRUFF: We will be going in  
23 camera, so if anyone in the audience needs to leave,  
24 please do so.

25 (REPORTER'S NOTE: At this point, an

1 in-camera session was held, which is contained in  
2 Volume 25, pages 2343 through 2349 of the transcript.)

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1 JUDGE WOODRUFF: We're back in regular  
2 session, then, and any cross for MIEC?

3 MS. VUYLSTEKE: No, thank you.

4 JUDGE WOODRUFF: For Public Counsel?

5 MR. MILLS: No questions.

6 JUDGE WOODRUFF: For Staff?

7 MR. DOTTHEIM: Yes, and it's been shortened  
8 by -- by Mr. Iveson.

9 I'd like to have a document marked as  
10 Exhibit, I think it's Exhibit 245.

11 JUDGE WOODRUFF: That's correct.

12 MR. DOTTHEIM: May I approach the Bench?

13 JUDGE WOODRUFF: You certainly may.

14 (EXHIBIT NO. 245 WAS MARKED FOR  
15 IDENTIFICATION BY THE REPORTER.)

16 CROSS-EXAMINATION BY MR. DOTTHEIM:

17 Q. Mr. Rygh, have you had a chance to review  
18 what's been marked as Exhibit 245?

19 A. Yes.

20 Q. Do you recognize that document?

21 A. Yes.

22 Q. Is that your response to a Staff Data  
23 Request?

24 A. Yes.

25 Q. And would you identify your dates of

1 employment, job titles and responsibility while in the  
2 employ of Lehman Brothers?

3 A. Yes. From July of 2007 'til September of  
4 this year, I was senior vice president in the investment  
5 banking division in our global powered utility group.

6 Q. Okay. Thank you.

7 MR. DOTTHEIM: I'd like to offer into  
8 evidence Exhibit 245.

9 JUDGE WOODRUFF: 245 has been offered. Any  
10 objection to its receipt?

11 (No response.)

12 JUDGE WOODRUFF: Hearing none, it will be  
13 received.

14 (EXHIBIT NO. 245 WAS RECEIVED INTO  
15 EVIDENCE.)

16 MR. DOTTHEIM: And I'd like to have marked  
17 as an exhibit a document, another response to Staff Data  
18 Request, Exhibit 246. May I approach the Bench?

19 JUDGE WOODRUFF: You certainly may.

20 (EXHIBIT NO. 246 WAS MARKED FOR  
21 IDENTIFICATION BY THE REPORTER.)

22 BY MR. DOTTHEIM:

23 Q. Mr. Rygh, do you have a copy of what's been  
24 marked as Exhibit 246?

25 A. Yes.

1 Q. Do you recognize that document?

2 A. Yes.

3 Q. Is that a response of yours to a Staff Data  
4 Request?

5 A. Yes.

6 Q. That Data Request asks you for what you  
7 mean by the term construction related mishaps in your  
8 surrebuttal -- in your rebuttal testimony, does it not?

9 A. Yes.

10 MR. DOTTHEIM: At this time I'd like to  
11 offer Exhibit 246.

12 JUDGE WOODRUFF: 246 has been offered. Are  
13 there any objections to its receipt?

14 (No response.)

15 JUDGE WOODRUFF: Hearing none, it will be  
16 received.

17 (EXHIBIT NO. 246 WAS RECEIVED INTO  
18 EVIDENCE.)

19 BY MR. DOTTHEIM:

20 Q. Mr. Rygh, do you still have what's  
21 previously been marked as the State of Missouri Exhibit  
22 504?

23 A. I do now.

24 Q. I'd like to ask you to refer to that --  
25 that document, and again, would you identify that document

1 again?

2 A. Yes. It is a research report that our  
3 equity research put out on -- part of it's on commissions,  
4 but also part of it's on the capital spend plan of  
5 utilities over the next several years.

6 Q. Okay. And I'd like to refer you to the  
7 cover page of that document.

8 JUDGE WOODRUFF: Mr. Dottheim, just a  
9 reminder, this is an HC document.

10 MR. DOTTHEIM: Yes. And I'll ask Mr. Rygh,  
11 I'd like for him to read a -- a sentence, and he can  
12 indicate whether it's highly confidential or not. I don't  
13 think it is, but --

14 JUDGE WOODRUFF: All right. You can ask  
15 him.

16 BY MR. DOTTHEIM:

17 Q. Mr. Rygh, I'd like to direct you to like  
18 the bottom fifth of that first page after the -- the cover  
19 sheet, which is the Data Request. It's the face page of  
20 the document.

