BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

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Evidentiary Hearing

April 26, 2011

Jefferson City, Missouri

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In The Matter Of Union Electric Company d/b/a AmerenUE's Tariff To Increase Its Annual Revenue For Electric Service) File No. ER-2011-0028

MORRIS WOODRUFF, Presiding
CHIEF REGULATORY LAW JUDGE
KEVIN GUNN, Chairman,
JEFF DAVIS,
TERRY JARRETT,
ROBERT S. KENNEY
COMMISSIONERS.

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JUDGE WOODRUFF: All right. Good morning, everyone, and welcome to our hearing on the Ameren rate case increase request, Case No. ER-2011-0028. We'll begin today by taking entries of appearance, beginning with AmerenUE -- or Ameren Missouri.

MR. BYRNE: Good morning, Your Honor. My name is Tom Byrne. I'm an attorney representing Union Electric Company, doing business as Ameren Missouri. My business address is 1901 Chouteau Avenue, St. Louis, Missouri 63103.

MR. LOWERY: Good morning, Your Honor. My name is James Lowery of the law firm of Smith, Lewis, LLP, 111 South Ninth Street, Suite 200, Columbia, Missouri 65201. I'd like to enter my appearance, and also the appearance of my partner, Michael R. Tripp, representing Ameren Missouri.

JUDGE WOODRUFF: Thank you.

MR. BYRNE: Your Honor, I'd also like to enter the appearance of Wendy K. Tatrow in my office, for Ameren Missouri, and Russ Mitten from Brydon Swearengen.

JUDGE WOODRUFF: Okay.

For Staff?

MR. THOMPSON: Thank you, Judge. Kevin A. Thompson, Annette Slack, Steve Dottheim, Nathan Williams, Sarah Kliethermes, Jennifer Hernandez, Jamie Ott, and Meghan McClowery from the Staff counsel's office for the Staff of the Missouri Public Service Commission, P.O. Box 360, Jefferson City, Missouri 65102.

JUDGE WOODRUFF: Thank you.

Public Counsel.

MR. MILLS: On behalf of the Office of the Public Counsel and the public, my name is Lewis Mills. My address is Post Office Box 2230, Jefferson City, Missouri 65102.

JUDGE WOODRUFF: Is there anyone here from NRDC? I don't see anyone.

For Department of Natural Resources?

MS. FRAZIER: Good morning, Your Honor. My name is Jennifer Frazier with the Missouri Attorney General's Office entering an appearance for the Missouri Department of Natural Resources. My office address is P.O. Box 899, Jefferson City, Missouri 65102.

JUDGE WOODRUFF: For MIEC.

MS. VUYLSTEKE: Diana Vuylsteke of the law firm of Bryan Cave, LLP, 211 North Broadway, Suite 3600, St. Louis, Missouri 63102. I'd also like to enter the appearance of Brent Roam, Carol Iles, Ed Downey, and Mark Leadlove, also with Bryan Cave.

JUDGE WOODRUFF: All right.

For the Missouri Energy Group, Ms. Langeneckert e-mailed me last week and indicated she would not be here until her issue comes up, so she's excused for today.

For the Municipal Group?

MR. CURTIS: Leland B. Curtis, the law firm of Curtis Heinz Garrett & O'Keefe on behalf of the Municipal Group. Our address is 130 South Bemiston, Suite 200, St. Louis, Missouri 63105. I'd also like to enter the appearance of Carl Lumley and Kevin O'Keefe. Thank you.

JUDGE WOODRUFF: Okay.

MEUA?

MR. WOODSMALL: Good morning, Your Honor. Let me enter the appearance of David Woodsmall on behalf of the Midwest Energy Users Association, firm of Finnegan, Conrad and Peterson, 428 East Capitol, Suite 300, Jefferson City, Missouri.

JUDGE WOODRUFF: Thank you.

For AARP and Consumers Council?

MR. COFFMAN: Appearing on behalf of AARP and -- as well as on behalf of the Consumers Council of Missouri, I'm John Coffman, 871 Tuxedo Boulevard, St. Louis, Missouri 63119.

JUDGE WOODRUFF: Okay.

Charter Communications? Mr. Comley also

e-mailed me last week indicating he would not be able to be here today. He is also excused.

For Missouri American? Is anyone here for Missouri American?

For the unions?

Missouri Retailers?

MR. SCHWARZ: Thank you, Judge. Tom Schwarz, Blitz, Bardgett and Deutsch, 308 East High Street, Suite 301, Jefferson City, Missouri 65109, for the Missouri Retailers Association.

JUDGE WOODRUFF: All right. And I believe that's all the parties. If I've missed anyone, please let me know.

All right. Hearing nobody, I think I got everybody.

We're having a little bit of technical difficulty --

POLYCOM OPERATOR: Welcome to Polycom conference recorder playback service.

MR. LOWERY: It's a very pleasant voice, though, Judge.

JUDGE WOODRUFF: Yes. It is.

All right.

MR. MILLS: She is in my GPS.

JUDGE WOODRUFF: Are there any preliminary matters anyone needs to take up before we get started with opening statements?

MR. BYRNE: Your Honor, one of the issues we were talking about in the record before -- one of the issues was not scheduled inadvertently, and it was the LED lighting issue.

POLYCOM OPERATOR: Conference recording has started.

MR. BYRNE: And the Company and Staff were talking, and I -- I guess our -- our suggestion was to -- to maybe add that to tomorrow's list of issues.

We've only really got one issue tomorrow -- or maybe two; storms and vegetation management, so that looks to be a relatively light day. So we thought maybe we could add that to tomorrow.

JUDGE WOODRUFF: Is that agreeable to everyone else?

All right. We will pencil LED lighting in for tomorrow.

MR. THOMPSON: Judge, we'll provide a corrected list and order of witnesses showing that.

JUDGE WOODRUFF: That's fine. Thank you very much.

All right. Then let's go ahead and get started with opening statements, beginning with Ameren

Missouri.

MR. LOWERY: Good morning, and may it please the Commission. My name is Jim Lowery, and I along with Tom Bryne, Wendy Tatro, Russ Mitten, Mike Tripp and Mark Whitt (ph.) will be representing the Company in this rate case.

As indicated in the Company's direct case filing, this case is driven -- which is the fourth case that the Company has filed in just about the last four years -- it's driven almost entirely by the Company's investment of more than a billion dollars since the rate case in assets that are serving customers today, including the large rate base addition at the Sioux plant, the Sioux scrubbers that you may have heard about, and also, in part, by higher net fuel costs, which are principally driven by higher fuel costs, principally coal and coal transportation costs, and also lower off-system sales.

Those lower off-system sales are driven by the fact that power prices have essentially remained depressed, as they started to be when the financial crisis hit in late 2008, and especially as compared to the historical averages that typically have been used to set the level of net fuel costs in the Company's revenue requirement.

If the entire proposed increase that the Company is asking for, based upon the revised reconciliation that the Staff filed on Saturday, is approved, the Company's rates will still be lower than KCPL's and Empire's, as well as approximately 25 percent below the national average.

I mention what is driving this case to highlight, in part, what is not driving the case. Other than the aforementioned net fuel cost -- which involved fuel prices and off-system sales prices the Company virtually has no control over -- other administrative, general, operating and maintenance costs have actually gone down since the last rate case that we concluded, I guess, about a year ago -- or not quite a year ago.

And the reason is, is because the Company continues to manage those costs in a diligent and disciplined manner. In fact, there's only minor differences between the parties, in terms of the appropriate level of those operating, maintenance, administrative -- those kinds of costs.

The largest difference is between the Company and MIEC, and it pertains to property taxes that are going to be owed based upon the large investment of Sioux and the investment at Taum Sauk that the Company seeks to rate base.

And there's a dispute about that with MIEC, that despite the fact that those investments have been in service and are serving customers, despite the fact that they were assessed for property tax purposes at the end of this year, like all property. Of course, property taxes are not something the Company can avoid or control, just like the rest of us.

But the bulk of the remaining differences, aside from the property tax issue, really involve return on equity, which is of course common in these kinds of cases.

The principal components of the Company's request, I think, are pretty straightforward. The Company asks the Commission essentially to do four things:

First, to approve a rate increase that will allow the Company to recover the revenue requirement associated with that more than billion-dollar investment the Company has made in its energy infrastructure since the last case that's serving customers right now;

Second, to approve an increase that will allow it to have a reasonable opportunity to earn a fair return on its investment, at least commensurate with ROEs that are allowed comparable companies with whom the Company must compete for the capital that it needs to make those investments;

Third, to approve continuation of the

vegetation and infrastructure inspection trackers that have been in place for a couple of years, to continue the Company's pension and OPEB tracker that's been in place for several years, and to continue the Company's fuel adjustment clause, which has only been in place for a couple of years.

All of those mechanisms are critical to providing the Company with that reasonable opportunity to earn a fair return and to mitigate the continuing excessive regulatory lag the Company faces, particularly given the historic test year construct that we have in Missouri.

And finally, we're asking you to approve a mechanism to permit the Company to fully recover its costs associated with energy efficiency investments so that it, first, will be able to continue to make those investments, and secondly, while doing so, so it will have that reasonable opportunity to earn a fair return.

The bottom line is, the Company is seeking consistent and constructive regularly policies that support the investments that it needs to make to provide safe and reliable service and to meet the high expectations of its customers, for the benefit of those customers and its stakeholders, not just today but in the future, because, obviously, the Company has got an ongoing obligation in the long term to provide service to customers.

Now, I'd like to turn to a discussion of the main contested issues in the case. And I'm going to talk about six of them. There might be a couple of others, but I'm going to just talk about those six this morning: The Sioux scrubbers, return on equity, the Taum Sauk upper reservoir, the sharing percentage in the fuel adjustment clause, storm costs, and energy efficiency, as I mentioned a minute ago.

There's a few other issues noted on the reconciliation, and we'll deal with those when we get to each issue. As I understand it, we're going to provide some mini opening statements on each of those.

First Sioux. As I mentioned earlier, the largest driver by far of the need for a rate increase in this case are the Sioux scrubbers. The engineers call them wet flue gas desulfurization units. I'm going to stick to calling them scrubbers.

Those scrubbers are part of both of the generating units at the Sioux plant in Saint Charles County. I don't know if this picture does it justice, but the scrubbers are huge.

AmerenUE witness and vice president Mark Birk, who is vice president of power operations, has described it as like building a large chemical plant on the back of an existing power plant, and in this case, retrofitting that large chemical plant on the -- on the power plant.

I don't know if you can read the labels, but this is the new chimney that had to be constructed. This is what's called a reactive prep building. I can't explain exactly what that is, but it's something to do with how it removes the S02.

The scrubber vessels are the heart of the units. They are much larger if you're there than they appear to be here. And that piece of equipment -- that combined complex of equipment, is designed and does remove more than 95 percent of the S02 that would otherwise be emitted. That's about 45,000 tons per year.

There's one other picture I want to show you, just to give you a little bit of an idea. One of the important components of a scrubber are these huge fans that are used to -- probably something to do with the limestone and how it actually reacts and works in the absorb vessel.

You can see how big these are. We've got a human being standing here, and the whole complex is very large. So they're very large pieces of equipment.

Building huge chemical plants like this, that have to be retrofitted on existing power plants, as you might imagine, is a very complex and expensive endeavor. The Company seeks to rate base approximately

$570,000 million for the two scrubbers in this case.

That investment accounts for approximately 106 million of the $200 million rate increase that the Company is asking for. That 200 million increase is about 63 million less than the Company asked for when it filed the case.

The reason is, when the Company filed the case, it had to include pro forma adjustments as to what it thought the revenue requirement was going to be as of February. It had to try to figure out what the rate base was going to be, what expenses, and those kinds of things.

And the fact is, a number of things have come in less than the Company expected: Labor costs are down; the Sioux scrubbers cost less than the Company expected; net fuel costs are down some.

And, also, and importantly, there's been a pretty significant change because of tax law changes that occurred after the Company filed the case relating to bonus depreciation that changes the revenue requirement quite a bit. So those things together have driven the request down to 200 million from the 263 million.

The Staff has audited the Sioux project. They began with data requests as far back as 2007. There have been regular monthly reports to the Staff, and there have been various meetings with the Staff. And their audit culminated in an audit report that was filed in February of this year in the docket.

The Staff proposes one disallowance. It's a $31 million disallowance. The evidence in this case will show that that disallowance has no basis whatsoever. It's sponsored by a Staff accountant who has little or no training, experience or education in the areas relating to the key drivers that precipitate -- that underlie the proposed disallowance. And this auditor has conducted no analyses and developed no data that supports the disallowance.

The evidence will clearly show that the Staff's proposed disallowance does not create a serious doubt about the prudence of the entire expenditures that the Company has made on the scrubber project.

I'd also caution you not to be distracted by the fact that a $31 million rate base disallowance may only equate to -- when I say only -- equate to about $5 million in revenue requirement, annually. What you're being asked to do by the Staff is to disallow $31 million of investment from the Company, forever.

The next topic I want to talk about is one that we always talk about in these rate cases, and that's return on equity. I mentioned earlier the importance of setting the Company's rate such that the Company truly has a reasonable opportunity to earn a fair return; one that's commensurate with the returns on investments in enterprises having similar risk, one that will ensure the financial integrity of the Company, one that will allow the Company to attract capital on reasonable terms -- the large amount of capital it needs so that it can continue to invest and meet the service expectations of its customers.

As the Commission knows, despite diligent cost management and repeated rate cases, the Company has struggled for several years in earning its allowed return. There's been a noticeable gap most of the time.

The only time that's really changed was last summer, and that was a momentary change, when we had extremely hot weather. And then it only changed for a couple of months. This is because the Company continues to face excessive regulatory lag. The Company's need to invest in the system hasn't stopped; the environmental regulations haven't stopped.

But as the Commission knows, the Company can't reflect those investments in rate base until it has another rate case and gets new rates in place. This is because of its inability to use a forecasted test year, the statutory prohibition on CWIP and rate base; the lack of mechanism for electric utilities in Missouri, among other things.

Now, we understand the Commission's ability to address some of those rate base-related issues is limited, in particular, because of the statutory prohibition about CWIP. But there are things that the Commission can do to provide the Company a reasonable opportunity to earn a fair return.

And one of those things is to recognize that when it sets the return, it has to be cognizant of the circumstances the Company is actually facing, including the regulatory construct, including the investments that are needed, and to take that into account when it is deciding where that reasonable return should be set.

Ameren Missouri ROE expert Robert Hevert recommends an authorized ROE for Ameren Missouri of 10.7 percent based upon the analyses that he has performed. The evidence will show that this recommendation is reasonable based on the fact that the national average of allowed returns on equity in the last 12 months for integrated electric utilities is 10.3 percent. It's just 40 basis points more than Mr. Hevert's recommendation.

And when you can take into effect the -- count the fact that the Company's regulatory risks are greater than the proxy groups that he uses, that the Company's operating risks are also greater -- I think for one obvious reason, the Company has a nuclear plant;

another obvious reason is the Company relies on coal-fired generation more than the average utility.

And I think it's pretty obvious that the environmental regulations are becoming more stringent, not less, and making the risk associated with having that much coal generation greater, not less.

All of those factors strongly mitigate in favor of authorizing an ROE slightly in excess of the national average, such as the 10.7 percent that Mr. Hevert recommends.

The ROEs recommended by MIEC witness Michael Gorman and Staff witness David Murray do not reflect a fair return on equity for the Company; and given the risks and challenges I noted a moment ago, make it nearly impossible, if not impossible, for the Company to have that reasonable opportunity to earn a fair return.

Their recommendations also can't be rationalized with the authorized ROEs around the country. Indeed, the evidence will show that of 35 proceedings in that 12-month period in which an ROE was authorized, only four were at or below Mr. Gorman's revised recommendation of 9.9 percent, and that Mr. Murray's recommendation is 92 basis points below the absolute lowest of all of those.

And even more importantly, with respect to Mr. Murray, Mr. Murray's recommendation is completely outside the zone of reasonableness, and should be given no weight whatsoever for that reason alone.

And while Ms. Licante's (ph.) recommendation from MEG of 9.7 to 10 percent revised recommendation is within the lower portion of her range, she agrees that an ROE as high as 10.6 percent -- which is within her range -- would be a reasonable ROE for the Company.

The next topic I want to talk about is the Taum Sauk upper reservoir. As several of you have seen for yourself, and as I think you all know, the new upper reservoir at the Taum Sauk plant was placed in service about a year ago. It cost approximately $483 million to build.

As those of you who have been there and seen for yourself, and as the pictures Mr. Bryne is holding up show, the new reservoir is a tremendously enhanced facility, to say the least. The picture on your left, of course, is the new reservoir; the picture on your right is the old reservoir.

These pictures show the tremendously enhanced foundation that you can see in the new reservoir. It's hard to see it, but back here on the back of the new reservoir is the overflow release structure that the old one did not have.

You can't see it at all, but some of you, I think, have seen it; inside the dam is a drainage gallery that allows engineers access and allows them to monitor the health of the dam. And there are a number of other enhancements, not to mention that the structure itself is a substantially enhanced facility over the structure that existed before.

This new facility is constructed of more than 3 million cubic yards of concrete, and it's a facility that is going to provide significant value to customers for at least the next 80 years.

In this case, the Company is seeking a rate base approximately $90 million of its investments. The evidence will show that the cost and related value of the numerous enhancements in the facility -- indeed, the substantially enhanced facility as a whole -- far, far exceed that $90 million, and far exceed the costs that it would have taken to remediate or rebuild the old facility, which would have been necessary, even if it had not failed in 2005.

I encourage you to ask Mr. Birk, the Company's vice president of power operations, and AmerenUE witness and dam safety expert Dr. Paul Rizzo about this new facility.

The evidence also shows that the new facility's extended life and slightly increased capacity will provide in 2010 dollars at least $170 million of incremental energy benefits to customers. And those benefits flow through the Company's fuel adjustment clause to customers -- or, at least, 95 percent of them do.

Finally, the evidence demonstrates that the $90 million of investment the Company seeks to rate base in this case are allowed costs under the Company's settlement with the State of Missouri, and that the Company has fully lived up to its commitment to protect customers from the cost of the failure of the original structure.

Indeed, those commitments, which are clearly spelled out in the state settlement, have resulted in the Company absorbing nearly $100 million of costs related to the failure.

There is absolutely no credible evidence in this case that supports denying the company recovery of that $90 million in investment.

To the contrary, the only testimony offered in opposition to that recovery is from Office of the Public Counsel witness and economist Ryan Kind, whose entire testimony on the subject is essentially a plea to the Commission to deny recovery of that $90 million based upon his personal opinion.

That is based upon his tortured and inaccurate construction of the Company's commitment to protect customers from the effects of the breach itself.

The evidence reflects, without a doubt, that this commitment has been met. And the evidence will show that -- also show that Mr. Kind's opinion about what would have happened with the old upper reservoir -- an opinion that he's not qualified to give in the first place -- has been thoroughly discredited by the testimony of Dr. Rizzo, who is a dam safety and FERC expert with forty-plus years of experience.

The next thing I'd like to talk about is the fuel adjustment clause. As I mentioned, the Company has had a fuel adjustment clause for barely two years. As noted earlier, it's been a tremendous struggle for the Company to actually earn its allowed ROE with the fuel adjustment clause; it would have been far more difficult without it.

Some other parties' protests notwithstanding, there's no credible evidence that supports making any material change in the fuel adjustment clause in this case, let alone doing away with it.

That means that, really, the only issue before you, in substance, is whether to adopt Staff's proposal. Staff's proposal is really an experiment. The Staff says, Commission, you should experiment -- or you could experiment, if you want to -- perhaps that's a fair characterization of what they say -- You could conduct an experiment, and that experiment would be change the Company's sharing mechanism from 95.5 percent to 85/15 percent.

Now, I'll talk more about this issue in more detail when we actually get to it next week. But the overwhelming evidence in this case will show that there's simply no basis to support the need for an experiment, that an experiment should be made, or to make any change in the sharing percentage.

The evidence will show that there's no proof of imprudence on the Company's part in either how it buys fuel, how it manages its off-system sales, runs its power plants, and that there's no basis to make an arbitrary change in the fuel adjustment clause mechanism, as the Staff, I would characterize, is sort of inviting you to do.

Next I want to talk about storm costs, which are probably on everybody's mind a little bit, given what happened last week. We learned again Friday night that Mother Nature is unpredictable, and that she can cause devastation and destruction that is difficult to predict and can cause it on a grand scale.

The National Weather Service is calling the tornado that hit St. Louis the worst in St. Louis since 1967. It reached an F-4 level. At times -- I talked to an

AmerenUE -- Ameren Missouri employee whose house lost one piece of siding, and a few doors down, the houses are completely gone.

There were about 2,700 buildings that were damaged or destroyed, and it's a miracle that nobody was killed, and that more people were not hurt.

Unfortunately, about 47,000 Ameren Missouri customers were without power for a period of time over the last three or four days. But I'm happy to report that as of this morning that number is down to about a thousand. And some of those, unfortunately, are service locations that can't be hooked up, because they don't exist anymore.

At its peak, the Company had 2,400 people working day and night to get service back on. And the damage was extremely severe in this area. But the Company has worked very hard, and was prepared for the storm, as it has been for the last several years.

And I think you'll conclude when the event is over, the Company did a very good job of responding and doing what it needed to do to get people back online.

The point of that discussion is first to update you, because I'm sure it's on your mind a little bit; and secondly to point out the fact that utilities can't control storm costs, and they can vary wildly from year to year. In the test year, the storm costs were very minimal.

In the trued-up test year, storm costs were higher -- at least, costs involved in preparing for what we all thought was going to be a terrible ice storm back in the first of February, that turned out to be a 20-inch snowfall -- or 15- or 20-inch snowfall that kept some of us at home for a couple of days.

But the point is, storm costs are unpredictable. They can vary wildly. And we think that it's important that the Company be allowed to recover all of its storm costs. And we think the Commission's decisions in recent years reflect that same -- that same general philosophy. And undoubtedly, Ameren Missouri is going to face very large costs from the storms that it's still recovering from now.

The problem in this case is that neither the method that the Staff is proposing, or that MIEC proposing -- is proposing, which is essentially the same method, to normalize storm costs in this case -- that method is not going to allow that full recovery -- or it's less likely to than the method that the Company is using.

The Company proposal is simple: Take the last 47 months. Look at what actually happened. Take an average. And because of the ups and downs, that is likely to do the best job that we can do to set a level that, on average, we could expect to be actually incurred in the future.

The dispute in the case is how to calculate the average. What the Staff and MIEC do is they sort of -- they sort of calculate a fictional average. They remove some of the costs that actually occur, and calculate an average that is about 2.2 million less than what actually the average is, if you include all of the costs.

What we're trying to do is use this historical data to set a level that's going to be incurred as best we can tell. And obviously, we can't predict with certainty in the future. The Company's method does the best job of that, and MIEC and Staff's method does not and should be rejected.

The last issue I want to talk about is one that I -- there's been a lot of discussion about in Missouri in the last year or two, and that's energy efficiency.

The Company's testimony from senior vice president Richard Mark, from Dan Laurent, from Bill Davis, all reflect that the Company has a strong desire to invest in energy efficiency. The Company wants to be a partner with its customers in helping them use less energy. The dispute in this case isn't about that.

The dispute in the case is about how we take advantage of the benefits that I think we all know energy efficiency can bring in a manner that's fair to utilities and to customers at the same time.

That was the goal of the Missouri Energy Invest -- or Energy Efficiency Investment Act, or MEEIA. But to put it bluntly, that goal is being thwarted by the positions that other parties are taking in this case about Ameren -- about energy efficiency.

And it's important to keep those goals in mind. So I want to tick off -- tick them off real quickly. The goals and the policy of MEEIA are, first, that demand-side investments are to be valued equally with supply-side investments; second, that timely cost recovery is to be allowed; third, that utility financial incentives are to be aligned with helping customers use energy efficiency measures; and finally, the timely earnings opportunities are to be provided associated with savings that can be realized from energy efficiency.

The evidence is unrefuted in this case that without approval of a mechanism to address the fact that the company loses money when energy efficiency measures take hold -- or to put another way, without a mechanism to address the throughput disincentive that I know you are all familiar with -- those goals, those policies will not be achievable.

That is because the proposals set forth by other parties result in losses to the Company that only exacerbate the current, excessive regulatory lag the Company faces; that take away cash the Company needs to invest.

Because of that, and because the evidence is unrefuted, that without such a mechanism, the Company's financial incentives simply are not aligned with the customers' use of energy efficiency.

Because of that, the Company is asking the Commission to adopt a mechanism that reflect that policy; that reflect an alignment of the Company's interests with its customers' interests.

The Company urges the Commission to do that in this case. If that doesn't happen, the evidence will reflect that the Company is not going to have any choice but to reduce its energy efficiency expenditures. The Company doesn't want to do that, but the Company can't continue to lose money on every dollar that it spends. There has to be a way to address that problem.

The Commission can make sure that doesn't happen by continuing the amortization of the costs the Company incurs after December 31, over six years, like has been -- is being done, and also by adopting the billing unit adjustment mechanism that deals with this throughout disincentive problem that is discussed by Mr. Davis's testimony in this case.

There are a few other issues the Commission will hear about over the next couple of weeks. I won't talk about them now. But I'll reclude -- I'll conclude my remarks by touching on just a couple of points.

It's obvious that even the 8 percent increase that the Company is asking for -- and that's what the increase is, based on the revised reconciliation -- which is about 25 cents a day for the average residential customer -- it's obvious that that matters to customers.

None of us like paying more. I don't like it; you don't like it. But the Sioux scrubbers had to be paid for; fuel has to be bought; investments in the system have to be made; storms have to be prepared for and responded to. And those things cost money, and I -- I believe -- I think you believe -- that the vast, vast majority of people understand that.

In the end, the Company asks only this: Permit it to recover the costs associated with the investments its made; permit it to recover its legitimate operating expenses; set its allowed return at a level that allows it to compete for the equity capital that it needs, and to continue to make the investments that it needs to make to meet the high expectations of its customers, and that are commensurate with returns of other enterprises.

We again look forward, for the fourth time in four years, to developing the record in this case for you, and answering your questions -- which I'm sure that you have some -- about all of these important issues.

I appreciate your patience. Thank you for your time this morning.

JUDGE WOODRUFF: Thank you.

Opening for Staff?

MR. THOMPSON: Thank you, Judge.

I have copies of the reconciliation that Staff filed before you.

(Whererin; Staff Exhibit No. 230 was marked for identification.)

COMMISSIONER DAVIS: Thank you.

MR. THOMPSON: Certainly.

I knew it wouldn't be that easy. We'll just work with the more primitive, but very reliable, technology of the paper exhibit. May it please the Commission.

Today, you take up Ameren Missouri's request for a general rate increase. Ameren Missouri seeks additional revenues on an annual basis of some $200.6 million. Staff believes that the Company is entitled to an increase of only 85.5 million, a difference of over $115 million.

There are also rate base differences between Staff and the Company, amounting to some $33.5 million. Other parties have other differences with the Company.

Your duty today is to set just and reasonable rates after consideration of all relevant factors. Just and reasonable rates will produce annual revenues that recover Ameren Missouri's prudent operating and maintenance expenses incurred in providing electric service to ratepayers, and will permit the shareholders a reasonable opportunity of earning a fair return on their investment.

Staff has audited the Company and carefully reviewed and considered its operations during the test year and its proposed additions to rate base. Staff has prepared a set of recommendations that, if adopted, will result in just and reasonable rates.

Rate setting is a balancing act. Your task -- and it is no easy one -- is to balance the interests of the Company and its customers and all of the various stakeholders in the light of the public interest.

We believe that the public interest demands financially stable and secure utilities that, nonetheless, must strive to be efficient in order to earn a profit. Rates must be set so as to not only enable the Company to continue its operations and service to the public, but to attract capital at reasonable rates.

There are 13 issues for your determination, many of which present a number of questions. The parties will continue the practice of making short opening statements to introduce each of the topics in turn, so I will keep my opening remarks brief.

With respect to regulatory policies, my opening remarks have shown Staff and the Company agree that the Commission should set just and reasonable rates, rates that allow full recovery of the Company's prudent operating expenses and an opportunity to earn a fair return on the investment represented by the value of the Company's rate base net of accumulated depreciation.

With respect to the testimony of the public taken at local public hearings, Staff has taken no position. Staff points out, however, that those hearings are part of the evidentiary record of this case, and that sworn ratepayer testimony is part of the record.

The Commission must consider it. It is part of the all relative factors that you must consider. The Commission may rely on it, for what it's worth, and base findings of fact upon it.

With respect to vegetation management and infrastructure inspection, Staff and the Company agree that the trackers should continue. Public Counsel and MIEC, M-I-E-C, oppose the continuation of those trackers.

With respect to storm costs, Staff and the Company differ. Ameren Missouri urges the Commission to include $7 million in rates. Staff says include only 4.8 million.

Ameren Missouri also wants the difference between the amount of non-labor storm costs incurred during the true-up period and the normalized level of non-labor storm costs to be included in the revenue requirement for ratemaking purposes. The amount of that difference is $1 million.

