

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS
Evidentiary Hearing
April 28, 2011
Jefferson City, Missouri
Volume 19

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

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

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1 JUDGE WOODRUFF: Let's come to order,
2 please. Welcome back to another day of the AmerenUE
3 rate case hearing.

4 We are going to be taking up the Sioux
5 scrubbers disallowance issue today, and I assume
6 we'll start with mini openings again. Anything
7 anyone want to bring up before we get started?

8 MR. LOWERY: I don't believe so, your
9 Honor.

10 JUDGE WOODRUFF: Okay. Mini opening,
11 then, for Ameren.

12 MR. LOWERY: Good morning again. May it
13 please the Commission.

14 I spoke with you a couple of days ago
15 about the scrubbers that have been installed at the
16 Company's Sioux plant. Installing them was part of
17 Ameren Missouri's strategy to comply with the ever
18 more stringent regulations that are being issued by
19 the U.S. EPA under the Federal Clean Air Act.

20 Indeed, without the scrubbers, Ameren
21 Missouri would be unable to comply with the Clean Air
22 Transport Rule. At issue before you today is a
23 proposed disallowance of approximately 33,000,000;
24 31,000,000 of which is Ameren's Investment in the
25 scrubber, or fortunately investment, and 2,000,000 of

1 which is the AFUDC associated with that 31,000,000.

2 Knowing that the Commission just recently
3 issued an order in the KCPL case, reciting, I
4 believe, correctly what the Commission's role is when
5 it's called upon to evaluate the prudence of large
6 rate-based investment, I won't spend much time
7 discussing that role.

8 Suffice it to say that the Company's
9 expenditures, including this \$33 million, are
10 presumed to be prudent unless another party puts on
11 competent and substantial evidence that raises a
12 serious doubt about that prudence and, unless that
13 happens, and even if it does, the Company could
14 overcome that with its own evidence, the Company is
15 entitled, as a matter of law, to have the investment
16 included in a rate base.

17 In a nutshell, the Staff claims that
18 Ameren Missouri was wrong to slow down the scrubber
19 project at the height of the global financial crisis
20 in the fall of 2008, a crisis that included the
21 bankruptcy of Lehman Brothers, the implementation of
22 the biggest federal bailout in the nation's history
23 and sharp increases in borrowing costs for those who
24 could actually access the capital markets.

25 The Staff claims that Ameren Missouri

1 was wrong to be worried about its liquidity, in other
2 words, about its ability to have enough cash to
3 deliver service 24 hours a day, seven days a week.

4 The Staff claims the Company was wrong to be
5 proactive so that if unexpected events occurred, the
6 contingencies that Mr. Baxter talked about on
7 Monday -- so that if those kinds of things occurred,
8 the Company would be able to deal with them and still
9 have enough cash to buy, for example, the natural gas
10 it was going to need to buy to serve customers in the
11 upcoming winter or to respond to storms, if storms
12 occurred, or to weather a downturn in revenues, if
13 that happened.

14 In fact, while it's not relevant to the
15 prudence of the Company's decision back in early of
16 November 2008 to slow down the project, we now know
17 that those kind of contingencies did happen. A
18 terrible ice storm happened in late January 2009, and
19 that storm cost the Company 80 to \$90 million of
20 unexpected cash expenditures that it wasn't planning
21 to incur, and Niranda's load dropped precipitously,
22 and they were actually out completely for a period of
23 time, and so revenues went down because of that event
24 as well.

25 Now, the Staff's theory is that the

1 Company had sufficient access to cash and therefore
2 didn't need to slow down the project. Not only did
3 the information facing the Company at the time
4 indicate that this contention was simply not true,
5 even if it were true, that's entirely beside the
6 point unless Ameren Missouri, faced with the
7 circumstances that it was facing then and the facts
8 that it knew, was imprudent for concluding that it
9 needed to slow down the project to conserve cash.

10 So what were those circumstances? The
11 evidence shows they were as follows: After Lehman
12 Brothers filed the largest bankruptcy in U.S. history
13 in September 2008, the country -- not just Ameren
14 Missouri, but the country as a whole found itself in
15 a liquidity crisis.

16 In Ameren Missouri's case, it had to rely
17 upon cash from operations and it had to rely on its
18 credit facilities. A credit facility, it's a line of
19 credit, basically, and it's a line of credit backed
20 up by -- I think at that time -- more than 20
21 different banks who each have a share of the
22 obligation to lend.

23 The evidence shows, as is pretty typical
24 in capital-intensive businesses like public
25 utilities, that Ameren Missouri's free cash flows at

1 this time were negative. That's means it had to rely
2 upon its credit facility to fund day-to-day
3 operations. This, too, is not unusual. That's why
4 you have a credit facility.

5 Now back to Lehman Brothers. Lehman
6 Brothers was one of the banks that was a participant,
7 a lender in that credit facility, so when Lehman
8 Brothers went bankrupt, so did the Company's access
9 to the funds that Lehman Brothers otherwise would
10 have to lend another credit facility.

11 Now, you might say, Well, surely other
12 banks would be happy to step up and cover what Lehman
13 Brothers couldn't lend anymore, but the evidence
14 shows that you would be wrong if you assumed that.

15 The evidence shows that Wachovia was
16 another participant in that credit facility and that
17 they were on the brink of insolvency themself at the
18 time. And as I'm sure you will probably recall,
19 other lenders were not in a lending mood because they
20 held on their balance sheets those toxic mortgages
21 that started a lot of this to begin with, and so
22 their balance sheets didn't look so good at the time.

23 Now, as Mr. Birdsong testifies, even
24 putting Lehman Brothers aside, fully one-third of the
25 lenders in the credit facility were rumored at the

1 time to be on the brink of insolvency. As
2 Mr. Birdsong also testifies, this wasn't a case where
3 Ameren Missouri's financial experts were sitting in
4 their offices worrying about something and everybody
5 else was going on about their business without a
6 care. To the contrary, many companies, if not most,
7 were seeing the same things that Ameren Missouri were
8 seeing and taking the same kind of steps that Ameren
9 Missouri ended up taking.

10 Now, apparently unaware of all of this,
11 the evidence will show that the Staff auditor, who
12 says that this \$33 million should be disallowed,
13 wasn't even aware that Lehman Brothers had gone
14 bankrupt.

15 Indeed, the evidence will show that
16 Ms. Grissum, who was that auditor, who has little or
17 no training or experience that would qualify her to
18 accept -- access the liquidity needs of the utility
19 facing these kinds of circumstances, that her opinion
20 is that the Company had plenty of cash, yet she has
21 performed no analysis that indicates how much cash
22 the Company needed at the time.

23 Incredibly, the evidence will show that
24 her theory is, that because at the time the decision
25 was made to slow down the project, Ameren Missouri

1 literally had \$33 million in its credit facility that
2 it could draw on; that according to her, what Ameren
3 Missouri should've done is drawn on the \$33 million
4 because it turns out it would've covered the cost of
5 the delay, but if you think about that, that doesn't
6 make any sense.

7 If I want to figure out if I have enough
8 cash to meet my needs over a forward period -- weeks,
9 months, whatever period is relevant -- I have to
10 first figure out, What am I going to have to spend?
11 What are my nondiscretionary expenditures? For a
12 utility, there are a lot of those, as you can
13 imagine.

14 Secondly, I have to figure out what I can
15 reasonably expect my earnings to be over that same
16 period of time. Then I have to think about, Might I
17 have some unexpected expenditures, so I have an
18 emergency fund just in case; and then I have to look
19 at all that and say, Does the cash in my bank
20 account, and if I have a line of credit -- the line
21 of credit that I have available to me -- is it going
22 to cover that?

23 If the answer's "no" on "probably no," I
24 probably ought to take some steps to conserve cash
25 and quit spending as much money, or I may run out of

1 cash which, of course for a public utility, would be
2 a disaster.

3 The question you have to ask yourself is,
4 How does the Staff know that Ameren Missouri's access
5 to cash was sufficient when it didn't, and it hasn't,
6 performed any analysis to figure out how much cash
7 Ameren Missouri needed? The answer is obvious. The
8 Staff doesn't know that Ameren Missouri had
9 sufficient access to cash because it can't possibly
10 know it without having performed such an analysis.

11 But Ameren Missouri did perform such an
12 analysis. Starting in early to mid-October and
13 continuing on almost a daily basis for the next
14 several weeks, Ameren Missouri performed a liquidity
15 analysis, and what it showed caused the Company a
16 great deal of concern.

17 What it shows was that in just very few
18 months the Company was literally going to run out of
19 cash unless it did something. So what did Ameren
20 Missouri do? It did what the evidence shows most
21 companies did: It looked at its capital expenditure
22 plans; it looked at its own end budgets and it began
23 to look for ways to cut the flow of cash going out
24 the door.

25 Ameren Missouri looked at anything that

1 it could do that didn't impact safety -- that was
2 first -- second, it didn't directly impact service to
3 customers; and third, it wouldn't cause it to be out
4 of compliance with some legal requirement.

5 It compiled specific lists of candidate
6 capital and O&M projects, expenditures, that it could
7 cut or that it could defer. And, ultimately, in a
8 matter of just a few weeks, because it had to make a
9 decision because every day and week that went by cash
10 was going out the door at a rate that was faster than
11 the analysis showed that it could, that it could
12 sustain, so in a few weeks the Company made some
13 decisions.

14 As a result of its analysis, the Company
15 slowed down the largest single project that it had at
16 the time, the Sioux scrubber project, but it also
17 canceled every single maintenance outage that it had
18 at its power plants in 2009.

19 It also slowed down the undergrounding
20 portion of its power-on project. It deferred some
21 fleet acquisitions. It deferred some expenditures
22 for energy delivery technical services. It cut
23 expenditures with contractors where it could, among
24 other things. In total, it put in place a plan to
25 cut or defer \$420 million of expenditures in the

1 fourth quarter of 2008 and for 2009.

2 And the evidence will show that Ameren
3 Missouri was not the only Ameren company that was
4 doing this. The evidence shows that Ameren Energy
5 Generating Company itself cut or deferred more than
6 the \$420 million -- \$477 million in 2009 -- including
7 slowing down one of its scrubber projects at its
8 Coffeen plant.

9 Now, as it turned out, the country's and
10 the company's worst fears did not come to pass, and
11 by early 2009 things started to look better. They
12 weren't great, but they were better than they
13 appeared to be in October and November, so the
14 Company -- it turned out, for example, that Wells
15 Fargo rescued Wachovia, so we didn't lose Wachovia in
16 the credit facility.

17 The capital markets started to fall. It
18 appeared by mid- to late-January that the Company
19 would be able to replace some long-term debt in
20 March, and that ended up happening. So after slowing
21 down the Sioux project in early November, which
22 reduced the cash needed, conserved cash, for about
23 approximate 2 1/2 or 3 months, and actually longer,
24 because when this project ramped back up, it took a
25 little bit of time to ramp it fully back up, then the

1 project was started back up or ramped back up from
2 the slowed-down state and was fully ramped up by the
3 spring.

4 Now, did the slowdown come at a cost?

5 Yes, it did come at a cost. There was more overhead
6 because the contractors were immobilized, and because
7 of the slowdown, the Company found it necessary to
8 push out the inservice dates, so the financing costs
9 went on longer, and that was \$33 million. We agree
10 with that.

11 But that's entirely beside the point as
12 long as the decision, given the facts and
13 circumstances facing the Company at the time, was
14 prudent to slow down the project to conserve cash.

15 In summary, the overwhelming weight of
16 the evidence will show that the Company's decision to
17 slow down the scrubber projects to conserve cash was,
18 indeed, a prudent decision and that it was made in
19 the interest of customers so that the Company could
20 be sure that it had the cash it needed to keep the
21 lights on 24-7.

22 I encourage you to ask Mr. Birdsong, and
23 Mr. Birk, for that matter, when they take the stand
24 this morning, given what they know now, would they
25 have done the same thing again? And I'll let them

1 answer that question for you.

2 I appreciate your time this morning.

3 Look forward to presenting the case. Thank you.

4 JUDGE WOODRUFF: Thank you.

5 Opening for Staff.

6 MR. DOTTHEIM: May it please the

7 Commission.

8 Staff contends the evidence shows that
9 Ameren Missouri had sufficient access to its credit
10 facilities in the capital market in late 2008 and
11 into 2009, and that Ameren should have continued the
12 Sioux plant wet flue gas desulphurisation, or
13 scrubbers project, rather than delay the project,
14 whereby it incurred an additional \$31 million in
15 project costs, \$18 million in construction costs and
16 \$13 million in AFUDC, which Ameren now seeks to pass
17 on to its Missouri ratepayers.

18 Staff contends that the evidence shows
19 that Ameren Missouri's liquidity concerns about
20 conditions in the financial markets during the period
21 commencing in late 2008 and continuing into early
22 2009 did not warrant Ameren Missouri incurring the
23 additional \$31 million cost to the project.

24 Staff does not contend that there was no
25 financial crisis. Staff's analysis is not a

1 hindsight rear view mirror analysis. As of
2 December 31, 2008, Ameren, Ameren Missouri, and
3 Ameren Generating Company had approximately \$540
4 million available to them under the credit facility
5 dedicated to their needs.

6 In January 2009, Ameren Missouri filed an
7 application to issue \$350 million in 30-year first
8 mortgage bonds, which it did in March 2009, at
9 8.45 percent to refinance short-term credit. On
10 November 4, 2008, Ameren reported its third quarter
11 2008 earnings and reported its solid liquidity
12 position.

13 The Staff's proposed rate base
14 disallowance of \$31 million is shown on the corrected
15 reconciliation as having a revenue requirement effect
16 of \$4,634,000 -- is what that rate base amount of
17 \$31 million rolls out as as far as the revenue
18 requirement effect: \$4,634,000.

19 Two members of the Staff filed on this
20 issue: Roberta Grissum and David Murray.
21 Ms. Grissum is a Staff auditor. She has previously
22 filed testimony in a construction audit and prudence
23 review in an Empire District Electric Company rate
24 case, Case No. ER-2004-0570, respecting the Empire
25 Energy center units III and IV. She was employed in

1 the Commission's financial analysis department in
2 1998 to 2002 where she performed rate-of-return
3 analysis.

4 Staff's direct case filing on February 8,
5 2011, indicated that Staff had not completed its cost
6 analysis of the Sioux plant scrubbers project and
7 left placeholders for the completion of that
8 analysis. In surrebuttal testimony, Ms. Grissum
9 relates that Staff proposes no further adjustments
10 based on the completion of that analysis.

11 Mr. Mark Seaberg, Ameren Vice President
12 of Power Operations, submitted direct testimony on
13 the Ameren Missouri Sioux plant scrubbers project.
14 Mr. Jerre Birdsong, an Ameren employee of Ameren
15 Services Company, and vice president and treasurer
16 for Ameren Missouri, did not submit any direct
17 testimony for Ameren Missouri.

18 Mr. Birdsong, in his rebuttal testimony,
19 relates a telephone conference call that Ameren
20 Missouri had with certain members of the Staff of the
21 Commission in October of 2008 regarding a financing
22 that AmerenUE was planning. Ameren Missouri also
23 prominently mentions that telephone conference call
24 in its statement of position.

25 The recollection of the Staff members who

1 participated in that conference call is very
2 different from that of AmerenUE as set out in
3 Mr. Murray's surrebuttal testimony.

4 The bottom line is that the Staff does
5 not bar a utility from making a financing application
6 with the Commission. The Staff conducts analysis and
7 makes recommendations to the Commission as a party in
8 a contested proceedings or as a participant in
9 noncontested proceedings.

10 A utility can ask for expedited
11 treatment. The Commission also has procedures for
12 treating highly-sensitive financial information as
13 highly confidential.

14 As noted previously in my opening
15 statement, AmerenUE did make a financing application
16 filing on January 16, 2009, in which AmerenUE
17 requested an order from the Commission authorizing
18 the issue and sale of up to \$350 million aggregate
19 principle amount of long-term indebtedness.