21 A. Uh-huh. Uh-huh.

22 Q. And it's maybe -- why don't I just point it  
23 to you. There's one sentence I'd like to refer you to.

24 A. Sure.

25 Q. And I'd like to ask you to read that



1 sentence into the record if that's not highly  
2 confidential. Do you know if that sentence itself is  
3 deemed to be highly confidential?

4 A. No, it's not confidential.

5 Q. Okay. Would you read that sentence into  
6 the record?

7 A. Lehman Brothers does and seeks to do  
8 business with companies covered in its research reports.  
9 As a result, investors should be aware that the firm may  
10 have a conflict of interest that could affect the  
11 objectivity of this report.

12 MR. DOTTHEIM: If I could have a moment,  
13 please?

14 JUDGE WOODRUFF: Sure.

15 MR. DOTTHEIM: Thank you, Mr. Rygh.

16 JUDGE WOODRUFF: All right. Come up for  
17 questions from the Bench. Chairman Davis?

18 QUESTIONS BY CHAIRMAN DAVIS:

19 Q. Good afternoon, Mr. Rygh. It's Rygh?

20 A. Yeah, Rygh. Thank you, Commissioner.

21 Q. This is a highly confidential document.  
22 It's been designated?

23 JUDGE WOODRUFF: Yes.

24 THE WITNESS: Yes, Chairman.

25 CHAIRMAN DAVIS: Can we go in camera

1 briefly?

2 JUDGE WOODRUFF: We certainly can. We're  
3 going to go in camera.

4 (REPORTER'S NOTE: At this point, an  
5 in-camera session was held, which is contained in  
6 Volume 25, pages 2356 through 2362 of the transcript.)

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1                   JUDGE WOODRUFF: We're back in regular  
2 session.

3 BY CHAIRMAN DAVIS:

4           Q.       So does that mean that there are fewer  
5 banks out there providing capital?

6           A.       Absolutely. And it's an issue that's going  
7 to be very important to the utility industry in the next,  
8 you know, over the next few years as a lot of the bank  
9 facilities that they've come to rely upon as a significant  
10 component of their capital base are going to have to be  
11 rationalized because one plus one doesn't equal two. It  
12 may not even equal 1.1. The bank capital is just not --  
13 it's -- is going to be available in a much smaller scale  
14 at a much higher price.

15          Q.       Okay. So I think you've answered the why  
16 there. Mr. Rygh, what's a write down?

17          A.       It's when effectively what you carry, the  
18 security or whatever, I guess it can be an asset also on  
19 your books, it has to be written down to a new value.

20          Q.       The big investment banks like Barkley's,  
21 formerly known as Lehman Brothers, Bank of America,  
22 others, have they had write downs in the last few months?

23          A.       Hundreds and hundreds of billions, yes.

24          Q.       Do those write downs have a material effect  
25 on the investment banking business?

1           A.     Absolutely.

2           Q.     How so?

3           A.     Well, I mean, it's obviously brought the  
4 solvency of the business into question and caused some of  
5 the consolidation you've seen. It's changed risk profile  
6 of the banks, not only the investment banks but the  
7 commercial banks. And it's -- it's -- one of the, you  
8 know, the bigger picture issues that's come out of it is  
9 the lack of ability to lend money to, you know, to our  
10 client base. It's been -- it's been a, you know, a cause  
11 of -- I'm sorry, a -- has been caused by some of these  
12 write downs.

13          Q.     Okay. And in response to the current  
14 financial crisis, have the investment banks gone out and  
15 raised new capital?

16          A.     They did when they could, up to a certain  
17 point, and then that was shut off. Probably September of  
18 2008 was probably the last time they've been able to do  
19 their own capital raisings, with the exception, I guess  
20 Barkley's did one in the UK. The rest has been coming  
21 from the government.

22          Q.     So for the investment banks like Barkley's  
23 that are left, is it -- is it fair to have the impression  
24 that they can be -- they can afford to be a lot pickier  
25 about who they loan money to and what terms they loan that

1 money under than they were, say, a year ago?

2 A. Absolutely.

3 Q. You think their investors expect that of  
4 them?

5 A. Absolutely. It's -- it's not only what the  
6 investors expect, but it's just the economics of it, which  
7 is our capital is so much more expensive now, we have to  
8 pass that along, and it's so much less available.

9 Q. Are investment banks like Barkley's more  
10 risk averse than they were a year ago?

11 A. Yes.

12 Q. Now, have you heard that the -- you follow  
13 the electric utility industry, don't you?

14 A. (Witness nodded.)

15 Q. Okay. So I mean, we've -- is it fair to  
16 say that out there in the print media there are like all  
17 of these estimates that the United States is going to  
18 need, you know, one and a half to two trillion dollars  
19 worth of investment in the next quarter century?