The Company wants that amount amortized into rates over five years; Staff opposes that treatment. MIEC agrees with Staff. Staff's position is worth reduction of annual revenue requirement of $2.4 million.

Staff and the Company differ on the Sioux scrubbers rate base addition. Staff believes that about $33.5 million should be excused from rate base as imprudent. This amount reflects construction costs and AFUDC incurred as a result of Ameren Missouri's decision to temporarily suspend the project during the financial crisis that began in the fall of 2008.

Staff contends that the Company had access at the time to adequate credit resources such that there was no need to suspend the project. The Company argues that suspension was a prudent decision, and that the resulting costs should consequently be borne by the ratepayers.

Public Counsel, AARP, and the Consumers Council support Staff's position, which in addition to its rate base impact, represents a reduction of 4.6 from annual revenue requirement.

The energy-efficiency, demand-side management issue includes ten separate questions for determination by the Commission. From Staff's point of view, there are two primary questions: First, how much energy efficiency and DSM should Ameren Missouri undertake going forward? Second, how will it be reimbursed?

This Commission held in its recent report and order in the KCP&L rate case issued just two weeks ago today that utilities within the Commission's jurisdiction must comply with MEEIA, regardless of whether or not the proposed rules under the law are effective. The statute, after all, is effective.

Staff does not agree with the Company that its rate request in this case constitutes a sufficient MEEIA application. Staff witness John Rogers has explained in his testimony how Ameren Missouri's filing is deficient.

Staff is in agreement with the Company, with Public Counsel, and with Missouri DNR that at least the current level of DSM programming expenditures should continue. In its recent Chapter 22 compliance filing, Ameren Missouri committed to continue pursuing a modest energy efficiency portfolio which helps to preserve the option to switch to a more aggressive path.

Staff further agrees with the Public Counsel and DNR that MEEIA requires Ameren Missouri to implement Commission-approved demand-side programs with a goal of achieving all cost-effective demand-side savings. Ameren Missouri is not complying with this provision of the law.

Staff again in agreement with Public Counsel and DNR believes that Ameren Missouri should continue to ramp up its demand-side management programs to pursue all cost-effective demand-side savings. MEEIA requires that the Company do this.

Both Staff and the Public Counsel agree that Ameren Missouri's request for DSM cost recovery in this case does not constitute a sufficient application under MEEIA. The statute sets out certain technical requirements that are simply not met.

Ameren Missouri did not file a timely application with the Commission to approve its DSM programs as part of this case, and did not develop and present a portfolio of DSM programs that are designed to achieve all cost-effective demand-side savings. These are requirements under MEEIA.

Because Ameren Missouri has not yet presented a sufficient application, the Commission cannot approve Ameren Missouri's demand-side programs in this case, and cannot approve a demand-side investment mechanism in this case.

Staff is at issue on this point with the Company, with Public Counsel, and with DNR.

Additionally, Staff opposes changing the six-year amortization period to a three-year amortization period. Public Counsel is aligned with Staff on this question.

Staff opposes the adjustment to billing units that Ameren Missouri has proposed, as does the Public Counsel. However, if the Commission does implement the billing units adjustment requested by Ameren Missouri, then the Commission should also order a corresponding adjustment in the calculation of net-based fuel cost rates.

Staff takes no position on the use of low-income weatherization funds to engage an independent third party to evaluate the program.

With respect to the Taum Sauk rate base addition, Staff does not oppose Ameren Missouri's proposal to place some 89 or $90 million in rate base, to reflect enhancements to the Taum Sauk plant as rebuilt.

That addition is opposed, however, by Public Counsel and by AARP and the Consumers Council.

The Public Counsel, AARP and Consumer Council position is worth about $90 million in rate base, and about 10.3 million in annual revenue requirement.

With respect to municipal lighting, Staff's position is that the street lighting customer class should receive the system average percentage increase plus approximately an additional 1 percent increase because the current revenue responsibility of that customer class is less than Ameren Missouri's cost to serve the class.

The largest single issue in this case is the cost of capital issue. That issue is worth $107.5 million in annual revenue requirement. And I'm referring to Staff's position.

The Company's expert, Robert Hevert, proposes a cost of common equity -- also known as return on equity, or ROE -- in the range of 10.4 to 11.25. Its specific recommendation is 10.7.

Ms. Licante for MEG proposes 10. Mr. Gorman, for MIEC, proposes a range between 9.8 and 10, and in no case higher than 10. His specific recommendation is 9.9.

Staff's expert panelist, David Murray, proposes a range between 8.25 and 9.25, with a midpoint

8.75.

As background, consider that just two weeks ago you awarded an ROE of 10.0 to KCP&L. In that same decision, you found that the recent national average award was 10.34 percent, and the average award in states bordering Missouri was 10.25 percent.

There are five questions in the fuel adjustment clause issue, six if you count the extra one that MIEC threw in. Staff urges the Commission to continue the FAC with modifications.

First, change the line item label on customers' bills; change the sharing percentage to 85/15; reduce the recovery period to eight months; do not allow the Company to retroactively correct errors; adopt the tariff language sponsored by Staff expert David Roos.

With respect to LED lighting, Staff's position is that the Commission should order Ameren Missouri not later than 12 months following the effective date of the report and order issued in this case to complete its evaluation of LED lighting systems; and based on the results of that evaluation, to either propose -- excuse me -- to either file a proposed LED lighting tariff or explain why such a tariff should not be filed.

Staff's position on the solar rebates is that the renewable energy standard rate adjustment mechanism, the RESRAM, is the appropriate cost recovery mechanism.

If the Commission instead adopts for an accounting authority order, then Staff believes that the Company should not be authorized in this case to implement an AAO, an accounting authority order, to recover the costs it occurred for compliance with renewable energy standards before the true-up date in this case.

The amount of solar rebate costs Ameren Missouri should be allowed to include in the revenue requirement used to set rates in this case is the amount annually incurred during calendar year 2010, which does not exceed the cap of 1 percent.

Staff's position on this issue is worth approximately a $407,000 reduction to rate base -- excuse me -- to revenue requirement.

Staff has no position on the issues raised by the unions, and has not been able to quantify the revenue requirement impact of the unions' positions.

Staff and the Company are agreed on the property tax issues. Ameren Missouri should include the full amount of the tax -- $10.7 million -- in revenue requirement. Public Counsel and MIEC oppose this inclusion.

There are several rate design questions.

Staff recommends that the Commission use Staff's base intermediate peak, or BIP, methodology to allocate investment costs among the rate classes.

Staff recommends that this same method be used for allocating investment in plant, but the NARUC method be used when allocating operation and maintenance expense.

Staff recommends that the Commission rely on its class cost of service study to design rates that move each class closer to its actual cost of service, while maintaining rate continuity, rate stability, revenue stability, and minimizing rate shock.

Staff recommends that the small general service and large transmission service rate classes receive the system average increase, as the revenue responsibilities of the customer classes are close to the cost of serving them.

Staff recommends that the residential and lighting customer classes receive the system average percentage increase, plus an approximate additional 1 percent increase because the current revenue responsibilities of those classes are less than the cost of serving them.

Staff recommends that the large general service, small primary service, and large primary service rate classes receive no increase for the first $30 million, because their current revenue responsibilities exceed Ameren Missouri's cost of serving them.

For any Commission-ordered increase above 30 million -- the additional amount above 30 million should be allocated on an equal percentage basis.

Finally, Staff recommends that the Commission maintain the non-residential rate schedule's interrelationship uniformity for customer charges -- Rider B voltage credits, reactive charge, and time-of-day customer charge.

Thank you.

JUDGE WOODRUFF: Thank you.

Opening for Public Counsel?

MR. MILLS: Good morning. May it please the Commission.

I will be very brief this morning given the opportunity to make mini openings with each of the issues as they -- as they come up. I will talk primarily about the overview of policy issues that are going to be addressed today and some other issues that will likely come up during Mr. Baxter's testimony.

With respect to the overview and policy issues, you have an issue in the issues list that I think if it's not new, it certainly has not appeared in the issues list in the last few AmerenUE cases, and that's the question of what should the Commission do about the public testimony?

I don't think there is any disagreement among the parties -- at least, not that I'm aware of -- that the Commission can consider that testimony.

After all, it's sworn testimony; the witnesses were subject to cross-examination; it's preserved in the record; it is at least as competent evidence as any of the expert witnesses you're going to hear today, although it is lay testimony rather than expert testimony, for the most part.

I think the question really is: What should the Commission do with that testimony? AmerenUE, I think, would concede that although you should consider it, it doesn't really have a plan about how you can actually take that into account when you're issue a report and order in this case.

My position is that the Commission can do at least two things with this testimony. The first is, because the Commission's charge -- and Mr. Thompson just pointed out -- is to set just and reasonable rates to balance the interest of the public and the utility, all with an eye towards the public interest, which in the case is the Commission's primary focus and primary function, the

Commission should establish a just and reasonable rate, taking this evidence into account.

The way I think that you should do that is, once you have determined what a reasonable range of returns on equity is, the Commission should establish a return in this case for AmerenUE at the bottom end of that range, so that it is still a reasonable rate of return, but it also takes into account the interest of the public as expressed in sworn testimony.

There is a second mechanism that I would urge the Commission to consider. You heard from Mr. Lowery, in his opening statement, that this case is driven primarily by investments in rate base.

Section 393.155 allows the Commission, in the case of an increase that is driven by an unusually large addition to rate base, to phase in the rates.

That's a statutory mechanism that the Commission has in its toolbox, and it's one that fits quite well in this case that's before you today, because the Company has conceded that the driving force of this case is not increases in expenses, it's rate base. And that's exactly what 393.155 is designed to cover.

So with respect to the overview and policy issues of how should the Commission take the local public hearing testimony into account, the evidence with regard to the state of the economy, and the hardships facing AmerenUE's customers, those are two mechanisms that I think the Commission should consider and should use in terms of setting rates in this case.

Now, with respect to a couple of the other issues that are likely to come up today -- one is the Taum Sauk issue, because Mr. Baxter is taking the stand just one time and he does have testimony about Taum Sauk.

Mr. Lowery, in his opening statement, pointed out that the cost that the company seeks to recover in this case, the capital investments, are allowed costs under the consent agreement. And I don't disagree with that.

But I think the important thing to remember is that in that agreement, allowed cost does not mean costs that the Company is allowed to recover on. It means costs that the Company is allowed to request recovery on. It's up to this Commission to decide whether to allow that recovery. It's not automatic; it's still within the discretion of this Commission.

So simply characterizing them as allowed costs, whether -- has no bearing on whether this Commission decides to force those costs on ratepayers or make the Company bear them, as Public Counsel has urged you to.

Finally, the -- and there may be other

issues, but the -- the other issue that is likely to come up in testimony today has to do with energy efficiency and demand-side management.

The Company has recently filed an integrated resource plan, and I think there will be some questions for Mr. Baxter, exploring the seeming disconnect between what the Company believes is the right thing to do and the most efficient and least cost alternatives in its integrated resource plan, and what it's proposed to do in this case. And I urge you all to question Mr. Baxter closely about that disconnect, as I imagine some of the parties will do.

Thank you.

JUDGE WOODRUFF: Thank you.

Opening for DNR?

MS. FRAZIER: Good morning. May it please the Commission.

I have a very short opening statement. But first, I'd like to say this is my first appearance before you, and it's a honor to be here and to learn a whole new interesting area of the law.

There are many differing interests represented by the parties in this rate case, and despite their different viewpoints, they have one thing in common: They all focus on the short-term -- for the most part, the time period until the next rate case.

The Department of Natural Resources is intervening in this rate case for a different purpose, and that is to recommend short-term solutions that also make sense for the long-term. Energy efficiency, as implemented through demand-side management programs, has proven to be a successful cost-effective way to keep the direct and indirect costs of energy low into the future.

When considering the issues before it in this rate case, especially those pertaining to demand-side management, we respectfully encourage the Commission to continue forging a path forward that leads to energy efficiency programs being used to meet our state's long-term energy needs, instead of costly alternatives.

We will be making more detailed statements in our mini openings later in the week. And I appreciate your time. Thank you.

JUDGE WOODRUFF: Welcome.

COMMISSIONER JARRETT: Yes. Welcome. And promise we won't bite. Well, maybe I should just speak for myself.

COMMISSIONER GUNN: Probably.

JUDGE WOODRUFF: All right. Opening for MIEC?

MS. VUYLSTEKE: I apologize in advance for the size of our exhibit. Let me try this. May it please the Commission.

Where can an industrial Company go when rates rise too quickly, when rates become too volatile, and rates increase too much? Missouri's economy depends on our manufacturing base.

60,000 jobs are represented by the MIEC companies, and these are the jobs that support Missouri's families, our stores, and our restaurants.

Missouri industry competes globally. And unlike Ameren, industrial customers don't have a commission to come to when their costs go up. And they don't have a way to protect themselves from volatility in the marketplace unless they manage their business with great caution.

Manufacturers who compete globally in all of MIEC companies do everything they can to scrutinize every cost, and they decide where to invest based on a climate's location and -- excuse me -- based on a location's business climate.

Electric -- electricity costs are currently one of the vast assets of Missouri's economy. They are relatively low. But that Missouri advantage is being diminished, and it's being diminished by a path that's being pursued by the utilities. While costs are going up -- it's true -- for utilities, utilities in this state -- and Ameren in particular in this case -- has sought to increase its rates more than necessary in each of its cases over the past four years.

In the current case, where the state's employment rate is over 9 percent, given the state of the issues, Ameren seeks about an 8 percent rate increase.

Within two years, Missouri has lost over 25,000 manufacturing jobs. If you look at the issues in this case, and as you look through the evidence, you see a theme with regard to every issue. Ameren seeks an excessive ROE; it seeks trackers that are no longer necessary for increasing cost items. And at the same time, in other proceedings, it's continued to seek rate increases through it's fuel adjustments, which are very significant.

It also has a consistent theme that incentives are needed for Ameren to fulfill its duty to provide efficient, safe and reliable service beyond the ROE, beyond the standard regulatory incentives.

To the MIEC companies that have been forced to lay off workers and to dig to the bottom for efficiencies to keep their doors of their Missouri plants open, these rate increases are devastating.

These manufacturers, as global competitors, face enormous uncertainties that are not comparable and far exceed Ameren's risks. Global competition does not leave room for annual rate increases, surcharges and trackers. And while Ameren can come to this Commission when it seeks greater revenues and greater assurance of cost recovery, there is nowhere for Missouri's manufacturers to go.

The chart here demonstrates the recent experience of Ameren's customers. And it shows that all of our adjustments create a huge difference between, you know, what Ameren is saying that its costs are needed to be and what we think that they actually are.

And I think that with regard to every issue where there are great difference, you should just keep in mind that if you err on the side of greater increases, that ultimately the cost to Missouri will be permanent if we lose jobs. Ameren can come back to you again, but for manufacturers who may have to lay off workers, the damage can be permanent.

And we'd appreciate it if you would consider this in mind and keep jobs in mind as you weigh your decision in this case.

Thank you.

JUDGE WOODRUFF: Thank you.

COMMISSIONER DAVIS: Judge, can I inquire of Ms. Vuylsteke for a minute?

JUDGE WOODRUFF: Sure.

COMMISSIONER DAVIS: Oh, can I -- can we

leave the chart up there? Now, is that the total reduction in this rate case that MIEC has proposed?

MS. VUYLSTEKE: That's the difference between the various adjustments that have been proposed in this case by the MIEC through its testimony -- the difference between that and the original proposal.

COMMISSIONER DAVIS: The difference between that and the original proposal. So now, if I understand it right, looking at the revised true-up reconciliation that was handed out by Mr. Thompson earlier, Ameren is now requesting approximately $200 million, and the MIEC difference is approximately 58.4 million; is that correct?

MS. VUYLSTEKE: I believe that's the latest reconciliation.

COMMISSIONER DAVIS: Okay. So you would agree, then, that they're entitled to approximately 142 million?

MS. VUYLSTEKE: I think that's the current state of the issues.

COMMISSIONER DAVIS: Okay. And let me ask you this, Ms. Vuylsteke: Do your clients have any desire to be deregulated?

MS. VUYLSTEKE: Our clients are deregulated.

COMMISSIONER DAVIS: No. Do they have any desire to shop for electricity in --

MS. VUYLSTEKE: I --

COMMISSIONER DAVIS: -- in terms of deregulating?

MS. VUYLSTEKE: I think that the desire of all businesses to seek competition in every aspect of their costs is definitely present. I do think that they don't want to be served by a deregulated monopoly. And as long as we are served by monopolies that we have to have good, strong, rigorous regulation.

COMMISSIONER DAVIS: Okay. So let's just say the conventional model of deregulation of electricity. So we would still regulate the distribution company; we would just no longer regulate generation and transmission. I mean, is -- are your members in favor? Would they prefer that model?

MS. VUYLSTEKE: My clients have not authorized me in this case to opine on various deregulation models. But I will say that there have been times in the past where industrial consumers have advocated around the country for competition. I think that that's a very long way into the future. And right now we want to make the system that we have work as well as it can for the economy, and that's regulated traditional model here.

COMMISSIONER DAVIS: So nobody wants to up and move to Illinois or to Texas, where they can shop for electricity?

MS. VUYLSTEKE: I think that all of the companies that are in the MIEC want to stay right here in Missouri, and their primary concern is global competition and just being able to keep their doors open here.

COMMISSIONER DAVIS: Okay. And going back, you agree that Ameren's revenues as of right now are insufficient. Correct?

MS. VUYLSTEKE: There is an agreement in this case that Ameren is entitled to some level of rate increase.

COMMISSIONER DAVIS: Right.

MS. VUYLSTEKE: I think the issue is on many issues, what they have sought is excessive.

COMMISSIONER DAVIS: Right. And correct me if I'm wrong, but these numbers that are in this case are built on the numbers from the previous case. Correct?

MS. VUYLSTEKE: I believe --

COMMISSIONER DAVIS: They're built on the rate case -- the rates that are actually in effect right now.

MS. VUYLSTEKE: When you say "built on," that confuses me a little bit, because --

COMMISSIONER DAVIS: Okay. Well --

MS. VUYLSTEKE: -- every rate supercedes the prior rate.

COMMISSIONER DAVIS: Right. So for instance, if the rates from the ER-2010 case were stayed, then the rate increase in this case would be significantly higher. Correct?

MS. VUYLSTEKE: I don't know if that would be the case. I can't do an evaluation based on any stay of the 2010 rate increase. There is no stay of that increase in effect. And I don't know what a court would do regarding stays of issues.

COMMISSIONER DAVIS: Okay.

MS. VUYLSTEKE: I think there's legal uncertainty about the level of a stay, if such a stay were to be granted.

COMMISSIONER DAVIS: Okay. So if AmerenUE's rates were such that they were collecting $200 million less than they are currently collecting, then -- and then they were asking for a rate increase, then these numbers would all be $200 million higher. Correct?

MS. VUYLSTEKE: I don't know, Commissioner. I'm sorry. I don't know what the difference would be. It just depends on what Ameren's costs are at the time. Ameren can certainly -- if there was some suspension of their rates that required them to seek rate relief, they would be here before the Commission doing so. That is not the case.

COMMISSIONER DAVIS: Yeah. So, then, it's your position that in ER-2010 that all the costs that were disposed of, that those are already in rates and we're just dealing with proposed adjustments to those costs in this case. Correct?

MS. VUYLSTEKE: That is correct.

COMMISSIONER DAVIS: Okay. Thank you.

JUDGE WOODRUFF: Thank you.

MEG, I know, is not here.

MEUA?

MR. WOODSMALL: Thank you. We'll be withholding any opening statement until our mini openings. Our focus will be just on class cost of service, rate design, so we'll offer it at that time.

Thank you.

JUDGE WOODRUFF: Thank you, Mr. Woodsmall.

Opening for AARP and Consumers Council?

MR. COFFMAN: May it please the Commission. Good morning.

I would like to start by agreeing with the Public Counsel regarding local public hearing testimony, and would like to remind you that the -- that the State of Missouri law does not state that the Public Service Commission's guiding star is to protect regulated monopoly utility earnings. Rather, Missouri law states that the guiding star of the Public Service Commission is protection of the public.

Missouri law says that decisions of this Commission need to fairly balance the interests of utility shareholders and utility consumers.

And I contend that this means the Commission needs to, in an even-handed and fair way, consider evidence about impact on the consumers, whether the proposed rate increase is reasonable, whether it can be fairly borne by most consumers, and to -- and to take into account the current financial crisis when it issues its final decision in this case.

The local public hearing testimony is relevant and I think compelling to many, if not most, of the issues that you're going to hear this week. And so I would ask that you go back and take a look at that public hearing testimony and consider it in conjunction with the testimony that you will see this week and next week.

The public hearing testimony is replete with consumers explaining what a rate increase would mean for them given the financial situations that they are currently experiencing since the 2008/2009 economic recession.

The utility -- if you move to the very next issue, the Sioux scrubbers -- the -- Ameren Missouri is asking that they receive 31 million extra cost related to their experience with the extent and severity of the financial crisis in 2008/2009.

I would contend that the local public hearing testimony shows you that the lingering effects of the 2008/2009 financial crisis has been more severe on an individual basis to consumers; and that if the Commission is willing to consider Ameren Missouri's arguments about how its rates need to be increased, and consumers need to pay more because of the financial crisis of 2008/2009, that that is an unfair and not an even-handed way to go about setting rates.

We ask that you give full recognition to the testimony that has been already accepted in the record on that point.

The local public hearing testimony will also show that the public is closely watching the way the Commission resolves the Taum Sauk issue -- the enhancements issue in this case.

The general public has heard about the catastrophic errors that Ameren Missouri committed, and the damage that resulted. I think that it's rather easy to understand that the rebuild and -- including the enhancements, were all the consequence of that catastrophe.

And we ask that you not allow consumers to bear any cost related to that -- to those errors and that terrible catastrophe.

Moving on to the fuel adjustment clause, we ask that the Commission follow the current fuel adjustment clause statute in analyzing whether the current fuel adjustment clause should be continued or extended, or discontinued, or the third option that is statutorily offered -- to modify it.

My clients, AARP and the Consumers Council of Missouri, have a fundamental opposition to the fuel adjustment clause. We believe that it has deteriorated the incentive for Ameren Missouri to manage its fuel and purchase power cost.

It has caused rates to increase dramatically at times. It has allowed rates to become more volatile. And we believe that, overall, it is leading to rates that are higher than they otherwise would be, if not allowing rate increases at times when overall cost do not justify those increases.

It has not been that many years ago that Ameren was thriving financially, even though it bore 100 percent of the risk variation in its fuel purchase power costs.

And it hasn't been that long ago that even under this current fuel adjustment clause statute that this

Public Service Commission determined that Ameren did not need a fuel adjustment clause, part -- in part due to the dynamic situation with its off-system sales.

My clients do not believe that the situation has changed in the intervening years to justify it; that if there is any electric utility in this case that does not need a fuel adjustment clause, it would be Ameren Missouri; and that the statute intends for this Commission to analyze anew, in each case, whether a fuel adjustment clause is absolutely necessary for the utility to have a reasonable opportunity to earn, and whether it is fair to consumers and shareholders.

The evidence in this case, I believe, will show that the consumers have absolutely no control over the management of Ameren's fuel and purchase power costs. Sure, they could try to conserve; they can do what they can, but they really have no control over the cost.

Now, Ameren Missouri will point out that they do not have complete control, but obviously they have choice of resources, they have choice of how they manage those costs; they have decisions regarding off-system sales. They have a great deal of control, whereas consumers have none.

But under the current fuel adjustment clause, the risk is borne 95 percent by the consumers. And if a party, on the other hand, that has -- that does have some control bears only 5 percent of the risk.

My clients believe that this utility can do fine with its return on equity that compensates it for bearing risk, and that it does not need to have 95 percent of its risk socialized amongst the general body of ratepayers. In fact, even bearing 85 percent of that risk, in our opinion, is grossly unfair and unreasonable.

But if this Commission feels that a fuel adjustment clause is justified in this case, the greater that Ameren can actually bear the greater amount of skin in the game that it has, we believe, the better that the system will work.

I'll reserve any other comments on other issues to mini openings, but thank you very much. That's all I have.

COMMISSIONER DAVIS: Judge, I've got a couple of questions --

JUDGE WOODRUFF: Go ahead.

COMMISSIONER DAVIS: -- for Mr. Coffman.

Mr. Coffman, looking at the true-up reconciliation statement filed in this case, as well as your position statements, if I am interpreting correctly, you seem to accept that AmerenUE -- or Ameren Missouri should be allowed to earn at least an additional $75

million; is that correct?
MR. COFFMAN: I believe that would be it. I would take the -- take the Staff position. We support the --
COMMISSIONER DAVIS: All of Staff's -- basically all of Staff's --
MR. COFFMAN: The Taum Sauk.
COMMISSIONER DAVIS: -- positions, plus Taum Sauk. So they're entitled to at least -- they're entitled to 75 -- you're saying that they're entitled to a new 75 million?
MR. COFFMAN: I -- in that neighborhood, yes. I believe that's about right.
COMMISSIONER DAVIS: So you're not saying that Ameren Missouri's rate request should be denied in full?
MR. COFFMAN: Well, that -- let me defer regarding rate design. That may be a fair revenue requirement, but how that is allocated to the residential customers and how -- and whether or not that needs to be phased in, in this particular case, would be a secondary question.
But as far as revenue requirement, I --
COMMISSIONER DAVIS: Okay. So you're saying --

MR. COFFMAN: -- my clients are --

COMMISSIONER DAVIS: -- in terms of revenue requirement, they're at least entitled to -- or they would be entitled to approximately $75 million, by your calculations. But then in terms of rate design, that the classes of customers that you're representing --

MR. COFFMAN: Yes.

COMMISSIONER DAVIS: -- should not necessarily --

MR. COFFMAN: I think the evidence in this case would justify some revenue requirement increase. I believe my clients' position would be in the neighborhood of 75 million. But that's subject to check; perhaps subject to other developments in the record of this hearing. But I think that's probably --

COMMISSIONER DAVIS: All right. Well --

MR. COFFMAN: -- a fair --

COMMISSIONER DAVIS: Well, let -- I mean, I'm going to go back here, because your witnesses have not -- are not testifying here. They testified at the February 16th local public hearings.

We had Mr. Sommerer and Ms. Bray testify. And Mr. Sommerer said, quote, that he wanted to make it clear that they are in strong opposition to this request for rate increase.

Ameren has also raised rates over 500 million in the last two years, which we don't believe there's been sufficient cause to raise them again. Is that a correct statement?

MR. COFFMAN: I believe the $500 million refers to a general rate increase and fuel adjustment clauses over the last four years. And I accept that that's Mr. Sommerer's opinion about whether rates should be increased.

COMMISSIONER DAVIS: Well, I mean, he was speaking as a board member for the Consumers Council of Missouri.

MR. COFFMAN: I'm not sure whether or not he was authorized to speak for the Consumers Council --

COMMISSIONER DAVIS: Okay. Well --

MR. COFFMAN: -- so that -- so that --

COMMISSIONER DAVIS: -- was -- was -- was Joan Bray authorized to speak for the Consumers Council?

MR. COFFMAN: I suppose since she's the president of the board, I -- I suppose she was.

COMMISSIONER DAVIS: Well, I mean, if her testimony -- I mean, the first sentence out of her mouth was why Consumers Council believes this rate increase should be denied in full. So -- but you're not here saying that today, are you?

MR. COFFMAN: No. I have to honestly say, I think that the revenue requirement testimony in this case would probably justify about a $75 million increase.

COMMISSIONER DAVIS: Okay. Thank you, Mr. Coffman.

JUDGE WOODRUFF: NRDC is not here.

Opening for The Municipal Groups?

MR. CURTIS: Judge, Commissioners, The Municipal Group would like to defer its opening statement to May 2nd, when the municipal lighting issues are taken up. Thank you.

JUDGE WOODRUFF: Thank you.

The unions are not here.

Charter has been excused.

Missouri Retailers?

MR. SCHWARZ: Good morning, Judge, Commissioners.

The Retailers will defer their opening statements as well for the two issues in which we have expressed an interest, which is property taxes and rate design.

Thank you.

JUDGE WOODRUFF: Thank you.

And last on the list is Missouri American Water, and they also are not here.

All right. Before we go ahead and go to the first witness, we'll take a short break. We'll come back at 10:05.

(A short break was taken.)

JUDGE WOODRUFF: All right. We're back from break and we're ready to move into the overview and policy issue. And I assume we'll be taking mini openings on that also?

MR. BYRNE: Yeah. You're Honor, I don't have a different mini opening from Mr. Lowery's opening.

JUDGE WOODRUFF: Does anyone want to make a mini opening on this?

MR. THOMPSON: I put it in my main one.

JUDGE WOODRUFF: Okay. Well then, we'll continue with the direct examination of Mr. Baxter.

And if you'd please raise your right hand?

(Witness sworn.)

JUDGE WOODRUFF: You may inquire.