20 Staff would also note that whatever the
21 disposition of the Staff might be to the filing on
22 June 30, 2009, LaClede Gas Company filed an
23 application with the Commission for authority to
24 issue and sell first mortgage bonds, unsecured debt
25 and preferred stock.

1 The application also was for LaCleda to
2 issue common stock, receive capital contributions to
3 issue or accept private placements of preferred
4 stock, first mortgage bonds, and unsecured debt and
5 to enter into capital leases, all in a total amount
6 not to exceed \$600 million.

7 The Staff believes that the Sioux plant
8 scrubbers issue that it raises has merit warning the
9 Commission's attention and that the Staff's position
10 meets the governing legal standards.

11 Thank you.

12 JUDGE WOODRUFF: Thank you, Mr. Dottheim.

13 Does public counsel wish to make an
14 opening?

15 MR. MILLS: Just briefly, your Honor.

16 First of all, I agree with Mr. Lowery
17 about the Commission's job here. The Commission's
18 job is to determine whether or not the Staff, through
19 its testimony, has raised a serious doubt about
20 AmerenUE's prudence, and if so -- and I think the
21 Commission should find that -- to determine whether
22 AmerenUE has affirmatively proved its prudence in
23 deferring or slowing down the Sioux scrubber project.

24 And I think just a couple of big-picture
25 numbers very clearly illustrate that Staff has

1 actually adequately demonstrated a serious doubt
2 about the prudence. First of all, it's important to
3 remember that at the time that the financial crisis
4 was unfolding in the fall of 2008, Ameren had a
5 \$1.5 billion credit facility, and that \$1.5 billion
6 credit facility is approximately half a billion
7 dollars above the amount of credit authority that
8 Ameren had just a year before when the Sioux project
9 was getting underway.

10 Now, Ameren points out that some of that
11 credit facility was threatened, or at least
12 potentially threatened, because some of the creditors
13 who were extending the credit were themselves under
14 financial threat, but only to the tune of about a
15 third, at worst.

16 So even assuming that Ameren's position
17 is correct, if a third of that \$1.5 billion credit
18 facility was threatened, that still puts Ameren
19 Missouri at about a billion dollars of credit, which
20 is about where they were when they started the
21 project.

22 So couple that with the fact that Ameren-
23 wide there were many choices of capital projects,
24 expenditures, to reduce and Ameren chose to take one
25 that would saddle captive ratepayers with an

1 additional \$30 million of capital costs, I think the
2 Staff has demonstrated that there is a serious doubt
3 about Ameren's course of action, which then turns the
4 burden back to Ameren Missouri to prove that it was
5 prudent, and that's a burden that it's failed to
6 carry.

7 Thank you.

8 COMMISSIONER DAVIS: Can I inquire of
9 Mr. Mills just for a second?

10 Mr. Mills, who is the short-term credit
11 facility with?

12 MR. MILLS: The short-term credit
13 facility? The \$1.5 billion credit facility was
14 through a group of lenders including, as you've
15 heard, Wachovia and Lehman Brothers.

16 COMMISSIONER DAVIS: Okay.

17 MR. MILLS: I don't know specifically
18 about the short-term facility that you're referring
19 to.

20 COMMISSIONER DAVIS: Okay. Well, I was
21 referencing -- I thought you'd used the term "short-
22 term," so I thought that was --

23 MR. MILLS: No.

24 COMMISSIONER DAVIS: So it was one and a
25 half billion through Wachovia, Lehman Brothers --

1 MR. MILLS: It was a consortium of
2 lenders, and I don't --

3 COMMISSIONER DAVIS: Right.

4 MR. MILLS: Mr. Birdsong or Ms. Grissum
5 would be better to answer exactly who was in that
6 list.

7 COMMISSIONER DAVIS: All right. Okay.
8 Thank you.

9 COMMISSIONER KENNEY: I do have a legal
10 question for either Mr. Dottheim or Mr. Mills,
11 actually.

12 The prudence standard, are we questioning
13 the prudence of delaying this specific project or the
14 prudence of having delayed any projects?

15 I mean, I guess the question that I'm
16 asking is: Is there an argument that the state of
17 the capital markets didn't merit any delay of any
18 projects and this was a complete overreaction, or
19 Ameren was imprudent in choosing this specific
20 project to delay as opposed to some others?

21 MR. MILLS: And since I'm standing here,
22 I'll answer first. Mr. Dottheim may or may not have
23 a different answer.

24 My position is that there certainly was
25 reason to be concerned about liquidity. There was

1 reason to be concerned about the credit markets, and
2 so it was not imprudent to delay some projects, but
3 as you heard from Mr. Lowery, Ameren Energy
4 Generating deferred about 470 million of capital
5 projects, Ameren Missouri deferred about 420.
6 There's absolutely no reason why that couldn't have
7 shifted by \$30 million.

8 So there is a serious doubt as to whether
9 or not deferring this particular project under those
10 circumstances, knowing what it would cost ratepayers,
11 was a prudent thing to do.

12 MR. DOTTHEIM: The Staff's adjustment
13 relates only to the Sioux plant scrubber project. It
14 was the -- the largest project that AmerenUE, Ameren
15 Missouri, had ongoing at the -- at the time, and the
16 Staff has been monitoring the project, and the Staff
17 has performed a construction audit. As part of the
18 construction audit, this is one area that the Staff
19 looked at.

20 I mean, the Staff also performed a
21 construction audit of the Taum Sauk rebuild but --

22 COMMISSIONER KENNEY: But -- and that's --
23 I understand that. That's slightly different, but I
24 think Mr. Mills is getting more to the answer that
25 I'm asking, addressing the question that I'm asking.

1 More precisely what I'm trying to figure
2 out is if it Staff's position that it was imprudent
3 to delay projects generally, or it was just imprudent
4 to have chosen this specific project to delay? And I
5 think Mr. Mills answered it, and I'm wondering if you
6 concur.

7 MR. DOTTHEIM: Well, it's -- it's this
8 project in particular.

9 COMMISSIONER KENNEY: Okay.

10 MR. DOTTHEIM: Of course Ameren Generating
11 Company, that's -- that's -- even though that was
12 part of the credit facility that's -- that's
13 unregulated. I mean, there are much smaller
14 maintenance projects.

15 This was the project that the Staff
16 concentrated on in particular for materiality
17 grounds, not to say that when you aggregate other
18 projects you don't come up with a materiality number
19 but, again, Staff's adjustment relates solely to the
20 Sioux scrubber projects.

21 COMMISSIONER KENNEY: Let me ask an
22 additional question. Then we can go to the
23 witnesses.

24 The standard is that Staff or a party
25 must raise a reasonable doubt as to the prudence of

1 the specific expenditure, and then the burden shifts
2 to the regulated entity to rebut that doubt;
3 correct?

4 MR. MILLS: Well, actually, I like your
5 standard better, but I think the standard is a
6 serious doubt.

7 COMMISSIONER KENNEY: Serious doubt.

8 Is there any obligation on the part of
9 Staff to -- as a part of this analysis or any other
10 party to say it was imprudent to delay construction
11 of the Sioux scrubbers and here's an alternative that
12 should've been pursued that would not have been
13 deemed imprudent?

14 For instance, Coffeen plant that they
15 delayed, and that was 400-and-some-odd million
16 dollars, and you're saying there was room to shift
17 the \$30 million. Is it your obligation, either Staff
18 or OPC's obligation, to offer a viable alternative?

19 MR. MILLS: I think you can get to serious
20 doubt in a number of ways, and certainly that would
21 be one way. Just to correct one thing, \$470 million
22 that Mr. Lowery identified for Ameren Energy
23 Generating was not just the Coffeen plant. There
24 were other projects as well.

25 COMMISSIONER KENNEY: Other projects.

1 MR. MILLS: But certainly that would be
2 one way, I think, you can raise a serious doubt
3 without saying, Shift -- you know, Delay this project
4 by that amount and that project by that amount and,
5 you know, don't replace this truck. I don't think
6 that you have to get into that level of detail to
7 raise a serious doubt.

8 COMMISSIONER KENNEY: Okay.

9 MR. DOTTHEIM: And if I'm not mistaken,
10 Coffeen and Duck Creek are not Ameren Missouri
11 facilities. Those are -- those are Ameren Illinois
12 facilities so, I mean, part of the discussion that
13 one gets into in dealing with Ameren Missouri is not
14 trying to disaggregate Ameren Missouri from Ameren
15 Corporation, Ameren Generating Company, which is
16 unregulated, Ameren Illinois.

17 COMMISSIONER KENNEY: Who had the \$1.5
18 billion credit facility?

19 MR. DOTTHEIM: That was Ameren.

20 MR. LOWERY: Commissioner, if I may, I
21 didn't want to interrupt Mr. Mills' opening
22 statement, but there is no, and was no, \$1.5 billion
23 credit facility. There was a 1.15 billion credit
24 facility that covered Ameren Corporation, the
25 unregulated operations in Illinois and Ameren

1 Missouri in total, and so one-third -- fully
2 one-third of that was at risk, and Ameren Missouri's
3 portion of that, it's access was only 500,000,000,
4 and some part of that 500,000,000 was at risk because
5 of Lehman Brothers going bankrupt and the fact that
6 some of the other lenders were also on the brink of
7 insolvency, and it wasn't clear that they were going
8 to be able to meet their commitments either.

9 So just so the record is clear: There is
10 no -- there never was a 1.5 billion facility.

11 COMMISSIONER KENNEY: The 500,000,000 to
12 which Ameren Missouri had access, who was that with,
13 or was that among multiple lenders?

14 MR. LOWERY: I thought it was 23.
15 Mr. Tripp tells me there were 18 different lenders.

16 COMMISSIONER KENNEY: 18 different
17 lenders. Okay.

18 And some portion if it would've been with
19 Wachovia and Lehman Brothers?

20 MR. LOWERY: Correct.

21 COMMISSIONER KENNEY: Can you tell me the
22 portions, or is that --

23 MR. LOWERY: I know Lehman had 171. I
24 don't know how much Wachovia had.

25 COMMISSIONER KENNEY: Okay. Thank you.

1 JUDGE WOODRUFF: Then we'll move on to our
2 first witness for Ameren.

3 You may call your first witness.

4 MR. TRIPP: Ameren Missouri calls Mark
5 Birk.

6 JUDGE WOODRUFF: Good morning, Mr. Birk.
7 Raise your right hand.

8 THE WITNESS: Morning, sir.

9 MARK BIRK, having been sworn, testified as
10 follows:

11 JUDGE WOODRUFF: You may inquire.

12 MR. TRIPP: Thank you.

13 (Ameren Exhibit Nos. 106NP, 106-HC, 107 and 108
14 were marked for identification.)

15 DIRECT EXAMINATION BY MR. TRIPP:

16 Q. State your name, please.

17 A. Mark Christopher Birk.

18 Q. And Mr. Birk, are you the same Mark Birk
19 who caused to prepare -- to be prepared for filing in
20 the docket in this case the following testimony:
21 Direct testimony, rebuttal testimony, surrebuttal
22 testimony?

23 A. That is correct.

24 Q. And we've marked your direct testimony as
25 Exhibit 106. It's a highly-confidential version, and

1 then 106-NP, which is a public version, and then
2 Exhibit 107, your redirect testimony, and Exhibit
3 108, your surrebuttal testimony; correct?

4 A. Correct.

5 Q. Did you have any corrections to this
6 testimony?

7 A. I do. I have one correction on my direct
8 testimony. On page 39, line 15, the summation
9 amounts associated with Taum Sauk, the -- there's a
10 mathematical error when we add the numbers up, and
11 the number on line 15 should read \$94,262,924.

12 Q. All right. Any other corrections?

13 A. No other corrections.

14 Q. With regard to that correction, have you
15 actually -- has that correction actually been made on
16 the transcript itself?

17 A. Yes, I believe it has.

18 Q. Now, with that correction, Mr. Birk, if I
19 asked you the same questions that appear in this
20 testimony, would you give the same answers?

21 A. Yes, I would.

22 Q. And is this testimony, then, true and
23 correct with that correction?

24 A. Yes, it is.

25 MR. TRIPP: Your Honor, I move to admit

1 Exhibits 106-NP, 106-HC, 107 and 108 into evidence.

2 JUDGE WOODRUFF: 106, 107, and 108 have
3 been offered. Any objections that they be received?

4 (No response.)

5 JUDGE WOODRUFF: Hearing none, they will
6 be received into evidence.

7 (Ameren Exhibit Nos. 106-NP, 106-HC, 107
8 and 108 were admitted.)

9 JUDGE WOODRUFF: And for cross-examination
10 we'll begin with public counsel.

11 CROSS-EXAMINATION BY MR. MILLS:

12 Q. Just briefly, Mr. Birk. This may not be
13 your area, but I will ask it anyway. Have you read
14 the surrebuttal testimony of Staff witness Roberta
15 Grissum?

16 A. I've read -- I have read it.

17 Q. Do you have a copy there with you?

18 A. I do not.

19 Q. I'm just going to read a simple statement
20 from that, and let me know whether you agree with it
21 or not. She states that --

22 MR. TRIPP: I'm sorry. What page are you
23 on?

24 MR. MILLS: I'm on page 3, lines 28 and
25 29.

1 BY MR. MILLS:

2 Q. This is talking about a -- what she refers
3 to as a \$1.5 billion credit facility, and she states
4 that UE can directly borrow under this credit
5 facility up to \$500 million on a 364-day basis.

6 Is that consistent with your
7 understanding of Ameren Missouri's access to the
8 credit facility?

9 A. Sir, I don't -- I don't get into that
10 level of detail.

11 Q. That's fine. I thought you might not.

12 A. I can't answer that. I don't know that.

13 MR. MILLS: Okay. Then I have no further
14 questions.

15 JUDGE WOODRUFF: Cross for Staff.

16 MR. DOTTHEIM: No questions.

17 JUDGE WOODRUFF: All right.

18 Questions from the Bench then?

19 Commissioner Davis?

20 COMMISSIONER DAVIS: No questions.

21 JUDGE WOODRUFF: Commissioner Jarrett?

22 COMMISSIONER JARRETT: Good morning,

23 Mr. Birk. How are you?

24 THE WITNESS: Good morning.

25 COMMISSIONER JARRETT: I had one quick

1 question. Mr. Lowery, in his opening statement,
2 talked about Ameren doing many measures cutting back,
3 not just the scrubbers but other projects and other
4 expenses as well. Do you recall that?

5 THE WITNESS: Yes, sir. Basically, back
6 in the early part of October I was asked by Mr. Voss,
7 who was at the time my boss, who was over Ameren
8 Missouri, as the other vice presidents of Ameren
9 Missouri, to look at and review and come up with a
10 potential list of projects that could be deferred if
11 the liquidity crisis got worse, so basically for us
12 everything was put on the table.

13 And I went to my managers, both at the
14 plants and in our operation services organization,
15 which is effectively our engineering organization,
16 and said, Let's review and let's come up with a list
17 of projects that we could potentially defer, should
18 things get worse.

19 And so everything was included on the
20 table and, quite frankly, when we did the review,
21 because of the nature of most of our projects, what
22 really ended up being the most optimal were the
23 deferral of the Sioux scrubber, because at the time
24 we were spending about \$17 million a month, and of
25 that, most of it was labor.

1 I remember, you know, after we went
2 through the list, we also felt that major overhauls
3 could be deferred, so those were the two, kind of,
4 big items. And we deferred, as Mr. Lowery indicated,
5 three major overhauls. We didn't do any that year.
6 And then we also effectively slowed down the Sioux
7 scrubber. We never really completely stopped it,
8 although when we looked, our initial plan was to come
9 up with a way to maybe defer for up to a year,
10 because at the time we weren't really sure how bad
11 things were and how bad they could get.

12 COMMISSIONER JARRETT: Now, in your
13 position, do you follow what other companies besides
14 Ameren are doing in this type of area? I guess my
15 question is: Were other companies besides Ameren
16 doing the same types of things that Ameren was doing
17 as far as cutting back because of the financial
18 crisis?