20 A. Yes.

21 Q. Are you familiar with the term liquidity?

22 A. Yes.

23 Q. What does it mean in relation to  
24 investor-owned utilities?

25 A. You know, capital available to make the

1 investments that's -- that are necessary.

2 Q. Is it fair to say right now that utilities  
3 like Ameren are more concerned with liquidity than they  
4 are with growth?

5 A. Very fair.

6 Q. Why so?

7 A. Well, with access to the capital markets  
8 where -- you know, utilities rely on a few different ways  
9 to raise their money. You've got the bank capital, which  
10 a fair amount of them have -- they put the revolving  
11 credit facilities in place either as ones they would use  
12 or backstops for commercial paper programs. Commercial  
13 paper's really nonexistent except for a few utilities that  
14 are A rated, which is a very small minority of utilities  
15 anymore.

16 Equity markets are effectively shut, and  
17 debt capital markets are very difficult to raise money.  
18 You see that in the prices that are being paid. You see  
19 that in the size of the deals that are getting done.

20 Q. Why were equity markets effectively shut?

21 A. Well, part of it is that some of the --  
22 some of the reaction you've seen when utilities have tried  
23 to gone -- tried to gone out and do equity deals. Pepco's  
24 probably the best example recently, maybe not even a month  
25 ago where they went out to raise money in the equity

1 markets and stock price went down 20 percent with the sale  
2 of their equity. They were selling -- were only selling  
3 \$250 million. It wasn't like they were selling a quarter  
4 of the company.

5 Q. Is that on top of the market declines that  
6 have already occurred in the last, say, few months?

7 A. Yes, and they sold -- they sold at 75  
8 percent of book value.

9 Q. Okay. Do you think that's why Ameren is  
10 considering delaying some of its cap ex expenditures?

11 A. Yes.

12 Q. Okay. Do you think fuel adjustment is  
13 going to be necessary for Ameren to complete some of those  
14 CAP Ex projects?

15 A. Yes.

16 Q. In your surrebuttal testimony, and I think  
17 it was page 10, you said that there was a, quote, flight  
18 to quality in the market. Can you expound on that phrase?  
19 What does the term quality mean?

20 A. Well, quality in this case has been T  
21 bills, three-month Treasuries, as you see by the yields  
22 there, yielding at a zero, less than zero. You would have  
23 expected in a -- utilities of the -- whether it's  
24 utilities or telecom or just the generation companies, all  
25 various different credit qualities out there, you would

1 have expected them to have benefited from a flight to  
2 quality, but I would say that not so much as the money  
3 didn't go to -- you know, it went to even more secure  
4 investments. It was not a -- they weren't trying to  
5 choose amongst what is the most secure asset base. They  
6 went -- a tremendous amount of capital went into  
7 government securities where they have 100 percent safety  
8 at this point.

9 Q. So that's why people would put money in T  
10 bills is because they feel like there's 100 percent  
11 certainty that they'll recover at least the capital that  
12 they put into it?

13 A. Yes.

14 Q. So when you decide to loan money to an  
15 investor owned utility in the current market, is the  
16 presence or absence of a fuel adjustment mechanism a  
17 consideration?

18 A. Yes.

19 Q. On a scale of one to ten, one being least  
20 important and ten being most important, where would you  
21 rank the absence or presence of a fuel adjustment  
22 mechanism?

23 A. In Ameren -- in Union Electric's case, two.

24 Q. Two being least important?

25 A. I'm sorry.



1 Q. One being least important and ten being --

2 A. I'm sorry, nine.

3 Q. Nine. Okay. Can you think of anything  
4 that would be a ten?

5 A. Yeah. The nuclear plant being shut down,  
6 that would be a ten.

7 Q. Okay. Among the -- first of all, is it  
8 fair to say that most states that are not restructured  
9 have fuel adjustment?

10 A. Yes.

11 Q. Of those states that have fuel adjustment  
12 mechanisms, is it fair to say that not all fuel adjustment  
13 mechanisms are created equal?

14 A. Yes.

15 Q. Are you aware that some states like  
16 Missouri don't allow 100 percent pass through of fuel  
17 costs?

18 A. Yes.

19 Q. Of those states, do you have an impression  
20 about what the most common means of portioning those costs  
21 might be?

22 A. Well, I mean, the majority of them it's 100  
23 percent pass through.

24 Q. Okay. Of the minority that's out there, do  
25 you have --

1           A.       Two of -- which I think is maybe six or  
2 eight, two of them are in Missouri 95/5, and I don't have  
3 the specific examples, but I think all the rest are pretty  
4 close to that 90 percent pass through.