MR. BYRNE: Thank you, Your Honor.

WARNER BAXTER testifies as follows:

DIRECT EXAMINATION BY MR. BYRNE:

Q. Mr. Baxter, can you please state your name and business address for the record?

A. My name is Warner Baxter. My business address is 1902 Chouteau Avenue, St. Louis Missouri.

Q. And by whom are you employed, Mr. Baxter?
A. By Ameren Missouri.
Q. And in what capacity?
A. I'm the president and chief executive officer.
Q. And are you the same Warner Baxter that caused to be filed in this case direct testimony that has been marked as Exhibit 100 and surrebuttal testimony that has been marked as Exhibit 101?
A. I am.
Q. And do you have any corrections to that prefiled testimony at this time?
A. Mr. Bryne, I have one minor one and it is in my surrebuttal testimony. And it is on Page 2 of that surrebuttal testimony, Line 29. And it relates to the number of state regulatory commission decisions. In that testimony on Line 29 I say there are 36 that were observed and it should be 35.
Q. Okay. Any other corrections?
A. No, sir.
Q. And as corrected, is the information contained in Exhibit 100 and Exhibit 101 true and correct to the best of knowledge and belief?
A. It is.
Q. And if I were to ask you the questions

contained in that prefiled testimony here today when you're under oath, would your answers be the same?

A. They would be.

(Wherein; Union Electric Exhibit Nos. 100 and 101 were marked for identification.)

MR. BYRNE: Your Honor, I would offer Exhibits 100 and 101 and tender Mr. Baxter for cross-examination.

JUDGE WOODRUFF: Exhibits 100 and 100 -- excuse me -- 101 have been offered. Any objections to their receipt?

MR. THOMPSON: No objection.

JUDGE WOODRUFF: Hearing none they -- hearing none they will be received.

(Wherein; Union Electric Exhibit Nos. 100 and 101 were received into evidence.)

JUDGE WOODRUFF: For cross-examination we begin with -- going down the list that's here -- Municipal Group I believe have left also. AARP?

MR. COFFMAN: No questions.

JUDGE WOODRUFF: Missouri Retailers have left. DNR, it looks like they've left as well. MIEC?

CROSS-EXAMINATION BY MS. VUYLSTEKE:

Q. Good morning, Mr. Baxter. How are you?

A. Good morning, Ms. Vuylsteke.

Q. Mr. Baxter, I'd like to refer you to Pages 5 and 6 of your direct testimony. Do you have that there?

A. I do.

Q. On tho-- on those pages of your testimony you discuss the three main reasons for the rate case. You cite the addition of the Sioux scrubbers, Taum Sauk enhancement rebuild and fuel costs. Correct?

A. I do.

Q. Now, regarding fuel expense, is it correct that your fuel contracts associated with your coal purchases and the transportation of that coal generally change on January 1st of the calendar year?

A. Yes, generally that's true.

Q. Okay. Of the $70 million that you refinance -- that you reference in your testimony, do you now how much of that was related to coal contracts or transportation increases which became effective on January 1, 2011?

A. I do not.

Q. Do you have an estimate of what your expected coal and transportation increases will be effective January 1, 2012?

A. I do know although I would expect that the transportation costs will rise simply because certain of our transportation contracts will expire.

Q. And Mr. Baxter, do you have plans to file a rate increase or a rate case to recover those increased coal and transportation costs?

A. At this time we have not made any decisions on any future rate case filings at this point.

Q. Do you expect to file one?

A. We have not made a decision. We have said in the past that we -- we would expect because of the rising costs either due to infrastructure investments or potentially rising fuel and related transportation costs among other things, that we will be more frequent filers of rate cases, but we have not made a final decision as to when we would file our next rate case to address the issues that you've mentioned.

Q. Although you've not made a decision, is it your expectation?

A. Is it my expectation to file another rate case sometime in the future, Ms. Vuylsteke, is that your question?

Q. To file a rate case to recover the expenses that you incurred for coal and transportation, the timing of such a rate case, the expected timing.

A. I just want to make sure I'm understanding you. Are you asking me if I'm going to be filing within a particular time or some time in the future?

Q. Within a particular time.

A. And so what is that particular time?

Q. Will you be filing a rate increase, for example, in the next year or --

A. I simply don't know.

Q. And you are -- cannot estimate a timeframe for the filing of your next rate case or an expectation of when that would occur?

A. At this time it would be premature because it's really based on many things, Ms. Vuylsteke, as we think about future rate case filings. Much of it is based upon potentially the outcomes of operational issues, which obviously can drive that. It is the outcome of how certain coal related transportation contracts may change. It is dependent upon the outcome potentially of this rate case itself. And it depends upon other regulatory and other requirements that are posed on our company.

And so as I said before and as we've said in the past, we do expect to be filing more frequent rate cases. And when we would expect to file those rate cases we would expect as we've done in the past to true-up as part of that rate case filing, our related fuel -- or net fuel costs at that time.

Q. With respect to the increases that you expect in your coal and transportation costs for January

2012, do you expect at this point in time that Ameren will absorb that increase in cost or will you collect it through the FAC?

A. We would expect that -- that of course is subject to the issue here before the Missouri Public Service Commission here -- we would number 1, anticipate and hope that we would have a fuel adjustment clause; and then secondly, that 95 percent of the net changes in fuel costs would be recovered through that fuel adjustment clause mechanism should we not file another rate case prior to that time.

Q. If Ameren was going to file a rate case before the end of 2011, would you know that as you were sitting here today?

A. Not necessarily, no. Although I would say, Ms. Vuylsteke, in terms of trying to -- to have rates in effect by 2012 in the normal course, it would not necessarily be possible given that this case is going to go through the end of August that we would be able to file another rate case and have that fully executed to reflect those increases at the beginning of 2012 because these rates would go into effect.

And so my expectation that any change is associated with net fuel costs will be reflected in the form of -- will be collected under the fuel adjustment clause mechanism.

Q. Okay. And do you have an estimate of what your transportation cost increases will be for 2012?

A. I do not know. I know that as I said there's certain contracts which will expire at the end of 2011. And those contracts are several years old. And so it is our expectation that our transportation costs will rise.

MS. VUYLSTEKE: Thank you. No other questions.

JUDGE WOODRUFF: Public counsel?

MR. MILLS: Thank you. I do have some questions.

CROSS-EXAMINATION BY MR. MILLS:

Q. Let me start, Mr. Baxter, by following up on Ms. Vuylsteke. If there are issues in this case that the Commission's considering that it may come to different results depending on how quickly you're going to be back in for another rate case, what would you advise them? What's the most likely scenario?

A. I'm not sure, Mr. Mills, if I understand your question.

Q. Well, for example, the recovery of storm costs that the Commission might take a different approach if they knew you were coming back in and you would have another rate change in 14 months after this was concluded as opposed to if they think you're going to be out for 36 months.

MR. BYRNE: I'm going to object, Your Honor. This question about when we're coming back for a rate increase has been asked and answered. Mr. Baxter said he does not know.

MR. MILLS: Mr. Baxter said in response to one question from Ms. Vuylsteke that a final decision has not been made. I'm trying to explore what parameters the Company's considering.

JUDGE WOODRUFF: I'll overrule the objection.

THE WITNESS: Could you repeat the question, please?

BY MR. MILLS;

Q. The question is that Commission -- if the Commission wants to know for the basis of deciding issues in this case what is the most likely scenario on when you will be filing another rate case, what would you advise them?

A. I think what I advise the Commission is that when I'm going to file the next rate case isn't all that important. What's really before the Commission are the costs we're seeking to recover in this case and that the

Commission should be seeking to reflect rates and regulatory policies which are consistent and constructive regulatory policy that will let us recover our cost of service and to give us the ability to earn a fair return on our investment.

Beyond that, if they do that, that could have an impact. But for us to predict what that would be and for them to have parameters in terms of -- well, if we're going to be coming in soon or not, that should impact our decision. I think the evidence in this case suggests that we have -- that we require a rate increase and that secondly we are seeking constructive regulatory policies so that we can continue to invest in our energy infrastructure on behalf of our customers.

Q. So they should expect you back in some time, but it may be months, maybe years? You're just not willing to commit at all?

A. I think it's impossible for me to commit exactly when it will be. I think I was clear before and I was clear before when I was here probably a year ago, that as a result of the rising costs that we are facing in our business and the rising investment needs that we need to meet regulatory requirements, whether they be for environmental mandates or among other things, that we expect to be filing more frequent rate cases in large part due to the fact that when the rising cost environment that we're in coupled with the -- the historical year that we use in this state, really requires us to come in more frequently and to have rate cases.

And so I would expect to be in some time, certainly in the -- in -- I don't know how you -- I don't want to put months on it, but I -- I would expect certainly it not to be a long period of time.

Q. Is -- does the Company have plans to install additional scrubbers at other power plants?

A. And this as you may know, we are in the process of looking very carefully at some new environmental rules which have been proposed by the -- by the Environmental Protection Agency just recently as well as to comply with -- with roles -- rules associated with the transport rules among many other things.

And so at this stage, we have not made a final determination as to when and whether in total. But it would be our expectation that sometime over, certainly, the next five or ten years that we very well will have to incorporate some additional scrubbers on our units based upon on our current understanding of environmental rules.

Q. Do you have a CAP EX budget for calendar year 2012?

A. Yes.

Q. Does it show scrubbers being installed in 2012?
A. No.
Q. Okay. How about 2013?
A. No.
Q. So -- well, maybe I should back up. How about 2011?
A. Well, no.
Q. Okay.
A. Absolutely not.
Q. Okay. Now, I know that you attended some of the local public hearings; is that correct?
A. I did.
Q. Have you -- but you didn't attend all of them?
A. That's correct.
Q. Have you read the transcripts for the ones that you did not attend?
A. I did one of two things, Mr. Mills, in terms of the ones I did not attend. I either read the transcripts -- but for each one of those hearings I got a report from our people who were at that hearing to summarize what actually took place at that hearing. So one of the two, I did do that.
Q. Okay. So you either attended, read the

transcript or got a report from people on the ground?

A. I did.

Q. Okay. It -- do you agree that the general sentiment of most of the people testifying at those local public hearings is that this is a very bad time to increase rates?

A. I would say in part, that is certainly a message that we heard. There's not doubt that the individuals who appeared at those public hearings were experiencing in some respect financial difficulties or were burdened by costs in general beyond just the rates that we're charging.

But I also heard at the public hearings other things. I heard at the public hearings that customers still place a high degree of importance on reliability. And they still place a high degree of importance on storm restoration. And so -- and they also place a high degree of importance on cleaner energy. And do I think it's a combination of those things, but there's no doubt, Mr. Mills, that certainly people appeared at those hearings were concerned about higher rates.

Q. And in fact, when you spoke to the people at those local public hearings, didn't you acknowledge that this is a bad time to increase rates?

A. It's true, I did. And in fact one of the things that was before the public hearings and we had an opportunity to speak directly to them -- and I'll commend, you know, frankly that -- the Commission for the new format. I think it is working much better. And we have the opportunity to speak directly as you do, as well.

But certainly one of the things that we had the opportunity to speak about was the impact of rates, but we also talked about the things that we're doing as a company to try and help our customers manage their future energy costs.

One of the things Mr. Lowery spoke about earlier on was was our discipline management of our costs to try and mitigate the impact. And in fact in this case our costs have gone down. We've talked about -- in terms of some of our other operation maintenance costs. We talked about energy assistance programs. And we also talked about energy efficiency programs.

Q. And Mr. Baxter, just so we don't keep getting into this: My question was did you acknowledge that this is a bad time for rate increases. That's pretty much a simple question.

A. Yes, I did.

Q. And that was really as far as I wanted to go with that.

A. I apologize.

Q. Thank you. Turning to your -- do you have copy of your testimony there with you?

A. I do.

Q. Good. Turning to your direct testimony, Page 5. The part of the answer beginning with the sentence on Line 17, is it still your testimony today that -- and I'm quoting here -- the most significant factor driving our need for a rate increase is to recover investments, primarily to improve the reliability of our aging infrastructure and comply with environmental regulations. The vast majority of this proposed increase (approximately $20 million -- $200 million) is due to energy enf-- infrastructure investments, environmental controls and other reliability costs to meet customers' expectation of more reliable and cleaner energy. Is that still accurate today?

A. Yes and no. And so no in terms of as you know there -- there -- there have been changes to the numbers. But in terms of concept, that is true.

Q. Okay. So even though the $200 million is no longer accurate, the concept of that being the vast majority driven by investments rather than increases in costs is true?

A. Yes, Mr. Mills.

Q. Now, you address in your surrebuttal

testimony towards the very end a little bit the Taum Sauk issue; is that correct?

A. I do.

Q. And at Page 15, you identify that the cost of the facility as about $490 million; is that correct? Page 15, Line 6.

A. That's correct.

Q. Okay. What portion of that was covered by insurance proceeds?

A. The portion of this was approximately -- well, $90 million less roughly. And so it's about $395 million, roughly.

Q. So of the $489 million, insurance paid 395?

A. So the 489 million consists of both capital and some O&M. The capital component of the 489 was approximately $483 million. The insurance proceeds, if my recollection serves me right, is $393 million associated with the capital piece. And that is the 90 mill-- roughly the $90 million that we're seeking to include in rate base.

Q. So between the recovery from insurance proceeds and the amount that you seek to recover from ratepayers by inclusion in rate base, is there anything left that the shareholders are bearing?

A. Absolutely. The --

Q. In terms of the capital cost?

A. Well, in terms of the capital costs? Well, in part I would say because part of the things that the shareholders have borne in terms of the insurance proceeds relates to the property tax deductible, which is tied to that policy. And so that number is, you know, approximately $15 million, I believe.

And there may be other costs associated with the insurance policy itself that shareholders bore besides the fact that shareholders also bore, you know, nearly $100 million of costs including that number I just gave you.

Q. But not of capital costs in terms of the rebuild?

A. As I said, I think the only -- the number principally -- you're right. The only number principally associated with the capital costs, I believe, is the $15 million of deductible.

Q. And you've been the either the CEO or in upper management for -- at Union Electric Company, AmerenUE, Ameren Missouri for a number of years; is that correct?

A. I've been -- since May of 2009 I've been the chief executive officer of Ameren Missouri and then prior to that I was the chief financial officer for several years for Ameren Corporation.

Q. And you're familiar with the Company's last four rate cases counting this one; is that correct?

A. I am.

Q. Do you recall in any of those cases that insurance premiums on the Taum Sauk plant were ever disallowed as an operating expense?

A. I do not recall that, no.

Q. So as far as you know, the ratepayers paid all of the cost of insurance on the Taum Sauk plant?

A. To the best of my knowledge, that is certainly possible. I don't recall any specific adjustments or whether we excluded any of those insurance numbers from our -- from our submittal. I just don't recall.

Q. Now, we're turning to the question of the economy in general and testimony of customers at local public hearings. Do you agree that the Commission should take those into consideration when its deciding what just and reasonable rates are in this case?

A. I believe that the Commission has the ability to consider what they believe are all relevant factors, whether they need to or should, that's in many respects a legal question.

But I know that the commissioners were there. They listened to the testimony. And so I'm sure they will consider all relevant factors.

Q. And entirely apart from a legal conclusion, for you as the CEO and somebody that was at those local public hearings, do you believe that the Commission should take the testimony into account when determining what a just and reasonable rate is in this case?

A. I think the Commission, you know, in terms of determining a just and reasonable rate -- again, that's a legal question -- should the Commission listen to the customers and what they have to say; absolutely. Absolutely because I did.

I listened to what customers had to say that's why we made sure that we had the senior officer at every one of those hearings. And that's why we were there to answer their questions. We should listen to what our customers say.

Q. Now, you said as part of that answer that you believe the determination of a just and reasonable rate is a legal question; is that your testimony?

A. Yes.

Q. Okay. So only a lawyer can determine what is just and reasonable?

A. Well, in the context I think, Mr. Mills, you referred to it in terms of what the law says, you know, that is -- that is ultimately a legal question. I think the Commission will take -- will consider those -- that testimony from customers and what they believe is appropriate. And I think that's fine.

Q. And how would you suggest that they take it into account?

A. I think, as I said before, when customers are there and they're talking about the economy they should listen to that. When customers are there and they're talking about good reliability and good service and minimal disruptions, they should listen to that. When they're here and hearing customers saying about how we should respond to storms, they should listen to that.

All those things the customer said in the context of those hearings I think are things that the Commission can and do hear, not just in the public hearings. As these commissioners and you, there are many other forums that you listen that happen to be testimony. But I think we absolutely should listen to what our customers have to say.

Q. All right. At Ameren Missouri you listen, you respond, you deliver. Okay. You just said that the Commission should listen to the customers. How should the Commission respond and deliver based on what's its heard from customers?

A. I think the Commission needs to weigh all kinds of relevant factors. I think one of the things that the Commission should keep in part is certainly the economic issues, but they also should be mindful of -- of our need to invest in our energy infrastructure on behalf of our customers to deliver the high levels of satisfaction they want.

And in setting those rates, they should make sure that we have the cash flows that we can make those important investments for our customers because that is really what their expectations are. So I think all those things should be considered.

Q. Okay. And I don't want to beat this to death because maybe you're just not going to say, but what I'm trying to get you to answer is can you tell the Commission specific steps that they should take in response to that testimony or conversely, specific steps that they should not take in response to that testimony?

A. I think our testimony has been clear and my testimony has been clear that what I think the Commission should do on behalf of customers -- because my testimony isn't a matter of just doing what is right for shareholders. My responsibility is also to balance both shareholders and customers' interest.

And we strongly believe -- I strongly believe what the Commission should do is set regulatory rates and regulatory policies which are consistent, which are constructive, which will give us the ability to invest in our energy infrastructure consistent with our customers' expectations on behalf of not just their interest, but all of our stakeholders' interest and the state.

How the Commission determines all those factors -- there are many things that they'll hear in the context of this case, but I'm confident the Commission will weigh all those factors and make that -- the appropriate decisions.

MR. MILLS: That's all the questions I have. Thank you.

JUDGE WOODRUFF: All right. For Staff?

CROSS-EXAMINATION BY MR. THOMPSON:

Q. Good morning, Mr. Baxter.

A. Good morning, Mr. Thompson.

Q. I don't have a lot of questions for you. First of all, I found something in your testimony that I thought was pretty surprising and worthy of following up on and that has to do with your non-fuel operating maintenance expenses.

It's my understanding -- and please correct me if my understanding is wrong -- but your testimony is that those expenses have in fact decreased; is that correct?

A. Could you point me to the specific --

Q. Well, I'm looking --

A. I just want to make sure I'm looking at --

Q. -- at Page 7 of your direct testimony. At the very top staring with Line 1, you say I would also note that this rate increase request does not include any increase in our non-fuel operations and maintenance costs because those costs have in fact decreased. That's true?

A. That's correct.

Q. Okay. And then you revisit that. Let's look at Page 3 of your surrebuttal testimony. I may have lost my copy now. Here we go. I'm looking at the bottom of the page starting on Line 41 where you say, We believe our customers also want us to continue our efforts to deliver high quality and reliable service at a reasonable cost. As a result, we have taken many proactive steps to reduce our costs including reducing certain 2010 costs by an excess of $300 million compared to 2008 and $200 million compared to 2009 levels. Do you see that testimony?

A. I do.

Q. Is that correct?

A. It is.

Q. Okay. And that's also referring, is it not, to non-fuel O&M costs?

A. Is referring in part to non-fuel O&M costs, but it's also referring to capital expenditures as well.

Q. Okay. Do you know how much of that is non-fuel O&M?

A. I do not. I would say that the -- the larger portion of that reduction are capital expenditures.

Q. Okay. Now, take a look, if you would, at the chart on Page 19 of your direct testimony. Do you have that there?

A. I do.

Q. Okay. And that chart shows, if I understand it correctly -- it's a comparison of your earned return on equity each month compared to your allowed or your authorized return on equity for the period between June of 2007 and June of 2010; is that correct?

A. That's correct.

Q. Okay. And you would agree with me, would you not, that for most of the months depicted there your earned ROE was below your authorized ROE?

A. That's correct.

Q. Okay. And that is the effect of the regulatory lag, is it not, that you devoted a lot of attention to in your testimony?

A. That's correct.

Q. Okay. And you have testified -- and I think you repeated it today -- that your company finds itself in a rising cost environment?

A. That's correct.
Q. Okay. And exa-- those costs that are rising, those include fuel costs; is that correct?
A. That's correct.
Q. And in fact, you've identified that as one of the drivers of this case?
A. Yes, sir.
Q. And another cost that is rising is required environmental investments, would you agree?
A. Yes.
Q. And that's a driver of this case also?
A. It is.
Q. And what about just general inflation? Is general inflation causing your costs to rise?
A. Yes, in part. Yes.
Q. Okay. And is that part of what you're -- you're countering with the proactive steps you're taking to reduce the non-fuel O&M?
A. Yes.
Q. Okay. And I'm curious; what exactly have you done to bring about those cost reductions?
A. Quite a bit actually since that time. One of the things that we did on the -- on the O&M side was that in 2010 we froze all management salaries. And so to try and mitigate the effect of increases that you might

normally see for merit increases, those were all frozen.

Secondly, what we did, we took a very careful look at much of our A & G costs, administrative and general costs. We tried to take those down as much as we possible could that were still consistent with trying to make sure we deliver safe and reliable service.

To be clear, O&M costs like tree trimming is an example, that's not one of those things that we -- we went ahead and went after because not only do we have regulations, but we know that's an important part of our ability to deliver safe and adequate service to our customers.

And then we took -- really we took another hard look at were many of our capital projects. And those are capital projects for things like what you might call smart grid, maybe upgrading our current grid with automated switches versus what we have today; or perhaps looking at some other investments related to information systems; or perhaps looking at other investments associated with spare transformers and all these other types of things that we've said, You know, try and mitigate the impact of the success of regulatory light and to address some of the increases that our customers are having.

We have deferred these projects because we consider those projects as good projects, important projects, but at the same time more on the discretionary phase compared to those things which we must do to meet Commission regulations for reliability, to meet federal regulations on environmental management among many other things.

And so we did this across our entire organization. And we want to make those investments. We think they're good investments to make on behalf of our customers, but you have to make -- it's a balancing act that we mus-- that we must be thoughtful of and those are some of the things that we did.

Q. Okay. Thank you. Now, with respect to return on equity, you are aware, are you not, that this Commission issued a report and order in the Kansas City Power and Light rate case two weeks ago today?

A. I am.

Q. Okay. And would I be correct in assuming that you carefully studied what the Commission did in that order?

A. Well, Mr. Thompson, what do you mean by carefully studying?

Q. Well, since you're the CEO of a regulated electric utility in this state, certainly it's of interest to you how the Commission treats other regulated electric utilities; isn't that correct?

A. Certainly. And so to the extent did I read a summary of the outcome of that order and certain aspects of that Commission's order, yes. I just wanted to make sure I understood just exactly --

Q. Okay.

A. -- what you meant by carefully.

Q. No trick questions. And you're aware, are you not, that the Commission awarded 10.0 as the return on equity for Kansas City Power and Light Company?

A. I am aware of that.

Q. Okay. So my question then, is: In view of your request made through your expert, Mr. Hevert for 10.7 percent, how is Ameren Missouri different from Kansas City Power and Light such that the Commission should award that extra .7?

A. You know, Mr. Thompson, I can't speak to the specifics of the entire Kansas City Power and Light case. I did not study all the testimony that was submitted by the various witnesses. I reviewed the outcome. I can tell you that in our particular case that Mr. Hevert has been very thoughtful and careful in terms of making his recommendation in our case.

And as Mr. Lowery pointed out at the outset, you know, it is our belief that -- that the 10.7 percent ROE that we have put forth is appropriate. Is it above the

10.3 percent average; yes. Do we believe that's appropriate; yes. And in part due to the fact that in -- in Missouri our company, you know, faces issues associated with excessive regulatory lag and the investments that we're having to make in our energy infrastructure certainly point out the issues with coal and nuclear.

I can't speak to how the Commission arrived at their decision for KCP&L. I know that KCP&L had a different regulatory framework for many years associated with their -- with their rebuild. And I don't know how that factored in. I can speak to our case though. And that's my belief.

Q. Okay. Well, you agree with me, would you not that under the guiding Supreme Court decisions the award of return on equity should be based on commiserate risk?

A. Mr. Thompson, I don't know what the --

Q. Okay.

A. -- guiding principles are from the Supreme Court.

Q. If I told you that that was the case, would you be surprised?

A. I -- I have no reason to doubt that.

Q. Okay. So as a CEO -- as the CEO of Ameren Missouri, do you believe that your company is more risky than Kansas City Power and Light Company?

A. You know, Mr. Thompson, I -- I can't speak in comparison. I do know that if you look at not just KCP&L, but if you look at the spectrum of utilities within the last 12 months that that average return on equity was approximately 10.3 percent.

And I do believe that the return on equity that we believe is appropriate is warranted to be higher for things like the regulatory lag that I mentioned before.

And so when you look at commensurate risks, I don't believe you should just look at a company. You should look at the universe because we don't compete for capital, which is Kansas City Power and Light. We compete for capital with the universe of utilities. We compete for capital with global companies.

And so what the Commission should -- in my opinion, what they should do is be thoughtful about all of those things because that really makes a meaningful impact on our ability to invest in the energy infrastructure consistent with our customer's expectations.

Q. Okay. Thank you. Are you familiar with your company's recent integrated resource plan filing?

A. I am.

Q. Okay.

MR. THOMPSON: May I approach?

JUDGE WOODRUFF: You may.

(Wherein; Staff Exhibit No. 232 was marked for identification.)

BY MR. THOMPSON:

Q. Let me hand you what I've marked as Exhibit 232. I wonder if you could tell me if you recognize that.

MR. BYRNE: You Honor, can I get a copy of that? Is it possible I can get a Commission copy?

MR. THOMPSON: I'll provide copies for all counsel at the next break.

JUDGE WOODRUFF: Go ahead and use his right now.

COMMISSIONER DAVIS: Well, I think he needs one now, don't you think, Mr. Thompson?

MR. THOMPSON: Counting is not my strong suit. I apologize.

MR. BYRNE: Thank you.

BY MR. THOMPSON:

Q. Mr. Baxter, do you recognize that?

A. Yes. I believe this is the executive summary that accompanied our integrated resource plan that we filed with the Commission in late February.

Q. Okay. And take a look, if you will, at Page 8. And there's a couple charts there. Do you see those?

A. Yes, I do.

Q. And do you see the one on the left?
A. I do.
Q. Annual budget, EE utility spending.
A. Yes.
Q. Okay. Now, there's a green line. Do you see that green line on that chart that's labeled Low Risk?
A. Yes.
Q. And if you know, is that the level of energy efficiency investment that Ameren is committing to?
A. Mr. Thompson, I think that is the level of investment that we modeled in our integrated resource plan.
Q. Okay. So if you know, what's the level that you're committing to?
A. It is my understanding that that level again is what we modeled in our integrated resource plan. I'm not trying to play with words in terms of commitment. But our integrated resource plan was modeled based on energy efficiency spending of approximately $20 million per year.
Q. Okay. So Ameren, as far as you know as you're speaking today, Ameren's planning to continue at the $20 million per year level?
A. No. That's not true.
Q. Okay. What is the amount you're planning to spend on a going forward basis?
A. Well, I think it's made clear in both my

testimony and Mr. Mark's testimony and others that in many respects our energy efficiency investment will be driven by the related regulatory framework that is provided to us for energy efficiency expenditures, both for program expenditures, but also to address really the key element and that's the throughput disincentive.

Q. So if I understand your testimony, you're saying that if those cost recovery elements are not addressed in a way that's satisfactory to Ameren that the level of investment will drop?

A. Yes. And I think what's important is not just the level of satisfaction for Ameren, but really it's the level which is consistent with the law and that is to effectively balance the -- the -- the interests of customers aligning the customers and the company's interest in terms of investment in energy efficiency programs.

Q. Okay. Is it your understanding of the law that your level of investment is tied to your level of cost recovery?

MR. BYRNE: I'm going to object. It calls for a legal conclusion. Mr. Baxter's not --

JUDGE WOODRUFF: I'll overrule the objection.

THE WITNESS: Mr. Thompson, you know, it -- I'm not a lawyer in terms of interpretation of the law.

BY MR. THOMPSON:

Q. I'm not trying to put you on the spot except to the extent of understanding how much you're planning to spend on energy efficiency programs going forward.

A. Well, I think I was clear in my response to your previous question. It is really directly related to the regulatory framework that aligns the incentives for customers and utilities for energy efficiency programs. And I think that -- that is -- that is a key component as we really embark on really a new phase in the state of Missouri associated with energy efficiency programs.

What we're simply trying to do is in our proposal is put forth an approach that we believe reasonably aligns the interests of customers and shareholders because we want to make investments in energy efficiency. We make tens of millions of dollars of investments in energy efficiency. And we want to continue that.

But to do so we would need to do that in a thoughtful way and a prudent way that has a regulatory framework that will allow us to do so.