19 THE WITNESS: Commissioner, the way that I
20 follow it is, basically for the most part I see
21 what's out there publicly and, you know, what we see
22 as far as in the way of press releases and things
23 that were occurring.

24 The -- the one that I probably was most
25 familiar with at the time is I had seen some

1 information associated -- you know, Constellation was
2 going through problems at the time, and then the
3 indication was Reliant would potentially be the next
4 company that would have problems, so that was part of
5 the way that, in my mind, you know, it appeared to be
6 pretty bad.

7 Also at the time I was actually going
8 through MBA classes at Washington University, and
9 when the Lehman crisis hit, I remember we devoted an
10 entire class to talking about it, because the doctors
11 at Wash U that, you know, were kind of presenting and
12 teaching us, they weren't really sure what was going
13 on, and they weren't sure -- you know, when you ask
14 them, Well, how long do you think this will take and
15 will it improve, they were uncertain because they'd
16 never been in this situation before, so to me it kind
17 of drove home to me that, hey, this is -- that is a
18 significant thing, and that's why we basically put
19 all of our projects on the table when we went to
20 review them.

21 COMMISSIONER JARRETT: And I think maybe
22 it was the last Ameren rate case where we were
23 talking about -- it was the interim rate case.
24 Remember when we had the hearings on the interim rate
25 case? It was called the global financial crisis. I

1 mean, it was really unprecedented.

2 THE WITNESS: I believe it was. I don't
3 know the details that Jerre Birdsong does, you know,
4 about, you know, everything that, you know, Ameren
5 was going through from a financial perspective, but
6 just in looking at what was going on in the outside
7 world -- and like I said, what I picked up through my
8 MBA classes -- and I also sit on the board of the
9 community college where we had concerns -- you know,
10 it's a charitable fund and whether the fund would be
11 liquid or not and, you know, we had outside parties
12 come in and present to us and explain how they were
13 trying to preserve liquidities that we could use, you
14 know, for tuition scholarships and things, so I truly
15 believe it was a legitimate concern, a legitimate
16 crisis.

17 And, you know, at the time, in my mind,
18 after we developed a list of projects, because of
19 where Sioux was at and the way that the -- you know,
20 the CARE rules were initially in place when we
21 started the project, then somewhere in the middle of
22 it they were vacated, and the KADDER (ph) rules,
23 which are the ones that are coming up now, were going
24 into place, it gave us a little bit of time.

25 And to me, you know, Sioux was a project

1 that at the time didn't impact safety. It didn't
2 impact the reliability of our generating plants, and
3 we weren't violating any laws by doing it, and it
4 really had a minimal impact on employees. I think
5 when -- when I recall and when we talked with the
6 major contractors involved, our biggest concern at
7 the time was, you know, if the liquidity crisis
8 continues to get worse, we need cash to continue to
9 run the Company, you know.

10 I've been involved in the trading
11 organizations, and one of the things you realize is,
12 if you don't have liquidity, you can't trade so, you
13 know, there's a potential risk that if it got much
14 worse and Ameren started to get into more liquidity
15 problems, we had a union trip, we had something
16 happen, how are we going to buy the power to cover
17 that trip and keep the lights on for our customers?

18 I remember talking to contractors about
19 that and also telling them, you know, we're spending
20 about \$10 million a month on labor on this project.
21 I'm not sure I can guarantee in the next couple of
22 months we can continue to pay you at that rate, so
23 that was really what factored in, and that's why we
24 decided and ultimately, you know, presented the list
25 to Tom Voss that said, We recommend at this point we

1 defer the Sioux scrubber and we recommend that we
2 defer all of our major overhauls.

3 Those were the things that, basically, in
4 Ameren Missouri Generation we felt provided the most
5 liquidity back to the Company.

6 COMMISSIONER JARRETT: So would it be, I
7 guess -- would it be accurate to say that in your
8 analysis you don't just look at bank account and what
9 your expenses are going to be and whether your bank
10 account can cover those expenses; you have to look at
11 contingencies, plants maybe possibly going down, bad
12 weather, devastating storms coming through that might
13 have unexpected expenses? You have to look at all of
14 those, not just look at, you've got some money in the
15 bank so it's business as usual?

16 THE WITNESS: No, that's exactly right
17 because, you know, the nature of operating an
18 electric system, whether it be the energy delivery
19 portion or the generation portion, is there tends to
20 be uncertainty, especially around the operations.

21 You don't know when you're going to have
22 a storm that rolls through. You don't know when
23 you're going to have a potential problem on a
24 generating plant where you're going to need cash to
25 fix it.

1 doing?

2 COMMISSIONER KENNEY: I'm doing well.

3 Thanks.

4 So what else was on that list that you
5 presented to Mr. Voss? I know there was the -- all
6 major overhauls were discontinued and the Sioux
7 scrubbers. What else was on that list?

8 THE WITNESS: Basically, we deferred about
9 \$168 million, roughly, in capital and about \$50
10 million in O&M from '09. The predominant projects
11 that were associated with that was the major overhaul
12 on Rush Island II, which we ended up doing in 2010.
13 There was a major overhaul on Labadie IV that we, at
14 this point, plan to do later this year, and there was
15 a major overhaul in Meramec IV.

16 That accounted, probably, for somewhere
17 in the neighborhood from a capital perspective of
18 about \$80 million, so we deferred all of those, and
19 we never brought those back. We just didn't do those
20 entirely in '09. They were canceled.

21 There was also, associated with those,
22 three major overhauls, about \$50 million in O&M that
23 was essentially pulled back and deferred. As I
24 mentioned before, the Sioux scrubber, ultimately at
25 the time we were spending about, like I said, roughly

1 about \$17 million a month, and what we saw by our
2 initial plan was, since we didn't know how long this
3 would last, we came up with a plan to kind of
4 initially slow it down because there was some
5 critical things like ID fans, absorbers that you
6 wanted to kind of get closed up.

7 There were a couple of other items on
8 some of the auxiliary buildings and some of the other
9 things that you wanted to continue and finish,
10 because it didn't make sense to just stop them, so we
11 targeted taking our spend from about 17 million a
12 month to about 2 million a month with the idea that
13 once we got into the spring, if things continued to
14 deteriorate, we would actually completely stop the
15 Sioux scrubber project, turn off the AFUDC, and thus
16 we meet our, kind of, plan to defer it for a year.

17 So that was one of the projects and, you
18 know, at the time we were also looking -- well, we
19 also looked at upgrades of plants. We had a
20 distributor control system upgrade at Labadie on all
21 four units that we were walking through that we
22 deferred.

23 We had some hydrowork at Keokuk on some
24 transformers and things that we pulled back and
25 deferred. As I mentioned before, basically

1 everything was on the table. We looked at every
2 project we had across the system in Ameren Missouri
3 Generation, and we tried to determine those ones that
4 didn't have an impact on safety, reliability, some
5 legal requirement, and really that we could do with a
6 minimal impact on our employees.

7 And one of the other good things about
8 the Sioux project was, since it was predominantly
9 being done by contractors, which contractors also
10 were involved in a lot of our major overhauls, those
11 were easy to pull back, because you could reduce
12 labor forces really quickly, and that kind of gave us
13 the biggest bang for the buck, so to speak.

14 COMMISSIONER KENNEY: Two additional
15 questions. Pulling labor back -- I read somewhere
16 else in the mounds of testimony about concerns about
17 availability of skilled labor to do the Sioux
18 projects. Was that a concern at all, that by pulling
19 back on the labor that you would have difficulty
20 getting them back up to speed at the time or that
21 they would go off on to other projects and have a
22 hard time getting that labor back?

23 THE WITNESS: That's a very good question,
24 Commissioner, because that was a little bit of a
25 concern at the time, and that's one of the reasons we

1 called the contractors in and talked to them about
2 it, and that's one of the reasons that we really
3 never stopped -- that was part of the reasons that we
4 slowed it down, so we could keep our key labor and,
5 you know, finish up some of those, what we believe
6 were critical items associated with it.

7 Now, if it continued to deteriorate and
8 get worse and ultimately we got to a point where we
9 weren't sure we could pay them, then obviously we
10 would have had to go further, but part of the
11 consideration was, we want to keep your key leaders
12 on the project. We want to keep some of your --
13 your -- your -- the people you feel are your key
14 people, and that's why we worked through it with the
15 contractors to come up with a plan.

16 And, you know, thankfully, as was
17 mentioned earlier by Mr. Lowery, you know, it got
18 better, you know, toward the end of January and into
19 the first quarter, so we were able to go back to the
20 contractors and say, Hey, you know, we'd like to
21 start ramping it back up.

22 Now, that takes several months just
23 because, like the question you raised, it takes a
24 while to ramp that labor back up. You have to get
25 the people back. You have to get the work packages

1 rolling again.

2 And, you know, as I mentioned in my
3 testimony, one of the benefits that we saw with the
4 slowdown is that we were able to get some lessons
5 learned, you know, from some of the -- especially,
6 you know, on the unregulated side because they were a
7 little bit ahead of us on their projects.

8 Duck Creek, I know there were some
9 earlier discussions about that, but Duck Creek, that
10 project was effectively done at the end of '08 and
11 put in service at the beginning of '09, so we were
12 able to get some lessons learned from them.

13 One of the things that I think will
14 really be a big benefit to our customers is when we
15 switched to the Stebbins tile by lining the absorbers
16 up, we saw some early problems at Duck Creek, some
17 problems at Coffeen when they were trying to do some
18 of the coatings, and that really, you know, when we
19 went back and looked at it, drove us to go a
20 different direction.

21 COMMISSIONER KENNEY: That's interesting.
22 So the Stebbins tiles that are in the scrubbers now,
23 that decision was made during the period of the delay
24 as a result of lessons learned on the other
25 projects?

1 THE WITNESS: It's one of the things that
2 came up out of the Duck Creek project. They --
3 the -- this environment that these scrubbers operate
4 in is very corrosive so, to me, I kind of liken it
5 to, you know, if you're going to do your bathroom and
6 you put up drywall or some kind of board in your
7 shower, the flakeglass lining is like a spray-on
8 coating, so you'd, like, do your shower and you'd
9 spray over it, say, the drywall.

10 Well, if you've got any water behind
11 that, it would deteriorate that drywall real quick.
12 Well, because of the corrosive nature of what's in
13 these scrubbers, anything that gets behind that
14 coating, it basically corrodes the steel very
15 quickly, and that's what they were seeing at Duck
16 Creek.

17 So we switched in the difference between
18 having a coating in your shower and tile in your
19 shower. This tile is, like, an inch-thick tile, so
20 it's pretty beefy.

21 COMMISSIONER KENNEY: Have you quantified
22 the savings from having switched to the Stebbins
23 tile, if there was any savings?

24 THE WITNESS: Well, what we believe was --
25 the savings will be in the -- in the longer-term

1 maintenance and in the better operation of the unit.
2 There's less temperature restrictions with the tile
3 in the way you can move the unit around, temperature
4 restrictions inside the scrubber.

5 Plus, our understanding with the coating
6 was that you would expect about a ten-year life.
7 Well, the tile itself, you know, life of that is the
8 life of the scrubber, which is 30 years or longer, so
9 while we haven't specifically quantified in dollars,
10 the savings were in better operation in maintenance,
11 basically.

12 COMMISSIONER KENNEY: Is it possible to
13 quantify that savings in dollars?

14 THE WITNESS: That would be something we
15 would have to go back and look at and try and make
16 assumptions on, you know, what it would take -- you
17 know, what maintenance would be required on the other
18 coating, things like that.

19 COMMISSIONER KENNEY: I want to ask
20 another question. So essentially we're talking about
21 the slowdowns from November of '08? Is that when the
22 decision was made, sometime in the latter part of
23 November of '08 through January, February, '09, so
24 three, four months?

25 THE WITNESS: Yeah, roughly about, by the

1 time you got it ramped down and then ramped back up.
2 The labor probably didn't really ramp back up until
3 sometime -- you know, the full staff, probably
4 sometime in March or April. It was probably closer
5 to second quarter.

6 COMMISSIONER KENNEY: So the first part of
7 the second quarter?

8 THE WITNESS: Yeah. Uh-huh.

9 COMMISSIONER KENNEY: You made reference
10 to the fact that had the crisis not -- had the global
11 financial crisis continued or been more significant
12 than anticipated, you contemplated shutting it down
13 for a year.

14 THE WITNESS: That's correct.

15 COMMISSIONER KENNEY: I think the phrase
16 that you used is you would've turned off the AFUDC.

17 THE WITNESS: That's correct.

18 COMMISSIONER KENNEY: What does that mean
19 exactly? It would've stopped accruing interest?

20 THE WITNESS: Yes, but in order to do
21 that, Commissioner, basically you have to completely
22 stop construction on the project; in other words, you
23 can't have any labor or anything going on, and we
24 weren't at that point yet.

25 COMMISSIONER KENNEY: So you couldn't have

1 turned off AFUDC for that three to four months?

2 THE WITNESS: We could not have because we
3 were still continuing that work on those critical
4 systems and the ID fans and the absorbers and things
5 like that.

6 COMMISSIONER KENNEY: Was there discussion
7 in the analysis of which projects to pick that this
8 was going to add, roughly, \$31 million to the overall
9 cost of the project?

10 THE WITNESS: When we were looking at the
11 projects because, like I mentioned, with the
12 overhauls and that, basically all of our projects
13 have a component of AFUDC, so we recognize by slowing
14 down or stopping projects, there was going to be
15 increased costs, so we didn't look specifically and
16 say, Oh, this project's going to contribute this
17 AFUDC, this one -- we recognized as a whole we could
18 pick up some increased cost.

19 COMMISSIONER KENNEY: On a project-by-
20 project basis?

21 THE WITNESS: No, we did not. We did not.

22 COMMISSIONER KENNEY: I mean, this was
23 essentially a calculated risk. I mean, it was either
24 face the possibility of not having any cash flow or
25 make some calculated decisions now that may increase

1 costs in the short-run balanced against no cash flow
2 at all.

3 THE WITNESS: Correct. And like I said,
4 we truly believed at the time -- I truly believed
5 that things were really serious out there and, you
6 know, when I talked with my team about it, didn't
7 have any pushback at all.

8 People clearly understood because of what
9 was going on in the broader country that there were
10 significant issues, and that's why we went through
11 and we put every project on the table and looked at
12 everything, because we were trying to do what we
13 could to -- to maintain liquidity for the Company.

14 COMMISSIONER KENNEY: Were there other
15 projects in the unregulated environment that could
16 have taken -- the Illinois, for instance, or any of
17 the emergent generation projects that could have
18 taken the place of this one so that, to quote
19 Mr. Mills, We wouldn't have been saddling captive
20 ratepayers?

21 THE WITNESS: I don't know the details
22 'cause we did it independently. I don't know the
23 details on the unreg. I do know about some of the
24 scrubber projects, because we worked them with an
25 alliance with both Sioux, Coffeen, and Duck Creek, so

1 I understood that, but I really can't, Commissioner,
2 go into -- because I don't know.

3 COMMISSIONER KENNEY: Mr. Birdsong, would
4 he know?

5 THE WITNESS: That's something you'd have
6 to ask him. I don't know. I can't speak for Jerre.

7 COMMISSIONER KENNEY: Okay. All right.
8 Thanks for your patience with my questions. I don't
9 have any others.

10 JUDGE WOODRUFF: I just have one general
11 question for you.

12 THE WITNESS: Yes, sir.

13 JUDGE WOODRUFF: In general terms, what
14 would happen if Ameren ran out of cash?

15 THE WITNESS: Basically, the way I
16 understand it -- and that question's probably better
17 to Jerre, but just from a direct operating
18 perspective, because I've been involved with the
19 trading organization, if you run out of cash -- I've
20 seen what's happened with other trading
21 organizations. Once you don't have liquidity and you
22 can't back up your trades, other companies shut you
23 down like that.