5           Q.       Okay. Is there any state or states that  
6 have fuel adjustment that stick out in your mind for  
7 being -- being much worse than the others?

8           A.       Not that stick out in my mind, no.

9           Q.       Hypothetically speaking, let's say you've  
10 got a utility whose fuel costs make up about 50 percent of  
11 the utility's expenses, and they're projecting fuel costs  
12 are going to increase by \$150 million over the next two  
13 years at a time when they've got more than a billion  
14 dollars worth of cap ex planned. Got that? What would  
15 you think of a sharing proposal that would split the  
16 costs, the increased costs of fuel 50/50 between a  
17 utility's shareholders and the ratepayers?

18          A.       Highly suboptimal for a couple reasons.  
19 One is it doesn't provide the protection that a fuel  
20 adjustment clause is meant to do. And are we speaking  
21 hypothetically or are we speaking of --

22          Q.       Hypothetically.

23          A.       Hypothetically, if two other utilities in  
24 that state, very good examples, had just gone and gotten  
25 95 percent and this utility goes and gets 50 percent, it's

1 going to really raise a tremendous amount of questions  
2 with investors as to that -- that -- either the -- where  
3 that utility stands as far as how it's regulated in that  
4 state and what -- as a signal as to what they can expect  
5 as they're spending not only that, you know, whatever the  
6 bill -- that first billion dollars in that first year, but  
7 the second billion. That's -- it's going to be a pretty  
8 difficult signaling event if that were to happen.

9 Q. What do you think the difference is between  
10 a -- a cost sharing mechanism, say the one proposed by  
11 Ameren that's 95/5 versus the one that's proposed that's  
12 say 80/20?

13 A. Well, I think there's -- there's still --  
14 when you're talking about the size of the exposure here,  
15 \$400 million, that 15 percent is a pretty significant  
16 number, when they -- they're still not earning their  
17 allowed ROEs.

18 Q. Mr. Rygh, last question. You filed your  
19 surrebuttal testimony on October 10th. That's two months  
20 ago today. Is there anything else that we need to know  
21 about the capital market that's not contained in your  
22 testimony? Has anything changed in the last two months?

23 A. Yeah. I would say that, you know, what has  
24 changed is, is that at points it's gotten worse than it  
25 was at that point. We're having a hard time predicting

1 where the bottom is. It's also important to note about  
2 the capital market, especially as it pertains to the  
3 utility sector, is that the deals that we're doing now are  
4 of the A rated or the -- you know, the highest quality  
5 triple Bs, and the ones that aren't, the middle triple Bs  
6 are a struggle to get done, and you're seeing these 9 to  
7 10 percent coupons.

8                   If you were to ask me what UE would raise a  
9 ten year today at, you know, it would have a nine handle  
10 on the coupon. It's a -- that would be the -- and six  
11 months ago, it had a six handle on it, you know, the 6 or  
12 9 percent or -- versus 6.7, the deal they did in July of  
13 2008.

14           Q.       Okay. And so you're talking about a  
15 difference of say 300 basis points roughly?

16           A.       Yeah. 250 basis points, yeah.

17           Q.       Okay. So that's, you know -- do you know  
18 what the cost of debt is for Ameren in this rate case?

19           A.       It's 5.6 percent.

20           Q.       And Mr. Rygh, if asked in the future what  
21 are the eight states that border Missouri, you'll be able  
22 to name those states, will you not?

23           A.       I will. I will.

24                   CHAIRMAN DAVIS: Thank you. No further  
25 questions.

1 JUDGE WOODRUFF: Let's go to recross based  
2 on questions from the Bench, beginning with Noranda?

3 MR. CONRAD: Very briefly.

4 RE-CROSS-EXAMINATION BY MR. CONRAD:

5 Q. Mr. Rygh, are you -- strike that.

6 Have you read some of the other testimony  
7 from the Union Electric witnesses in this case?

8 A. I've read a fair amount of it. I can't say  
9 I've read it all. But I read it as it pertains to fuel  
10 adjustment clause. I've tried to -- I've tried to.