Q. Okay. What's your -- what is the financial year that Ameren Missouri operates under?

A. Our financial year? Do you mean in terms of financial reporting to investors? Is that what you mean?

Budgeting and those types of things?

Q. Exactly.

A. It's the calendar year.

Q. It's the calendar year. Okay. So for calendar year 2011, do you know has Ameren Missouri budgeted an amount of capital expenditure for energy efficiency?

A. Yes.

Q. And what is that amount?

A. It is my understanding that amount approximates $33 million.

Q. Okay. If you know, is the budget for calendar year 2012 in existence?

A. Yes.

Q. Okay. And if you know, what is the amount of energy efficiency expenditure budgeted for 2012?

A. I believe what was budgeted for 2012 was an amount -- was $20 million.

Q. $20 million?

A. Yes.

Q. So you would agree with me that's about $13 million less than the amount you said was budgeted for this year?

A. Yes.

Q. Okay. If you know, what's the explanation for that decrease?

A. I think there are a couple reasons for that. Number 1 is that the $33 million that we're spending this year is consistent with the amount of expenditures that we think are necessary to meet our commitment that we made under the integrated resource plan to achieve those savings.

Having said that, I'll say that the $33 million number te most important thing we're really focused on is achieving the savings. It isn't so much the $33 million that is the right thing to do. We're focused on achieving the savings.

Frankly, it's in our customers' best interest if we achieve the savings, we can do it in a manner that's less than $33 million.

But prospectively, did we chose to lower that amount; the simple answer is yes. And it is lower. But if you look at over the last three years, what we've spent on energy efficiency and you know, $20 million is by and large consistent. Maybe it's a little bit less, but when you look at the last three years our average has probably been, you know, in the mid-$70 million.

We've ramped up here in this last year to make sure that we achieve our commitment before. So I think it's in part that is that we're still trying to make tens of millions of dollars of investments in energy efficiency prospectively.

Q. Okay. Let's imagine that the Commission resolves all of the energy efficiency DSM cost recovery issues as Ameren has asked the Commission to do. Are you following me?

A. Yes.

Q. Would the amount that Ameren proposes to spend on energy efficiency in calendar 2012 -- would that amount be larger than the $20 million that you've testified is currently contemplated?

A. As the testimony of Mr. Mark and -- frankly, I'm not sure if I say it specifically, but we said that based upon the proposal that we've made -- and that proposal has been modified slightly. It is now -- we're working for the six-year recovery of the amortization, but with the billing unit adjustment for the throughput disincentive, then that amount would be $25 million per year.

But again, I think the more important thing is really to focus on the savings. If we can find ways to be more efficient in our energy efficiency dollars, I think that too is in the best interest of our customers.

Q. Okay. And are you aware that it's Staff's position that Ameren Missouri has not yet made a sufficient filing under MEEIA to request cost recovery mechanism?

A. Yes.

Q. Okay. Do you agree or disagree with that position?

A. I -- the problem -- I don't know -- I specifically don't know all the rules that had to be -- or all the compliance filings. But what I do know is that -- is once the rules become effective and it's my understanding that they're not effective today -- but once they become effective and if there are certain filings that we must make to be in compliance with those rules, we will do so in due course.

Q. Okay. And are you aware that two weeks ago the Commission held that Missouri electric utilities must comply with MEEIA regardless of the fact the rules are not yet in force?

A. That is my understanding.

Q. Okay. And imagine that Staff is correct in that Ameren has not yet a MEEIA filing that is compliant in all respects and that is sufficient to support the Commission's provision of cost recovery mechanisms. Imagine that that were true. How soon then would Ameren Missouri make a sufficient filing?

A. I don't know. I think the best person to ask that would be potentially Mr. Davis who will be on the witness stand later in this proceeding, perhaps Mr. Laurent. Those would probably be the two people who would know specifically the requirements and our ability to file those and when.

Q. Okay.

MR. THOMPSON: I would move that the Commission receive -- let's see -- yeah. Exhibit 232, the IRP executive summary.

MR. MILLS: I have no objection.

JUDGE WOODRUFF: All right. Exhibit 232 has been offered. Any objections to its receipt?

Hearing none, it will be received.

(Wherein; Staff Exhibit No. 232 was received into evidence.)

MR. THOMPSON: Thank you. No further questions. Thank you very much, Mr. Baxter.

THE WITNESS: Thank you, Mr. Thompson.

JUDGE WOODRUFF: All right. We will move to questions from the bench then. Chairman?

QUESTIONS BY CHAIRMAN GUNN:

Q. Mr. Baxter, I just have a couple questions. In the last rate case you put up, you put up that nice chart about -- and it's contained in your testimony about the monthly ROEs. The one in your testimony ends on June of 2010.

Have you been -- have you been hitting that -- the -- the authorized ROE, which I think is 10.2. Correct? I could be wrong on that.

A. No. No. I believe it's 10.1.

Q. 10.1. I'm sorry. Have you been -- have you hit that in any monthly period from June 2010 to today?

A. Mr. Chairman, the answer's yes. And it happened, I believe it was three months later in the year during the summer principally due to, as Mr. Lowery I think alluded to in his opening statement, because of the extreme warm weather that we had.

Since then -- since those warm summer months, it has since dipped back down to a level that's, you know, approximately 200 basis points below our current allowed ROE.

Q. So you're saying that there -- for three months, you believe --

A. Yes. I believe that's correct.

Q. -- you did hit -- you did hit it? Was -- do you know what that -- the ROE was? Was it 10.1 exactly or was it --

A. I think it was -- it was a little bit higher than that.

Q. Slightly above?

A. It was slightly above.

Q. So you attribute that 100 percent to the warm months. Nothing -- is anything attributable to the reduction of expenses, the $100 million?

A. Mr. Chairman, I would attribute the large portion of that being the weather, but there's no doubt that some of our disciplined cost reductions across our business had some kind of impact on that as well.

Q. You mentioned that one of the cost-cutting measures you did was that management salaries were frozen?

A. That's correct. In 2010.

Q. Were bonuses frozen as well or were those -- were those based on performance and other things just like normally?

A. Bonuses were not frozen and they were based on performance as they had been in the past.

Q. Okay. All right. And when you talk about management salaries, how far down the chain are we talking? Directors? Managers? Or -- or --

A. All management.

Q. All management?

A. All management. Now, the contract workers did not have their rates freeze because we have a labor contract with them.

Q. Sure.

A. But all management received wage freezes.

Now, Mr. Chairman, just to be clear if someone received a different position and a promotion throughout the year or something, there could have been a change in their salary, but by and large I would say that was the principle.

Q. The salary for that particular classification was frozen?

A. Yes.

Q. Rather than --

A. Yes. I think that's -- that's --

Q. -- if somebody --

A. -- a good way to put it.

Q. -- went from a manager to a vice president or something like that --

A. That's right.

Q. -- they would receive the higher salary. Okay. I want to -- I want to turn to Taum Sauk a little bit. And I just want to clarify: You're asking for enhancements to the upper reservoir. Correct?

A. Well --

Q. You're not asking for the rebuild of the upper reservoir?

A. That's -- what we're asking for, Mr. Chairman, really there are two categories of cost both of which gets you to the $90. One would be enhancements to the upper reservoir or costs that we would have incurred absent the breach. Both of which -- both of which frankly either category, whether you talk about enhancements or cost we would have otherwise incurred are far in excess of the $90 we're seeking in rate base.

Q. But I want to be clear -- the enhancements were not over and above, they weren't extra? They weren't included when you rebuilt the reservoir. Correct? When you -- so have you -- let me back up.

Have you done extra enhancements to the upper reservoir since the upper reservoir was considered to be open and --

A. I see.

Q. -- operating?

A. That is not what we're seeking in this case. No. Since April of 2010, when -- when those -- the 90 million that we're referring to is related to that. Now, we may have additional capital expenditures that we made at Taum Sauk outside of that, which are -- it's not the $90. This is really related to the big --

Q. And these are --

A. -- unit.

Q. And these are enhancements that you took advantage of because you were basically starting from scratch?

A. Well, I think that's fair. I think there --

it wasn't because it was -- basically to enhance the safety and the quality and the life of this plant. And so it was things like -- and Mr. Chairman, you saw things like the -- the overflow release structure, the drainage gallery. All those things; obviously, we had the opportunity to do that and they were the proper things to do.

Q. Now, I've -- there's some questions as to whether the original build was built appropriately. I think there's some reports that are out there that say they were not -- they may not have been built really up to the standards that it should have been built even in the 1960s.

A. That's correct.

Q. So are you saying that without these enhancements that you're seeking for -- if you remove the enhancements in which you are seeking recovery for, that the upper reservoir would have been built appropriately? I mean, up to code or what you would consider to be standard?

A. Yeah. And so Mr. Chairman, the simple answer is that, you know, our expert Dr. Rizzo has filed testimony and is clear in saying that the old reservoir would not have passed the inspections, the subsequent inspections by the Federal Energy Regulatory Commission when they did their analysis. This potential failure modes analysis.

And his conclusion was that that old

reservoir would have to have been done one of two things: Either retire; or two, rebuilt as we've done in basically the exact same way we have done that. And so his conclusion is that that old reservoir was not sustainable. It was at the end of its useful life and that what we have done is what we would have had done in the normal course, absent the breach.

Q. It strikes me a little -- and it's an imperfect analogy, but it strikes me a little bit that you've got kind of a clunker car that really needs a new fan belt in order to -- in order to get to work properly. But before you buy the fan belt, your car gets totalled and you get a brand new car and the insurance is paying for a brand new car.

And in that brand new car you get satellite radio, you get airbags, you get all this other stuff. And then you're coming back and saying, oh but wait, I still get my money for the fan belt that I need.

You know, so I'm a little -- I'm having a difficult time making the distinction between you starting from scratch and rebuilding this and there have been a couple comments in press releases that insurance is expected to cost the --

You start out by saying insurance is expected to cover the costs to rebuild. And then in subsequent press releases that hedged and says substantially costs. So it seems to me is what you're trying to do is really get the ratepayers to cover the cost of the rebuild, which I'm having trouble with the distinctions here.

Because having an overflow system and having the drainage systems seem to me are helping to prevent what happened originally, which was the initial collapse of the reservoir.

A. But Commissioner -- Mr. Chairman, perhaps I can help here. If you think about it, in a -- in the normal course of business if we decided that to enhance the safety of that structure as it stood before, and we decided to put an overflow release structure in there, in the normal course of business ratepayers would have paid for that.

Q. Right.

A. In the normal course of business, if we decided that instrumentation needed to be enhanced, ratepayers would have paid for that. And in the normal course of business, if we decided that the fact that this was not built on solid bedrock, which it was not, and we decided that we needed to enhance that for the safety of that plant and the reliability of that plant, ratepayers would have paid for that.

And so you know, I believe what we're asking for in the form of $90 million is -- is -- is really costs that ratepayers would have borne in the normal course. And frankly, is at a value which is far less than the value that ratepayers will receive over the 80-year life for this facility.

Q. Right. Although this wasn't the normal course of business and you got to start from scratch because the reservoir was built fairly shotty from the beginning and there wasn't monitoring of the water overflows and there were a great many mistakes that happened to caused it. So we -- I guess we'll talk to your expert a little bit.

But I'll tell you I'm having a little bit of a problem seeing the distinction.

Yes. I agree with you, if all those things had happened to the basic reservoir at the time that the reservoir was still standing, that would be something that the ratepayers would have borne. But this wasn't in the normal course of business. We had a massive collapse and we had -- we had all these issues, so --

A. Mr. Chairman, I want you to -- this was -- I agree this was not the normal course and we understand that there are mistakes that were made; not just in the construction but also in frankly some of the things that we did as -- as -- as a management team.

So I don't want you to sit there and say that you know, we don't accept responsibility. We accept that responsibility. But at the end of the day we do believe as you've heard me say that -- that these costs that we're seeking are appropriate and they're going to bring tremendous amounts of benefits to the consumers.

And frankly, whether all those enhancements would have been done in the normal course, I mean, you can certainly talk to Dr. Rizzo and Mr. Birk. But I think when you look at those pictures, there's -- I think as you'll -- you know and you've seen it, that that facility is nothing -- this will last another 80 years. That other facility was not going to last another 80 years.

Q. I think that's -- I think that's probably accurate. Let me ask you one final question and then I'll let some of the other commissioners go. So insurance covered everything except for about $90 million?

A. That's correct.

Q. On the rebuild.

A. On the rebuild.

Q. And so -- so if we give you that -- if we allow you that $90 million -- to recover that $90 million or whatever it ends up being with the revenue requirement, if you take out regulatory lag, the Company will essentially being paying zero for the rebuild out of the shareholder portion?

A. Well, I think -- and Mr. Mills asked a similar comment -- I would say that part of that cost that we did incur to get that $90, which were absorbed by shareholders was at least $15 million associated with the deductible.

And I think -- Mr. Chairman, I think you're aware of the other costs that we absorbed in the bigger picture certainly including keeping ratepayers whole throughout the entire time that the Taum Sauk was down meaning that we -- we modeled as if Taum Sauk was running.

And in fact, ratepayers absorbed about $55 million associated with that generation that we assumed was there, but frankly we paid for our of our pockets.

Q. You mean shareholders absorbed?

A. Did I say -- yeah. Shareholders. Excuse me.

Q. I thought --

A. I apologize. Thank you for correcting me.

Q. I thought you meant shareholders.

A. I did mean shareholders.

CHAIRMAN GUNN: I don't have anything else. Thanks, Mr. Baxter. I appreciate it.

JUDGE WOODRUFF: Commissioner Davis?

QUESTIONS BY COMMISSIONER DAVIS:

Q. Good morning, Mr. Baxter.

A. Good morning, Commissioner. How are you?

Q. I'm good. Let's go back here. Mr. Baxter, going back to Ms. Vuylsteke's questions. I mean, what is your understanding of Ameren Missouri's coal contracts as well as its transportation contracts?

Are those contracts -- I mean, do they all expire -- what expires at the end of this year, I guess is what I'm asking. Or is it next year? I forget which.

THE WITNESS: Judge, can I -- I don't know if the expiration of our coal contracts are proprietary or Not because -- as well as our transportation because we bid those and --

MR. BYRNE: We probably ought to go in camera.

JUDGE WOODRUFF: Okay. We will go in camera.

(REPORTER'S NOTE: At this point, an in-camera session was held, which is at Volume 17, Pages 127 to 134.)

JUDGE WOODRUFF: Back in regular session. All right. We're back in regular session.

QUESTIONS BY COMMISSIONER DAVIS:

Q. Mr. Mills asked you -- and I don't believe this is -- you own your own railcars. Correct?

A. We do, but we also lease some railcars as well, Commissioner.

Q. Okay. And then do you purchase the fuel. I mean, if this is HC we can go back in HC. I apologize. Do you purchase the fuel for your rail transportation or do you allow the railroad to do that?

A. The railroads purchase their -- their own diesel fuel. We take -- we take activities to mitigate or hedge the potential increases for diesel fuel. We have a very active program to mitigate the potential rises in diesel fuel costs.

Q. Okay. Okay. All right. Now -- I'm sorry. You know, Mr. Mills asked you a number of questions about the current economic climate. Do you think this is a -- is a good time to raise -- raise your rail costs or coal costs or the price of diesel fuel in general?

A. In general, it is -- certainly creates challenges for companies like us and certainly creates challenges certainly for our ratepayers, but it's -- it's one of those necessary things to deliver safe and reliable service to our customers. And so consequently if those costs are deemed to be fair and prudent then they're appropriate costs.

Q. Okay. Going back to the graph that Mr. Thompson asked about and Commissioner -- or Chairman Gunn asked about on Page 19 of your direct testimony. Now, this graph only runs through June of 2010. Has Ameren Missouri had a month since June 2010 where it earned more than a 9 percent ROE?

A. Yes.

Q. And how many months has it had where it has earned more than 9 percent?

A. I believe -- as I responded to Chairman Gunn -- I believe it was three times.

Q. Three times.

A. Yes. Roughly.

Q. And do you recall -- I mean, was it 9.1, 9.5. Did you make 10?

A. Yes. Now, I believe my testimony to Chairman Gunn is that I exceeded 10 on a -- on three of those months, but it has since -- and that was during the hot summer months that you saw the increases. And since then the more recent data that we have since the first of the year has our ROE down closer to 8 percent.

Q. Okay. And so -- let me, I guess -- let me ask you this: For the calendar year 2010, what was your average earned ROE?

A. Approximately 8 percent.

Q. Approximately 8 percent for the entire calendar year?

A. Yes, sir.

Q. So that would take into account the three months where you earned 10 percent?

A. Yes.

Q. Okay. What was your actual earned ROE for the first quarter of 2011?

A. It -- as it's -- we probably need to go in camera.

COMMISSIONER DAVIS: I'm sorry.

JUDGE WOODRUFF: Do you want to go in camera at this point?

COMMISSIONER DAVIS: Sure. Let's go in camera.

JUDGE WOODRUFF: All right.

(REPORTER'S NOTE: At this point, an in-camera session was held, which is at Volume 17, Pages 138 to 140.)

QUESTIONS BY COMMISSIONER DAVIS:

Q. Now, going back to Mr. Mills' questions about the anticipated installation of scrubbers. I'm not actually going to ask about scrubbers, but -- are you familiar with Ameren Transmission Company's plans to build transmission projects in Missouri?

A. Yes. In general, I am.

Q. And is it -- is it fair to say that prior to the new cost allocation methodology adopted by MISO that there were no plans to build transmission lines in Missouri in Ameren Missouri?

A. Commissioner Davis, I'm not sure exactly when the new cost allocation methodology came within MISO. And I believe your question was whether there were no plans to build transmission in Missouri. It depends on what you mean by plans. I think that our transmission folks look out many, many years in terms of investments.

And it's my understanding that they've had on the -- at least in the planning stage the possibility for some transmission build out in the future. Of course we have to go through MISO on some of that transmission build out.

Q. Were those plans in any of Ameren Missouri's IRP filings?

A. I don't know.

Q. And now Ameren Missouri is going to, I guess, assign all of its -- all the projects that it could build to Ameren Transmission Company, all of the -- all of the projects that are 300 Kb and above; is that correct?

A. And so Commissioner when you say assign, I'm just trying to make sure I understand. That Ameren Transmission -- are you asking whether Ameren Transmission will oversee transmission projects which we believe are appropriate for Ameren Missouri, they'll oversee the construction and the planning. Is that generally your question?

Q. Well, I guess I'm trying to determine who's going to build what here in the future in terms of -- so Ameren Missouri is still going to build some transmission that's 300 Kb and above, or is it all going to be built by Ameren Transmission Company?

A. And so, Commissioner, to make sure that -- I'll try and answer your questions. What Ameren Transmission Company will do is that they're going to be responsible for building those transmission projects, which are deemed region-types of projects from MISO.

And -- and certainly Ameren Missouri could indeed build transmission projects on its own behalf should it be directly related to our customers. And we've put that line as those which are defined as regional transmission projects versus -- versus those that are for Ameren Missouri.

Now, Ameren Transmission Company, just as we did prior to that, knew we had a service company that really oversaw all the transmission projects and so Ameren Transmission Company will help oversee the construction and planning of those projects for Ameren Missouri. But Ameren Missouri in the future could indeed build transmission projects.

Q. Okay. And I guess, how do you -- how do you define the difference between a regional project and an Ameren Missouri project?

A. Well, you know, Commissioner, I don't pretend to be the expert in all the definitions for transmission. I know that Ms. Borkowski, who is our president is one of the experts, not in just the region, but in the nation.

So as I understand it, there are specific projects for MISO, which are -- I would just call regional projects. And those projects are generally thought of to be done be the Ameren Transmission Company. Those which are directly related to tying to our customers and their specific needs those would be Ameren Missouri projects.

But beyond that, the specifics and how you define it I don't know if --

Q. Okay. All right. Well --
A. -- I'm the expert to address that.
Q. -- if it's built in the Ameren Missouri service territory, then Ameren Missouri has the right to build that project first. Correct?
A. Commissioner, I know you're asking do we have the right of first refusal. I don't know if I know all the specifics. I know there is a right of first refusal out there that Ameren Missouri has and I'm not sure to what extent that right of first refusal begins and ends.
Q. Okay. So theoretically it's going to be built in Ameren Missouri's territory where then they would have the right of first refusal? I mean, how else would the -- how else would the project automatically pass to Ameren Transmission Company?
A. Again, Commissioner, I don't dispute that. I think there is a right of first refusal and I don't know if there is specific terms of what that right of first refusal may or may not be. But I know Ameren Missouri has an opportunity to look at those projects.
And certainly I would agree that if their in our territory, that's when it would apply. But to say if that's legally how it's supposed to work, I -- I -- that may be a step beyond what I'd be willing to confirm.
Q. Mr. Baxter can you give me a definition for

the term arbitrage?
A. I'm trying to come up with a simple definition, Commissioner. Commissioner, I must admit the term I'm familiar with. And how to define it I'm struggling with. Do you have a definition I maybe could agree or disagree with?
Q. Sure. So let me just try to distill this down here. It's the practice of taking advantage of a price differential between two or more markets.
A. I'll accept that.
Q. Okay. So if Ameren Missouri is going to build a transmission project, then it's going to be built pursuant to state regulation. Correct?
A. I would presume that would be the case.
Q. Okay. So you're looking at an ROE in the 10s potentially.
A. High 10s.
Q. Okay. High 10s. You're looking at your actual capital structure probably.
A. Yes.
Q. I mean, that's been the past practice here at the Commission. And then you're going to have some scrutiny over your expenses.
A. Certainly.
Q. Okay. So if the project is assigned to

Ameren Transmission Company and it's built as a quote "regional" project, then it's built under FERC jurisdictions. Is that a fair statement?

A. That'd be my understanding, yes.

Q. Okay. And do you know what the -- what the ROEs for FERC regional transmission projects are?

A. It's my understanding, Commissioner, that they're around 12 percent.

Q. Okay. And they can get a hypothetical capital structure. Is that a fair statement? Have you looked at any of those decisions?

A. I think, Commissioner, that under the FERC regulations you can have flexibility in terms of capital structures. You can have flexibility in terms of how you recover your costs. I think there are several mechanisms that FERC allows to incent the build out of transmission.

Q. Right. Incentives. And then also you've got -- Ameren Missouri has participated in several FERC proceedings?

A. Yes.

Q. Would you characterize Federal Energy Regulatory Commission's oversight over expenses as being less, more or about the same as this commission's?

A. Commissioner, I -- in terms of a specific transmission project, I don't recall sort of a specific transmission project that we have done that's had direct oversight from FERC in some time. So I don't know that their level of oversight that they have for potential other jurisdictions, but I'm sure they -- they -- they engage in whatever they believe is appropriate to oversee those projects.

Q. Well, in the gas cases involving Missouri gas utilities MIG, have you had any -- have you looked at any of those cases where Ameren and this commission have been involved?

A. I have not.

Q. You have not. Okay. So I guess let me -- let me just get back to the question here. Is -- does the assignment of these transmission projects to Ameren Transmission Company -- I mean, is that in essence an arbitrage opportunity for Ameren Corporation?

A. I think, Commissioner -- I think what it really is more about is having Ameren Transmission Company focused on their objective, which is regional projects and having Ameren Missouri focused on projects which are core to their customers, and that transmission projects which are directly related to their service needs.

And for us to -- my company to be focused on those projects with the limited capital that we have that we believe brings the greatest benefit to our ratepayers.

And so that is really the focus. For us to suppose they're going out and doing other regional transmission projects, which could constrain our capital to do other things for our ratepayers.

Q. You mentioned constrained capital, so I mean would you -- would you acknowledge this -- you know, in I guess certain instances would allow the -- for the double leveraging of some of these projects?

A. And Commissioner, could you define what you mean by double leveraging?

Q. Well, it means that you can shift all the debt to the -- to the subsidiary where it's not subject to the parent corporation and yet you can -- in theory the debts -- or the revenues from the entity will pay for the debt service payments.

A. And so Commissioner, are you asking that the structure, could that -- could double leveraging potentially occur? Is that your question?

Q. Yes.

A. Well, I guess -- I guess that's certainly a possibility. But I guess in the form of regulatory oversight, that would be something that would be looked at to see if it was appropriate or not.

Q. Okay. Is MISO membership a good deal for Missouri consumers?

A. Yes. Based upon the study that we have most recently performed we've concluded that being a member of MISO has significant benefits to the Missouri ratepayer.

Q. And do you recall what the -- what those -- was there a dollar value attached to those significant benefits?

A. I don't recall the specific number or the value. I do not know. But I know that what I've been informed in the analysis is that the benefits are very significant and meaningful.

Q. And was that in a -- was that a recent analysis or was that in the context of the last case?

A. I believe -- there's -- if my understanding's a true there's a docket pending before the Commission that is looking to extend our participation in MISO for an additional 20 months. And I believe that analysis and our support for that is incorporated therein.

Q. And you don't recall the case number on that, do you?

A. No. I don't, Commissioner.

COMMISSIONER DAVIS: All right. No further questions. Thank you.

JUDGE WOODRUFF: Commissioner Jarrett?

QUESTIONS BY COMMISSIONER JARRETT:

Q. Good morning, Mr. Baxter.

A. Good morning, Commissioner Jarrett.
Q. I wanted to start out with a couple questions about the Sioux scrubbers. Was that a discretionary project by Ameren Missouri or is that a required project due to federal or state regulations?
A. It ultimately, Commissioner -- that is a requirement that we would need to meet the clean air transport rules. And so it is -- so I hate to use the jargon. We needed to do that project to meet environmental regulations set by the federal government.
Q. Okay. Now my understanding from the testimony is that the project was started and then it was suspended for a time due to credit and financial issues; is that correct?
A. Commissioner, I think I would characterize it as more slowed down. Suspended suggests that all work on that project ceased and that never was the case. That project was slowed down. Activities and certain things were deferred, but the entire project continued to move forward even during the crisis. But certainly it was slowed down.
Q. Can you elaborate on the financial issues that caused that slow down?
A. Yeah. The -- Commissioner, I think that's an important and a very good question. I think, you know,

looking back two years from now I think it's important that we understand the context which some of those decisions were made.

And when you think about September or the fall of 2008, there are things that were frankly once thought of as unimaginable and certainly never expected, actually started to take place.

You started seeing things like Lehman Brothers a major investment bank one morning literally come to work and there was no more Lehman Brothers, which had a meaningful effect on us in terms of our -- our credit facility.

You had the federal government bailing out significant companies, Fannie Mae, Freddie Mac. You had them bailing out AEG and then literally putting forth a plan to try and bail out the financial industry, which at one point was even not accepted by Congress and ultimately didn't happen.

You had significant increases in interest costs, unprecedented. And real concerns about financial collapse in the industry as a whole during that entire period. It wasn't just one month. There was a period of months and beyond. So those are -- that's the back drop of things that were happening.

And -- as well as the real concern that

there were many others that were right on the cusp of what happened to Lehman. It's very unprecedented to believe that all the major investment banks were called to Washington to decide who was going to buy whom to see who could bail someone out. You know, unprecedented.

And so when you think about the decision, not only was that going around, but you know as where we sat we had to be mindful of what the challenges that we face as an organization. And so challenges that we face in the organization were several.

One, we did not have access to the commercial paper market. And so that short term market, which was available to some, that was not even to be thought of during that particular point in time.

Secondly, we knew that we had what was called negative free cash flow. Our expenditures were in excess of the money that we had brought in for operations. They were insufficient to cover our operations. They weren't sufficient to cover our capital expenditures. That was a fact.

We also knew that as a result of that that our life blood was these credit facilities. That was our ability to be able to go and access those credit facilities and there was a great amount of uncertainty associated with that.

That coupled with the fact when we looked out into the future we knew that there were real risks that if we did not have access to the capital markets, we would indeed run out of our credit facilities in the second quarter of 2009.

That was -- that was our analysis and that didn't even factor in a host of contingencies which, you know, I'll be happy to address. And so those are the back drops. And so one of the things that we decided -- the one thing we always knew was that we had an obligation to serve. We weren't many other companies who might be able to sort of slow things down; we have an obligation to serve just like we did this past weekend.

You know, when we had this incredible storm come through, we had an obligation to serve. We didn't say, we'll get to you next week. We had to get at it then and there to help our customers.

And so consequently we knew that what was prudent for our state, for our customers, was that we had to deliver safe and reliable service and we had to manage at the end of the day a host of other contingencies, which you could not have potentially predicted, things like storms, tens of millions of dollars; things like another bank in our credit facility going away; things like lower sales happening, higher levels of collateral.

All kinds of contingencies. Customers not being able to pay their bills. All these types of things were very real.

And so liquidity was king. And so the thing we had to do was be very mindful of the expenditures that we made. And so we made decisions to look across our enterprise on a segment by segment basis to see what we could do to better control ourselves, things that we could control.

And so what we did, we looked at projects across the board and we slowed down, we deferred, we even eliminated certain projects. Things like major outages, we didn't do any in 2009 because we had to make sure that we got through this terrible period of time.