24 JUDGE WOODRUFF: They won't trade with
25 you?

1 THE WITNESS: They won't trade with you.
2 We do the same exact thing. We have a list that we
3 go through, you know, very frequently, and basically
4 if a company goes on the list, they're done. We
5 won't trade with them because there's no guarantee
6 you're going to get paid.

7 JUDGE WOODRUFF: Has that happened to
8 other utilities?

9 THE WITNESS: Oh, yes, it has, and its
10 happened to other trading companies, and to me that's
11 a very real risk.

12 And part of the problem -- you know, the
13 concern we would have is, when we have an obligation
14 to serve our load, if we lose liquidity and basically
15 can't trade with other parties and we lose a unit or
16 two, where are we going to get the energy from? We
17 no longer can trade in the market, so we start --
18 effectively, you know, you have to potentially start
19 reducing load, which is not a good option.

20 JUDGE WOODRUFF: At what point would a
21 company be put on that no-trade list?

22 THE WITNESS: Normally -- that'd probably
23 be a better question to ask Jerre. Normally, our
24 risk management people continually review that, and
25 they make the representations to our trading

1 organization.

2 JUDGE WOODRUFF: Would that happen at some
3 point before they absolutely hit bottom, not paying
4 billions of dollars?

5 THE WITNESS: I probably -- yeah, like I
6 said, we don't run the analysis. We get the feedback
7 that they provide us.

8 JUDGE WOODRUFF: Okay.

9 THE WITNESS: Okay.

10 JUDGE WOODRUFF: That's all I have then.
11 Thank you.

12 THE WITNESS: Thank you.

13 JUDGE WOODRUFF: Recross based on
14 questions from the Bench, beginning with public
15 counsel?

16 MR. MILLS: Thank you.

17 RECROSS-EXAMINATION BY MR. MILLS:

18 Q. And just sort of turning that last
19 question first: When you were involved in trading
20 activities, were there ever vertically-integrated
21 regulated utilities on the no-trade list?

22 A. I would have to -- I'd have to go back and
23 look. I'd have to go back and look in detail to be
24 able to answer that. I know there were companies on
25 the list. Whether they were vertically-integrated,

1 whether they were merchant generators, there was a
2 mix. I'd have to go back and look to give exact
3 details.

4 Q. So if there was a mix, it's your testimony
5 today that there were some vertically-integrated?

6 A. I'd have to go back. I really wouldn't
7 want to say.

8 Q. Except that you said there were some.
9 Your answer now is you don't know?

10 A. No, there were companies on the list.
11 Whether they were vertically-integrated or not, I
12 don't know that.

13 Q. You may have said this, but just so the
14 record's clear, when exactly, from your perspective,
15 did the slowdown at Sioux begin?

16 A. We were -- we were asked to develop the
17 list in early to mid-October, and we -- we talked
18 with the contractors to develop their plan in early
19 November, and at that point, then, they were
20 formulating their plan.

21 It probably took them several weeks, and
22 by -- I would say by -- probably by late November,
23 mid- to late November we were -- we were into the
24 process of, Okay, here's your plan. Let's go with
25 it.

1 Q. When did the ramp-up back to full
2 construction activity begin?

3 A. Toward the end of January, basically in
4 discussions that I had with Mr. Voss, we were -- we
5 were told that, Hey, looks like we can go ahead and
6 ramp the project back up.

7 Now, as I mentioned before, you can't do
8 that overnight. You know, it takes a couple months
9 to get all the labor back and then start doing it, so
10 to me, you know, we were -- we give the word sometime
11 at the end of January, and we were probably up to,
12 you know, normal project operating construction
13 levels sometime the first part of the second quarter.

14 Q. If you can, can you give me the -- at
15 least an approximation of the monthly spend during
16 those months?

17 A. From what I understand -- during the
18 months that it was deferred or what the projected
19 spend was going to be?

20 Q. The actual spend when the slowdown was in
21 place.

22 A. I don't have those numbers in front of
23 me. I know what the projections were.

24 Q. The projections for the slowdown --

25 A. No.

1 Q. -- or the projections on the non-slowdown
2 numbers?

3 A. The projection on the non-slowdown
4 numbers. They were running somewhere around -- it
5 was in the order of 15 to 17,000,000 a month is what
6 we were spending.

7 Q. Just in terms of general orders of
8 magnitude during the slowdown, were you spending, you
9 know, 10 to 15, or were you spending 1 to 2?

10 A. No, our target was try to get down to
11 roughly a \$2 million a month spend during the
12 slowdown.

13 Q. Okay.

14 A. I don't have the actuals in front of me,
15 because you have to recognize you had to ramp down --

16 Q. Sure.

17 A. -- and then you ramp back up so,
18 obviously, you wouldn't say, Okay, the first of
19 December you'll be at 2,000,000 a month.

20 Q. Right. No, but the 2,000,000 target,
21 that's very helpful.

22 Now, with respect to AFUDC -- and I don't
23 know if it's identified in the record, but can you
24 confirm that that acronym means Allowance for Funds
25 Used During Construction?

1 A. Yes.

2 Q. Okay. And is that a regulatory concept?

3 A. I believe it is, yes.

4 Q. So unregulated generators don't use the
5 AFUDC content; is that correct?

6 A. I believe, but that would be a better
7 question to ask Jerre than me.

8 Q. Okay. Now, with respect to the ramp-up,
9 you said it took a couple of months. Is that sort of
10 more or less a straight line from the level where
11 you're at to the full level, or is it, you know, a
12 curve or --

13 A. It was probably more of a straight line,
14 but recognize there were -- there were, you know,
15 several work packages going on so, basically, you
16 know, you looked at what you could effectively -- you
17 know, how to effectively bring people in and then
18 start staffing up those work packages, you know.

19 When I -- to me, just looking at the
20 staffing, it looked like a pretty straight line on
21 how we increased.

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

24 THE WITNESS: Thank you.

25 JUDGE WOODRUFF: Any cross by Staff?

1 MR. DOTTHEIM: Yes. Thank you.

2 CROSS-EXAMINATION BY MR. DOTTHEIM:

3 Q. Mr. Birk, you were asked, I think, some
4 questions about AmerenUE, Ameren Missouri running out
5 of cash, that situation in 2008, 2009. When I look
6 at your direct testimony and I look at page 1 --
7 could I refer you --

8 A. I don't have it in front of me.

9 Q. Well, I don't think you really need it.

10 A. Okay. Yes.

11 Q. It indicates that you got your bachelor of
12 science degree in 1986.

13 A. That's correct.

14 Q. So when did you start -- well, it
15 indicates you began your employment at Union Electric
16 Company in 1986; is that correct?

17 A. Correct. I worked as -- I worked as a
18 summer engineer in 1985, and I began my employment
19 after I graduated in May of 1986.

20 Q. So you wouldn't have been an employee at
21 Union Electric Company in the late 1970s or the early
22 to mid-1980s, would you?

23 A. No, I would not.

24 Q. Okay. So you wouldn't have testified
25 before the Commission on behalf of Union Electric

1 Company in rate cases in the late 1970s, early to
2 mid-1980s?

3 A. No, I would not.

4 Q. Do you recall if there was double-digit
5 inflation in the late 1970s, early to mid-1980s?

6 A. I do recall the double-digit inflation.

7 Q. In your experience -- this is not the
8 first Union Electric Company, AmerenUE, Ameren
9 Missouri rate case that you've testified in, is it?

10 A. No, it is not.

11 Q. Okay. Have you testified -- are you
12 familiar with the Commission's procedures in interim
13 rate cases?

14 A. I am not that familiar with them,
15 Mr. Dottheim.

16 Q. Do you know if -- are you familiar -- do
17 you know if those cases are sometimes referred to as
18 "emergency rate cases"?

19 A. I'm not -- I'm not that familiar with
20 them, okay?

21 Q. So you do not know if what might be
22 referred to as interim rate cases or emergency rate
23 cases have certain standards that the Commission
24 applies?

25 A. I do not. My background's in operations.

1 MR. DOTTHEIM: Okay. Thank you.

2 I have no further questions.

3 JUDGE WOODRUFF: Redirect?

4 REDIRECT EXAMINATION BY MR. TRIPP:

5 Q. Mr. Birk, you were asked about, and I
6 think you even said, that the Company, when they were
7 considering which projects or what to do in order to
8 reduce expenditures, everything was on the table. Is
9 that fair.

10 A. That is correct.

11 Q. Okay. And you mentioned the Sioux project
12 as being one of the larger projects along with the
13 outages?

14 A. That is correct.

15 Q. How actual deep did it go in terms of
16 proportion of funds going out the door when you're
17 look at delaying projects or deferring?

18 A. As far as the magnitude of projects we
19 looked at, you know, we actually deferred projects in
20 some regards that were, like, less than a million
21 dollars, so we went all the way down. We went all
22 the way down.

23 Q. You mentioned earlier there was a criteria
24 that you used to apply to determine which projects
25 that you could defer or delay. What was that

1 criteria?

2 A. Basically what we did was we looked at
3 projects that would not have an impact on safety,
4 both to the public and our employees, projects that
5 would not impact reliability. When you look at that
6 from a generating perspective, we're trying to make
7 sure that, obviously, our units are there to provide
8 the needed energy for our customers; projects that
9 weren't required because of regulatory requirements,
10 and then those projects that would have the least
11 impact on our employees.

12 MR. TRIPP: Judge, I need an exhibit
13 marked, and I believe it will be 152.

14 (Ameren Exhibit No. 152-HC
15 was marked for identification.)

16 BY MR. TRIPP:

17 Q. First of all, is 152 a data request by the
18 Staff the Company responded to with regard to the
19 particular categorization that the Company did in
20 looking at what projects to delay or defer?

21 A. Yes.

22 Q. And you reviewed this and it is accurate?

23 A. Yes. Yes.

24 MR. TRIPP: Your Honor, I move to admit
25 into evidence Exhibit 152.

1 JUDGE WOODRUFF: 152 has been offered.

2 Any objections to its receipt?

3 Mr. Mills?

4 MR. MILLS: Judge, I think we should
5 always be fairly, sort of, careful about introducing
6 huge wads of information on redirect when no party
7 has a chance to review it, ask questions about it or
8 do anything else with it, so that's sort of the
9 general premise.

10 But with respect to this particular
11 exhibit, it appears to be about 30 pages I've just
12 been handed, like, less than a minute ago. I would
13 like some time to look at it before I'm required to
14 object or not object.

15 JUDGE WOODRUFF: Okay. I'll wait for a
16 ruling on it.

17 MR. DOTTHEIM: And Judge?

18 JUDGE WOODRUFF: Uh-huh.

19 MR. DOTTHEIM: Might I voir dire the -- I
20 mean, I'd like to object on the basis it -- I don't
21 think it's been -- a foundation for it. I don't know
22 if it's been established whether Mr. Birdsong has
23 prepared any of this document.

24 JUDGE WOODRUFF: If you'd like to question
25 about that, go ahead.

1 MR. DOTTHEIM: Thank you. Excuse me. I
2 said "Mr. Birdsong." I meant Mr. Birk.

3 VOIR DIRE EXAMINATION BY MR. DOTTHEIM:

4 Q. Mr. Birk, you've had an opportunity to
5 look at what's been marked as Exhibit 152.

6 A. I have. I don't have it in front of me
7 right now, but I have.

8 MR. TRIPP: (Handed document to Mr. Birk.)

9 THE WITNESS: Okay.

10 BY MR. DOTTHEIM:

11 Q. Mr. Birk, did you prepare any part of what
12 has been marked as 152?

13 A. When -- basically, we provided -- my
14 organization provided the information associated with
15 the project deferrals and the cash flows and things
16 associated with -- with that, so if you go back and
17 look, you know, on the pages where it talks about the
18 unit outages and the notes, my organization prepared
19 those.

20 Q. But the analysis that's contained within
21 these pages, your organization did not perform?

22 A. No. That would've been Lynn Barnes'
23 organization that would have performed the analysis.
24 We would have provided the projects and the cash
25 flows, and the analysis would've been done by our

1 controller.

2 MR. DOTTHEIM: Judge, on that basis, I
3 would object to this exhibit being put in through
4 Mr. Birk.

5 MR. TRIPP: Judge, I can lay a foundation,
6 if you require it.

7 JUDGE WOODRUFF: All right. Before you do
8 that, I also have a question. Most of these
9 documents are marked "highly-confidential." Are they
10 still highly-confidential?

11 MR. TRIPP: Yes, they are.

12 JUDGE WOODRUFF: We'll mark it as 152-HC.
13 If you wish to try and offer more foundation, go
14 ahead.

15 MR. TRIPP: All right.

16 VOIR DIRE EXAMINATION BY MR. TRIPP:

17 Q. Mr. Birk, I believe you've already said
18 that the actual -- some of this spreadsheet
19 information was actually compiled by Lynn Barnes.
20 Did you and your organization provide the information
21 to Ms. Barnes in response to a request for
22 information in order for that to be compiled?

23 A. Yes, we did.

24 Q. And in terms of the projects and the O&M
25 different task on that list, where did that

1 information come from?

2 A. That came from my organization.

3 Q. At the time that this -- even after this
4 was prepared in October of 2008, was it something
5 that was being circulated among the leadership team,
6 including yourself, where you were reviewing it on a
7 weekly basis?

8 A. Yes. Yes.

9 Q. And so you reviewed this information
10 before?

11 A. Yes.

12 Q. Do you have any doubts about its accuracy?

13 A. No, I do not.

14 MR. TRIPP: I don't have any other
15 questions, Judge, on the foundation.

16 JUDGE WOODRUFF: Okay.

17 Well, I've already indicated I would defer
18 ruling on this until public counsel has had an
19 opportunity to review these.

20 MR. MILLS: Thank you, Judge.

21 Is Mr. Birk going to be available later
22 for more voir dire?

23 MR. TRIPP: I assume today.

24 MR. MILLS: Okay.

25 JUDGE WOODRUFF: All right. I assume

1 we'll make a ruling on this before we conclude this
2 issue today so --

3 MR. MILLS: Okay. That would be fine.
4 After I've had a chance to look at it, I may have
5 questions for Mr. Birk about his knowledge of it.

6 JUDGE WOODRUFF: Okay. So at this moment
7 I'll defer ruling on 152 and you can proceed with the
8 rest of your redirect.

9 MR. TRIPP: All right.

10 REDIRECT EXAMINATION (cont) BY MR. TRIPP:

11 Q. You were asked questions about -- and I
12 think in the opening statement, Office of Public
13 Counsel said there was no reason you couldn't have
14 just shifted \$30 million from one project to another.

15 And you were asked questions about,
16 actually, the cost of what Sioux was costing the
17 Company, money going out the door every month, and I
18 believe what you said was 15 to \$17 million, roughly;
19 is that right?

20 A. Yes, that's correct.

21 Q. At the time you were making the decision
22 in November of 2008, did you know how long the delay
23 would be?

24 A. No. No, we did not know how long the
25 delay would be. That's why when we looked at the

1 plans -- and initially our preliminary planning was
2 this would probably be a year, so when we talked with
3 the contractors and instructed them, Hey, come up
4 with a plan where we could effectively slow this
5 thing down and delay for a year, that's what we did.

6 Q. So in making the decision in November of
7 2008, about whether or not to slow down or delay the
8 Sioux project, did you have any idea that it was
9 going to cost \$30 million if you delayed it and
10 started it back up in January?

11 A. No, we didn't. Actually, the initial
12 analysis, it was -- it was closer to probably 53 or
13 more based upon it being a year-long delay. And
14 again, we were in uncertain times. We weren't sure
15 how long the liquidity crisis would last, and we were
16 trying to develop a plan that would basically get us
17 through. I think the common thinking was, If we
18 could make it through a year, we'd probably be okay.

19 MR. TRIPP: You know, I need another
20 exhibit marked, and it is also highly-confidential.
21 So would it be 153-HC?

22 JUDGE WOODRUFF: 153-HC.

23 (Ameren Exhibit No. 153-HC

24 was marked for identification.)