11 Q. Have you read a piece by Roger A. Morin?

12 A. I believe so, yeah.

13 Q. Do you know that name?

14 A. Wasn't that the person that just testified?

15 Q. No, sir.

16 A. Sorry. Yeah, I've seen -- I certainly know  
17 the name, yes.

18 Q. Involved in ROE --

19 A. Yes.

20 Q. -- calculations, does that help?

21 A. Yes. Okay.

22 Q. Have you run across that name in any of  
23 your professional work?

24 A. I haven't before this, but it's -- yeah.

25 No, I have not.

1 Q. You did read his offerings here?

2 A. Yes. I've read pieces of that and pieces  
3 of the rebuttal testimony to it, yeah.

4 Q. You consider him to be a competent witness?

5 A. Absolutely. I have no reason why I  
6 wouldn't consider him to be a competent witness.

7 MR. CONRAD: Thank you. That's all.

8 JUDGE WOODRUFF: For MIEC?

9 MS. VUYLSTEKE: I do.

10 RE-CROSS-EXAMINATION BY MS. VUYLSTEKE:

11 Q. Good afternoon.

12 A. Hi.

13 Q. Just one question. Would you be more  
14 comfortable with the 80/20 sharing mechanism that  
15 Commissioner -- Chairman Davis discussed if the mechanism  
16 had a 50 basis point limit on its impact?

17 A. I don't think so, no. Like I said, it's a  
18 signal, and you know, the markets are looking for bad news  
19 and the credit rating agencies are already really focused  
20 on this. I think that -- that would be a fairly tough  
21 thing for them to swallow.

22 MS. VUYLSTEKE: Thank you.

23 JUDGE WOODRUFF: State?

24 MR. IVESON: No questions, your Honor.

25 JUDGE WOODRUFF: Public Counsel?

1                   MR. MILLS: Judge, I'd prefer to defer my  
2 questions until after I get a copy of 504.

3                   JUDGE WOODRUFF: Okay. Can someone get him  
4 a copy of 504?

5                   MR. MILLS: This may take me a minute.

6                   JUDGE WOODRUFF: We're off the record.

7                   (A BREAK WAS TAKEN.)

8                   JUDGE WOODRUFF: Let's go ahead and get  
9 started. Mr. Mills, are you ready to proceed?

10                  MR. MILLS: I am. Just one brief question.

11 CROSS-EXAMINATION BY MR. MILLS:

12                  Q. Mr. Rygh, looking at the various criteria  
13 by which Lehman Brothers ranked public utility  
14 commissions --

15                  JUDGE WOODRUFF: Mr. Mills, this is a  
16 highly confidential document.

17                  MR. MILLS: And I don't think this question  
18 will be highly confidential.

19 BY MR. MILLS:

20                  Q. Is there anything in there that assigns a  
21 weight to the -- how good a job the commission does  
22 protecting captive ratepayers?

23                  A. No. It's meant to be focused on -- you  
24 know, its from an investor perspective, not from a  
25 ratepayer perspective.

1 MR. MILLS: That's all I have. Thank you.

2 JUDGE WOODRUFF: For Staff?

3 MR. DOTTHEIM: No questions.

4 JUDGE WOODRUFF: Redirect?

5 MR. BYRNE: Yes, I do, your Honor.

6 REDIRECT EXAMINATION BY MR. BYRNE:

7 Q. Good afternoon, Mr. Rygh.

8 A. Good afternoon.

9 Q. In response to one of Chairman Davis'  
10 questions, I think you suggested or you agreed with him  
11 that not all fuel adjustment clauses are created equal.  
12 Do you recall that --

13 A. Yes.

14 Q. -- question and answer?

15 And I wanted to ask a few questions about  
16 that. First of all, do investors pay attention to the  
17 details of a fuel adjustment clause?

18 A. Absolutely.

19 Q. Okay. And on the issue of sharing, does it  
20 matter to investors if there's sharing or not sharing in a  
21 fuel adjustment clause?

22 A. Yes.

23 Q. Is it better if there's no sharing from an  
24 investor's standpoint?

25 A. Yes.



1           Q.       How about in a fuel adjustment clause, the  
2 use of historic costs versus projected costs, does that  
3 matter to investors?

4           A.       Yes. They would prefer projected costs.

5           Q.       Okay. And do a lot of fuel adjustment  
6 clauses have projected costs?

7           A.       A fair amount of them.

8           Q.       How about quick recovery of costs versus  
9 slow recovery of costs, do investors prefer quick or slow  
10 recovery?

11          A.       Quick is much preferred. Regulatory lag is  
12 a very large issue.

13          Q.       And how quick would a quick recovery  
14 utility recover fuel costs? Do some adjust their rates  
15 monthly?

16          A.       Oh, yeah. I'm sorry. The true-up period,  
17 yeah, a fair amount of them are monthly or quarterly.

18          Q.       Okay. And do you think a fuel adjustment  
19 clause where you recover your costs three times a year, is  
20 that on the good end or the bad end of the recovery  
21 periods?