We also, you know, to our vendors we slowed down our payments. We looked at alternative financing methods, not just your traditional but alternative. Things like like selling your receivables.

We tried to put as much on the plate that we could to make sure that we could get through what was a very uncertain market and not just the depth, but the length. And so consequently one of the things that we looked at were big projects.

And we put criteria out there that we said, okay, what's the right thing to do to make sure we deliver safe and reliable service. And safety was number one, reliable service was number two. Making sure that we met all environmental laws and regulations, number three. Making sure that -- that we tried to have minimal impact on our employees to the greatest extent possible. Those were all important criteria.

And as consequence to that we looked at all of our major projects and one of the projects which obviously rose to the top in terms of ability to potentially slow down or defer was the Sioux scrubber project.

And so Commissioner, the reason why Sioux was chosen was number 1, while we ultimately needed it meet environmental laws and regulations, we still were able to defer or slow down that project and meet those environmental regulations.

Two, we had the ability because the number of contractors that we had for that project to ramp up or ramp down. And that is indeed what we were able to do with that project. Three, it was a big project. It was a monthly spend of about $15 to $20 million from that one sole project alone. And it certainly didn't affect our ability to deliver safe and reliable service to our customers.

And so it was a tough decision. It's one that we thought very carefully about. And it was a decision made to slow it down. We continued to work on some key projects along the way. And so for a period of time between say November and the end of January, that project was slowed down and ultimately restarted as a result of that.

What it ultimately did do was push back our in-service dates as a result of that. But the bottom line, in the back drop of all those things, it was clearly the prudent thing to do.

Q. And I want to ask you a question and I don't want you to speculate, so feel free to tell me you don't know if you don't know. But do you believe that if you had continued with the Sioux scrubber project as originally intended and not slowed down during that financial crisis do, you believe you would have possibly sacrificed safety and reliability of service because of keeping the costs going on the Sioux scrubbers?

A. Absolutely. That was clearly -- that was clearly a risk that we had to face. And it wasn't like we could just simply go down and say, gosh, I hope we have one dollar in the bank at the end. That isn't how you manage. You don't -- you could show up on one week -- and just as we saw last week, be responsible for tens of millions of dollars for storm costs.

And in fact, in 2009 that's -- in fact that is what happened. We had significant levels of storm costs that we incurred in January and it went on. So you had to plan not just for your bank account, you had to plan for any number of contingencies. And so that was a real risk and that is absolutely why we made the decision that we did.

Q. Okay. Thank you. I want to switch gears for a moment. I believe it's in your direct testimony on Page 16. You provide a chart I think I've seen before and probably most people have seen before. It's the environmental regulatory timeline for coal units.

And the timeframe here on your chart is from 2008 and to 2017. Now, we're at 2011. Correct?

A. Yes.

Q. I'm looking at 2011 and beyond. It looks like there are many more regulations and guidelines and requirements that you have to meet from 2011 on and you've had to meet between 2008 and 2011. Is that accurate?

A. Yes.

Q. Had Ameren Missouri done a estimate to value what the costs will be for now until 2017 for all of these environmental requirements?

A. It -- so the simple answer to your question, Commissioner, is we've done I would say scenario planning as opposed to a pinpoint estimate because what you have here are regulations associated with I would say three things; air quality, ash and water. And you can put in greenhouse gases and they -- when you say air quality. But those are sort of the big three or big four, however you want to define them.

And so even as part of our integrated resource plan, you know, we talk about environmental regulations which could be what we deem a aggressive and could have significant effects on -- hundreds -- billions of dollars of potential investments to meet these things. And so we do -- we have gone through scenario planning. And the number could be in the billions.

At the same time the environmental protection agency just recently issued proposed rules, they're not final, related to air quality and some related to water. I -- and some of those rules at first blush do not appear to be as aggressive as they could have been.

And so as we sit here today we continue to evaluate the impact those rules over, say, the next 10, 15, 20 years, as well as what we believe is the appropriate environmental compliance strategies.

Q. Now, does this chart reflect the greenhouse gas emissions regulations that the EPA is looking at right now?

A. Yes. Commissioner, if you look at the lower, right-hand, you see CO2 regulation. And you see in the color, it's kind of an orangeish color. And so that is certainly an issue which is -- which is out there associated with the EPA.

Q. But that is sort of speculative now because we don't know what the -- what the emissions standards are going to be?

A. Yeah. In many respects all of these are somewhat speculative because we don't know the specific standards. Even -- even for those, you know, here on CAIR, those are still somewhat -- none of them are fully decided. Certainly when you come to greenhouse gases and carbon, I would say of all of those, that may be -- may be the most speculative at this point in time.

Q. So when Mr. Mills was asking you about frequency of rate cases, would the items on this chart be major drivers in whether you come in for rate cases or not?

A. Absolutely.

Q. And I think you said billions of dollars possibly of increased costs between now and 2017 for those environmental costs?

A. And you know, that is a possibility. That is a scenario if they are aggressive. Now, I will say that we are doing everything we can to -- to be very thoughtful to not only help shape these environmental regulations to minimize the impact to ratepayers, but also to try and find alternative strategies to minimize those impacts.

And no matter whether they're modest, moderate, whatever word you want to put on them, at the end of the day these environmental regulations will drive higher costs for ratepayers. The question is not whether, it's the magnitude and when.

Q. All right. Let me switch gears. I just have a few more questions. Does Ameren Missouri enjoy raising rates?

A. No, Commissioner. I don't know if I would say we enjoy raising rates because we understand the challenges the customer has. But at the same time, we know that to do the things that we believe are important for our business consistent with our customers' expectations and our ability to deliver and fair return to our investors, frequent rate cases based upon regulatory framework that we are faced with in Missouri are a necessity.

Q. Now, I know you're not the ROE expert and you've got other people testifying to that, but you did touch upon that in your surrebuttal, so I'm going to ask you a few questions about it.

Does the figure of 10 percent ROE have a significance with the financial markets?

A. And so Commissioner, please help me in terms of what you mean by significant? If you could maybe explain a little bit more what you mean by that.

Q. Well, when analysts are looking at utility companies and they're recommending to their clients whether to buy certain utility stocks, is 10 percent -- is there any significance where if you're -- if you're below 10 percent the analysts are going to look at the utility negatively versus whether they're over 10 percent?

Have you heard talk about 10 percent being sort of the bottom line for -- for analysts?

A. Now Commissioner, I would say this: I don't think that 10 percent is really the line; I think it's frankly higher than 10 percent. I would say that if analysts knew that our company got below 10 percent and they knew that in the last 12 months that only four other decisions have been made and 9.9 and below out of 35, I think that would concern analysts.

I think secondly analysts are already concerned with the fact that we have 10.1 percent when the average is 10.3 percent and they know that we have -- we experience excessive regulatory lag. I think analysts believe that we are already below what they believe it to be appropriate from an ROE perspective.

And so I would say analysts believe it is higher than 10. And I think to answer your question then with regard to something below 10, I think that would be viewed very negatively.

Q. Now, if we were to take Staff's recommendation of 8.75 ROE how would that effect your company's ability to raise capital?

A. It would clearly increase our cost of capital to raise. I think if we -- in my opinion, and of course, you know, Mr. Hevert will be able to respond on this much better than I -- but if we received an 8.75 percent return on equity, I think that the equity markets that -- and the capital markets in total would say that this is a regulatory environment which would be considered very aggressive, potentially -- obviously that is aggressive. Aggressive; potentially negative.

And consequently analysts and investors would say it's going to be very difficult for this company, and for them, to earn a fair return on their investment. Not difficult; I would say impossible. Impossible. So it would have very negative ramifications.

And so one of our primary sources of capital is going to the equity markets. Indeed, we did that in 2009. And indeed, we put much of that equity into Missouri to shore up its balance sheet. That cost of equity would rise significantly if we had an 8.75 percent return on equity because it would be deemed off the charts.

Q. Now, you were here when Ms. Vuylsteke gave her opening statement, were you not?

A. I was.

Q. And you heard what she said. I just wanted to give you an opportunity to respond.

A. Well, you know Commissioner -- you know, we -- when we think about customers we think about all of our customers. And so we recognize that the smaller residential customers, that certain of our customers are challenged. And I'm sure certain of our industrial customers have challenges.

But at the same time our industrial customers today desire and need near perfect reliability. Noranda Aluminum, who is honestly our largest -- I mean, literally a blip on the screen in terms of our ability to deliver safe and reliable energy to them, or have any disruption to many of our large industrial customers. It costs them significant sums of money.

And so we know what we must do is to invest in our energy infrastructure to meet their expectations. And so when you step back and you look at our reliability, coupled with rates in this country compared to rates not only in this state, which are even if you gave us a 100 percent of our entire rate increase would be the lowest of all the investor-owned utilities in this state.

And 100 percent of the rate increase to revise that we've talked about is in the top 25 percent in the country. I would say that when you look at the bargain it is a very attractive bargain. And similarly in speaking with those who are in economic development and they look at energy costs in the state of Missouri, one of the things was always rises to the top in terms of attractiveness is our overall low energy costs.

And it's our objective to continue to be efficient, to continue to be effect. But it's also our desire to make sure we deliver safe and reliable energy for all of our customers.

COMMISSIONER JARRETT: All right. Thank you, Mr. Baxter. I don't have any more questions, but I appreciate your testimony.

THE WITNESS: Thank you, Commissioner.

JUDGE WOODRUFF: Commissioner Kenney?

QUESTIONS BY COMMISSIONER KENNEY:

Q. Good morning, Mr. Baxter. How are you?

A. Good morning, Commissioner. I'm well. And you?

Q. I'm doing well. I'm going to ask questions about the Sioux scrubbers, about energy efficiency, the trackers and the relationship to ROE and then I'm going to touch a little bit on the environmental costs as well. But I'll do that in the context talking about the Sioux scrubbers.

Let me just back up and follow up on a question that Commissioner Jarrett just asked regarding an 8.7 ROE and what it would do to Ameren's cost of capital and you said it would clearly raise it. Would you be -- and then you said significantly. Are you able to quantify that in basis points or --

A. No, Commissioner. That would just be an observation. I haven't done any specific analysis. Maybe Mr. Hevert would be able to do a better job of answering that. Maybe he's addressed it specifically in his testimony.

Q. And hypothetically speaking if we gave Ameren 11.2 percent ROE, what would that -- what effect would that have on Ameren's cost of capital? Careful there.

A. I think I'm okay. If you see me go down --

Q. There's lots of lawyers in the room.

A. I'm sorry, Commissioner. Could you ask your question again. I apologize. I was a little distracted.

Q. That's okay. It's the converse of Commissioner Jarrett's question. If we gave -- hypothetically speaking, if we gave Ameren 11.2 ROE, what effect would that have on Ameren's cost of capital?

A. I think in general it would lower our cost of capital.

Q. Significantly?

A. I think at that level compared to where we're at, I think it would have a very significant effect. I don't know --

Q. Can you quantify it?

A. -- to what extent. I could not.

Q. All right. I want to talk first about the Sioux scrubbers and the -- I don't know which numbers are HC and which ones aren't. Staff proposed disallowance, is it HC? Okay. It's $31 million. Right? Or thereabouts?

A. Yes.

Q. 30 million.

MR. BYRNE: I thinks it 33.

COMMISSIONER KENNEY: 33 million?

MR. BYRNE: AFUDC in that range.

BY COMMISSIONER KENNEY:

Q. And it's based upon Staff's assertion that -- well, it was because of delays caused by Ameren's decision to delay the project, not halt it but to delay.

A. Slow it down is the term I like to use.

Q. Slow it down. And that that decision was based upon issues in the credit markets and the capital markets more or less?

A. More or less. As well as -- it was that, Commissioner, but also as I -- as I related to Commissioner Jarrett, you know, making sure that we not only just dealt with the capital markets but a host of contingencies that we had to be mindful of that could have hurt our overall liquidity.

Q. And you needed to maintain liquidity to deal with those potential contingencies more or less?

A. Absolutely. We had to certainly do the best we could to plan for those.

Q. And you contemplated alternative financing such as selling receivables and other such steps. Right?

A. That's correct. Traditional, non-traditional financing methods, projects, delaying payments to vendors and the list was fairly extensive.

Q. How did you get away with delaying payments to vendors? Did vendors raise a stink about that?

A. You know, it -- all things being equal I think that it was a practice that was being employed by everybody. They were delaying their payments. It was probably a ripple effect. So do we have some issues and some vendors raise questions, the simple answer is yes. The simple answer is yes. Was it one of those things that we kept for such a long period of time that it really negatively effected our vendors; the answer is to the best of my knowledge, no.

Q. And this was primarily in the second half of '08, in the first two quarters of '09?

A. Generally speaking Commissioner, I would say that much of these activities took place in certainly the second half and probably, you saw those more pronounced from September through December. And then you really saw them not just continuing through the first quarter of '09, but frankly the entire 2009, for many of the projects.

Because one of the things that -- that everyone was hopeful would actually be successful was the government's bailout.

Q. Uh-huh.

A. And any -- while they infused capital and did certain things, there was certainly no guarantee that that was going to work. And so even today throughout 2009 the implications of that financial crisis are still being felt in the capital markets.

Q. So September through December and the entirety of 2009 essentially Ameren didn't have access to commercial paper markets, is the first thing that I think that you mentioned?

A. That's correct.

Q. And secondarily there's negative free cash flow?

A. That's correct.

Q. And as a result of that negative free cash flow, there's uncertainty associated with lack of access to credit market?

A. There's certainly -- there's sort of a lack of access as well as the cost of the credit markets, both.

Q. And so the decision was made to slow down the Sioux project to increase or maintain a certain level of liquidity?

A. That's correct.

Q. All right. Given that context, how do you respond to Staff's argument that Ameren still had $540 million available to it in an existing credit facility and that in September of '09 -- and I don't know if this is HC either. These -- Mr. Lowery?

MR. LOWERY: I don't believe it is.

BY COMMMISSIONER KENNEY:

Q. All right. Issuance of additional -- in September of 2009 Ameren was able to additional long-term capital in the form of $535 million new equity and then in March of '09 were able to issue 30-year first mortgage bonds 8.45 percent, $350 million.

So don't those facts belie Ameren's concerns about lack of access to the credit markets?

A. Absolutely not, Commissioner, with all due respect.

Q. Not at all?

A. No. Because when the decisions were made at that time, you had to look at the context which I explained to Commissioner Jarrett that you had to plan for. While $500 million sounds like a lot, the fact of the matter is that the negative free cash flow was in excess of a billion. And the fact of the matter is that, that assumed that you had full access to your credit facilities.

What was uncertain was whether there -- you would wake up one morning and find another Lehman Brothers or two or three. And so when we looked out and we did the analysis it was nowhere certain that -- that we would have unfettered access to the capital markets. And secondly, should you be able to access those capital markets, they would have been very, very expensive.

And so --

Q. What's very, very expensive?

A. Because we could issue -- I'm sorry.

Q. What is very, very expensive?

A. Well, it was expensive -- for some it was in excess of 10 percent.

Q. But you issued for a 30-year mortgage bond on 8.45 percent.

A. And that's correct, Commissioner, but that was in March.

Q. Of '09?

A. Of '09.

Q. Right.

A. But when the decision was made --

Q. Okay.

A. -- with regard to Sioux was in the fall, that November timeframe. And we were studying all these things in September and October. And so the uncertainty that existed at that point in time was number -- was all the things I said. There was uncertainty in terms of the capital markets.

Throughout September I can tell you that there was no access if you wanted to unless you were the highest grade entity to access the capital markets to borrow.

And so -- and plus there was uncertainty as to whether, as I said, that federal government's bailout was indeed going to hold. And I think after the fact, other people who've looked at it and said, gee, they weren't -- they didn't realize just exactly how deep that crisis was.

Q. And so even in September of '09 when Ameren was able to access $530 million in equity and it looked like it was long-term capital to refinance some short-term capital in September of '09 in the amount of $530 million in new equity. That -- even that doesn't belie the notion that it was difficult the capital market?

A. Absolutely not because -- so Commissioner that was September -- that was a full 12 months later. We had analyses which showed that in the second quarter we could have run out of liquidity.

Q. In the second quarter of --

A. Of 2009.

Q. Right.

A. And so the issue -- the March 2009 issue was after -- you know, that was after the capital market -- we saw things had gotten better. And secondly, you know, in September of '09, you know, that was way out there in the future and we could have had real issues. And so there was uncertainty.

And so what we didn't know is -- and there was nothing that was black and white. We're operating with a tremendous amount of uncertainty and we're making prudent decisions in terms of making sure we had with our primary goal of delivering safe and reliable service.

Q. I'm confused and I don't want to belabor the point because maybe I -- the decision to slow down the Sioux project was in November of '09?

A. '08, excuse me.

Q. '08.

A. My bad. If I've been saying '09 I apologize. It was November of 2008.

Q. I see.

A. So it was -- to make sure, so if I've been --

Q. So by September of '09 and March '09 debt and equity issuances were after the slow down decision --

A. Absolutely.

Q. -- was made?

A. Yes.

Q. All right. But prior to that there was the tightening of the credit markets and --

A. It's everything that I was just describing. So Commissioner, I apologize if --

Q. Okay.

A. -- I was -- and so to be clear: All these events happened in September, October, November, December, January of '08 and so it was in the first quarter or the second quarter of '09 that we had real concerns about liquidity. And that's not taking into consideration all of the contingencies that I just described a little bit earlier.

That -- which frankly as we know are very real. Things like storms. Things like, you know, the need to post additional collateral. Things like, you know, potential -- you know, obviously lower sales for customers and those types of things.

Q. So the first quarter of '09 all the way through September of '09, at least, the capital markets were loosing up and Ameren had no problems accessing them at that point, then?

A. To suggest, Commissioner, we had no problems would probably be a bit of an overstatement. I would say that we were able to access. They were clearly more challenging than they had been in the past. But we were, in March of '09, able to access those capital markets. But I think just because we're able to access the capital markets doesn't mean that we still shouldn't have been prudent in managing our liquidity.

In fact, even because we access those capital markets, we still did not do any outages throughout the rest of 2009.

Q. And you continued to delay payment to vendors throughout 2009?

A. Frankly, as a result of that we started loosening up on that. It wasn't throughout the entire year, but certainly through the early part of '09. We started loosening some of those activities up.

Q. Okay.

A. In large part, Commissioner, you know, what we saw in the front half of '09, it was a very fluent time. And it was a very uncertain time, unprecedented. And so what we saw were things improving in the overall capital markets. Still no guarantee because even then, while the government had done their bailout there was still uncertainty in terms of the wherewithal of certain banks.

And as you know, throughout 2009 while we didn't see many of the major banks fail, we certainly saw a number of the smaller banks fail because they didn't meet the credit qualifications that the federal government had put forth.

And so those are the types of things that we did. And we knew the Sioux project was an important project. And in fact that is one of the reasons why when we looked at some of the projects, it got put back on when we thought it was prudent to do so and to execute the plan that we wanted to execute for them.

Q. And when was that decision made?

A. That was made in late January of 2009.

Q. All right. And you said that you knew that the Sioux project was important and that kind of brings me to my next set of questions about environmental regulatory timeline for coal units on Page 16.

A. Uh-huh.

Q. And this originally was a result of Edison Institute Research. Right?

A. I believe, Commissioner, this is a chart that Edison electric has put out. It's -- I think other organizations have used it, but --

Q. I've used it in a presentation.

A. Yeah.

Q. I don't think I've ever been a presentation discussing environmental compliance --

A. That hasn't had some version of this. Right?

Q. -- that hasn't included this chart. So it's affectionately referred to the train wreck by other names.

A. Yes.

Q. But in all fairness though, everything on here is not entirely new. Right? Some of these like the CAIR rule, which is now under a different name. Is --

A. CADER (ph.).

Q. But CAIR is not new. And the SOx and NOx compliance rules, those weren't new. Right?

A. In terms of what time period are you referring to, Commissioner?

Q. Well, they're on this chart beginning in '08. Well let me ask you: When were Sox and NOx -- when was SOx and NOx regulated heavily by the EPA? It was prior to '08. Right?

A. Well, in part I think as you can see there on the left-hand side, you see that there is -- there are CAIR and CAMR rules. CAMR is mercury, CAIR was -- same way with SOx -- and you see some of the rules were vacated. Some remanded. Obviously many of these rules were challenged in the courts.

Q. Uh-huh.

A. And so some of those things were -- were out there. We knew when we actually started the Sioux scrubber project that these were likely potentially coming down the line. One of the reasons why we -- we thought this was going to be the case and in deed turned out to be the case for us to meet these environmental requirements.

Q. Would it be fair to say that the really brand new ones would be the 316(b) compliance and that's the water component. Right?

A. That is the water.

Q. And then the CCB rules is the coal combustion byproducts rule based with coal/ash rule?

A. I think that's true. And I think the other thing I would -- I would point out are this HAPS/MACT rule. Do you see that in the blue there?

Q. That's the mercury and air pollutant

standards?

A. Yeah. So --

Q. So mercury was regulated already?

A. Sure. But I think what was uncertain throughout most of that period of time or what the specific rules were discussed -- to your point, I think that we knew that there was going to be some level of rules associated with SOx, NOx, and mercury, and even as we've talked about with Commissioner Jarrett, potentially carbon.

Q. Uh-huh.

A. Water had been kind of spoken about but became more direct recently and then of course ash within the last couple of years.

Q. Well, so water and ash are the true -- I would say -- brand spanking new ones.

A. Okay. Well, I understand why you say that. I understand why you say that.

Q. Do you agree with me?

A. Yeah. I would say brand spanking new -- I would say that we've always had water regulations.

Q. Right.

A. And --

Q. The 316(b) specifically.

A. Relatively speaking I believe that's right.

Q. Would you agree with me then that this --

not -- I'm -- this chart may have a tendency to overstate the amount of environmental compliance that's coming down the pike for coal units? Would you agree with me?

A. I -- Commissioner, I don't know if it overstates. I believe it's my understanding it spells out the potential environmental regulations, which are out there.

Q. Do you think it's designed to be scary?

A. I think it's designed to be frankly factual, Commissioner.

Q. Okay. All right. All right. I'll move on from that. And I want to talk about the trackers and their relationship to the ROE. Now, I understand that there are trackers in place already that the FAC or -- outside of the rate case recovery mechanisms. FAC, vegetation management and pension and OPEB tracker. Are those the three that already are in place that you're asking for continuance on?

A. And so Commissioner, can I maybe qualify that a little bit?

Q. Sure.

A. It's my understanding that the only mechanism which we're able to change rates outside of the rate case is the fuel adjustment clause. And so the trackers are what they are; they're trackers.

Q. Yes, they are. Right.

A. There's pension and OPEB and the vegetation management. So we don't change rates but we're able to track differences between what's established in base rates.

Q. And Ameren wants to maintain those three mechanisms and it's proposing three new mechanisms for construction accounting, for capital investments, and highway construction relocations?

A. I believe, Commissioner, those last three as a result of the recent settlement are no longer being sought in this case.

Q. Which three? The energy --

A. The last three. So the only ones there -- the first three are still being -- are still -- but as a result of settlement discussions, those last three are not being sought.

Q. So that would be the energy efficiency -- well, let me ask you this because you talked about the throughput disincentive.

A. Yes.

Q. What is -- what does that mean to you? I think it has different meanings.

A. Well, to me it is -- it is from our perspective it is the lost fixed costs that we -- that we lose as a result of lower savings.

Q. Lost fixed cost --

A. Cost recovery in my basic --
Q. Lost fixed costs?
A. Yes.
Q. Is it the same -- is it the same as -- in your estimation as lost revenues?
A. I think it's somewhat very close, very germane to that. Now quite the same, but I think it's -- it's -- you know, it is I think -- when you look at the economics -- when you look at the economics, I'm not sure if there's really much difference frankly.
Q. So revenue is a cost?
A. Lost fixed costs is a cost. Losses associated with -- so losses as I see it, Commissioner -- and so maybe I should respond to your question. I didn't mean to interrupt you.
Q. Go ahead.
A. The losses associated with energy efficiency programs are costs. Our rates are established to recover not just variable costs, but fixed costs. And so consequently when we -- when our levels of sales go down, we lose the recovery of some of those fixed costs. And so those become losses, which are therefore in my view, become costs.
Q. How are you able to determine that specific lost fixed costs are attributable to a specific energy

efficiency program as opposed to a ratepayer taking their own steps to be more energy efficient?

A. And so Commissioner, in terms of how we actually go about doing that, how we went through the calculation -- and I'll be honest with you, I'm not the expert. I think Mr. Davis, who will be up a little bit later -- maybe Mr. Laurent. My sense is probably Mr. Davis is the one who can probably walk you through the specifics of that.

Q. Would you agree with me though that if there are lost revenues or lost fixed costs that are not attributable to a specific energy efficiency program that that -- those costs and those revenues are still lost, but they're not attributable to a specific energy efficiency program, that the throughput disincentive is not truly corrected through that mechanism?

A. Well, so Commissioner in terms of that issue and what our proposal is, again, I probably will it to Mr. Davis to see -- in terms of how we true-up our estimate of the billing units and how we relate those back to our programs that we do versus not.

Q. And is it accurate to say that if you aren't allowed to recover lost fixed costs that you'll be forced to decrease investment in energy efficiency programs?

A. I guess in a word, you know, Commissioner, yes. But I want to make sure that I put the appropriate qualifier on that.

Q. Okay.

A. You know, we want to invest in energy efficiency programs. What we have found -- I mean, we've learned quite a bit as a company over the last several years in terms of these energy efficiency programs. We've learned number 1, that customers are embracing them. And secondly, we've been able to do some more studies to determine just exactly what the impacts of these energy efficiency programs are.

And what we have found is that -- is that they are -- they are resulting in losses and through -- through -- since the time of our energy efficiency programs being out in 2008, we've incurred about $15 million of losses. If we --

Q. That are attributable to energy efficiency programs?

A. Yes. Yes.

Q. And so prospectively, if we would spend at the level that we suggested at $25 million per year and we didn't address the throughput disincentive, we would have losses for two years that would be in excess of $50 million.

And so what we're trying to do is to find an approach that -- that really aligns consumers' desire for energy efficiency programs, our desire to spend it, but also make sure that we give our shareholders a reasonable opportunity to earn a fair return on their investment.

Q. So let me -- let me make sure I understand you. You said if you spend $25 million on energy efficiency programs there's going to be a $50 million loss over the course of two years?

A. If we spend 25, 25, 25 on consistent space and we would not come in for a rate case, say, for two years, we would absorb losses of approximately 50 to $55 million.

Q. In decreased consumption or just expenditures on energy efficiency programs?

A. No. That has nothing -- that is excluding the program costs, which -- which -- which we would recover as we do now. These are lost fixed costs due to lower usage.

Q. So and the way it works now -- how does it work now? I mean, you spend money on an energy efficiency program. You're allowed to recover that and you're allowed -- what happens to that that money? How's that money treated?

A. Well, the -- the way it is treated now it's my understanding that we spend money on energy efficiency program, we put it as an asset on our books and we're able to recover that over the six years, for the program.

Q. So you're able to recover the costs -- all right.

A. Of the program costs.

Q. Program costs.

A. What's happening now is throughput disincentive we're absorbing 100 percent of those costs.

Q. And is it treated as -- that money, is it treated as a regulatory asset and you're allowed to earn on it?

A. No.

Q. It is not put under rate base?

A. No. It's a loss.

Q. No. Not the lost revenue. Is the expenditures on the program?

A. Excuse me. I believe that's the case. We're able to treat that as a regulatory asset and put that as a rate base item. I don't know if it's a regulatory asset, but as a rate base item.

Q. You're earning on it?

A. Yes, we are.

Q. So you get the money back and you're earning on it. Now the statute says that we're supposed to align the rate -- well, we're supposed to align the utility financial incentives with the best interests of the ratepayers. Some language to the effect. But everybody's interpreting that to mean that we're supposed to be aligning the utility's interest with the ratepayer's interest. Right?

A. Yes.

Q. More or less. And this is kind of a philosophical question: Why does the utility require any additional incentive above and beyond? You get to recover the money. You get to earn on it. Why is there this need for additional incentive beyond those two items?

A. Well, I think Commissioner -- I think they're incentives. And what we're simply trying to do here is to prevent losses.

Q. And that's assuming that you can attribute specific lost revenues to specific energy efficiency programs?

A. Yes. I -- you know, again, Mr. Davis would be better served --

Q. Sure.

A. -- to answer the specifics. But the alignment, there's not alignment in our view, of consumers and shareholders' interest if to spend money on energy efficiency programs drives losses. But it isn't just losses, Commissioner. It isn't just, you know, the -- the losses. It actually reduces cash flows. And it attributes -- we've talked a lot about regulatory lag and excessive regulatory lag.

Well, these losses -- just the ROE gap only will get bigger. And the cash flows that we have to invest in our infrastructure get less. And so that's not also in the interest of ratepayers if we have the inability or we're constrained in investing in our energy infrastructure as a result of energy efficiency programs.