25 BY MR. TRIPP:

1 Q. Mr. Birk, I've handed you what's been
2 marked 153-HC. Can you identify that?

3 A. Yes, I can.

4 Q. What is it?

5 A. Basically, it is a response to a Staff
6 data request that was prepared by Robert Schweppe,
7 who's in my organization.

8 Q. The response to the Staff data request
9 434?

10 A. That's correct.

11 Q. Does it include an attachment that's -- I
12 think it's about eight pages -- that describes the
13 outage shift evaluation?

14 A. Yes, it does.

15 MR. TRIPP: Your Honor, move to admit into
16 evidence Exhibit 153-HC.

17 JUDGE WOODRUFF: 153-HC has been offered.
18 Any objection to its receipt?

19 MR. MILLS: Yes, Judge. I have the same
20 general objection. The information being dumped in
21 redirect as well as a specific objection -- request
22 that I would be allowed additional time to look at
23 this information before I be required to object or
24 not object to it.

25 JUDGE WOODRUFF: Once again, I'll defer

1 ruling on the admission until public counsel has a
2 chance to review.

3 MR. TRIPP: Judge, at that time will I
4 have the opportunity to inquire about the evidence,
5 if it's admitted?

6 JUDGE WOODRUFF: Public counsel wish to --
7 well, I guess the question is, Do we wait for the
8 examination until after public counsel's had a chance
9 to review?

10 MR. MILLS: I would certainly prefer that;
11 otherwise, you'll have a great deal of information in
12 the record that may be based on an exhibit that's not
13 admitted.

14 MR. TRIPP: I'm just inquiring, if that's
15 the case.

16 JUDGE WOODRUFF: Well, that would require
17 us to bring Mr. Birk back later in the day, but I
18 guess we could do that.

19 MR. LOWERY: Your Honor, may I make a
20 procedural suggestion that might expedite this a
21 little bit?

22 JUDGE WOODRUFF: Sure.

23 MR. LOWERY: When Mr. Tripp is done with
24 his redirect and maybe a couple of exhibits -- I'm
25 not exactly sure that you deferred ruling on -- we're

1 probably going to be due for a break, I would think.
2 Perhaps public counsel could look at these documents
3 during that period.

4 You can then put Mr. Birk back on, and
5 you can rule, if necessary, rather than waiting and
6 him having to stick around for maybe two or three
7 more hours or something like that. It seems that
8 that would be an appropriate way to handle it.

9 JUDGE WOODRUFF: We are about due for a
10 break.

11 Did you have other items that you wanted
12 to go in for redirect?

13 MR. TRIPP: Yes, I do, and I will do
14 that --

15 JUDGE WOODRUFF: Go ahead.

16 BY MR. TRIPP:

17 Q. We were talking about, Mr. Birk, the
18 analysis that's being done and whether it really was
19 simply just looking at whether you had access to
20 30,000,000 or 31,000,000 or 33,000,000 at the time as
21 that being the driving factor in the Company making
22 the decision to delay.

23 When the Company is making that decision,
24 is it a \$30 million number?

25 A. No, it's not. We were -- we were spending

1 at a rate, like I said, of 15 to \$17 million a month,
2 so when the decision was made, we were looking at the
3 potential savings across the entire year for these
4 projects and for the scrubber, so it's not a \$30
5 million decision.

6 The 30,000,000 is the cost associated
7 with, effectively, the delay but not -- not what our
8 run rate was and not the cash that basically Ameren
9 Missouri would have to use to shore up it's
10 liquidity.

11 Q. Sure. Now, do you have any idea in terms
12 of November of 2008, if you're talking a year delay,
13 roughly 15,000,000 a month?

14 A. Well, it's going to -- obviously, it
15 varies by month and, you know, I think roughly that's
16 the ballpark we were looking at at that point.

17 Q. With regard to the questions you were
18 asked about Illinois and the plants that, you know,
19 Duck Creek, for example, Coffeen, and whether there
20 was an ability to maybe defer something there on that
21 side versus something here in Missouri, are you
22 generally aware of any regulatory requirements in
23 Illinois that would have restricted the Company's
24 ability to do that?

25 A. Yes. As I mentioned earlier, the thing I

1 was probably most familiar with over in Illinois were
2 some of the timing around their scrubbers, and
3 because we were working them in conjunction with what
4 was being done at Sioux, but the unregulated side is
5 under a multi-pollutant standard requirement that the
6 State of Illinois has that, basically, Duck Creek had
7 to have the scrubber in service to go back in service
8 in January of '09.

9 And Coffeen basically had to have their
10 scrubber in service by the end of '09, so while they
11 slowed Coffeen down like we did with Sioux, they had
12 an ultimate requirement to have it in service at the
13 end of '09 due to state requirements.

14 Q. Was there any waiver given in Illinois to
15 allow them to escape that requirement?

16 A. Not that I'm familiar with associated with
17 Coffeen and Duck Creek. There may have been work
18 done associated with Newton and Java, but those
19 weren't started yet.

20 Q. You were asked about whether the Company
21 specifically took into account AFUDC when it was
22 making a decision about what to delay versus not to
23 delay. You mentioned that one of the things that was
24 delayed, or the decision to -- that was made in fall
25 of 2008 to delay were the outages; correct?

1 A. That's correct.

2 Q. Now, those outages, did they actually,
3 then, like the Sioux plant, get ramped back up, or
4 did they get put back on the schedule for 2009?

5 A. For 2009 we did not do any of those
6 outages that were deferred.

7 Q. So those still remained pushed back to --

8 A. Correct. And ultimately, we did Rush
9 Island, Unit II, and we did an outage on Meramec Unit
10 IV in 2010. We have still not completed the outage
11 for Labadie IV that was deferred.

12 Q. But the other major thing that you pointed
13 to was the Sioux project, and it got ramped up in
14 January?

15 A. Yes. It was the first project,
16 basically. You know, the major overhauls didn't --
17 the Sioux project was the first one that got ramped
18 back up.

19 Q. Okay. I just have one last topic for you,
20 Mr. Birk.

21 You mentioned that during the slowdown,
22 and you talked about the fact that they discovered a
23 problem with flakeglass lining, so there was a
24 decision made to switch from flakeglass lining to
25 Stebbins tile.

1 A. That's correct.

2 Q. And again, how did that issue arise?

3 A. Right. Basically what we found, after --
4 as Duck Creek got into start-up and operation, they
5 determined when -- initially when they were coating
6 the absorber and then began operating that they were
7 developing leaks, and at the time found that the
8 lining appeared to be failing in areas.

9 We did a more thorough review of it, and
10 we made a determination on the Missouri side that for
11 the longevity of the absorbers and due to operational
12 and maintenance requirements, we would switch over to
13 Stebbins tile lining, which that type of lining is
14 the one that the industry is predominantly using
15 now. There are very few absorbers that have
16 flakeglass.

17 MR. TRIPP: I need an exhibit marked, and
18 it is public.

19 JUDGE WOODRUFF: Okay. We're up to
20 No. 154.

21 (Ameren Exhibit No. 154
22 was marked for identification.)

23 BY MR. TRIPP:

24 Q. Mr. Birk, I've handed you what's been
25 marked as Exhibit 154. Can you identify that,

1 please.

2 A. Yes. Basically, that's a picture of one
3 of the absorbers. There are two of them at Sioux,
4 and --

5 Q. Sorry.

6 A. That's okay.
7 There are two of them at Sioux and,
8 again, these tiles are about an inch thick.

9 Q. Okay. I just need you to identify this.

10 A. That's what it is.

11 Q. Okay.

12 A. That's what it is.

13 MR. TRIPP: Your Honor, move to admit into
14 evidence Exhibit 154.

15 JUDGE WOODRUFF: 154's been offered. Any
16 objections to its receipt?

17 MR. MILLS: Judge, I'm going to have to
18 object on the basis of relevance. Neither
19 Mr. Dottheim nor I asked any questions about Stebbins
20 tile. None of the commissioners initiated any
21 questions about Stebbins tile. Mr. Birk volunteered
22 information about Stebbins tile.

23 I don't think it's relevant to any of the
24 cross-examination or questions from the bench to have
25 this exhibit.

1 JUDGE WOODRUFF: Any response?

2 MR. TRIPP: First of all, I forgot, but
3 actually it's a picture that appears in one of the
4 schedules that's attached to Mr. Birk's testimony,
5 which has already been admitted into evidence so,
6 technically, it's already into evidence.

7 And the second part of my response is
8 that I do recall that there were questions by
9 Commissioner Kenney, I think, about the Stebbins tile
10 that was discovered -- that decision was made during
11 the delay.

12 JUDGE WOODRUFF: I'm going to overrule the
13 objection and it will be admitted.

14 (Ameren Exhibit No. 154 was admitted.)

15 BY MR. TRIPP:

16 Q. You did, generally, kind of describe how
17 the Stebbins tile was different than the flakeglass
18 lining, but looking at Exhibit 154, are you able to
19 explain further to the Commission that -- that
20 decision to make that change?

21 A. Basically, on the outside of the absorber
22 it's basically carbon steel, and what you're looking
23 at is the inside of the absorber. What you have is
24 you have tile, then you have grout, and then you have
25 carbon steel, so what we ended up with was a much

1 more robust absorber for both units.

2 If we hadn't have done this, basically,
3 you would have had a carbon steel tank with a -- kind
4 of a painted-on flakeglass coating, and this is -- as
5 I said, this is what the industry is going with,
6 really, at this point. At one point it was either
7 alloy or tile. There had been problems with alloy,
8 and it appears that this was a very good decision to
9 go ahead and put this in.

10 Q. Are you aware of whether or not Staff has
11 said that this was an imprudent decision?

12 A. Staff indicated they believe this was a
13 prudent decision.

14 Q. Okay.

15 MR TRIPP: I don't have any other
16 questions at this time.

17 JUDGE WOODRUFF: All right. Let's go a
18 ahead and take our break then.

19 I'm sorry. Mr. Dottheim?

20 MR. DOTTHEIM: If I just might, I don't
21 know if we're -- oh, well, we're going to go back, I
22 gather, to Mr. Mills. Has Mr. Birk's testimony been
23 admitted?

24 JUDGE WOODRUFF: Yes.

25 MR. DOTTHEIM: Okay, because I was

1 take a break, and we'll come back at 10:30.

2 Mr. Birk will still be on the stand, and
3 we'll deal with the issues that have been raised and
4 objected to.

5 (A recess was taken.)

6 JUDGE WOODRUFF: We're back from break.
7 Mr. Birk is still on the stand, and at this point we
8 need to deal with the deferred rulings on the
9 admission of a couple documents, on 152-HC and
10 153-HC.

11 Mr. Mills, have you had a chance to look
12 at those documents?

13 MR. MILLS: I have had a brief opportunity
14 to look at these documents. Unfortunately, some
15 other things came up during the break so it wasn't as
16 much time as I would have liked. I would like to
17 proceed with a little voir dire of Mr. Birk.

18 JUDGE WOODRUFF: Go ahead.

19 MR. MILLS: Do you have the two exhibits
20 in front of you?

21 THE WITNESS: Yes, sir.

22 VOIR DIRE EXAMINATION BY MR. MILLS:

23 Q. 153-HC, this indicates that it was
24 prepared initially by Sergeant Lundey; is that
25 correct?

1 A. That's correct.

2 Q. What's the relationship of Sergeant Lundey
3 to the Sioux project?

4 A. Basically, they were the engineering firm
5 associated with the Sioux project.

6 Q. Okay. So they were the owner's engineer?

7 A. Effectively, yes. Yes, they were.

8 Q. Okay.

9 A. Uh-huh.

10 Q. And who is Robert Schweppe?

11 A. Mr. Schweppe is manager of environmental
12 projects. He worked works for Bob Miners, who
13 reports to me.

14 Q. Okay. And then with respect to Exhibit
15 152-HC -- and let me -- as a preliminary question,
16 let me ask you this: Did you have any discussion
17 about these exhibits over the break?

18 A. Yes.

19 Q. With whom did you have discussions?

20 A. Just with Jim Lowery and Mike Tripp.

21 Q. Did they give you any ideas about how to
22 respond to questions about these exhibits or coach
23 you in what's in these exhibition?

24 A. Oh, no, they did not. I've seen this
25 exhibit before.

1 Q. With respect to Exhibit 152-HC, and just
2 in your own words, what exactly is this exhibit?
3 What does it consist of and what does it show?

4 A. Basically, it's a list of projects that
5 provide cash flows for each of those projects, for
6 all Ameren -- well, Ameren Missouri projects.

7 Q. Okay. Is that all it is?

8 A. It also has some notes that would
9 indicate, you know, potentially, you know, if they
10 were like on the Rush Island Unit II outage, where it
11 was currently scheduled and, you know, cash flows
12 associated with that. There's some notes and some
13 cash flow information.

14 Q. When was all the information prepared?

15 A. This actual list is dated as of
16 October 14, 2008.

17 Q. Did you have any involvement in preparing
18 the responses to the Niranda data request, responses
19 that are also part of this exhibit?

20 A. I did not prepare the Niranda data
21 response. Basically, people from my organization
22 would have given the financial -- the information
23 associated with particular projects to Ms. Barnes.

24 Q. And are you familiar with all that
25 information?

1 A. Yes, I am.

2 Q. And how do you reconcile the differences
3 between the initial part of Exhibit 152-HC and the
4 responses to the Niranda data requests?

5 A. Can you be more specifics?

6 Q. For example, the Rush Island Unit II
7 outage, are the numbers given in response to the
8 Niranda data requests consistent with the analysis at
9 the beginning of the data request?

10 A. I believe the numbers in the Niranda data
11 request are basically budget numbers. They're not
12 exactly monthly cash flow numbers that are in the
13 beginning of the request, so the Niranda request has
14 total numbers, and the -- when you look at the --
15 kind of the list, it's a cash flow. It's not a whole
16 list of cash flow. It just looks at it, you know,
17 for about a six-month period.

18 Q. So in terms of relevance to this issue,
19 which set of numbers are appropriate?

20 A. Well, I think what's relevant to this
21 issue is that basically this helps explain the list
22 of projects and the breadth of the review that took
23 place. I think, really, that's the relevance. In my
24 mind that's the relevance.

25 Q. Were the responses to Niranda prepared

1 specifically to respond to that question, or were
2 they prepared as part of an analysis and then later
3 attached as a response to Niranda?

4 A. I don't know that. I do not know that.

5 MR. MILLS: Judge, I don't have an
6 objection to Exhibit 152-HC -- I'm sorry -- 153-HC.
7 With respect to Exhibit 152-HC, I'm going to concur
8 in Mr. Dottheim's objection as to lack of foundation.

9 Although some people in his organization
10 might have provided some of the numbers that went
11 into the analysis, none of the analysis that's
12 attached to 152-HC was done by this witness. The
13 accuracy can't be determined by asking this witness
14 questions, and so there's a lack of foundation.

15 JUDGE WOODRUFF: Ameren wish to respond?

16 MR. TRIPP: Yes, your Honor.

17 First of all, I know it's not the basis
18 of your objection, but if we needed to, we could
19 remove the Niranda data requests which were admitted
20 into that case, and I think which the Commission
21 could take judicial notice of from the remainder of
22 the exhibit.

23 But with regard to the objection as to
24 the foundation, we have laid sufficient foundation.
25 This witnesses provided the information and, in fact,

1 has testified that it was information that was being
2 considered by the Company at the time and, in fact,
3 that he reviewed, and so in terms of the questions
4 that were asked by the Commission of this witness
5 about what kind of analysis was being done at the
6 time, this is directly responsive to it, and we've
7 laid the foundation.

8 He doesn't have to have prepared the
9 exhibit in order for it to be admissible. He just
10 needs to be able to confirm that the information in
11 it was accurate with regard to the things he did.

12 JUDGE WOODRUFF: Let's deal with 153-HC
13 first. There was no objection to that. It will be
14 admitted.

15 (Ameren Exhibit No. 153-HC was admitted.)