22          A.       It's certainly not as good as monthly or  
23 quarterly, so it's probably in the, you know, getting  
24 towards the bad end, but somewhere in the middle.

25          Q.       How about if you recover costs over a 12-

1 month period, is that a long recovery time or a short  
2 recovery time?

3 A. It's a fairly long recovery time.

4 Q. And would investors prefer a long or short  
5 recovery time?

6 A. Short.

7 MR. BYRNE: And I guess we might need to go  
8 in camera, your Honor, because I do want to ask him about  
9 504HC.

10 JUDGE WOODRUFF: All right. We will go in  
11 camera.

12 (REPORTER'S NOTE: At this point, an  
13 in-camera session was held, which is contained in  
14 Volume 25, pages 2379 through 2388 of the transcript.)

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1 JUDGE WOODRUFF: All right. You can step  
2 down.

3 THE WITNESS: Thank you. All right. We'll  
4 stop there for tonight. Mr. Dottheim?

5 MR. DOTTHEIM: Yes, Judge. A couple of  
6 items. One, before I forget, last week, I think it was  
7 the Chairman in particular who requested an updated  
8 reconciliation, and we have copies, and I can distribute  
9 that.

10 JUDGE WOODRUFF: If you would, please, that  
11 would be great.

12 MR. DOTTHEIM: Mr. Lowery has asked me  
13 whether the company has approved, and it's my  
14 understanding that the company has. In fact, the  
15 reconciliation, if my memory serves me, at least a couple  
16 of days ago was circulated to all parties, and all parties  
17 were given an opportunity to comment and contact the  
18 Staff, and I do believe the company has signed off on it  
19 and -- and all parties have had an opportunity to visit  
20 with the Staff on it. So --

21 MR. LOWERY: That's good enough for me. I  
22 just hadn't closed the loop. If Mr. Dottheim says that's  
23 the word he's gotten, that's fine with me.

24 MR. MILLS: Judge, another issue that I  
25 think we left hanging was the question of Mr. Dauphinaia.

1                   JUDGE WOODRUFF: Yes. I meant to bring  
2 that up also. Have the parties reached any sort of  
3 understanding on that?

4                   MS. VUYLSTEKE: I think we probably have,  
5 your Honor. There are a number of designated portions of  
6 Mr. Dauphinaia's deposition that Mr. Lowery provided me a  
7 few hours ago, and the proposal is to introduce those in  
8 lieu of his testimony by agreement between MIEC and Ameren  
9 on those specific portions. And all I have to do is just  
10 review those with the witness, and I should know by first  
11 thing tomorrow morning, and I'm guessing that it will  
12 probably be fine and we'd eliminate the need for his  
13 appearance.

14                  JUDGE WOODRUFF: Okay. That sounds like a  
15 good resolution. Anything else anyone wants to bring up?  
16 Mr. Dottheim?

17                  MR. DOTTHEIM: Yes. In visiting earlier  
18 with Mr. Lowery, there's one designation of the Staff with  
19 the deposition of Mr. Arora which the company objects, and  
20 I don't know if Mr. Lowery would be willing to take that  
21 up now. It might expedite matters if we could -- if we  
22 could address that. It certainly would help the Staff.  
23 We would go into tomorrow morning --

24                  JUDGE WOODRUFF: Mr. Arora is next?

25                  MR. DOTTHEIM: Yes.

1                   -- knowing what the Bench is ruling.

2                   JUDGE WOODRUFF: What's the objection?

3                   MR. LOWERY: Your Honor, it's my  
4 understanding that the Staff intends to offer a deposition  
5 exhibit that was an exhibit at Mr. Arora's deposition, not  
6 just certain admissions in the deposition. The exhibit is  
7 hearsay, and there's not a proper foundation. It was not  
8 prepared by Mr. Arora. It is a chart that I believe  
9 Dr. Proctor may have prepared. I don't even know for sure  
10 if I know who prepared it. But it was not prepared by  
11 Mr. Arora. He was asked several questions about it and  
12 asked whether it showed X and whether it showed Y. I can  
13 read you the specific deposition questions if you'd like  
14 for me to, but he --

15                   JUDGE WOODRUFF: Talking about the  
16 forward -- electric forward ATP price chart?

17                   MR. LOWERY: That's correct.

18                   JUDGE WOODRUFF: Which is also highly  
19 confidential, I believe.

20                   MR. LOWERY: That's right. And I'm not  
21 talking about the data out loud, so I'll just --

22                   JUDGE WOODRUFF: Make sure that's not an  
23 issue.

24                   MR. LOWERY: Right. Absolutely. But he  
25 disagreed with a couple of the questions that he was asked

1 about in terms of does it show X and does it show Y. He  
2 didn't prepare it. He didn't analyze the data. He didn't  
3 go into Excel and choose the formulas and verify the data.  
4 And it's also hearsay. There's been no foundation that he  
5 relied on it in forming any of his opinions, that he's  
6 even ever seen it before. So even if admissions in the  
7 deposition would be admissible, a chart prepared by Staff  
8 presented to the witness in the middle of a deposition  
9 doesn't make the chart itself admissible.