Q. Is there an analysis that's been done either by Ameren or by industry that takes into account any increases in revenues that are attributable to plasma screen TVs and the proliferation of gadgets and projects around the house and increased usage that make come from new technologies down the road in terms of electric vehicles that potentially will offset whatever's lost in energy efficiency programs?

A. You know, Commissioner, I don't know if there's been a specific analysis, but Mr. Davis in his testimony talked about customer growth.

Q. Uh-huh.

A. And our analysis shows that 80 percent of the growth that we have to customer sales is attributable frankly to new customers and not opposed to customers using a lot more. It's because we have new customers that require hook up and costs that we have to incur to hook them up and to place them into new service.

And so that's the best one that I'm aware of. Mr. Davis will be able to give you the specifics. But -- but -- so 80 percent isn't driven by the big plasma TVs and all these other things. Frankly, it's driven by customers needing new service.

And we need -- and we're looking for the cash flows associated with that new service to mitigate the costs that we incur as a result of it.

Q. I'm going to ask one final question. This is kind of -- it's going to ask for your opinion and maybe some speculation as well. If a customer's making investments in energy efficiency; new light bulbs and new siding and making whatever investments they think that they need to make their home operate more efficiently, and they have an expectation that it's going to do something to their bill, is it -- does it act as a disincentive for the customer if they see no net change in their bill or in fact even a net increase after making energy efficiency investments?

A. Well, Commissioner, I believe that customers will see a change in their bill. Because if they -- if they reduce their level of usage one of the things that we have a variable costs, which are reflected on our customers' bills, related to the fuel adjustment clause. And so there's no doubt that if they use less, they will get less of a charge should there be an increase for net base fuel costs on their bill. They will see a direct benefit for that.

And consequently, they will also see -- and this gets a little bit in the longer term, is that by energy efficiency programs, it will defer the need to add baseload generation, which is a -- and potentially -- you know, potentially environmental controls and all these other things we talked about.

And so there is an incentive. I mean, part of our job -- I say part of my company's job and I think part of our collective job is to make sure customers understand that.

Q. I agree with you on that. Because you attended the local public hearings as did I and person after person after person expressed frustration and a feeling of a lack of incentive in making energy efficiency investments because they had made certain energy efficiency investments and didn't see a net decrease in their bills. And so maybe it's a matter of better communication on all of our parts.

A. Yeah. Commissioner, I think you're right. I think one of the things we found too is confusion.

Because what customers -- when they started peeling the onion back on the bill, what we found were a couple things. One was that their bill went up because there actual usage went up because we had a tremendously hot summer.

But secondly, when you look at the bottom line bill, often what has happened are changes in taxes and those other types of things. And so it isn't just energy efficiency in terms of educating the consumer. I think it's broader than that. It's making sure they understand all the components of a bill. And it's hard. It's hard for some of these customers, but that's one of the things that I think we have to do.

COMMISSIONER KENNEY: All right. I thank you for your patience through my questions.

THE WITNESS: Thank you, Commissioner.

COMMISSIONER DAVIS: Judge, can I go back and ask -- all right.

FURTHER QUESTIONS BY COMMISSIONER DAVIS:

Q. Just to recap on some of Commissioner Kenney's questions, Mr. Baxter. Is it fair to say that the collapse -- I mean, did you think that prior to -- prior to September 2008 -- I mean, did you ever envision Lehman Brothers collapsing?

A. No. I would tell you that in August of 2008 I didn't envision Lehman Brothers collapsing.

Q. And in fact, they've been around for more than 150 years. Correct?

A. That is correct. I can tell you that employees that have been there for 40 years were shaken by the fact that their entity that they literally walked away on Friday before and then came back that following Monday and Tuesday, it was beyond their belief.

Q. All right. So really it would -- for -- it would be impossible for a reasonable person to have foreseen that. Correct?

A. Yes, Commissioner. When I seen Alan Greenspan -- who you can decide if you think he's wise or not -- when he said that he could have never envisioned the depth and the length and the extent of this crisis as just one observer, I think that very many reasonable people did not foresee this happening. And took frankly, very similar actions.

Our actions were consistent with what was taken, not just in our industry but across the entire country and global.

Q. Right. And so Lehman Brothers collapsed in September 2008. AmerenUE makes the decision to slow down work on the Sioux scrubbers in approximately November 2008; is that correct?

A. That's correct.

Q. And then you've made the decision to try to get back up to business as usual in January 2008; is that --

A. Late January 2009.

Q. I'm sorry. Yeah. Late January 2009. And then after that you, you know, issued some first mortgage bonds and did some other things later in the year. Correct?

A. That's correct.

Q. So the other thing I did want to ask you about was Commissioner Kenney asked you some questions about -- I call it the EEI chart on Page 16 of your testimony. It's true that a number of these rules have been floating around out here for some time. Correct?

A. Yes.

Q. It doesn't mean they cost any less, does it?

A. No.

COMMISSIONER DAVIS: Thank you, Judge. No further questions. All right. We're due for a break for lunch. So we'll take a break now. We'll come back at 1:30 and resume with recross based on questions from the bench.

(Off the record.)

JUDGE WOODRUFF: We're back from lunch, and almost ready to get started with recross based on questions from the bench.

We had some questions about moving the LED lighting around.

Do you want to address that?

MR. LOWERY: Yes, Your Honor. I think this morning we had indicated that we thought we could take it up tomorrow, but, in fact, we have a witness that's not available tomorrow.

Originally, when we were working with the Staff on the schedule, it was scheduled on May 5th. And that witness is available then, and so we thought we would just put it on May 5th, if that pleases the Commission.

I think we would put it after solar rebates, because I think the witness is traveling in. So if we could do solar rebates first, then LED lighting. Neither of those issues, I think, are expected to take a long period of time, so we should have plenty of time that day.

JUDGE WOODRUFF: That will be fine.

MR. LOWERY: Thank you.

JUDGE WOODRUFF: Okay. Along those lines, I did want to make one other announcement, just in general. It's a request from one of the commissioners, that as we start taking witnesses out of order and so forth during the process, make sure we give the commissioners a couple hours' notice in advance that we're going to be doing that. That's certainly helpful to them, and that's just good practice.

Commissioner?

COMMISSIONER DAVIS: Preferably a day, but at least a couple of hours.

JUDGE WOODRUFF: And that might tell you which commissioner requested that, as well.

All right. Well, let's go ahead and get started on recross based on questions from the bench.

I'm just looking around here. I guess we'll go down to MIEC.

RECROSS EXAMINATION BY MS. VUYLSTEKE:

Q. Good afternoon, Mr. Baxter.

A. Ms. Vulysteke, hello.

(REPORTER'S NOTE: At this point, an in-camera session was had, which is at Volume 17, Pages 195 to 199.)

JUDGE WOODRUFF: All right. We're back in regular session, and you can continue.

BY MS. VUYLSTEKE:

Q. You were discussing the Sioux scrubbers earlier; I think in your conversations with Commissioner Davis, as well. And Ameren installed two other scrubbers, correct, in Illinois -- Coffeen and Duck Point?

A. I believe you're referring to Coffeen and Duck Creek.

Q. Okay. And Duck Creek. You installed two other scrubbers in Illinois; is that correct?

A. Yes. We have installed other scrubbers in our Illinois generation operations.

Q. Are you aware of any discussions to delay the installation of those two scrubbers in Illinois?

A. At what point are you referring to, Ms. Vuylsteke?

Q. At any point. Was there any -- ever any discussion to delay the installation of the scrubbers at Coffeen and Duck Creek?

A. Are you referring back to the last quarter of 2008, during that time period? Is that what you're generally referring to?

Q. I would say at any time, but let's start in 2008.

A. Well, I think at that point in time, the simple answer is yes. That was clearly something that was considered. And, in fact, the Coffeen scrubber was indeed slowed down. The Duck Creek scrubber, if I'm not mistaken, moved forward because it was basically just about to come in service in January.

But what you have to keep in mind in Illinois is that they had certain statewide environmental standards that they had to meet. And so they had not just the federal environmental standards, they actually have more stringent statewide standards that had to be met.

Q. So my next question is going to be: Why were those two projects not delayed? And were -- would you think that the -- why were they not delayed?

A. I think it was, simply, as I just said, they had to meet a timeframe to install those scrubbers to meet environmental standards in the state of Illinois.

Q. Did the fact that Coffeen and Duck Creek provided power in an unregulated, or at least a competitive, market, was that a factor in the decision to go ahead and move forward with those?

A. It was not a factor in Ameren Missouri's decision, in terms of what they did with the Sioux scrubber project. No.

Q. Was it a factor in the decision to move forward with the other two?

A. I think the primary driver was simply to meet environmental regulations. And if they didn't meet environmental regulations, those plants would not operate.

Q. Okay. I have no other questions. Thank you.

A. Okay.

JUDGE WOODRUFF: Public Counsel.

MR. MILLS: Thank you.

RECROSS EXAMINATION BY MR. MILLS:

Q. Mr. Baxter, let's -- I'm going to go back to the Taum Sauk questions. Okay. And Commissioner Gunn tried a car analogy on you. And I'm going to see if I can try a slightly different one and see if it resonates.

Say you've got a fairly old car -- runs okay, you know it's not going to last forever, but you're satisfied with it. Your neighbor borrows it and totals it. Okay. You with me so far?

A. Yes.

Q. He couldn't find that exact same car to replace it with, so he bought a newer car, with lower miles -- just a year newer, but lower miles. And so, theoretically, it should last longer. Because he offered to replace your car because he totaled yours.

So he brings you this new car and says, Oh, here's your car. And by the way, you owe me $3,000 because this cost more than the car I wrecked.

How would you feel about that?

A. So Mr. Mills, let me make sure I understand. So I'm driving an old car.

Q. Yes.

A. Right? And my neighbor goes out, and he --

Q. Borrows it with your permission, and totals it.

A. Okay. And so he receives insurance proceeds for the value of that car. I'm driving that old car only because maybe I didn't have the financial wherewithal to do something different.

Q. Well, because it's been working fine for you, and you just hadn't gotten around to replacing it. You hadn't really even studied replacing it, but -- you were just driving it daily, but -- until it got crashed.

A. Okay.

Q. So rather than asking your opinion about whether or not you want a new car, he volunteers to replace it; and without your knowledge, he replaces it with a better car, and then presents you for -- with a bill for the difference.

A. And so, Mr. Mills, in your example, I assume when you say "a better car" -- so perhaps in that better car that he gives me, it's a car -- let's just say it's one that's more like a 2010 type of car. Right? It's possible. Right. It just hasn't been driven; it has low mileage.

And it's -- perhaps that same car has -- let's just say the original car I had was a 1960's vintage. And so he offers me another car -- say it's a 2010 -- and it had, you know, all these enhancements to it -- things like the seat belt, shoulder strap. Let's just say it has a -- an air bag, traction control. Those are all very good things. Those are all safe things.

Q. Uh-huh.

A. And it's -- this car has less mileage. And he says, you know, I'll replace that car, and I'll give it to you, but you pay me for $3,000. And it has all these good things, and it's a safer --

Q. Well, see, now you're --

A. -- more reliable --

Q. -- differing from my analogy, because in mine, the neighbor just did it and then presented you with a bill afterwards; didn't ask you about it.

A. Okay.

Q. So --

A. So the question --

Q. -- you need to keep that part of the

analogy -- I don't care about you changing the cars out. I know where you're going with your cars, and that's fine. But here -- this is the after-the-fact thing: The neighbor presents you the car and presents you the bill.

A. And so I assess that additional money that I have to pay -- and it has all those enhancements to it. And he says, you know, I'll replace those.

And would I pay for it, with all those enhancements and all those benefits, and it's a car that's safer, more reliable and it's going to last longer, and I thought it was a good thing? Yeah, I would pay for it.

Q. Okay. Even if your budget is really tight, and you're going to have to go without medicine to be able to pay for that car? Even then you would be willing to pay for it?

A. I think if it -- in the bigger picture, if that car was one that then in the bigger picture was going to have benefits for me that would last for a long time, and it was going to be cheaper for me in the long run to do it, you bet.

Q. Okay.

COMMISSIONER GUNN: I'd like to officially apologize for using the car reference.

BY MR. MILLS:

Q. In response to some questions for -- from

Commissioner Gunn -- Chairman Gunn, you talked about, you know, sort of the -- "in the normal course of business," I think was a phrase that came up in a couple of answers.

In the normal course of business in utility planning, if Ameren Missouri were to decide to build a $490 million plant, would that not go through the IRP process?

A. Yes. I would presume it would.

Q. Okay. Did the Taum Sauk rebuild get analyzed in the IRP process?

A. Did the Taum Sauk rebuild get analyzed in the IRP process? Could you -- can you explain what that means? By the --

Q. Well --

A. -- analyze in the IR -- was it included in the IRP?

Q. Did you do any integrated resource planning analysis that led you to conclude that rebuilding the Taum Sauk plant was the best generating -- was the best supply- or demand-side option at that point in time?

A. Are you referring back to our 2008 plan?

Q. I'm referring to any plan.

A. I don't recall -- I know that Taum Sauk was in our 2005 IRP plan, and I don't know -- I presume that Taum Sauk, in 2008 -- since we would have commenced construction on that plant by then -- was included in our

2008 IRP plan.

Q. And perhaps I'm asking the question wrong. My question is not was it included in the IRP plan, but was the decision to rebuild the plant the result of integrated resource planning?

A. Well, Mr. Mills, if it was included in the IRP plan, I would then say that it was part of the IRP planning process. It was included.

Q. Okay. So you looked at a number of different alternatives and decided that compared to, say, repowering Venice that Taum Sauk was a better -- rebuilding Taum Sauk was a better alternative?

A. Well, you know, I don't know if a specific analysis was done. But I can tell you that for the $90 million investment that we have in rate base, that the benefits associated with Taum Sauk are conservatively estimated to be $170 million for ratepayers. That's a good deal.

Q. So the decision was driven, at least in a large part, by the fact that the insurance proceeds were available to rebuild Taum Sauk?

A. My analogy was more about the benefit of the -- what we have in rate base versus those benefits that ratepayers would truly achieve. I don't know the specific analysis that was done in the IRP in 2008. I'm just giving

you that as a bigger picture --
Q. All right.
A. -- statement.
Q. Well, let me ask you that as a question, then. Was the fact that there were insurance proceeds available to devote to the rebuild of Taum Sauk a big factor in your decision to rebuild it?
A. I believe that the decision to rebuild was really addressed as part of the overall state settlement. I think that there was an awareness that insurance proceeds would be available.
But to what extent that was factored in -- in all of that statewide settlement, among other things, we did commit in the statewide settlement to rebuild Taum Sauk. That was part of the statewide settlement. And that was a factor, I'm sure, that was considered.
But to what extent that analysis was done, I was not in middle of all of that, so I'm not aware.
Q. Did the state -- was the statewide settlement based on an integrated planning analysis?
A. I do not know.
Q. Now, the insurance covered roughly 400 million less of the capital cost. Did -- were there insurance proceeds available to recover any of your lost revenues during the period that the plant was down?

A. Yes. I believe so.
Q. Okay. Do you know the magnitude of those?
A. I -- no, not specifically. I know that the costs that we have absorbed in excessive insurance proceeds were approximately $55 million. I don't recall specifically the replacement power number.
Q. Okay. Now, I think in response to questions from Commissioner Gunn, you acknowledged that leading up to the collapse that mistakes were made; is that correct?
A. Yes.
Q. Does any entity other than Ameren Missouri bear any responsibility for the collapse?
A. Well, we -- as we said from the outset, we take full responsibility for that collapse. And so whether there's other entities that are responsible, I haven't thought about it, but I know we take full responsibility.
Q. Can you think of any other entities that had a hand in it, that had any responsibility?
A. What do you mean by entity? Do you mean -- the simple answer is no. We -- that I can think of, no. I think we take full responsibility for that.
Q. So would you agree that the collapse of the upper reservoir was solely due to Ameren Missouri's errors?
A. So let me -- let me qualify it. Maybe I was not as clear. We certainly made errors during that period

of time. But there -- certainly, there were errors that were made in the construction of the original facility.

As -- so the collapse, as some of the analyses have indicated, was certainly in part driven by the over-topping; and it was in part driven by the -- our errors that we made in setting the sensors and those types of things.

But I believe, as Dr. Rizzo also stated at the -- the catastrophic collapse was also driven by the poor construction that was not consistent with the design when the plant was originally built in 1960s.

And so are there some entities that may have some culpability associated with that? I don't know. But that certainly was an implication. But we oversaw that project. We oversaw that project back in the '60s. And so --

Q. Ultimately, even when it was being built, Union Electric at that point, was responsible for overseeing the quality of construction?

A. You bet.

Q. Okay. So would you agree that the upper reservoir breach was solely due to Ameren Missouri errors?

A. Mr. Mills, I think we're probably mixing words. But yeah, we take full responsibility. So if you call it errors, oversights, lack of -- inappropriate controls, whatever you want to call them, I think we take full responsibility. We've never backed away from that.

Q. Okay. Now, you had some questions about return on equity and the graph that shows your actual earnings over the last certain period of time. And I'm not going to ask you about any of the specific numbers.

But I think at one point you referred in one of your answers to your inability to earn your authorized return on equity. Do you recall that?

A. Yes, in general, I said that has been a challenge.

Q. Okay. What have your annual productivity gains been over the last three years?

A. So Mr. Mills, would you define -- how would you define "productivity gains"?

Q. Well, it's your business. How do you measure productivity gains in your business?

A. Well, we measure productivity in a lot of different ways. Certainly, when you look at out power plants, and you look at equivalent availability, that's a way that measures how often your power plants are available to run.

In general, we have seen equivalent availability consistently get better for all of our power plants. And, of course, that's beneficial for our ratepayers, because if our power plants are available, it means excess generation, because we have low-cost generation available. That's a helpful metric.

Q. And what is that over the last three years?

A. I don't know the specific number. It is in the mid to high 80s for our equivalent availability for our coal-fired power plants and our Callaway plant. So if you look at that, that plant has run very well over the last several years.

It was one of the few plants in the country, just a few years ago, that literally ran breaker to breaker. And what I mean by that, they have outages, as you know, every 18 months. And they literally ran breaker to breaker with really no significant outage just about three or four years ago.

And since that time, they have had no forced outage, other than for the time that they've had just for the maintenance outage. So that's a sign of productivity.

When you look at reliability, when you look at some of the investments that we've made there, we have seen in the last five or six years that our reliability metrics have indeed improved. And in fact, they are down probably -- in terms of frequency of customer outages, they're down around 20 percent.

Q. Do you track those by percentage?

A. We track those by a metric that's called system average frequency index, and so there are numbers, SAFI. And so we have seen those go down.

And they used to be, several years ago, about 1.2. That means that, you know, customers would average about 1.2 outages. Now, they're closer to 1. And so those are some examples.

And certainly, we continue to monitor, you know, our head count. So if you look at a very big picture -- and I know you've seen UE; you've been an observer for a long period of time -- you look at UE probably 20 years ago, we probably employed about 9,000 people just as UE.

Today, we probably employ for that same -- more workers -- excuse me -- more customers, more energy delivered, we probably employ about 4,500 workers. So that's a productivity gain.

Q. And let me try to get a little more specific. I'm talking about the period of time on the chart that you've got in your direct testimony.

A. I --

Q. As you sit here today, can you give me any quantifiable productivity gains over that same period of time?

A. Well, I think I gave the reliability

statistics where we're consistent with that. The equivalent availability statistics were in there. The Callaway statistics consistent. Those are all during that period of time.

Q. So how much has the Callaway availability improved over the last three years?

A. I do not know the specific number.

Q. And do you track man hours year to year?

A. Man hours, in what way?

Q. System-wide, total number of man hours system-wide.

A. Certainly we have data which shows man hours. Are you -- now, are you referring to just total man hours that are employed, man hours that are out in the field? I mean, I'm trying to make sure I understand.

Q. Either or both in combination.

A. We have data which is available which shows, I'm certain, total man hours that our employees work.

Q. Okay. And do your man hours show productivity gains system-wide?

A. I do not know.

Q. Okay. Now, you were asked some questions by Commissioner Davis in particular about the MISO and Ameren's participation in the MISO and transmission. And one of the things he asked you about was the right of first refusal. Do you recall that?

A. I do.

Q. To your knowledge, does MISO -- when it's looking for an entity to build a particular transmission project, do you know that they look at the Ameren family of companies as the entity who has the right of first refusal, rather than Ameren Missouri in particular?

A. I do not know.

Q. You don't know. Okay. And finally, I'd like to ask you some questions about energy efficiency. And just so I'm clear, Commissioner Kenney asked you about reductions in energy efficiency spending, if there is no new mechanism. Do you recall that?

A. Could you help me out on --

Q. If there's no adjustment in this case for the throughput incentive; if you continue under a cost-recovery mechanism like you've had up to this point.

A. So -- and let me make sure I'm responsive. So I think you're saying, you know, Commissioner Kenney was talking about the need for -- we talked about the need for a throughput disincentive to be addressed in this case for us to have the ability to continue to invest, you know, meaningful dollars in terms of energy efficiency. Is that sort of the --

Q. That's the line of questions I'm --

A. Okay.
Q. -- I'm just referring to as background --
A. Thank you.
Q. -- just so your lawyer doesn't object that I'm asking --
A. No, I understand.
Q. -- stuff beyond the cross.
A. I just wanted to make sure you and I were communicating.
Q. So -- okay. If the Public Service Commission adopts a cost recovery mechanism similar to what you've had in the past, without any new mechanism to address the throughput incentive, what is your anticipated level of expenditure for 2012? I think you said it was 20 million, but I just wanted to confirm that.
A. Well, to be clear, what we had in the budget was $20 million. What we put in the budget was all done prior to the Commission issuing their rules, because we set our budget earlier in the year. The Commission issued their rules, I believe it was in March. And so we put that as a placeholder.
But as we look forward in our energy efficiency expenditures, and as we've stated in testimony here, you know, what we believe is very important is -- is a better alignment between customers and the company and

shareholders, in terms of energy efficiency.

And so what we said in this testimony is that if the throughput disincentive is not adequately addressed, you know, we're really left with no reasonable choice but to reduce our level of energy efficiency expenditures. And so I would suspect that what is in the budget for 2012 would come down.

Q. Okay. So you would spend less than 20 million?

A. It's certainly a very realistic possibility. Yes.

Q. Do you still have a copy of the executive summary of your integrated resource plan?

A. I do.

Q. Isn't that the $20 million amount roughly equivalent to the low-risk DSM plan?

A. It is.

Q. Okay. And that's your preferred resource plan, is it not?

A. It is a component of the preferred resource plan, as well as --

Q. Right. Right. Right.

A. -- as the other plans that we put in there, the other alternatives.

Q. Sure.

A. So it is the same plan.
Q. Would you -- if you decided to spend less than that $20 million, would you have to make a filing with the Commission that you've abandoned your preferred resource plan?
A. Mr. Mills, I don't know what our requirements would be under the integrated resource plan rules -- if we'd have to update that or not if we changed that.
Q. Fair enough. Now, also in that executive summary -- which I think is Exhibit 232 --
MR. THOMPSON: That's correct.
BY MR. MILLS:
Q. -- for the record -- there is a discussion of an energy efficiency plan. And this is starting on Page 19.
A. Excuse me. 19? Yes.
Q. The heading down towards the bottom of the page. Now, is it correct that under that plan, Ameren Missouri would be able to meet future energy needs solely through energy efficiency?
A. And so to make sure I understand the context, so this is -- this is -- we had basically four plans that we had in our integrated resource plan.
There was the preferred plan, which was --

for all practical purposes, I would describe it as business as usual, no real change in environmental regulation. And then the energy efficiency plan is one of those plans that we could adopt, should there be aggressive environmental regulations.

And under this approach, one of the plans, which included -- a natural gas nuclear was one plan, a natural gas plan, and then an energy efficiency plan.

You know, there was a model that would suggest that our future energy needs could be met through energy efficiency if several things took place: One, that, frankly, customers -- everybody in this room, industrial customers and others -- would not only embrace energy efficiency the way we model, but actually execute against that.

And so that certainly was a -- an approach. And there's no certainty associated with that. But that's possible.

And then, secondly, you know, of course, under this aggressive energy efficiency plan, you know, that would have assumed that we would have had a regulatory framework that would have been consistent with the alignment between customers and shareholders, that we've talked about.

Q. Well, now, let me back you up, here. Is it your testimony that this plan could not be executed, or that you would not execute it without treatment of the throughout incentive -- disincentives?

A. Well, I think that it's -- really, I would say the answer to that is both. I think it would be -- it would not be able to be executed because we would incur significant levels of losses from the throughout disincentive.

And so it would be -- not only would we have the inability to address the details of the plan, but we'd have real issues in terms of the issues I talked about before, with excess of regulatory lag and our ability to invest in energy infrastructure.

Q. But let's get back to the plan itself. Under this plan, should it be adopted, the level of energy efficiency anticipated is no greater than the realistically achievable potential determined by your study; is that correct?

A. I'm sorry, Mr. Mills. Ask that question again, please. I want to make sure I understand.

Q. The energy efficiency levels under the energy efficiency plan that's described on Page 19 are not -- the level of energy efficiency there is not greater than the realistically achievable potential energy efficiencies that you all have identified?

A. I don't know.
Q. Okay. And going on, under this plan, not only would there be, over the 20-year planning horizon, no additional supply-side resources added, but the Meramec plant would be retired; is that correct?
A. If this plan was executed as modeled, then that was certainly a possibility, subject to the caveats I explained to you a moment ago.
Q. And when you say it's a possibility, that's what the plan is, is it not?
A. That is -- that is how this plan is modeled.
Q. Okay.
A. But again, you know, this -- what's different between this plan, Mr. Mills, and may -- in --
MR. MILLS: Judge, I don't have a question pending. If you could instruct the witness to answer the question and then please stop.
JUDGE WOODRUFF: So instructed.
MR. MILLS: Thank you.
I'd like to have an exhibit marked.
JUDGE WOODRUFF: Okay. And your next number is 308.
(Wherein; OPC Exhibit No. 308 was marked for identification.)
MR. MILLS: Anybody else?

BY MR. MILLS:
Q. Mr. Baxter, are you familiar with this article from the St. Louis Post Dispatch that ran two months ago?
A. Yes.
Q. Okay. If I can get you to turn to the second page --
A. The back? The flip side?
Q. Yes.
A. Okay. Thank you.
Q. The flip side.
A. Yes.
Q. The reference that Mr. Kidwell is making in the last two, I guess you would call them paragraphs, at least chunks of text, are those references both to the energy efficiency plan in your IRP and to the achievable potential study that the company conducted?
A. I believe, Mr. Mills, this is consistent -- I believe the observations in the statement are consistent with the overall energy efficiency plan that you just described. I think you said a second thing about --
Q. Also are the statements also consistent with the study of DSM potential?
A. Yeah. And I -- that I'm not so sure about, and I think Mr. Davis would be able to address that

question.

Q. Well, let me focus your attention on the second sentence in the second-to-last paragraph, about the plan commissioned by the utility.

A. In the second paragraph?

Q. The second-to-last paragraph.

A. Okay. I'm sorry.

Q. It says, A plan commissioned by --

A. Yes.

Q. -- the utility published last year indicated that energy efficiency alone could reduce consumption. Do you believe that that is the DSM potential study?

A. Yeah. I --

Q. Don't know?

A. I don't know for sure.

Q. Okay. That's fine. Now, with respect to the energy efficiency plan that's identified on Page 19 of Exhibit 232, what would it take to get the Company on that path?

Does it take truly aggressive environmental regulations at the federal level? Or are there things that the Missouri Commission can do to -- or stakeholders in Missouri can do to get Ameren Missouri on that path?

A. And so, Mr. Mills, to make sure that we're talking about "that path," you're talking about a more aggressive spend for energy efficiency. Is that sort of generally the path that you're referring to?

Q. I'm talking about a truly more aggressive spend.

A. So --

Q. The plan that's described here.

A. So certainly this plan was outlined with the mind set that there would be aggressive environmental regulations. So that's certainly one issue.

But I think perhaps the most important issue, or a significant issue, is the issue that we've talked about before, and that is addressing in a meaningful and a thoughtful and a constructive way the throughput disincentive. That is a very important element of what may be many other elements. But that is certainly an important element.

Q. All right. Well, let me see if I'm understanding you correctly. If the Commission were to adopt your proposal in this case, would you then embark on a course of action similar to the energy efficiency plan shown on Page 19 here?

A. No. What we said in our testimony -- Mr. Marks' testimony, and reiterated by myself, is that should the Commission adopt a throughput disincentive based upon what we've proposed here, we would have expenditures that would be approximately $25 million per year and the related savings that go with this.

This energy efficiency plan here, if I'm not mistaken, is tens and tens of millions of dollars more than that approach.

Q. So my question remains: What would it take for you to get onto this path?

A. And as we sit here right now, Mr. Mills, I don't know specifically what else it would take. I have not done the specific study.

Now, I think we have to keep in mind that, you know, we're at a -- at -- I think in a very early stage in the bigger picture of energy efficiency.