16 JUDGE WOODRUFF: 152, OPC and Staff have
17 objected on the basis of foundation. I'm going to
18 overrule that objections and admit the document.

19 (Ameren Exhibit No. 152-HC was admitted.)

20 JUDGE WOODRUFF: Ameren, you wanted to
21 inquire, I believe, about 153 of your witness.

22 MR. TRIPP: Just briefly.

23 JUDGE WOODRUFF: Go ahead.

24 FURTHER REDIRECT EXAMINATION BY MR. TRIPP:

25 Q. With regard to 153-HC, Mr. Birk --

1 A. Yes, sir.

2 Q. First of all, just what was the purpose
3 for the evaluation that's attached to that cover
4 page?

5 A. The purpose of the evaluation was
6 basically to look at and evaluate the schedule and
7 cost implications of shifting the outages, you know,
8 deferring the Sioux project for a year.

9 Q. And this was information that the Company
10 considered in November of 2008?

11 A. Yes, it was.

12 Q. Same question, really, with regard to
13 152. This is information that was being -- is this
14 information that was being considered in the fall of
15 2008 by the Company in terms of what projects to
16 defer or delay?

17 A. Yes, it was.

18 MR. TRIPP: No other questions, your
19 Honor.

20 JUDGE WOODRUFF: Then that concludes the
21 redirect. And Mr. Birk, you may step down.

22 THE WITNESS: Thank you.

23 COMMISSIONER DAVIS: Procedurally,
24 Mr. Birk is going to be back to testify about Taum
25 Sauk; is that correct?

1 MR. TRIPP: That is correct.

2 COMMISSIONER DAVIS: Is he the best
3 witness to inquire about capacity of Taum Sauk before
4 or after? Who is the best witness to inquire?

5 MR. LOWERY: He would be the best witness
6 to inquire of.

7 COMMISSIONER DAVIS: Forgive me. I don't
8 have my schedule on me. Do we know when that's
9 coming up, just so I'm aware of it.

10 MR. LOWERY: It's next week.

11 THE WITNESS: I thought it was Monday.

12 MR. LOWERY: Monday.

13 JUDGE WOODRUFF: That's what's on my chart
14 here, Monday.

15 COMMISSIONER DAVIS: All right. Thank
16 you.

17 JUDGE WOODRUFF: Next witness.

18 MR. TRIPP: Ameren Missouri calls Jerre
19 Birdsong.

20 JUDGE WOODRUFF: Okay. Morning,
21 Mr. Birdsong.

22 THE WITNESS: Morning.

23 JUDGE WOODRUFF: Please raise your right
24 hand.

25 JERRE BIRDSONG, being sworn, testified as follows:

1 JUDGE WOODRUFF: You may inquire.

2 MR. TRIPP: Thank you, Judge.

3 (Ameren Exhibit Nos. 109-P and 109-NP

4 were marked for identification.)

5 DIRECT EXAMINATION BY MR. TRIPP:

6 Q. Please state your name.

7 A. Jerre E. Birdsong.

8 Q. And Mr. Birdsong, are you the same Jerre
9 E. Birdsong that caused to be prepared for filing in
10 this document rebuttal testimony which we have marked
11 as 109-P and 109-NP?

12 A. I am.

13 Q. And do you have any corrections to that
14 testimony?

15 A. I do not.

16 Q. And if I were to ask you the same
17 questions that were asked of you in this rebuttal
18 testimony, would you give the same answers?

19 A. I would.

20 Q. And is this testimony true and correct?

21 A. It is.

22 MR. TRIPP: Your Honor, I move to admit
23 into evidence Exhibit 109.

24 JUDGE WOODRUFF: 109-P and NP has been
25 offered. Any objection to its receipt?

1 (No response.)

2 JUDGE WOODRUFF: Hearing none, it will be
3 received.

4 (Ameren Exhibit Nos. 109-P and 109-NP
5 were admitted.)

6 JUDGE WOODRUFF: Cross-examination,
7 beginning with public counsel.

8 MR. MILLS: Thank you. Good morning,
9 Mr. Birdsong.

10 THE WITNESS: Good morning.

11 MR. MILLS: Do you have a copy of the
12 surrebuttal testimony of Roberta Grissum there with
13 you?

14 THE WITNESS: No, I don't believe I do.

15 MR. MILLS: May I approach?

16 JUDGE WOODRUFF: You may.

17 MR. MILLS: (Handed a document to
18 Mr. Birdsong.)

19 CROSS-EXAMINATION BY MR. MILLS:

20 Q. Mr. Birdsong, I've handed you a copy of
21 the surrebuttal testimony of Roberta Grissum. If I
22 could direct your attention to page 3, towards the
23 end -- and I don't have it in front of me to give you
24 the exact line number.

25 Starting on page -- line 25, Ms. Grissum

1 refers to a \$1.5 billion credit facility. Do you see
2 that reference?

3 A. I do.

4 Q. In your opinion, is that wrong or is that
5 simply a simplification of the credit available to
6 Ameren Missouri?

7 A. No, that's just wrong.

8 Q. Okay. Then going on from there, at line
9 29 -- starting on line 28 and continuing to line 29,
10 Ms. Grissum quotes from the 2008 Ameren annual report
11 saying that UE can directly borrow under this credit
12 facility up to \$500 million on a 364-day basis.

13 First, have I accurately read her
14 testimony?

15 A. Yes, you have.

16 Q. Second, do you agree that that's an
17 accurate statement?

18 A. Yes, that's accurate.

19 Q. Is the \$500 million upper limit determined
20 by the credit facility itself?

21 A. Yes, it is.

22 Q. Okay. So the credit facility itself
23 assigns amounts of credit to the various Ameren
24 subsidiaries?

25 A. Yes. We refer to those as sublimits under

1 the overall credit facility.

2 Q. Is that something that's negotiable with
3 creditors, when credit facilities are entered into?

4 A. Yes, it is.

5 MR. MILLS: I have no further questions.

6 JUDGE WOODRUFF: Cross for Staff?

7 MR. DOTTHEIM: Yes. Thank you.

8 Morning, Mr. Birdsong?

9 THE WITNESS: Good morning.

10 MR. DOTTHEIM: I'd like to have an exhibit
11 marked.

12 JUDGE WOODRUFF: All right.

13 Staff's next number will be 233.

14 (Staff Exhibit No. 233
15 was marked for identification.)

16 MR. DOTTHEIM: May I approach the witness
17 and the Bench?

18 JUDGE WOODRUFF: You certainly may.

19 MR. LOWERY: 233, your Honor?

20 JUDGE WOODRUFF: 233.

21 MR. LOWERY: Thank you.

22 CROSS-EXAMINATION BY MR. DOTTHEIM:

23 Q. Mr. Birdsong, have you had an opportunity
24 to take a look at what's been marked as Exhibit 233?

25 A. Yes, I have.

1 Q. Do you recognize that document?

2 A. That is the earnings release that the
3 Company issued upon announcement of its third quarter
4 2008 earnings.

5 Q. I'd like to direct you to page 3, and I'd
6 like to direct you to the fourth paragraph from the
7 bottom. I'm going to read that paragraph.

8 MR. TRIPP: Has this been admitted into
9 evidence yet?

10 JUDGE WOODRUFF: No, it has not been
11 offered.

12 MR. DOTTHEIM: No, it hasn't, but I'm
13 going to offer it into evidence.

14 BY MR. DOTTHEIM:

15 Q. But at October 31, 2008, our available
16 liquidity, which represents our cash on hand and
17 amounts available under our credit facilities, stood
18 at approximately \$145 billion, up about 550,000,000
19 from this same time last year. Despite this solid
20 liquidity position, we are reducing 2009 operating in
21 capital expenditures in our nonrate regulated
22 generation business by a total of 400,000,000 to
23 500,000,000. Operating and capital expenditures in
24 2009 for this business will be approximately
25 300,000,000 to 400,000,000 below 2008 levels. Other

1 meaningful and capital expenditure deferral and
2 reduction opportunities are also under review
3 throughout the rest of our business.

4 Did I read that accurately?

5 A. Not entirely. I believe you said
6 145,000,000,000 as the amount of available money that
7 we had, and the number is 1.45 billion.

8 Q. I'm sorry. Thank you for correcting me.

9 With that correction, did I read that
10 accurately, or as you corrected it, is that paragraph
11 as you've corrected it as stated?

12 A. Yes, it is.

13 Q. Okay.

14 MR. DOTTHEIM: At this time I would offer
15 Exhibit 233.

16 JUDGE WOODRUFF: 233 has been offered.
17 Any objections to its receipt?

18 MR. TRIPP: None.

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

21 (Staff Exhibit No. 233 was admitted.)

22 BY MR. DOTTHEIM:

23 Q. Mr. Birdsong, at page 16 of your
24 surrebuttal testimony, starting with the question
25 that you have at line 10, you relate a conference

1 call that occurred on October 21, 2082, do you not?

2 A. I do. That's my rebuttal testimony. I
3 did not prepare surrebuttal testimony in this case.

4 Q. I'm sorry. Your rebuttal testimony.

5 A. Yes.

6 Q. Ameren Missouri -- or AmerenUE didn't
7 provide the Staff any documents relating to the
8 proposed financing prior to the October 21, 2008
9 conference call, did it?

10 A. No, I believe that's correct.

11 Q. Okay. AmerenUE didn't provide the Staff
12 any documents relating to the proposed financing
13 subsequent to the October 21, 2008, conference call,
14 did it?

15 A. No, I don't believe we did.

16 Q. Do you know whether AmerenUE called the
17 Staff subsequent to October 21, 2008, to advise the
18 Staff that it would not pursue its proposed
19 financing?

20 A. I don't know.

21 MR. DOTTHEIM: Okay. At this time I'd
22 like to have another exhibit marked.

23 THE COURT: All right. 234.

24 (Staff Exhibit No. 234-HC
25 was marked for identification.)

1 MR. DOTTHEIM: May I approach the witness
2 and the Bench?

3 JUDGE WOODRUFF: Certainly.

4 And this is No. 234.

5 THE WITNESS: Thank you.

6 MR. TRIPP: It's an HC document?

7 MR. DOTTHEIM: Yes, it is.

8 JUDGE WOODRUFF: All right 234-HC.

9 MR. DOTTHEIM: 234-HC.

10 BY MR. DOTTHEIM:

11 Q. Mr. Birdsong, have you had an opportunity
12 to take a look at what's been marked as 234-HC?

13 A. I have.

14 Q. Do you recognize that document?

15 A. Yes, it's the response to a data request
16 that we received from Staff.

17 Q. Okay. And the first page is a memo to
18 file by Mr. Michael G. O'Bryan referencing the
19 10/21/2008 conference call with Staff?

20 A. Yes, it is.

21 Q. Okay. And then there are a number of
22 e-mails and draft applications, are there not?

23 A. Yes. That's correct.

24 MR. DOTTHEIM: At this time I'd like to
25 offer Exhibit 234-HC.

1 JUDGE WOODRUFF: 234-HC has been offered.
2 Any objection to its receipt?

3 MR. TRIPP: None.

4 JUDGE WOODRUFF: Hearing none, it will be
5 received.

6 (Staff Exhibit No. 234-HC was admitted.).

7 BY MR. DOTTHEIM:

8 Q. Mr. Birdsong, you have participated
9 previously in AmerenUE financing applications at the
10 Missouri Public Service Commission?

11 A. Yes, I have.

12 Q. Okay. Are you aware that financing
13 applications can be made with a request for expedited
14 treatment?

15 A. Yes, I am.

16 Q. Okay. Are you aware that applications or
17 materials in filings with the Commission can be filed
18 with a "highly-confidential" designation?

19 A. I don't know.

20 Q. Okay. Your testimony has been filed with
21 a "proprietary" designation, has it not?

22 A. It has. Portions of it have.

23 Q. Okay. I'd like to direct you to your
24 rebuttal testimony, Exhibit 109-P, page 1, line 5,
25 where you state that you're employed by Ameren

1 Services Company; AMS provides various business and
2 corporate support services for the operating
3 companies owned by Ameren Corporation, including
4 Union Electric Company, doing business as Ameren
5 Missouri, paren, Ameren Missouri or Company, closed
6 paren. Did I read that correctly?

7 A. I believe you did.

8 Q. Okay. And then at lines 9 and 10 you
9 state, Among the services provided by AMS to Ameren
10 Missouri are cash and liquidity management services
11 and services relating to the placement of debt, when
12 necessary. Did I read that correctly?

13 A. You did.

14 Q. What other operating companies owned by
15 Ameren does AMS provide cash and liquidity management
16 services and services relating to placement of debt
17 when necessary?

18 A. Ameren Illinois Company, which is the
19 electric transmission and distribution company that
20 we own in Illinois, and then also for Ameren Energy
21 Generation Company, which is an unregulated
22 generation company in Illinois.

23 Q. I'd like to direct you to page three,
24 lines 2 to 10, of your rebuttal testimony where you
25 state what your principle duties are for Ameren

1 subsidiaries, do you not?

2 A. Yes, I do.

3 Q. What Ameren subsidiaries do you provide
4 those principle duties for?

5 A. For all the subsidiaries.

6 Q. And could you name what you would consider
7 to be the principle subsidiaries.

8 A. Yes. The three principle subsidiaries are
9 the ones that I gave you that we actually issue debt
10 for.

11 Q. Okay. AmerenUE filed an application in
12 January 2009 for Commission authorization to issue
13 sale up to \$350 million, aggregate principle amount
14 of long-term indebtedness, did it not?

15 A. It did.

16 Q. Okay. Do you know whether AmerenUE
17 employees made a courtesy call to the Staff prior to
18 the filing of that application?

19 A. I'm sure we did. We always do that, but I
20 don't specifically recall that call or whether I was
21 on it or just one of my assistants may have covered
22 that for me.

23 Q. Do you recall whether the Commission
24 issued an order granting that financing in March of
25 2009?

1 A. Yes. We filed that application on
2 January 16, and we received an order from the
3 Commission on March 4.

4 Q. Mr. Birdsong, are you familiar with what I
5 would refer to as the Harris litigation involving
6 Union Electric Company?

7 A. That really does go back a long ways. I
8 was involved with that at the time, but that was a
9 very long time ago, so I don't remember much in the
10 way of details.

11 Q. That was securities litigation against
12 Union Electric Company back in the 1980s, was it not?

13 A. I think it goes back to the early '70s

14 Q. For securities fraud --

15 A. Yes.

16 Q. Which Union Electric Company lost, did it
17 not? Do you recall?

18 A. Yes, I believe that's correct.

19 Q. Can I have a moment, please.

20 Mr. Birdsong, do you have follow the
21 financing applications of any other utilities
22 regulated by the Missouri Commission, LaClede Gas
23 Company, for example?

24 A. No, I don't following the filing of the
25 applications. I generally do know when they actually

1 issue securities but, no, I don't follow their
2 filings with the admission.

3 MR. DOTTHEIM: If I could have a moment,
4 please.

5 Thank you, Mr. Birdsong. You've been
6 very patient.

7 JUDGE WOODRUFF: All right. We'll move to
8 questions from the Bench. Mr. Chairman.

9 COMMISSIONER GUNN: I don't have any
10 questions.

11 JUDGE WOODRUFF: Commissioner Clayton.

12 COMMISSIONER CLAYTON: No questions for
13 me. Thank you.

14 JUDGE WOODRUFF: Commissioner Davis.

15 COMMISSIONER DAVIS: Good morning,
16 Mr. Birdsong.

17 THE WITNESS: Good morning.

18 COMMISSIONER DAVIS: It seems like we're
19 going a little bit out of order here, but do you
20 recall when Ameren released its 2008 annual report?

21 THE WITNESS: Generally, yes, I do.

22 COMMISSIONER DAVIS: Okay. And that would
23 have been sometime in '09. Do you recall on or about
24 what date that would have been?

25 THE WITNESS: Either late February or

1 early March of '09.