10 MR. DOTTHEIM: The -- the chart was not  
11 objected to. In fact, the Staff didn't even offer the  
12 chart, if I could refer -- and I have copies of the  
13 deposition.

14 JUDGE WOODRUFF: I have it in front of me.

15 MR. DOTTHEIM: I would refer you, Judge, to  
16 page 90 of the -- of the deposition, starting at line 5,  
17 the answer at line 10 where Mr. Arora says again, I'll  
18 have to chart those prices. Then he says, do you have a  
19 chart where you have done this? I could look at that.  
20 And then I responded, we do have a chart. And I produced  
21 the chart. There was no objection to the chart. I --

22 MR. LOWERY: In fact -- I'm sorry,  
23 Mr. Dottheim.

24 MR. DOTTHEIM: Mr. Lowery, go ahead.

25 MR. LOWERY: In fact, I said I'm going to

1 object unless you're asking him to assume that it's true.  
2 So he asked him and then I said, again, just for  
3 clarification, based on that assumption, all of these  
4 questions are based on that assumption, is that right?  
5 And Mr. Dottheim confirmed that was true.

6 So all the questions were hypothetical  
7 assumptions that that chart and its data was accurate and  
8 true, and Mr. Arora never said that I agree that the chart  
9 is accurate, I verified the data. And, in fact, he was  
10 asked questions later about does it show X and does it  
11 show Y and he said no, it does not.

12 JUDGE WOODRUFF: And I see that in the  
13 portion that was highlighted by Staff.

14 MR. DOTTHEIM: And he responded on that  
15 basis.

16 MR. LOWERY: But that doesn't make the  
17 chart admissible. There's no foundation for the chart,  
18 and it's hearsay.

19 JUDGE WOODRUFF: Well, I'm going to  
20 overrule the objection to the chart and allow it in as  
21 part of the document. It's for what -- I hate to say  
22 this, but for what it's worth, in that it -- it is  
23 something that's referred to in the deposition and  
24 certainly not -- there's no implication that the chart is  
25 accurate or that it's correct, but it is referenced in the

1 portions of deposition that are mentioned. So I'll allow  
2 it in on that basis.

3 MR. LOWERY: We'll certainly abide by the  
4 Bench's ruling.

5 JUDGE WOODRUFF: Even if you disagree with  
6 it.

7 MR. LOWERY: Even if I disagree.

8 JUDGE WOODRUFF: Anything else we need to  
9 deal with tonight?

10 (No response.)

11 JUDGE WOODRUFF: Okay. Then we are  
12 adjourned until 8:30 tomorrow morning.

13 WHEREUPON, the hearing of this case was  
14 recessed until December 11, 2008.

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1	I N D E X	
2	FUEL ADJUSTMENT CLAUSE	
3	Opening Statement by Mr. Lowery	2114
	Opening Statement by Mr. Dottheim	2124
4	Opening Statement by Mr. Mills	2126
	Opening Statement by Mr. Iveson	2130
5	Opening Statement by Ms. Vuylsteke	2133
	Opening Statement by Mr. Conrad	2134
6	Opening Statement by Mr. Coffman	2137
7	AMERENUE'S EVIDENCE:	
8	MARTIN J. LYONS	
	Direct Examination by Mr. Lowery	2140
9	Cross-Examination by Mr. Conrad	2143
	(In-Camera Session - See Index Below)	
10	Cross-Examination by Ms. Vuylsteke	2177
	Cross-Examination by Mr. Iveson	2179
11	Cross-Examination by Mr. Mills	2181
	(In-Camera Session - See Index Below)	
12	Cross-Examination by Mr. Dottheim	2244
	(In-Camera Session - See Index Below)	
13	Questions by Commissioner Murray	2263
	Questions by Chairman Davis	2264
14	(In-Camera Session - See Index Below)	
	Recross-Examination by Mr. Iveson	2288
15	Redirect Examination by Mr. Lowery	2289
	(In-Camera Session - See Index Below)	
16	MARTIN J. LYONS (In-Camera Testimony - Volume 25)	
17	Cross-Examination by Mr. Conrad	2154
	Cross-Examination by Mr. Mills	2194
18	Cross-Examination by Mr. Dottheim	2250
	Questions by Chairman Davis	2278
19	Redirect Examination by Mr. Lowery	2302
20	KENNETH GORDON	
	Direct Examination by Mr. Lowery	2311
21	Cross-Examination by Mr. Conrad	2313
	Cross-Examination by Mr. Iveson	2318
22	Cross-Examination by Mr. Dottheim	2319
	Redirect Examination by Mr. Lowery	2332
23		
24		
25		