And so I think as a state we need to be thoughtful in terms of how quickly we approach energy efficiency, to make sure that the expenditures that we make are good expenditures for our customers, and that we just don't go out there and start throwing a whole bunch of programs out there. And so we have to be balanced and thoughtful.

And the approach that we've outlined is what I would say is walking, if not jogging, before we're in a full-course sprint. This is a -- this is a full-bound sprint.

Q. Okay. Now, let's talk about the proposal that you have in this case. And I want to try and do a comparison to what I'm going to call business as usual compared to if the Commission adopts your proposal in this case.

And I'm having a little trouble because I haven't gotten from you -- and if you've given it and I just haven't understood it, forgive me -- but I haven't gotten from you a clear number about what business as usual would be.

You've got $20 million in your 2012 budget. It may be something less than that if there's nothing done in this case; is that correct?

A. That's correct.

Q. How much less?

A. You know, Mr. Mills, what we do for any rate case is that after a -- an order is written, and issued, you know, we step back and we look at the overall resources that are provided from an order, and that encompasses all aspects of the case, including energy efficiency.

And so what we will do subsequent to this case is that, you know, we will look at how the Commission decides for energy efficiency expenditures. We'll look at all the other aspects of the order.

And we'll make decisions in terms of what we think is in the best interest of our customers, balancing that with what we think is an appropriate and best interest of our shareholders.

And so what we've said is that we don't have a specific number. But our belief is that absent the adequate addressing of the throughput disincentive that we would expect our energy efficiency expenditures to be meaningfully reduced.

Q. Meaningfully reduced from the 20 million?

A. Yes.

Q. Okay. Well, let's -- just so I've got something to quantify it with, let's just assume for the purposes of this question that the Commission takes an approach somewhat similar to what they did with KCPL, and they order you to continue spending $20 million. So that's the baseline. Okay?

A. I honestly don't know if the Commission ordered KCP&L to spend $20 million.

Q. Okay. Just assume that in this case the Commission orders you to continue your DSM spending level at $20 million a year. Okay.

MR. BYRNE: Your Honor, can I ask what Commission questions this ties to?

MR. MILLS: It ties to both questions from Commissioner Kenney and Commissioner Gunn. They both had questions all about ongoing levels of DSM spending and what the Commission should order or shouldn't order.

JUDGE WOODRUFF: Proceed.

I don't hear an objection yet, so --

MR. MILLS: Oh, okay. I took that as an objection, so I was responding to it. But --

BY MR. MILLS:

Q. Just for purposes of my questions, assume with me that the Commission orders you to continue spending on DSM $20 million a year. Okay.

A. Okay. And we're assuming -- and I don't know if that's a legal question or not, honestly. But I'll assume if that's --

Q. Assume they have the authority --

A. Okay.

Q. -- and assume they do it.

A. Thank you.

Q. And assume that you comply with it. Okay. All of those things.

A. Yes.

Q. Under the proposal that's in Mr. Davis's testimony, we would get -- if the Commission were to adopt that instead of simply ordering you to continue at $20 million, we would get roughly a $25 million spent on energy efficiency. Correct?

A. Our proposal is that we would spend $25 million with the adjustment to the billing units to address the throughput disincentive.

Q. Under Mr. Davis's testimony?

A. Yes.

Q. Okay.

A. Uh-huh.

Q. And so under that proposal, customers would pay the $25 million in costs for those programs. Correct?

A. That's correct.

Q. And they would pay about an additional $25 million in throughput incentives; is that correct?

A. I -- if -- there are 25 -- approximately $25 million of losses, so that's probably true.

Q. Okay. So if the Commission were to accept that proposal, ratepayers would pay $50 million, as opposed to $20 million, and for that $50 million they would get an additional $5 million of efficiency programs?

A. Make sure I understand your scenario. So ratepayers, they would pay for the throughput disincentive under our proposal, as well as the amortization of the $20 million --

Q. 25 million.

A. -- excuse me -- $25 million over six years. And so it wouldn't be, obviously, one-to-one. But -- and so, similarly, I assume your $20 million would be amortized over --

Q. Right.

A. -- six years.

Q. Right.

A. And so the real difference would be -- the incremental difference would be the throughput disincentive for the $25 million between the two scenarios.

Q. Yes.

A. I understand.

Q. Okay. So the incremental $25 million for the throughout disincentive gets an additional $5 million of programs?

A. Yes.

Q. Compared to a scenario in which the Commission orders you to just continue with $20 million?

A. Yes.

Q. Okay.

A. Having said that, what would also end up happening as a result of that -- if we were ordered to -- and assuming all your caveats that would have to be ordered, and we had to do the 20 million, and we'd be losing twenty-five-plus million dollars, we would then have to step back just in the context of the whole rate case --

As I said before, we'd have to step back, and we would recognize that our cash flows would be going down meaningfully -- not just $20 million, but then next year be $50 million, and those types of things.

And we would have to make, then, adjustments to our budgets. And we would have to then reduce the level of expenditures that we made for other projects, which, you know, I believe is not consistent with our customers' expectations.

Q. But if the Commission were to order you to continue to spend -- to spend 20 million -- which is your low-risk DSM plan -- under the same general parameters under which you're spending $33 million now -- is that not correct, that in 2011, you are spending -- you're planning to spend 30 -- roughly $33 million on energy efficiency, with no throughput disincentive adjustments? Is that correct?

A. That's correct.

Q. Okay. Now, with respect to other incentives, other ways to address the throughput disincentive, what is Ameren Missouri's position on decoupling?

MR. BYRNE: I'm going to object. This is beyond the scope of anything that was asked from the Commissioners.

MR. MILLS: Granted, none of the

Commissioners mentioned decoupling, but they talked about incentives and throughput disincentive, and this is a way to address throughput disincentive.

JUDGE WOODRUFF: I'll overrule the objection.

THE WITNESS: So Mr. Mills, if I can --

MR. MILLS: Just -- just -- this is a -- this is a --

THE WITNESS: -- repeat your question. What is --

MR. MILLS: -- very -- very general, wide-open question about decoupling.

THE WITNESS: I think we would encourage the State to have a good, thorough discussion about decoupling. We -- I think that there are all kinds of ways to try and address this issue. Even the way that we're proposing in this is certainly a -- we believe is the right way.

But if you look five, ten, fifteen years down the road, is that the only way; no, not necessarily. Could decoupling be another approach; certainly. It's something that we, as a state, should look at.

BY MR. MILLS:

Q. Okay. It's not something that Ameren has ever -- Ameren Missouri has ever proposed using; is that correct?

A. No. We have not in this particular case. It's my understanding that for us to move forward in decoupling that a docket would be necessary to be open, and that -- and that would be the appropriate forum to have a good thorough discussion about it. So -- but that's not where we're at as a state right now.

Q. Would you recommend that the Commission open that docket?

A. We -- I certainly think it would be -- I think -- talking about energy efficiency and trying to address unique ways to address the issues that I'm laying out here, I encourage all that dialogue. Absolutely.

MR. MILLS: Judge, that's all the questions I have. I'd like to move the admission of Public Counsel Exhibit No. 308.

JUDGE WOODRUFF: All right. 308 has been offered. Any objections to its receipt?

MR. BYRNE: I'll object. It's a hearsay article from Jeff Tomich of the Post Dispatch. Mr. Tomich isn't here to cross-examine. I -- it's hearsay. I object to it.

MR. MILLS: It's a newspaper article that Mr. Baxter conceded, at least, that the relevant portions are accurate. And I don't think there's anything inaccurate about it. But the Commission doesn't have to rely on it as sworn testimony to admit it into the record.

MR. BYRNE: It's hearsay. It shouldn't be admitted.

JUDGE WOODRUFF: All right.

MR. MILLS: By that thinking, anything written by someone who is not actually sitting on the witness stand is hearsay. And I think that's a little bit too broad. I think any report by that definition is hearsay. This is a newspaper article. The Commission can take consideration of the newspaper article.

JUDGE WOODRUFF: Well, you've already questioned him about the relevant portions of it. The document does appear to be hearsay, so I'm going to sustain the objection. It's not received.

All right. Move over to Staff.

MR. THOMPSON: Thank you, Judge.

RECROSS EXAMINATION BY MR. THOMPSON:

Q. Mr. Baxter, hello.

A. Mr. Thompson, how are you this afternoon?

Q. I'm fine. Thank you. And you, sir?

A. I'm fine. Thank you.

Q. Do you recall Commissioner Jarrett asked you about the Sioux scrubbers and asked you if they were required? And I think you replied they were required by federal environmental regulations. Do you recall that?

A. Yes.

Q. Okay. The reason I ask -- now, your predecessor in your position, was that a man named Tom Voss?

A. Yes.

Q. Okay. And what does Mr. Voss do now?

A. He is the chairman, president and chief executive officer of Ameren Corporation.

Q. So is he in fact your boss?

A. Yes.

Q. Okay. Now, there was actually a hearing going on in a rate case in November of 2008. This was Case ER-2008-0318. Do you recall that case?

A. I recall a case around that time. I don't know if that's the specific number. But in general, I recall a case taking place around that time.

Q. Okay. Well, if I told you that Mr. Voss testified in the course of that case, would you have any reason to doubt that?

A. Absolutely not.

Q. And if I told you that Ms. Vuylsteke asked Mr. Voss if UE -- then the name of Ameren Missouri. Correct? --

A. Yes.

Q. -- was under a legal obligation to install the Sioux scrubbers, and Mr. Voss told her no, as far as you know, was that true at that time?

A. Yes.

Q. Okay. So the legal obligations changed in the interim?

A. Yes, because, Mr. Thompson, what's transpired since that time is that the environmental rules have become clearer in terms of those emissions. And so when we first started the project, as Mr. Voss said, it may not have been required; but as it turns out now, the Sioux scrubbers are indeed an important part of our environmental compliance strategy with existing rules.

Q. Okay. And also on that occasion Mr. -- there were questions about possible responses to the financial crisis, which I think you testified began about that time.

A. Yes.

Q. Okay. And Mr. --

A. And this is -- I'm sorry -- November of 2008?

Q. Yes.

A. Thank you.

Q. Yes. Mr. Conrad asked Mr. Voss if there was a general austerity program that had been adopted at AmerenUE in response to the present economic climate.

Now, is that essentially referring to the same program you have described in which you have made large reductions in the amount of non-fuel operating and maintenance expenses?

A. Mr. Thompson, I -- it would probably be helpful if I could take a look at that testimony --

Q. Well --

A. -- because I'm not sure of the context in which the question was made.

MR. THOMPSON: May I approach, Your Honor?

JUDGE WOODRUFF: You certainly may.

MR. THOMPSON: And I don't have copies of this for all of you.

MR. BYRNE: It's quite all right.

BY MR. THOMPSON:

Q. It starts right there at the bottom.

A. Is there documents that precede this, please -- other pages that precede this?

Q. Yes, sir. They're all right there.

A. I don't want to get them out of order for you. I'll try and do my best. Okay.

Q. Okay. So my question was: Is the austerity program -- and that's, of course, part of Mr. Conrad's question -- is he referring to the programs which were implemented -- which have been implemented, and which have resulted in significant reductions to non-fuel operating and maintenance expenses?

A. I think in part. I think what Mr. Voss addresses in his response is that -- he says that, We certainly are -- we're looking very carefully at new hires. We're looking carefully at excess expenditures, you know. Again, we're looking for ways to preserve cash to see if we can get through this crisis without serious consequences to the company.

And so I would say that the austerity program that Mr. Voss was referring to was not just O&M, but also capital. Because later he goes, We're looking to delay some digital control applications, upgrades to unit transformers. There's a possibility to delay some kind of modifications to ash handling and other things that affect the power plants.

And so some of those are a mixture of both capital and O&M.

Q. Okay. And so that relates back to -- I think you said that at that time, liquidity was king; is that correct?

A. Yes.

Q. And the idea was to reduce cash flow out?

A. Yes. The idea was to minimize the need to access the capital markets that were very uncertain, as well as the need to borrow potentially from those capital markets, which are very expensive.

Q. Okay. And you were asked several questions about regulatory lag. Let me ask you: If you could imagine, or you could design, a perfect ratemaking process here at the PSC to reduce regulatory lag, or even cut out regulatory lag, what are the components you would want to see in that?

A. I think there's several components that would be helpful in addressing excess regulatory lag. I think it goes to both the O&M and the capital side. And so the O&M certainly a key mechanism that we have today, which is critical prospectively, is the fuel adjustment clause at the 95/5 sharing. Frankly, I'd prefer it to be 100 percent, but we understand the 95/5 percent. So that's a key mechanism.

But more importantly, to deal with excess regulatory lag for O&M expenditures, it wouldn't be just tracker mechanisms, because tracking mechanisms, they do the bookkeeping but they don't give you the cash, until you come in for your rate case.

And so a better mechanism may be either additional riders, or perhaps a -- an alternative regulatory plan that we had -- maybe in some form or respects, that we had many years ago, whereby changes in costs up and down would be reimbursed back to customers, or there could be additional cost to customers on a more timely basis. That was a mechanism that I think worked very well.

When you look at capital, what I think is very important are a couple of things. One of the things that I think really is missed in terms of regulatory lag is the losses associated with infrastructure investment.

Often people think regulatory lag is one where you just don't get cash quickly. The fact of the matter is, when you put a piece of equipment in place -- let's just talk about the storm that we just ended up doing. We will end up putting tens of millions of dollars of equipment in place.

Tomorrow, today, those pieces of equipments are being depreciated. Returns on those pieces of equipment, they're being lost. Those are losses. Not only are we not getting the cash, but those are losses we'll never recover.

And so what we should look at are infrastructure investment mechanisms that would have more timely recovery associated with infrastructure investments being made.

And it isn't just for the benefit of the shareholder, but frankly for the benefit of the customer, because more timely cash flows will allow us to drive more investment into our infrastructure, which will create greater jobs, which would be better for the state of Missouri. Those would be the types of things that we should look at.

And I know that -- and I commend the Commission or taking a hard look at the regulatory process. And we appreciate that. I think that's going to be an excellent opportunity for us all collectively together to see if there's a way that we can be more efficient in terms of what we do here for the benefit of all stakeholders.

And, of course, you know, people often talk about CWIP, construction work-in-process. Is that a mechanism that would be helpful? Absolutely. Would forecasted test years be helpful, like they have in Illinois; you bet. All those things would make meaningful strides in terms of addressing the excessive regulatory lag that we're facing today.

Q. Thank you.

A. Thank you.

MR. THOMPSON: Staff has no further questions.

JUDGE WOODRUFF: All right.

Redirect?

MR. BYRNE: Yes, Your Honor.

REDIRECT EXAMINATION BY MR. BYRNE:

Q. Let me apologize. I have a car analogy. Commissioner Gunn and Mr. Mills asked you some questions analogizing the Taum Sauk plant to a car, so I guess I will, as well.

Mr. Baxter, what year was the Taum Sauk plant built?

A. 1963.

Q. Okay. Let's imagine that you had a 1963 car, and it was insured by an insurance company that was obligated to protect you from the effects of an accident on that car. Okay? Can you imagine that?

A. Yes.

Q. And then let's assume, as in Commissioner Gunn's example, that that car that was insured with an insurer with that obligation was in an accident and it was totaled. Okay? How much would the insurance company pay to keep you whole from the effects of that accident?

A. They would pay me generally for the value of that 1963 car.

Q. And what would you do with the proceeds from an accident of a 1963 car?

A. Well, I would take those proceeds and I would say, Well, a 1963 vintage car didn't probably have all the things on it that would probably be better to have today -- things that are more safer, things like -- I think as Mr. Mills was talking about, things like safety belts.

I'm not sure in 1963 they even had to have safety belts -- certainly not shoulder safety belts. Things like air bags, anti-lock breaks.

Certainly, today, you even have those cool little things in your car where you can look when you're backing up so you don't hit people. Right?

There are a lot of things that today's modern-day standards -- I would take that money and reinvest it into what is a more modern, safer, reliable, and in fact a car that would last much longer.

Q. Would the insurance company have an obligation to pay for that newer car?

A. No.

Q. And why would you want to pay for a newer car?

A. For all the reasons, Mr. Byrne, that I just cited: It would be a safer, more reliable, and longer-lasting car. Those enhancements would be worth it for me to pay because of the long-term value and benefits I would get from that incremental piece -- not -- I wouldn't pay for the entire car, but just for the incremental piece that would be certain with it.

Q. Who benefits from the enhancements at the

Taum Sauk plant?

A. Ratepayers.

Q. There was a lot of questions about the Company's obligation to protect customers from the effects of the breach. Do you remember those questions?

A. Yes.

Q. How has Ameren Missouri met its obligation to protect customers from the effects of the breach?

A. Our obligations associated with ratepayers were clearly set forth in the settlement that we made with the State. And included in that -- those obligations were a host of things that we said that we would do.

We would pay for the clean-up of Johnson Shut-Ins; of course, we would -- we actually put monies out there for the local service territory; we agreed to assume for modeling purposes -- as we did in many rate cases subsequent to that time -- that Taum Sauk acted as if it was all part of our system.

And, in fact, the replacement power that we had to -- the costs that we incurred assuming that, we absorbed all those costs.

As I said earlier in my testimony, we absorbed the cost for deductibles -- whether they be for property, for liability, and all those other types of things. The bottom line is when you sum up all those things, we've incurred a little less than $100 million to date, and frankly, that number could go higher.

Q. Does the little less than $100 million include the cost of restoring Johnson Shut-In State Park?

A. It ultimately could, yes.

Q. But does the calculation of the less than $100 million --

A. At this -- at this stage, the piece that is associated with the Johnson Shut-Ins would be the deductible. Certainly, a piece of that is already in there, but not in its entirety.

Q. Are we going to ever charge customers for the cost of cleaning up any of the mess or restoring Johnson Shut-Ins?

A. Absolutely not.

Q. Is that financially a significant commitment that the Company has made and undertaken?

A. Well, certainly, because the fact of the matter is that we still are in dispute with insurance companies over the ultimate settlement of that. And so, yes, it is a significant financial commitment that we've made years ago, and that we've continued to honor today.

Q. At the very beginning of your cross -- or early -- before the Commissioners asked questions, Ms. Vuylsteke asked you about when the Company is going to come in for another rate case. Do you recall that question?

A. I do.

Q. Do you know when the Company is coming in for a rate increase request?

A. No. We do not know when we will come in. It's going to be driven by several factors. It's going to be driven by factors that we've talked about, frankly, all morning and part of this afternoon, things like new environmental regulations; things about new costs and how they may end up rising.

In fact, it may be driven, in fact, by the ultimate implications or the order from this case. Those all could be drivers.

Q. Is it driven by factors that are unknown at this point?

A. Yes. In their entirety, yes.

Q. You were asked some questions, I believe by Mr. Thompson, comparing this case to the KCPL case, and the 10 percent return on equity that was awarded to Kansas City Power and Light Company. Do you recall that --

A. I do.

Q. -- set of questions? Did you read any of the testimony in the Kansas City Power and Light Company case?

A. I did not.
Q. Did you attend any of the hearings in the case?
A. I did not.
Q. Do you know the details of Kansas City Power and Light Company's regulatory plan that it's had in effect for a number of years?
A. I do not.
Q. Okay. Commissioner Gunn asked you some questions about -- I think you were looking at the return on equity chart that shows that the company has consistently -- other than a couple of months last year -- been unable to earn its authorized return on equity. Do you remember those questions about that chart?
A. I do.
Q. And my understanding is, your testimony was after that, even now, the Company is still hundreds of basis points below being able to earn its authorized return; is that correct?
A. My testimony was that, today, if you looked at it, we're probably -- I think I -- I'm trying to make sure if I -- I'm trying to avoid going to --
Q. Oh.
A. -- in camera. No. I think that we estimate that -- today, that those numbers approximate 8 percent,

all things being equal.

Q. And how -- what's -- in terms of dollars, to put a monetary value on these percentages we're talking about, what's 100 basis points of shortfall worth to the Company?

A. I just want to make sure we're talking about the lingo properly. A basis -- 100 basis point equal to 1 percent. And so for every 100 basis points, or 1 percent, that's equal of $55 million of revenues. And so if we're under-earning by 2 percent, or 200 basis points, that's obviously $110 million.

Q. Per what? Per year?

A. Per year.

Q. He had some questions about -- I think this related to energy efficiency. But you talked about the 2012 budget. And I guess the question I had is: Does the Board of Directors approve an annual budget for the Company?

A. Yes.

Q. Has the Board of Directors approved the 2012 budget yet?

A. For the O&M budget, no. They typically approve only a one-year budget for 2011. But we do have a budget for management purposes for 2012.

Q. Okay. Commissioner Davis asked you some questions about the Ameren Transmission Company. Do you recall those questions?

A. I do.

Q. And I guess my question is this: If Ameren Transmission Company did not exist, would Ameren Missouri deploy its capital to build regional transmission projects?

A. No, Mr. Byrne. As I explained to Commissioner Davis, you know, we're -- our focus is on doing transmission projects which directly serve our customers, and not deploying our precious capital for regional projects which don't have as much benefit, or at least direct benefit, to our customers.

Q. Well, then, who would build them in the absence of Ameren Missouri building them, or if Ameren Transmission Company didn't exist?

A. Well, certainly, my understanding that there are other companies out there who are willing to engage in these transmission projects. And so my sense is that another company from somewhere else would -- could and -- step in and do those projects.

Q. Why don't you have enough capital to do those projects?

A. Mr. Byrne, I think it really gets to some of the issues that we've been talking about. You know, when we're dealing with the regulatory lag, and in some cases excessive regulatory lag, we need to make sure that we're thoughtful in terms of where we deploy our capital. And so we have made the decision to deploy our capital to meet certainly all laws and regulations, whether it be for reliability or environmental matters or the like.

But we also deploy our capital for discretionary projects when we have that discretionary capital available to meet our customers' expectations -- things like reliability and those types of things. And that's where we choose to make our strategic investments.

Q. Commissioner Davis also asked you about -- a little bit about quantifying the benefits of MISO membership. Do you recall that question?

A. I do.

Q. Were you able to look over the lunch hour at what the quantification of the MISO -- benefits of being in MISO is for --

A. Yes. Based upon Mr. Davis's -- or -- excuse me -- Commissioner Davis's questions, we did -- I did inquire as to what that number was. And it's my understanding that the net benefits to ratepayers over the next three years is approximately $70 million.

Q. And do you know what kinds of things those benefits -- well, you said net benefits. What does that mean? Why is it net?

A. Well, there are costs, obviously, that are associated with being in the MISO organization. So they're net of those costs.

Q. And -- and --

COMMISSIONER DAVIS: I'm sorry, Judge. Was that 70 or 17?

THE WITNESS: Seven zero.

COMMISSIONER DAVIS: Seven zero.

COMMISSIONER KENNEY: Over the next ten years.

BY MR. BYRNE:

Q. And Mr. Baxter, to what are those benefits -- what kinds of things are those benefits attributable to? What's driving that significant benefit to being in MISO?

A. The most significant benefit of being in MISO is the ability to have significant levels of off-system sales which flow directly back to customers through the fuel adjustment clause.

Q. Could you get that benefit other places?

A. Well, not to the same level. Our analysis indicates that the greatest level that you would get them is by being part of MISO.

Q. Okay. Commissioner Jarrett asked you a question about 10 percent being of significance to the financial markets. Do you recall that question?

A. I do. I do.

Q. I think you said, really, there's a higher level that's sort of a breaking point for the financial markets, higher than 10 percent.

A. Yes.

Q. Do you recall that? Are the financial markets interested in authorized returns or the returns that a company can actually earn?

A. Well, the simple answer is both. Certainly, the financial markets are very attuned to authorized returns, because that gives you a greater ability and greater level of cash flows to -- in light of regulatory lag, to actually have the opportunity to earn higher levels of returns on equity.

And so the lower you set that metric, obviously the more difficult that bar is to earn reasonable returns on equity from their perspective.

But certainly they're very mindful of your earned returns. That goes without saying. The bottom line to them is the bottom line. And so they monitor both. And the Commission's decisions associated with return on equity are very important.

Q. Would the financial markets expect a higher return in a jurisdiction where it's more difficult to actually earn that return?

A. Yes.

Q. Mr. Mills asked you some questions about decoupling. And I think in response you said you hadn't proposed -- the Company hadn't proposed decoupling its electric rates. Do you recall that?

A. That's correct.

Q. Do you know if the Company has taken any steps toward decoupling its gas rates?

A. Well, you know, decoupling is a big word, Mr. Byrne. But in part, by having a greater level of your -- of, say, your -- a fixed rate to customers -- that being higher -- that is a -- in some respects, a form of decoupling. And so there has been progress made in that area in our gas business.

Q. You were asked some questions about -- and I think maybe from Commissioner Kenney, about growth as it -- as it might relate to the billing units offset that the Company is proposing. And I think in response to one of his questions you said that 80 percent of growth is attributable to customers needing -- new customers needing service as opposed to an existing customer getting a big-screen TV or that kind of a thing. Do you recall that?

A. I do.

Q. Okay. And why is that significant? Why --

what's -- what was your point of saying that -- why does it matter that 80 percent of the growth is attributable to new customers getting new service?

A. Well, certainly, if the majority of your growth is being driven by those you've already made the investments in the infrastructure and incurred the costs, you know, that obviously is a factor in -- well, you do not have the cash outflow to serve those new customers.

My point was, is that if you're offsetting the throughput disincentive as a result of new customers, we are not being provided the cash flows to really serve those new customers through, I guess, that growth piece.

And if you take that away, as part as the energy efficiency, you know, it just, again, accelerates or exacerbates the excessive regulatory lag that we're facing today.

Q. You talked about regulatory lag, and I think -- I think during opening statements, Commissioner Davis asked various parties if they proposed -- or if they agreed that some level of rate increase was warranted for Ameren Missouri. Do you recall that?

A. I do.

Q. And how does -- is that a form of regulatory lag, having to wait until the report and order is issued when all the parties agree that a rate increase is warranted?

A. Well, certainly, when -- and so, if you think about in this particular case, if we have a cutoff or A true-up that goes through February, and we have a report and order that goes through -- that will not be issued until August, and rates not change until August, that period of time for any, certainly, infrastructure investments that we make during Points A and Point B, those are -- that actually impacts regulatory lag for all the reasons I said a little bit earlier, in terms of the lost depreciation and return on those types of things.

Q. You had some questions where you were asked about the Company's cost-cutting measures and austerity program. Did the Company have -- do anything to manage its headcount during the period of time that you were looking at?

A. And so, Mr. Byrne, are you referring back to 2008 and 2009, or are you referring more recently, or both?

Q. Both.

A. Well, the simple answer is yes to both. I mean, we -- there's no doubt that we actively control our headcount. Certainly back in 2008 and 2009, for all practical purposes, we put on a hiring freeze.

And even today, we are very thoughtful in terms of how we add additional headcount to our business to make sure that we're not as not only efficient as effective, but also to be helpful to our customers as we try to manage our costs on their behalf, as well.

Q. Were there any programs to reduce headcount during that period of time?

A. Well, yes. Certainly more recently, at the end of 2009 -- I believe I have my dates right -- there was both a voluntary and in part an involuntary separation plan that was put forth at our company.

Q. Okay. I'd like to ask you some questions about Sioux. In response to many questions, you explained what issues the company was facing in November of 2008 that led to the slowdown of the Sioux project. I guess what I'd like to ask you is, you know, based on what you know now, you know, a year and a half later, would you have done anything differently back in November of 2008?

A. The simple answer is absolutely not. Absolutely not. I think in terms of speaking to Commissioner Jarrett and many of the other Commissioners, you know, you looked at all the issues that surrounded us at that point in time, and I outlined them, so I won't go through all of those issues again.

But certainly the bankruptcy of major investment banks -- you know, a federal bailout, which people were not sure that that was ultimately going to be successful; issues associated with, you know, rising credit rates and, frankly, credit freezes in the capital market. So it was a very scary time.

And not only was it scary, but you look back, and you look at commentators who talked about that particular time, and those who are close to it. You know, we were very close -- we were in a global crisis, but we were actually close to a global financial meltdown.

And it was actually, frankly, worse than what I even had envisioned sitting in the middle of all of it. And I think that there's some very good actions that were taken. Fortunately, they were good, and they worked.

But the domino effect that -- you look at Lehman Brothers; there was no doubt that there was no -- there was certainly a potential for a domino effect. One of the major banks that we had in our facility at that time was Wachovia.

And, you know, Wells Fargo came in and saved them. It was as simple as that. And they could have been gone just like Lehman Brothers.

I mean, you had Morgan Stanley; you had these strong banks -- everyone figured if Lehman could go -- they were all asking, Okay, are we too big to fail? And that's not a conversation you like to have when you're trying to run a business. So looking back, there's no doubt, we did the right thing.

Q. I guess the issue is if -- you know, if the company had run out of liquidity, or was unable to access the capital markets -- and I -- and so my question to you is: What would happen to the company and its customers if it -- if liquidity -- if it didn't have any liquidity, what would happen?