2 COMMISSIONER DAVIS: Okay. So if it was
3 late February or early March of '09 when they were
4 releasing the 2008 annual report, then you would be
5 able to make, you know, statements, you know,
6 concerning 2008 that you had sufficient liquidity,
7 then, wouldn't you?

8 THE WITNESS: Yes. By that time we had
9 already started the Sioux projects back up. We had
10 put it back on the full-scale construction project in
11 late January, so by that time we were more confident
12 in the conditions that were available to us in the t
13 financial market, so by the time we filed the 2008
14 annual report, we would have had a much better
15 feeling about the condition, financial markets and
16 had much more information about what actually
17 happened.

18 COMMISSIONER DAVIS: Okay. Judge, I have
19 no further questions at this time.

20 JUDGE WOODRUFF: Commissioner Jarrett.

21 COMMISSIONER JARRETT: Good morning,
22 Mr. Birdsong.

23 THE WITNESS: Good morning.

24 COMMISSIONER JARRETT: I'm referring to
25 234-HC, and I don't think I'll need to go into

1 in-camera, but if I do, I'm sure you or the attorneys
2 will let me know.

3 The conference call that's referenced
4 there, I'm trying to get a time line in my head of
5 when this occurred. Did this occur before Ameren
6 Missouri decided to scale down the Sioux scrubbers
7 projects?

8 THE WITNESS: I would characterize it as
9 having occurred at the time that that decision was
10 being addressed. The call was actually made on
11 October 21, and Ameren Missouri had started looking
12 at all of its projects to see which ones could be
13 slowed down or referred back in early October, so it
14 was making decisions kind of on a daily basis looking
15 at every project on what could be deferred without
16 harming customer service or without having a safety
17 issue or not complying with law.

18 So that decision-making process was going
19 on during that time, and when we had, really, a
20 compilation of results of doing that, we had a pretty
21 good idea by that October 21 date as to what could be
22 slowed down.

23 The Board actually had an emergency
24 meeting on October 31 and really approved the actions
25 to slow down what management had been recommending in

1 that last period of October, so really the Sioux
2 scrubber deferral would have occurred whether we
3 would have been able to get that financing done or
4 not.

5 There was never, ever any indication that
6 by approving this financing we would not have to slow
7 down projects, including the Sioux scrubber.

8 COMMISSIONER JARRETT: All right. I want
9 to refer to the second page of Exhibit 234-HC,
10 specifically the last paragraph in that memorandum,
11 and I'll ask -- I want to ask some questions about
12 that, and I'll ask if that needs to be HC.

13 MR. LOWERY: I believe it does.

14 COMMISSIONER JARRETT: All right, Judge.
15 Can we go in-camera?

16 JUDGE WOODRUFF: All right.

17 All right. At this point we were
18 in-camera.

19 (REPORTER'S NOTE: At this point an
20 in-camera session was held, which is contained in
21 Volume 20, pages 504 to 508 of the transcript.)

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1 JUDGE WOODRUFF: And we're back in regular
2 session. Commissioner Kenney, do you have any
3 questions?

4 COMMISSIONER KENNEY: I do.

5 Mr. Birdsong, thank you.

6 Were you here earlier for Mr. Birk's
7 testimony?

8 THE WITNESS: I was.

9 COMMISSIONER KENNEY: And he talked about
10 the slowdown in the Sioux scrubbers and some benefits
11 that endured from that in terms of deciding to
12 replace the existing tile with the Stebbins tile. Do
13 you remember that testimony?

14 THE WITNESS: Yes, I do remember that.

15 COMMISSIONER KENNEY: Do you know how
16 much, or if -- are you able to quantify any savings
17 that will be realized as a result of replacing the
18 old tile with the Stebbins tile?

19 THE WITNESS: I think that with utilizing
20 Mr. Birk's staff, we could come up with an estimate
21 for that, but that calculation has not been
22 calculated and we'd have to make some assumptions in
23 coming up with such an estimate, but I think we can
24 do that.

25 COMMISSIONER KENNEY: I don't know what

1 the procedures is for this. I would invite a filing
2 of some sort that would -- if you can quantify it,
3 and it doesn't have to be in any particular hurry,
4 but I think it would be helpful to know that.

5 JUDGE WOODRUFF: Commissioner, what we'll
6 do on that, then, if you like, we'll reserve an
7 exhibit number and ask them to file it within, say, a
8 week.

9 COMMISSIONER KENNEY: That's fine.

10 MR. LOWERY: Can we have till the end of
11 next week?

12 JUDGE WOODRUFF: That's fine.

13 MR. LOWERY: And we'll discuss it with
14 Mr. Birk and his staff to see what could be done it.
15 Assumptions would have to be made, of course.

16 JUDGE WOODRUFF: That would be No. 155 as
17 a late-filed exhibit.

18 COMMISSIONER KENNEY: Thank you.

19 JUDGE WOODRUFF: And end of next week
20 would be May 6.

21 MR. LOWERY: 6.

22 COMMISSIONER KENNEY: I want to go back to
23 234-HC and that's the big packet, and I'm not going
24 to get into the specifics of it. There's a financing
25 application in here; right?

1 THE WITNESS: There are drafts that we
2 never made.

3 COMMISSIONER KENNEY: These were never
4 done, never filed?

5 THE WITNESS: These were never done. They
6 were redone in a different form than this when we
7 actually made a filing on January 16.

8 COMMISSIONER KENNEY: Which resulted in an
9 order from us in March.

10 THE WITNESS: That's correct.

11 COMMISSIONER KENNEY: Is that the \$350 in
12 8.45 percent first mortgage bonds?

13 THE WITNESS: Yes, that's correct. That's
14 the 350 million that we issued in March.

15 COMMISSIONER KENNEY: But application
16 occurred in January.

17 THE WITNESS: Yes, January 16.

18 COMMISSIONER KENNEY: Am I correct you
19 said that that application would have been made
20 irrespective of whether Sioux was slowed down or
21 not?

22 THE WITNESS: Yes, but I think I actually
23 said it the other way around.

24 COMMISSIONER KENNEY: Slowed down Sioux.

25 THE WITNESS: We would've slowed down

1 Sioux whether we got the financing done earlier than
2 that or not.

3 COMMISSIONER KENNEY: Were there other
4 options entertained -- and I asked Mr. Birk the same
5 question, but maybe in a slightly different format.

6 Were there other options entertained to
7 achieve savings or to help with cash flow that would
8 have not involved the Sioux plant and our captive
9 ratepayers, perhaps \$30 million of savings that could
10 have been achieved in the nonregulated side?

11 THE WITNESS: The way that we approached
12 this was not to have a target and then select
13 projects to meet a target amount of spending
14 slowdown. We kind of acted as advisors to the
15 operating companies. The operating companies made
16 the decisions on which projects could be slowed down
17 or deferred.

18 And as we were advising them, we just
19 said, Look at each project individually to use these
20 criteria, something that does not affect safety or
21 something that would, you know, have a legal issue.
22 If something really affects customer service, what
23 we're trying to do is to preserve liquidity so we can
24 use that to serve our customers, and with that every
25 project was just viewed on a kind of yes-or-no basis,

1 Could it be deferred?

2 So there was no trade-off of one project
3 against another project, every project in going down
4 to, you know, very small amounts, and this was done
5 company-wide. I mean, the global financial crisis
6 affected every company, and the instructions as we
7 were advising our operating companies were the same
8 for every operating company, so each one was looked
9 at individually and not compared to another.

10 Now, the results that we got on the
11 unregulated merchant generation side, they had more
12 in reductions and deferrals than Ameren Missouri did,
13 and it's a much smaller company, so for a much
14 smaller company to have even greater deferrals, you
15 know, they more than participated in this reduction
16 of spending of projects that we looked at.

17 COMMISSIONER KENNEY: Now, were though
18 deferrals in capital expenditures or maintenance?

19 THE WITNESS: There was both.

20 COMMISSIONER KENNEY: Oath.

21 THE WITNESS: Yes.

22 COMMISSIONER KENNEY: One final question.
23 The total amount of this credit facility -- I'm
24 confused how much we're talking about. You said 1.15
25 billion at one point?

1 THE WITNESS: Yes. That's the correct
2 amount.

3 COMMISSIONER KENNEY: And Ms. Grissum's
4 testimony said 1.5 billion.

5 THE WITNESS: That must be a typo.

6 COMMISSIONER KENNEY: And this investor
7 relations document refers to a credit facility of
8 1.45 billion. The paragraph that Mr. Dottheim read
9 from as of -- and this isn't HC; right?

10 MR. DOTTHEIM: No.

11 COMMISSIONER KENNEY: It says, As of
12 October 31, 2008 that the available liquidity in the
13 form of this credit facility was at 1.45 billion.

14 THE WITNESS: Yes. Now that amount is the
15 amount that's available, and it's not just from the
16 1.15 billion. The 1.15 billion was available to
17 Ameren Corporation, to Ameren Missouri and to the
18 Generation company. There were two other \$500
19 million credit facilities for just the Illinois
20 utilities, so if you take all three of --

21 COMMISSIONER KENNEY: The additional
22 500,000,000?

23 THE WITNESS: Yes. Those were not
24 available to Ameren Missouri, so the total of those
25 three is approximately -- or is 2.15 billion.

1 COMMISSIONER KENNEY: Right.

2 THE WITNESS: And then we used
3 approximately 700 million of that, so the unused
4 portion of the entire 2.15 billion was the 1.45
5 billion number.

6 COMMISSIONER KENNEY: Okay. Good.

7 THE WITNESS: And that was the amount we
8 were afraid would not show up one day by the banks
9 just not honoring their commitments under those
10 facilities.

11 COMMISSIONER KENNEY: Okay. This begs
12 another question. Of that remaining 1.45 billion,
13 how was available to Ameren Missouri?

14 THE WITNESS: See, that was at
15 September -- October 30.

16 COMMISSIONER KENNEY: October.

17 THE WITNESS: October 30. At the end of
18 October, Ameren Missouri had 114,000,000 of short-
19 term debt, so approximately 380,000,000 would have
20 been available to Ameren Missouri under its own
21 facilities, but then it could have gotten additional
22 liquidity that make up that 1.45 from Ameren
23 Corporation, but not all of it, but the vast majority
24 of that would have been available through Ameren
25 Corporation.

1 COMMISSIONER KENNEY: I think Mr. Birk
2 said there would have been approximately \$500 million
3 available from 18 different lenders; right?

4 THE WITNESS: That's the amount of the
5 credit available directly to Ameren Missouri, and
6 that was a syndicate of 18 banks that offered that.

7 COMMISSIONER KENNEY: And 171 million of
8 that would have been from Lehman Brothers. Do you
9 know how much of that would have been from Wachovia?

10 THE WITNESS: Yes, I do.

11 COMMISSIONER KENNEY: Can you tell me?
12 You're looking for it; right.

13 THE WITNESS: Yes, I do have that.
14 156,000,000 of that was from Wachovia. Some of the
15 other banks that we were concerned about was Goldman
16 Sachs -- had 161,000,000 of it. Citibank had
17 167,000,000, and National City had 45,000,000, so
18 there was a total of 529,000,000 that we were
19 extremely concerned about in addition to the
20 121,000,000 that we had already lost from Lehman
21 Brothers.

22 COMMISSIONER KENNEY: So just between
23 Wachovia and Lehman Brothers, it's, what, \$327 --

24 THE WITNESS: That's correct.

25 COMMISSIONER KENNEY: -- million?

1 THE WITNESS: That's correct.

2 COMMISSIONER KENNEY: Thank you. Thank
3 you for your patience.

4 JUDGE WOODRUFF: All right. I do have one
5 question for Mr. Birdsong. It's the same question I
6 asked of Mr. Birk. Can you give me a general idea of
7 what happens if Ameren loses cash liquidity.

8 THE WITNESS: Well, I do not have
9 firsthand experience in that, and I hope I never do,
10 but as you are getting close to running out of
11 liquidity, your suppliers will start demanding more
12 in the way of payments. They may expect you to pay
13 up-front before you get something. They may require
14 more in the way of collateral, but as you're
15 approaching running out of cash, you actually need
16 more cash.

17 If it actually comes down to the point
18 where you don't have it and you have bills that come
19 due, say if it's a coal supplier, they're not going
20 to give you the coal. if it's a gas supplier, they
21 can shut off the gas immediately. If it's certain
22 borrowing from a bank or debt issuance, you
23 essentially go into default on that, so once you get
24 to that situation your suppliers not only can cut off
25 services, but for what you owe them they can send you

1 into bankruptcy, so you just are not able to provide
2 the service, and that's why we were trying to
3 preserve every bit of liquidity that we could have in
4 order to provide service to our customers, that the
5 millions of dollars that we were spending on things
6 other than for customer service or safety or for
7 legal reasons, we were deferring those items so that
8 we would have this liquidity available to us to serve
9 our customers.

10 JUDGE WOODRUFF: And do you know if,
11 during this financial crisis, any other vertically-
12 integrated electric utilities had cash flow problems
13 that reached that sort of level?

14 THE WITNESS: There was, really, a
15 plethora of Wall Street research, and I think
16 virtually every vertically-integrated utility
17 responded in the same way we did by cutting back on
18 capital spending whenever they could.

19 JUDGE WOODRUFF: And did anybody run into
20 liquidity problems despite their setbacks?

21 THE WITNESS: I -- I -- I don't think any
22 vertically-integrated did. Some of their
23 subsidiaries -- I'm aware of, say, Constellation.
24 They had an issue -- or the had collateral calls, and
25 they didn't have sufficient liquidity available to

1 make those collateral calls, and they wound up
2 selling a percentage of their company at rock-bottom
3 price in order to get the cash to be able to continue
4 to operate, but that was only the unregulated part of
5 a vertically-integrated utility, not the vertically-
6 integrated utility.

7 JUDGE WOODRUFF: Recross based on
8 questions from the Bench? Public counsel?

9 MR. MILLS: No thanks.

10 JUDGE WOODRUFF: Staff?

11 MR. DOTTHEIM: One moment, please. Yes, I
12 have a question for Mr. Birdsong.

13 RE-CROSS-EXAMINATION BY MR. DOTTHEIM:

14 Q. Mr. Birdsong, I have a couple of pages
15 from the Great Plains Energy, Inc., 10(k) from
16 December 31, 2008, and I'd like to direct you to a
17 paragraph that's highlighted and ask you to read it
18 into the record, if I can approach --

19 JUDGE WOODRUFF: You may.

20 MR. DOTTHEIM: -- Mr. Birdsong.

21 MR. TRIPP: Mr. Dottheim, are you finished
22 with your question because I have an objection before
23 the answer is made?

24 JUDGE WOODRUFF: What's your objection?

25 MR. TRIPP: First of all, it's not been

1 admitted into the evidence to read from. It's
2 improper and there's been no foundation laid.

3 MR. DOTTHEIM: There were questions from
4 the Bench about, I think, access to the capital of
5 other vertically-integrated utilities, and this is an
6 example of access to capital of other vertically-
7 integrated -- of other vertically-integrated utility
8 in 2008, in fact, in the latter portion -- in the
9 latter portion of 2008.

10 JUDGE WOODRUFF: All right. That goes to
11 relevancy. That objection was to foundation.

12 MR. DOTTHEIM: Well --

13 JUDGE WOODRUFF: Do you wish to offer the
14 exhibit?

15 MR. DOTTHEIM: Yes, I can -- I can offer
16 the document which is -- again, it's not the entire
17 Form 10(k). It's the cover page, and from this copy
18 it's pages 41 and 42.

19 JUDGE WOODRUFF: Mr. Tripp, does that
20 satisfy your objection?

21 MR. TRIPP: Well, I think he needs to lay
22 the foundation for the witness, and if he can do
23 that, we'd be satisfied.