1	GARY M. RYGH	
	Direct Examination by Mr. Byrne	2336
2	Cross-Examination by Mr. Iveson	2338
	(In-Camera Session - See Index Below)	
3	Cross-Examination by Mr. Dottheim	2350
	Questions by Chairman Davis	2354
4	(In-Camera Session - See Index Below)	
	Recross-Examination by Mr. Conrad	2373
5	Recross-Examination by Ms. Vuylsteke	2374
	Recross-Examination by Mr. Mills	2375
6	Redirect Examination by Mr. Byrne	2376
	(In-Camera Session - See Index Below)	
7		
	GARY M. RYGH (In-Camera Testimony - Volume 25)	
8	Cross-Examination by Mr. Iveson	2343
	Questions by Commissioner Davis	2356
9	Redirect Examination by Mr. Byrne	2379
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

	EXHIBITS INDEX	MARKED	RECEIVED
1			
2			
3	EXHIBIT NO. 41NP/HC		
4	Direct Testimony of Martin J. Lyons, Jr.	2142	2142
5	EXHIBIT NO. 42NP/HC		
6	Rebuttal Testimony of Martin J. Lyons, Jr.	2142	2142
7	EXHIBIT NO. 43		
8	Surrebuttal Testimony of Martin J. Lyons, Jr.	2142	2142
9	EXHIBIT NO. 44		
10	Direct Testimony of Kenneth Gordon	2313	2313
11	EXHIBIT NO. 45		
12	Surrebuttal Testimony of Kenneth Gordon	2313	2313
13	EXHIBIT NO. 46		
14	Rebuttal Testimony of Gary M. Rygh	2338	2338
15	EXHIBIT NO. 77HC		
16	11/26/08 letter from Department of Energy to AmerenUE	2382	
17	EXHIBIT NO. 243		
18	May 27, 2008 Standard & Poor's Ratings Direct	2322	2328
19	EXHIBIT NO. 244		
20	October 14, 2004 Standard & Poor's Ratings Direct	2329	2330
21	EXHIBIT NO. 245		
22	Response to MPSC Data Request 0336	2350	2351
23	EXHIBIT NO. 246		
24	Response to MPSC Data Request 0343	2351	2352
25	EXHIBIT NO. 430		
	April 20, 2008 Letter, Form 561s	2182	2183
	EXHIBIT NO. 431HC		
	Response to OPC Data Request 216	2193	2194

1	EXHIBIT NO. 432HC		
	Response to OPC Data Request 2087	2201	2205
2			
3	EXHIBIT NO. 433HC		
	Response to OPC Data Request 115	2205	2206
4	EXHIBIT NO. 434HC		
	Response to OPC Data Request 2216	2213	2213
5			
6	EXHIBIT NO. 435HC		
	Response to OPC Data Request 2214	2227	2230
7	EXHIBIT NO. 436		
	Response to OPC Data Request 2056	2231	2233
8			
9	EXHIBIT NO. 437		
	Response to OPC Data Request 2057	2233	2234
10	EXHIBIT NO. 438		
	News Release	2235	2288
11			
12	EXHIBIT NO. 503		
	Response to Staff Data Request 0340	2341	2345
13	EXHIBIT NO. 504HC		
	Response to MPSC Data Request 0332	2341	2345
14			
15	EXHIBIT NO. 759		
	Response to Noranda Data Request 006	2144	2145
16	EXHIBIT NO. 760HC		
	Response to Noranda Data Request 005	2145	2146
17			
18	EXHIBIT NO. 761		
	Response to Noranda Data Request 004	2146	2147
19	EXHIBIT NO. 762		
	Response to Noranda Data Request 003	2148	2149
20			
21	EXHIBIT NO. 763HC		
	Response to Noranda Data Request 002	2149	2150
22			
23			
24			
25			

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C E R T I F I C A T E

STATE OF MISSOURI            )  
                                  ) ss.  
COUNTY OF COLE             )

I, Kellene K. Feddersen, Certified

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

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

\_\_\_\_\_  
Kellene K. Feddersen, RPR, CSR, CCR  
Notary Public (County of Cole)  
My commission expires March 28, 2009.