Q. Well, I think Mr. Thompson said it well: Liquidity was king, because it was. And there were a lot of reasons for it. You know, I think people think liquidity is so like your checking account; you just kind of go in there and say, Well, is it negative one day or not? It doesn't work that way. Because the fact of the matter is that the markets are keeping track of you all the time. The rating market's keeping track of you all the time.

So it would happen is because obviously we have to be transparent and report to the markers -- to the markets. People would see that we had liquidity issues. And it isn't just people; it would be vendors.

So one of the things that we were mindful of as we thought about that capital crisis was that we're going into a winter season, and we -- and people often forget, you know, we have gas customers. And so if there were certainly signs that we were having issues from a liquidity standpoint, there's no doubt that our gas suppliers would have called for prepayments of all of our gas supply.

And one thing about gas suppliers, what they can do, they can turn the spigot and they can stop that supply. And that's not a position that we wanted to find ourself in, certainly.

Now, the second thing you had to be mindful of is coal. Now, why do we -- do we have coal inventories? You bet. But at the same time, our coal companies, you know, we have contracts, and to the extent that those contracts look like they're going to have problems, we're going to have problems making those payments, companies have the ability to require collateral to be posted.

And so what you end up doing as far in advance of the day you walk in and don't have a penny of liquidity, actually what you start doing is actually start exacerbating this thing months and months and months in advance.

And so not only were we concerned about those issues, but we were concerned about what I would consider contingencies that get closer to the blocking and tacking in what we do. And the reality of the situation is the blocking and tacking of what we do is just what we did last weekend: We addressed a major storm that was certainly out of our control, that was significant.

But if you remember, we had, in some respects, the storm of all ice storms in January of 2009. I know this Commission recalls that. And that was not -- that was a storm of the magnitude -- and I -- who knows what this ultimate storm will be?

But, you know, we immediately have to call in contractors and vendors to come and help us. And if those contractors and vendors would sit there and say, You know, they may not be able to pay us, do you think they'd show up on our door the next day? The simple answer is no.

If we had to pay for all those poles and all these other things, do you think companies would sit there and say, Well, we'll worry about that later? In that situation, there was no one who was giving anyone any break.

And so on that particular day, you know, we ended up spending, I think, close to $90 million in that few weeks alone -- few days alone to try and serve our customers. And, of course, what ended up happening then was an event that no one could have foreseen, was the fact that we lost our largest energy user, Noranda Aluminum.

So not only did we have those cash flows going out the door, but we also lost those margins, those revenues from that customer immediately. And I know that it's been an issue that has been discussed before at this Commission.

You know, obviously, we lost those margins, and later we tried to address those lost margins with contracts to try and mitigate, to some extent -- including the $42 million which I understand is at issue -- I mean, what we're trying to do is just -- at that time, is just trying to stay whole. And that's what we tried to do, obviously, with those other contracts, is just stay whole.

And so there's no doubt -- there's absolutely no doubt that we did the right thing; we did the prudent thing for customers in slowing down the single largest project that we have in the Ameren Missouri system that burned 15 to $20 million a month, was the right thing to do, as well as -- we shouldn't just isolate on that one project -- as well as literally across our entire system, hundreds of millions of dollars in Ameren Missouri were slowed down, deferred or eliminated because of this crisis.

Q. Were projects for our affiliates slowed down, deferred and eliminated as well?

A. Yes. Absolutely.

Q. Okay. Were there any benefits -- you talked a lot about the negatives from slowing down the Sioux project. But were there benefits that were realized for the company and its customers from slowing down the Sioux project?

A. And so, Mr. Byrne, I'll correct you a little bit. You know, I don't talk about the negatives so much with the slowdown of the Sioux project. I think it was the right thing to do. And in that it was a positive, because, number one, it preserved liquidity, and that was the first and foremost thing that it did.

Q. Right.

A. But the second thing that it did, that coupled with all the other projects -- you know, frankly, I think it was Commissioner Kenney -- and I think we got our dates kind of goobered up, and so I apologize if I contributed to that -- but, you know, if we had done business as usual and continued to spend the way we did, well, we wouldn't have been able to wait until even March to issue that debt.

We would have had to issue debt perhaps in the middle of the fall, where we had an affiliate who issued ten-year debt -- which is generally cheaper than thirty-year debt that we issued -- at 10 percent.

And so the difference between the 8.45 percent for thirty-year debt that we issued for UE versus what we may have had to issue if it was thirty-year debt, it would have been in excess of the 10 percent is millions of dollars -- millions of dollars of savings. And that's the financial piece.

And then from an operational standpoint, I know that Mr. Birk -- and I encourage you to chat with him about this -- you know, we also -- after the fact, we ended up having some meaningful benefits in terms of our scrubber project itself.

Certainly, you know, we realized the benefits of those other scrubber projects, which were being done on the Illinois side of the river. And what we learned in one particular instance was that we had these absorbers in our scrubber, and they're lined with a lot of different things with all the flue glass -- flue gases going up.

And originally we had designed that with flake glass lining. And it's -- I'm not an engineer -- fiberglass, and -- is really how I would characterize it.

And at the end of the day, what we found in Illinois is that some of that flake glass lining, they were having problems with it. It was starting to chip away.

And so the issues that we foresaw and said, you know, If we go down this path five, ten, fifteen years from now, we start having this chipping, we're going to incur significant levels of O&M, and maybe have to actually replace this with what we ended up doing right now. And it's called stebbins tile.

And if you ever look on the inside -- we'll show pictures -- it looks like the tile you might put in your kitchen or your bathroom, but it's obviously far different -- more sturdy. And it will be a -- an important and significant improvement that that delay we're able to incorporate that into our Sioux scrubbers. And that is just one of the other benefits associated with that delay.

Q. Thank you very much.

MR. BYRNE: No further questions.

JUDGE WOODRUFF: All right.

Mr. Baxter, you can step down --

THE WITNESS: Thank you, Judge.

JUDGE WOODRUFF: -- and be excused.

(Witness excused.)

JUDGE WOODRUFF: We'll take a break before we go on to Mr. Rackers. We'll come back at 3:15.

(A short break was taken.)

JUDGE WOODRUFF: All right. We're ready to get started again after our break. And Mr. Rackers has taken the stand.

Please raise your right hand. I'll swear you in.

(Witness sworn.)

JUDGE WOODRUFF: Thank you very much.

Staff may inquire.

STEPHEN RACKERS testifies as follows:
DIRECT EXAMINATION BY MR. THOMPSON:
Q. Mr. Rackers, spell your name would you please?
A. Stephen Rackers, R-a-c-k-e-r-s.
Q. And how are you employed, sir?
A. I'm employed with the Missouri Public Service Commission as an auditor 5.
Q. And are you the same Stephen Rackers that prepared or caused to be prepared a direct and surrebuttal testimony, which have been marked as Staff's Exhibits 223 and 224?
A. Yes.
Q. Do you have any corrections to that testimony?
A. No, I don't.
Q. If I was to ask you the same questions today would your answers be the same?
A. Yes.
Q. And as far as you know, those are true and correct to the best of your knowledge and belief?
A. Yes, they are.
MR. THOMPSON: I offer Exhibits 223 and 224.
JUDGE WOODRUFF: All right. 223 and 224 have been offered. Any objections to their receipt?

Hearing none, they will be received.

(Wherein; Staff Exhibit Nos. 223 and 224 were marked for identication.)

(Wherein; Staff Exhibit Nos. 223 and 224 were received into evidence.)

BY MR. THOMPSON:

Q. Now, in addition to that testimony you also sponsored certain other items, did you not?

A. That's correct.

Q. For example, you sponsored Staff's Exhibit 200HC, which is the Sioux scrubber's audit; is that correct?

A. No. That's not correct.

Q. That's not correct? You did not sponsor that?

A. That's correct. That's sponsored by Ms. Grissum.

Q. Okay. And did you sponsor the Taum Sauk audit?

A. No.

Q. You did not? How about the revenue requirement cost of service reports, Staff's Exhibit 201?

A. Yes. I'm sponsoring that.

Q. You are sponsoring that. Very well. But you did not write all of that, did you?

A. That's correct.

Q. Okay. And are you also sponsoring Staff's Exhibit 202, the Staff accounting schedules?

A. Yes, I am.

Q. And were those prepared under your direction?

A. Yes, they were.

Q. As far as you know, are those schedules correct?

A. Yes, they are.

(Wherein; OPC Exhibit No. 202 was marked for identification.)

MR. THOMPSON: Okay. At this time, I'll offer Staff's Exhibit 202, Staff's accounting schedules.

JUDGE WOODRUFF: Okay. 202 has been offered. Any objections to its receipt?

Hearing none, it will be received.

(Wherein; Staff Exhibit No. 202 was received into evidence.)

BY MR. THOMPSON:

Q. And finally, you also prepared Staff's Exhibit 230, the reconciliation; isn't that correct?

A. Yes, I did.

Q. Okay.

MR. THOMPSON: I will, at this time offer the reconciliation and Staff's Exhibit 230.

JUDGE WOODRUFF: Okay. 230 has been offered. Any objections to its receipt?

Hearing none, it will be received.

(Wherein; Staff Exhibit No. 230 was received into evidence.)

MR. THOMPSON: At this time, I'll tender the witness for cross.

JUDGE WOODRUFF: Okay. Going down the list of who is here. It looks like the first one here is MIEC.

CROSS-EXAMINATION BY MR. ROAM:

Q. Good afternoon, Mr. Rackers.

A. Good afternoon.

Q. Could you generally describe the Staff's position regarding the use of trackers?

A. Depending on the circumstances of a cost or an expense the company's incurring, Staff has sometimes opposed and sometimes supported trackers.

Q. And in this case what is the Staff's position with respect to the trackers?

A. The vegetation and infrastructure inspection tracker or --

Q. That's fine.

A. Staff is not opposing those trackers in this case, the continuation of those trackers.

Q. And why is that?
A. Staff believes that based upon the orders from the Commission in the last two cases -- they're supportive of the trackers until we get through a complete cycle with regard to tree trimming and inspections. And also I don't have any additional -- or Staff has no additional evidence it feels it can provide to the Commission to eliminate the trackers that's already provided in the first two cases.
Q. So it's the -- it's -- so the Staff's position is not necessarily that trackers -- that the trackers should not be discontinued; it's simply that based upon the previous orders the Staff has determined not to support the discontinuation of the trackers in this case?
A. Staff has not opposed in this case to continuation of the trackers.
Q. Okay. Do you believe the annual expenses of vegetation management and the infrastructure inspection expenses have stabilized or leveled off enough today to forego the use of those trackers?
A. I believe that, yes.
Q. And absent the Commission decisions from the last two cases, would you be recommending that these trackers be discontinued for purposes of this case?
MR. THOMPSON: Objection; calls for

speculation.

JUDGE WOODRUFF: I'll overrule the objection. You can answer.

THE WITNESS: I don't know.

MR. ROAM: We need to go in camera for these next few questions.

JUDGE WOODRUFF: Okay. Normally I would -- we'll go in camera. And they're in the process of trying to restore the system. If it comes up, I'll make sure we're muted.

(REPORTER'S NOTE: At this time, an in-camera session was held, which is at Volume 17, Pages 271 to 273.)

JUDGE WOODRUFF: And Mr. Coffman, I skipped over you before. Did you have any questions?

MR. COFFMAN: No questions. Thank you.

JUDGE WOODRUFF: All right. Public counsel?

MR. MILLS: No questions.

JUDGE WOODRUFF: Ameren?

MR. BYRNE: Thank you, Your Honor.

CROSS-EXAMINATION BY MR. BYRNE:

Q. Mr. Rackers, I'd like to talk to you a little bit about regulatory lag. Do you believe regulatory lag is a problem in Missouri?

A. No, I don't.

Q. Okay. And as Mr. Baxter was talking earlier this morning, there are different impacts in terms of regulatory lag on capital and expense items. Would you agree with that?

A. Yes.

Q. And for a capital item, it's my understanding that regulatory lag exists because when the capital item goes into service it immediately starts depreciating and until the Company files a rate case and rates can take effect, the Company looses all the accumulated depreciation and a return on that investment for that interim time period; is that correct?

A. I would generally agree with that. I

personally believe that there are offsets to that effect, but --

Q. Okay. We'll I'll get to that in a minute. But holding aside the offsets, is that what happens just to the capital investment?

A. Yes.

Q. And would you agree with me that when a company is making a large amount of capital investment in between rate cases, those losses of the return and depreciation can become pretty considerable?

A. They can, but historically Staff has for very significant plant additions Staff and other parties to cases have taken measures to mitigate that effect.

Q. Like Sioux scrubber there was construction accounting for? Is that an example?

A. That's correct.

Q. I mean, doesn't Ameren Missouri have hundreds of millions of dollars of capital investment that doesn't qualify for that -- for that type of construction accounting treatment?

A. It does, but I believe that's offset to a very large degree by your growth and the depreciation reserve and the deferred tax reserve.

Q. Okay. Can you explain those offsets a little bit for me?

A. Sure. I mention this in my surrebuttal testimony on Page 3. Your depreciation reserve grows at an annual rate of 385 million. So that's -- that's a direct reduction in rate base that continues after rates take effect. So just to stay even you have to invest 385 million of new plant. And then your accumulated deferred tax continues to grow.

The government continues to initiate programs to try to stimulate the economy. Various depreciation, rapid depreciation programs, and those are having a very quick increasing effect on the accumulated deferred income tax balance. And again, that's a reduction to rate base and would offset capital improvements that you made, that the company made.

Q. How long will it be before the Company can recover the capital investment associated with the storm this last weekend?

A. I don't know. I have no idea what level of capital yield incurred.

Q. Okay. Well, whatever level it is will you agree it's probably pretty significant?

A. I really don't know. Storms can either be very capital intensive or they can be maintenance expense intensive. And I really don't know which this was.

Q. Well, would you agree with me that whatever the level of capital and expense, we're not going to be able to recover it until we file another rate case and rates take effect under that later rate case?

A. Yes, but those would be offset to some degree by the offsets that I just discussed.

Q. What about the aspect of regulatory lag, as I understand it when Commissioner Davis was asking questions of people during opening statement, maybe all -- perhaps all the parties in this case -- at least a lot of the parties in this case -- agree that Ameren Missouri is entitled to some level or rate increase based on the test year updated as of February 28th; is that correct?

A. Yes.

Q. But we have to wait in order to recover that -- those higher costs or that rate increase at least the minimum level that everybody agrees we're entitled to, we have to wait from February 28th until the effective date of new rates in this case, which would probably be early August; is that correct?

A. I think it's early July, but yes.

Q. I mean, do you think that's appropriate that the Company has to wait for five or six months to increase rates to a level that all parties agree is appropriate?

A. Yes, I do.

MR. BYRNE: Thank you, I have no further

questions.

JUDGE WOODRUFF: Okay. Questions from the bench?

Commissioner Davis?

COMMISSIONER DAVIS: No questions.

JUDGE WOODRUFF: Commissioner Jarrett?

COMMISSIONER JARRETT: No questions.

JUDGE WOODRUFF: Commissioner Kenney?

COMMISSIONER KENNEY: No. Thanks, Mr. Rackers.

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

MR. THOMPSON: No redirect. Thank you.

JUDGE WOODRUFF: Then Mr. Rackers, you can step down.

And Barbara Meisenheimer is the next witness.

(Witness sworn.)

JUDGE WOODRUFF: You may inquire.

BARBARA MEISENHEIMER testifies as follows:

DIRECT EXAMINATION BY MR. MILLS:

Q. Could you state your name for the record, please?

A. My name is Barbara Meisenheimer.

Q. And could you spell that, please?

A. B-a-r-b-a-r-a, Meisenheimer's M-e-i-s-e-n-h-e-i-m-e-r.

Q. Thank you. And by whom are you employed and what capacity?

A. I'm employed by the Office of Public Counsel. I'm a chief utility economist.

Q. Thank you. And did you cause to be filed in this case direct testimony on production cost allocator, rebuttal testimony about economic considerations and surrebuttal testimony about the production cost allocator?

A. Yes, I did.

Q. And for your information, those exhibits have been marked Exhibits 304, 305 and 306 respectively. If I were to ask you the same questions that are contained in those exhibits, would your answers be the same today?

A. My answers would generally be the same. I had a couple of corrections --

Q. Okay. Let's go ahead and do the corrections if you would, please.

A. -- to rebuttal testimony. On Page 5 of rebuttal testimony I just need to correct the percents. On Line 4 there's the number 18.35 percent. That same percent appears in the table. In both places it needs to change to 19.59 percent.

And on Line 5 of that testimony and in the table the percentage 29.1 percent appears. That needs to change to 30.45 percent. These changes don't have significant impact on the numbers and no impact on the conclusion.

Q. Do you have any additional corrections?

A. No.

Q. With those corrections, if I were to ask you the same questions that are contained in your testimony here today would you answers be the same?

A. Yes.

Q. And are those answers true and correct to the best of your knowledge, information and belief?

A. Yes, they are.

MR. MILLS: Judge, with that I'll offer Exhibits 304, 305 and 306 and tender the witness for cross-examination.

(Wherein; OPC Exhibit Nos. 304, 305 and 306 were marked for identification.)

JUDGE WOODRUFF: 304, 305 and 306 have been offered. Any objections to their receipt?

Hearing none, they will be received.

(Wherein; OPC Exhibit Nos. 304, 305 and 306 were received into evidence.)

JUDGE WOODRUFF: For cross-examination we begin with AARP.

MR. COFFMAN: No questions.
JUDGE WOODRUFF: And MIEC?
MS. VUYLSTEKE: No questions.
JUDGE WOODRUFF: Staff?
MR. THOMPSON: No questions.
JUDGE WOODRUFF: Ameren?
MR. BYRNE: No questions.
JUDGE WOODRUFF: All right. We go for questions from the bench. Commissioner Davis.
QUESTIONS BY COMMISSIONER DAVIS:
Q. Good afternoon, Ms. Meisenheimer.
A. Good afternoon, Commissioner.
Q. Going to Pages 4 through 6 of your rebuttal testimony, let's -- I guess specifically let's go to the graph on Page 5. You note that Ameren Missouri's growth of annual revenue per customer has been approximately 18.35 percent since 2006; is that correct?
A. I adjusted that number to 19.59, which is just a small numerical change.
Q. Okay.
A. But, yes.
Q. And then their proposed increase would now be less. What was that? What was that number?
A. It actually would be more.
Q. It would be --

A. At 30.45 instead of the 29.1.
Q. Okay. But their -- they've dropped of 40 or 60 million of their proposed increase?
A. These -- at the time that I filed this testimony --
Q. Okay.
A. -- I was relying on the proposals that they had made in their initial filing and then looking at a previous rate case filing and --
Q. Uh-huh.
A. So that's what the numbers are based on. They don't reflect an adjustment if the Company has made one to their requested revenue requirement.
Q. Okay. Now, prior to 2006 Ameren Missouri and its predecessors, they actually had several rate decreases, did they not?
A. I recall that there was a decrease. However, I was not involved.
Q. All right. I mean, how long have you been employed by OPC Ms. Meisenheimer?
A. I've been employed with Public Counsel since January 1st of 1996, but for many years I worked primarily in telecommunications, transitioned to gas. Electric is the last area that I've become involved in.
Q. So then you wouldn't know what the price of

electricity was that residential customers of Ameren Missouri and its predecessors were paying from say 1985 -- 1986 through approximately '05, '06?

A. No.

Q. Have you ever actually heard that Ameren went for about 20 years there -- Ameren Missouri -- without a rate increase and several decreases?

A. I don't know the length of time on -- I'm not trying to be difficult. I just --

Q. No. No.

A. -- don't have that -- that historical knowledge.

Q. So you don't know what the price of electricity that Ameren -- how the price of Ameren customers was paying in 1985 compares to the price of electricity that they're paying now, do you?

A. No. Not -- not specifically for Ameren. And we will have another witness, Ryan Kind, that will be a witness for us on rate design. And it may be that he can answer those questions for you.

Q. Okay. Maybe he can be prepared to answer that. Ms. Meisenheimer, did you get the chance to listen to Mr. Mills cross-examining Mr. Baxter on the stand earlier?

A. I heard snippets of it. I --

Q. Okay. Did you hear him ask Mr. Baxter if anyone else was responsible for Taum Sauk?

A. Yes.

Q. Okay. Let me ask you the same question: Is anyone else responsible for Taum Sauk's collapse?

A. I -- I don't think that I can answer that. I don't know.

Q. You don't know? I mean, let me ask you this: Have you ever thought that the way that Ameren's off-system sales margins were baked into rates helped contribute to Ameren's conduct and ultimately the collapse of Taum Sauk?

A. I haven't thought about that.

Q. Okay. Do you think a rate structure that says Company, you have to make a $100 million on off-system sales to break even then you can keep everything over that. Do you think a rate structure like that could cause some problems?

A. Without more specifics I don't know. I will say that I have worked on incentive programs in the past and that is a type of incentive structure, not the specifics to Ameren. But that is a structure that we -- our office has supported in the past in -- in some cases.

Q. You've supported it in the past in some cases? Did you envision a scenario where that sort of scenario might be problematic?

A. It's possible. Without specifics I don't feel comfortable --

Q. Okay.

A. -- expanding on that.

Q. Do you think -- do you think if you had record high spot market power prices that that could be a problem with such a rate design for off-system sales where the Company has the opportunity to make in essence, unlimited profits over a threshold?

A. I don't know.

Q. Okay. Well, just looking back and having the benefit of hindsight now, do you think that the Commission and the parties who were designing how Ameren Missouri's off-system sales were baked into rates -- do you think that they could have done a better job in crafting a scheme for those off-system sales margins so that Ameren might have felt more comfortable in taking Taum Sauk down for routine maintenance as well as some of its other plants?

A. I don't know the details well enough to answer that with a yes or no.

Q. Did OPC sign on to the rate design stip in the last Ameren rate case?

A. Yes. I believe we did.

Q. Do you recall any of Mr. Mills's cross-examination of Mr. Woodsmall's witness? The MEAU witness. I can't think of his name right now.
A. Not -- not without being refreshed on it.
Q. Okay. At one point during Mr. Mills's cross-examination of Mr. Woodsmall's witness in that case -- you know, it almost gave me the impression that -- that Mr. Mills was advocating that the LTS rate class deserved more favorable rate treatment because they had invested more money to higher more experts witnesses to contest more issues in the 2010 rate case. Is that a fair impression?
A. I was not public counsel's witness on rate design. I think it was Ryan Kind. So I would defer that to him as well.
Q. Okay. Do you recall Mr. Mills cross-examining Mr. Baxter using the car analogy?
A. Yes.
Q. Okay.
COMMISSIONER DAVIS: So Mr. Mills, if I get this wrong, correct me. Okay?
BY COMMISSIONER DAVIS:
Q. So in essence he was asking Mr. Baxter if his neighbor or friend borrowed Mr. Baxter's car and that neighbor or friend then wrecked the car and then had it

fixed and included a few upgrades and then handed him the bill for those upgrades -- is that in essence what Mr. Mills was asking Mr. Baxter? Is that your recollection?

Is that a fair representation, Mr. Mills?

MR. MILLS: That certainly is very close, yes.

COMMISSIONER DAVIS: Okay.

BY COMMISSIONER DAVIS:

Q. Do you think -- do you think Mr. Mills was asking for pre-approval there?

A. Asking for pre-approval?

Q. Do you think he was telling -- do you think he was asking Mr. Bax-- telling -- asking Mr. Baxter that in saying that they should have come to the Commission and asked to spend more money on Taum Sauk than the -- than the insurance -- anything over the insurance payments, they should have come and ask for pre-approval with the Commission and from the other parties to spend?

A. No.

Q. No? So you don't think he should have come here and asked to -- for any kind of pre-approval to upgrade Taum Sauk?

A. Again, this is an issue that I have not prepared testimony on, but --

Q. I mean, you are -- you are here kind of as an overall witness, are you not, Ms. Meisenheimer?

A. I'm here to discuss the impacts of this decision on the economy on consumers and their rates. I'm able to answer some policy and overview questions, but I'm --

Q. Okay. I thought that was a policy and overview question that's why I was asking.

A. Well, pre-approval -- I mean, I'm happy to tell you that we don't generally support any kind of pre-approval outside some type of stipulation that we may have entered.

Q. Okay. So --

MR. MILLS: For the record, we did not offer Ms. Meisenheimer as a policy witness. I'm not sure how she got on the list of witnesses as a policy witness. I think perhaps someone looked at her rebuttal testimony, thought it sounded like policy testimony and put her on this list.

COMMISSIONER DAVIS: Okay. So it wasn't you?

MR. MILLS: It wasn't me.

COMMISSIONER DAVIS: Wasn't you. Okay. It was somebody else.

BY COMMISSIONER DAVIS:

Q. All right. Rate design.

A. Okay.

Q. All right. Do you think that this Commission should apportion a smaller amount of the rate increase through a special class of residential customers, those who would make more than $100,000 a year, who bought million-dollar homes and now can't afford to pay their electric bills because they're under water and they're paying debt service on their mortgage?

A. No.

Q. No. Okay. Now, last question Ms. Meisenheimer. Do you think a large electric consumer in this state should be able to accumulate more than a billion dollars worth of debt as a result of a leverage buy-out and then come in here and say that they need a smaller rate increase than everyone else because they employee 900 people -- more than 900 people in an impoverished community or that they're one of fewer than maybe a dozen such businesses in the country?

A. I don't know the specifics of the testimony that you're referring to. I would qualify that there are some cases where there might be certain factors that the Commission should consider in apportioning increases to various customer classes.

We do -- with respect to low income, I think that it's not unreasonable to allow some kind of discount in recognition of affordability of rates.

Q. Uh-huh.

A. And other factors. And as I said, I don't know the specifics of the testimony you're referring to, but we in some cases allow discounts to large employers or to draw businesses to the state of Missouri through discounted rates.

Q. Okay. Well, what if the business is already here and they voluntarily assume several hundred million dollars worth of debt?

A. Again, I can't testify on the specifics of that testimony or respond to it.

COMMISSIONER DAVIS: Okay. Thank you, Ms. Meisenheimer.

JUDGE WOODRUFF: Commissioner Jarrett?

COMMISSIONER JARRETT: I don't have any questions. Thank you, Ms. Meisenheimer.

THE WITNESS: Thanks.

JUDGE WOODRUFF: Commissioner Kenney.

COMMISSIONER KENNEY: Me neither. Thank you very much.

THE WITNESS: Thank you.

JUDGE WOODRUFF: All right. Anyone wish to recross based on questions from the bench? I don't see anyone's hand going up, so any redirect?

MR. MILLS: Yes. Thank you.

REDIRECT EXAMINATION BY MR. MILLS:

Q. Ms. Meisenheimer, in traditional ratemaking without riders and things like that, in between rate cases doesn't any increase in revenue or decrease in cost go straight to the utility's bottom line?

A. Yes, it does.

Q. Okay. Is off-system sales revenue any different from any other source of revenue?

A. No.

Q. Or any cost item that could be decreased in that respect?

A. It is not different and in fact off-system sales are generated with the same facilities that are funded through rates of other ratepayers.

Q. Okay. If you're in the delivery business and you get more money for making deliveries, isn't there a tension between wanting to make deliveries and getting maintenance done on your delivery van?

A. Yes. Certainly.

Q. Is the same tension present for a manufacturer and maintenance on the production line?

A. Yes.

Q. If the delivery person or the manufacturer gives into temptation and pushes the equipment too hard so that the equipment breaks down, is that a market failure?

A. No. It's not a market failure.

Q. And if you extend that to a regulated business and a regulated business pushes its equipment too hard in the quest for profits, is that a failure of regulation?

A. Not a failure of the regulation necessarily, no.

MR. MILLS: Okay. That's all I have. Thank you.

JUDGE WOODRUFF: All right. Ms. Meisenheimer, you can step down.

THE WITNESS: Thanks.

JUDGE WOODRUFF: And I believe that's the last witness for today. Anything else anyone wants to bring up at this point? Mr. Byrne?

MR. BYRNE: Judge, is there an agenda tomorrow or how -- are we going to --

JUDGE WOODRUFF: Yes. I was going to address that. Agenda is set at 9:30 tomorrow. What I propose to do is go ahead and start tomorrow at 8:30 and then take a break for agenda, probably a half hour or 45 minutes. We'll decide for sure tomorrow. And then we can start with storm costs and vegetation.

All right? Anything else?

Then we are adjourned until tomorrow morning at 8:30.

(Wherein; Municipal Group Exhibit Nos. 750, 751 and 752 were marked for identification.)

(Wherein; MDNR Exhibit Nos. 800, 801 and 802 were marked for identification.)

(Wherein; Staff Exhibit Nos. 200HC, 201, 203 HC, 204, 205HC, 205HP, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219HC, 219NP, 220HC, 220NP, 221, 225, 226, 227, 228 and 229 were marked for identification.)

CERTIFICATE OF REPORTER

I, Lisa M. Banks, CCR within and for the State of Missouri, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

____

Lisa M. Banks, CCR

I N D E X

COMPANY'S EVIDENCE

STAFF'S EVIDENCE

OFFICE OF PUBLIC COUNSEL'S EVIDENCE

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