24 JUDGE WOODRUFF: All right.

25 MR. DOTTHEIM: If I may approach --

1 JUDGE WOODRUFF: You may.

2 MR. DOTTHEIM: -- the witness.

3 BY MR. DOTTHEIM:

4 Q. Mr. Birdsong, have you had an opportunity
5 to review the pages that I've handed to you?

6 A. I have.

7 Q. I've represented that it's an excerpt of
8 the Form 10(k) of Great Plains Energy, Inc., from
9 December 31, 2008. Does that appear to be what those
10 pages are?

11 A. Yes, it is.

12 Q. Okay. Have you had a chance to review the
13 highlighted paragraph?

14 A. I have.

15 Q. Okay. I'd like to ask you to read that
16 paragraph into the record.

17 MR. TRIPP: Objection. It needs to be --
18 moved to admit before he reads from it.

19 MR. DOTTHEIM: All right. I'll move to
20 admit the document, if I could have it marked as
21 Exhibit 234.

22 MR. TRIPP: Your Honor, I'll continue my
23 objection on lack of foundation, in particular with
24 regard to the fact that it's selected portions of --

25 MR. DOTTHEIM: I can have a copy made of

1 the entire form 10(k) for December 31, 2008.

2 MR. TRIPP: Second, even if it is in its
3 completeness, I don't think he's laid the necessary
4 foundation.

5 COMMISSIONER KENNEY: Can I ask a
6 question?

7 JUDGE WOODRUFF: Sure.

8 COMMISSIONER KENNEY: Are you asking him
9 to react to certain passages of this document?

10 MR. DOTTHEIM: Yes, and I'd say that
11 Ameren Missouri can put into the record any other
12 portion of the document.

13 Yes, I'm asking him to react to the
14 highlighted portion.

15 COMMISSIONER KENNEY: Whose 10(k) is it?

16 MR. DOTTHEIM: Great Plains Energy.

17 COMMISSIONER KENNEY: Does it need to be
18 in the record to get his reaction? I'm trying to get
19 around this. Does the document itself need to be in
20 the record if it's only being -- you're not offering
21 the document for the truth of the matter asserted;
22 you're just getting his reaction to it.

23 MR. DOTTHEIM: That's right.

24 So do we even need to offer the document
25 into evidence?

1 MR. TRIPP: If it's going -- if any
2 contents are going to be read into the record, it's
3 hearsay and there needs to be a foundation laid
4 before --

5 COMMISSIONER KENNEY: If he's not offering
6 it for the truth of the matter asserted, it's not
7 hearsay. He's just trying to get the witness'
8 reaction.

9 MR. TRIPP: Well, Commissioner, I was just
10 stating my position.

11 COMMISSIONER KENNEY: I know. I'm just
12 trying to speak and go on here.

13 JUDGE WOODRUFF: Let's be clear about one
14 thing first. It's 235, rather than 234.

15 MR. DOTTHEIM: I'm sorry.

16 JUDGE WOODRUFF: 234 was the response that
17 was just admitted.

18 At this point, Staff has offered the
19 document, and there's been an objection to it. I
20 don't know that it's necessary to offer it either,
21 but it has been offered at this point.

22 I'm going to overrule the -- well,
23 actually, I haven't seen the document yet, so let's
24 take a step back here. Before the document has been
25 offered, you've asked the witness to read from it to

1 get his reaction to it?

2 MR. DOTTHEIM: Yes.

3 JUDGE WOODRUFF: All right. And then at
4 that point an objection was raised. I'm going to --
5 do you wish to withdraw the offer of the document?

6 MR. DOTTHEIM: Yes, I can withdraw the
7 offer.

8 JUDGE WOODRUFF: All right.

9 MR. DOTTHEIM: I think he's verified the
10 pages that I asked him to read, but I'm asking him to
11 react to the paragraph.

12 JUDGE WOODRUFF: All right. To move
13 things along, I'm going to accept a withdrawal of
14 235. I'm going to overrule the objection to reading
15 the document and then getting -- reading the
16 paragraph and then getting his react to it, so if
17 that's clear as mud now --

18 MR. TRIPP: As long as we're stipulating
19 that it's not offered for the truth of the matter
20 asserted, the portion that he's reading.

21 JUDGE WOODRUFF: Okay.

22 Mr. Dottheim, you can proceed with your
23 question then.

24 MR. DOTTHEIM: Yes.

25 BY MR. DOTTHEIM:

1 Q. Mr. Birdsong, would you read that
2 paragraph into the record.

3 A. The paragraph reads: KCPL's primary means
4 of short-term financing is the issuance of commercial
5 paper. Commercial paper market conditions were
6 extremely difficult in the late third quarter and
7 early fourth quarter of 2008. Despite this, KCPL
8 maintained uninterrupted access to the commercial
9 paper market, although at higher rates and shorter
10 terms than historically. As the fourth quarter
11 progressed, conditions in the commercial paper market
12 improved and KCPL benefited in terms of both the
13 longer available terms and lower rates.

14 And my reaction to this is that the
15 commercial paper market does not offer you any
16 additional liquidity beyond your credit agreements.

17 When you issue commercial paper, you have
18 to issue that with the backing of your credit
19 agreements from the bank so, for example, if you have
20 \$500 million in your credit agreements with the banks
21 and you issue 200,000,000 in commercial paper, that
22 means that you can only borrow 300,000,000 from your
23 banks at that point, so your commercial paper is
24 inextricably tied to the underlying bank agreements,
25 and to the extent that the banks would actually not

1 be able to fund the credit, then you cannot issue
2 that commercial paper.

3 Q. Thank you.

4 Just for clarity, was the \$171 million
5 associated with the Lehman Bank on the 1.15 billion
6 credit facility available to Ameren, AmerenUE and
7 Ameren Genco?

8 A. No. \$100 million of that 121 was
9 associated with the 1.15 billion, and then the other
10 amount was on the Illinois agreement.

11 MR. DOTTHEIM: Thank you.

12 JUDGE WOODRUFF: Redirect?

13 REDIRECT EXAMINATION BY MR. TRIPP:

14 Q. Mr. Birdsong, you recall the questions
15 that you were asked. They were, I think, specific to
16 the October 20082 conference call, but you did
17 testify that it's been the Staff's practice for some
18 time to restrict requests for long-term debt
19 financing authority to the amount of short-term debt
20 that the Company has; is that correct?

21 A. Yes, that's correct.

22 Q. Are you aware or do you have an
23 understanding as to why Staff uses that concept or
24 relies on that, restricting your long-term debt
25 request to your short-term debt?

1 A. No, I don't, particularly in light of a
2 credit crisis where cash is really your best form of
3 liquidity.

4 Q. I wanted to ask you about what has been
5 admitted into evidence as 233. Do you have that in
6 front of you, that paragraph that Mr. Dottheim had
7 you read?

8 A. Yes.

9 Q. In that paragraph that he had you read,
10 which is on page 3 of 10, it states in the second
11 sentence, when it talks about the cash on hand and
12 the amounts available under our credit facility stood
13 at approximately 1.45 billion.

14 A. Yes. That's correct.

15 Q. It says that's up about 550,000,000 from
16 the same time last year.

17 A. Yes.

18 Q. Sounds to me like it was a better
19 situation than it was.

20 A. It's not really better, particularly for
21 Ameren Missouri. A big piece of that increase in
22 liquidity that was available on October 31 was
23 because of the \$400 million debt issuance that we
24 were able to do at Illinois Power, and that's exactly
25 the type of financing that we were requesting to get

1 authority to do in Missouri.

2 We couldn't do that in Missouri. We did
3 \$400 million debt issuance at Illinois power, so that
4 increased this 1.45 billion -- increased the
5 liquidity amount up to the 1.45 billion by \$400
6 million just from that one issuance alone.

7 Q. Mr. Dottheim, I believe, asked you some
8 questions about --

9 A. If I might interrupt, just for further
10 clarify on that 1.45 billion, that was the amount
11 that we were really concerned would not be there from
12 the banks not providing it. That's what the banks
13 were contractually committed to providing us, but we
14 just had no assurance on a day-to-day basis that that
15 would actually be available to us from the banks.

16 Q. A credit facility's a contract, but if
17 they're not there, doesn't matter.

18 A. No. You file your lawsuit, and maybe
19 three years later you maybe get the money.

20 Q. Mr. Dottheim asked you about your
21 particular employment and how it relates to the
22 different Ameren companies, correct --

23 A. Yes.

24 Q. -- or segments.

25 When you're talking about the advice that

1 you're providing those different segments with
2 regard -- I think -- what was the direction given to
3 each of these segments in terms of reducing capital
4 expenditures?

5 A. The advice given to every one of the
6 operating companies was the same. It's to look at
7 all of your construction projects. What is it that
8 you can delay, defer, even cut out or just slow down
9 that would not affect customer service? What would
10 not affect the safety of operating the system? What
11 do we need to do to legally operate the system?
12 Those were the primary instructions that we had.

13 Beyond that we also said, Okay, what
14 would have less expenditures to contractors not
15 affect employees as much [sic], so the primary
16 decision-making was done for the customer in order
17 that we could preserve all the liquidity that we
18 could possibly preserve to continue to operate the
19 system to provide them service.

20 Q. Is there any significance to the fact that
21 all three of those companies were each reducing their
22 expenditures in terms of anything untoward about
23 Ameren's role in all of that?

24 A. No, there wasn't. In every case the
25 decision was made to preserve liquidity for the

1 customers of that company.

2 Q. When you responded to some of the Staff
3 DRs regarding Ameren Missouri's liquidity, you
4 mentioned Ameren. Why did you do that?

5 A. Ameren Missouri had liquidity available to
6 it directly, but Ameren Corporation also is a source
7 of liquidity for Ameren Missouri, and as I was being
8 asked about questions on the liquidity available to
9 Ameren Missouri, if I had just answered for Ameren
10 Missouri directly, that would have not have been the
11 full picture on really what was available to Ameren
12 Missouri.

13 Ameren Corporation is a very important
14 part of the liquidity that Ameren Missouri has
15 available, and I think I would have been rightly
16 criticized if I had ignored the liquidity that could
17 have been made available to Ameren Missouri through
18 Ameren Corporation, so with that, I refer to
19 liquidity available to both Ameren Missouri and
20 Ameren Corporation hand-in-hand.

21 Q. And I'm sorry to jump around. This is
22 kind of my last section here.

23 When you were talking about that
24 October 2008 conference call with Staff, I think you
25 said there would have been a delay even had that

1 application -- the Staff supported your application.

2 A. Yes. We were looking at, really, every
3 possible place that we could to preserve liquidity,
4 either from spending less or having more available to
5 us, so the deferral that was made for all the
6 projects, and the Sioux project as well, that would
7 have occurred whether or not that financing was done
8 or not.

9 Q. Now, there's been testimony or that --
10 that in November of '08, the consideration was, We
11 may be deferring this or delaying that project for up
12 to a year. Had Staff supported the application and
13 the application made and done on an expedited basis,
14 do you know whether or not that delay would have been
15 for a year? Would you have known at that time it
16 would have been for a year, or would it have been
17 potentially less?

18 A. No. I think it ultimately could've meant
19 that the delay would have been less than a year if we
20 could've gotten that financing done at that time.

21 Q. And we know as it turned out that the
22 conditions improved and it actually ended up being
23 less; is that true?

24 A. It did. The decision was made on late
25 January to go and proceed with the project at its

1 original pace.

2 Q. Give me just one second, please. Oh. You
3 said when you were also talking about that, you were
4 talking about the financing with the Commission and
5 that you ultimately did, that that was based on the
6 debt outstanding as of December 31, short-term debt
7 outstanding as of December 31; correct?

8 A. That's correct.

9 Q. In terms of the credit available to Ameren
10 Missouri and to its credit facility, did that run
11 out?

12 A. The amount available directly to Ameren
13 Missouri ran out on February 2. That's when it
14 achieved short-term debt of 500,000,000, and then it
15 went beyond that up to 550,000,000 by the time that
16 we got the long-term debt financing done in March.

17 Q. And at the time you were considering
18 making this request to the Commission, had you done
19 any analysis to determine whether or not in
20 anticipation of when that debt would have run out?

21 A. Yes. We were monitoring how long the
22 existing liquidity would exist. And without making
23 any changes to our spending patterns, it would have
24 been exhausted by the second quarter of 2009. That's
25 just way too close, liquidity running out to be

1 comfortable at all.

2 Q. As it turned out that, was actually a
3 favorable prediction because it ended up running out
4 sooner.

5 A. Right. It wound up end of February rather
6 than the second quarter.

7 MR. TRIPP: Just one moment.

8 I have no further questions.

9 Thank you.

10 JUDGE WOODRUFF: And then you may step
11 down.

12 It's getting close to lunchtime, so we'll
13 take a break now and come back at 1:00.

14 (A lunch recess was taken.)

15 JUDGE WOODRUFF: Let's come to order,
16 please. It's now 1:00 and we're back from lunch, so
17 we're ready to get started again. I believe we're
18 ready to go with Staff's first witness which, I
19 believe, to be Mr. Murray.

20 Afternoon. Please raise your right hand.

21 DAVID MURRAY, being sworn, testified as follows:

22 JUDGE WOODRUFF: You may inquire when
23 you're ready.

24 MR. DOTTHEIM: Since Mr. Murray's
25 testimony is on the Sioux scrubbers on -- is in

1 Exhibits 200 and 220, not in his -- that portion of
2 the report that's on rate of return, it's in the
3 portion of the construction audit and prudence review
4 of the Sioux wet flue gas desulphurisation project,
5 and his surrebuttal testimony, I thought I'd only
6 offer those portions of his testimony at this time
7 and take him through that.

8 JUDGE WOODRUFF: Okay. That's fine.

9 MR. LOWERY: Might I clarify: Mr. Murray
10 does not have any testimony in the Sioux audit
11 report, to my knowledge.

12 MR. DOTTHEIM: He is the source of the
13 information. He's on page 42.

14 MR. LOWERY: That's true, but the report
15 doesn't say that he was the witness.

16 Ms. Grissum had a number of sources of
17 information upon which she based her testimony, but
18 the affidavit and report reflects its her report, not
19 his.

20 MR. DOTTHEIM: Well, he will -- and the
21 source of that, he has a correction to that -- that
22 item.

23 MR. LOWERY: I would suggest Ms. Grissum
24 needs to make the correction then.

25 JUDGE WOODRUFF: It is Ms. Grissum's

1 testimony, as I understand it.

2 MR. DOTTHEIM: All right.

3 JUDGE WOODRUFF: What we have is his
4 surrebuttal testimony, the portions that have not
5 been struck.

6 MR. LOWERY: That's correct, your Honor,
7 and I was going to, and perhaps since we're sort of
8 taking up some procedure now, I was just going to --
9 I was going to object to the portions that have been
10 struck because, literally, it's of course file -- but
11 I would ask the transcript be made clear that to the
12 extent that exhibit's admitted, those lines and pages
13 reflected in our motion are not admitted as part of
14 the record.

15 MR. DOTTHEIM: And I was not going to
16 offer those portions --

17 MR. LOWERY: Okay. Very well.

18 MR. DOTTHEIM: -- of his testimony.

19 JUDGE WOODRUFF: Okay. Proceed.

20 DIRECT EXAMINATION BY MR. DOTTHEIM:

21 Q. Mr. Murray, do you have what has been
22 marked as -- well, would you please state your name
23 for the record.

24 A. David Murray.

25 Q. Would you please state your place of

1 employment.

2 A. Missouri Public Service Commission. I'm
3 Staff.

4 Q. Do you have a copy of what has been
5 premarked as Exhibit 220-HC and 220-NP?

6 A. I have the HC version. I'm not sure that
7 I have brought the NP version with me.

8 Q. 220-NP and 220-HC contains your
9 surrebuttal testimony on the Sioux scrubbers?

10 A. Yes. And let me correct you, or correct
11 myself. I do have the NP version as well. I
12 apologize.

13 Q. Your surrebuttal testimony on the Sioux
14 scrubbers starts on page 27, line 6, and goes to
15 page 29, line 12?

16 A. That is correct.

17 Q. If I were to ask you the questions today
18 that are contained in Exhibits 220-HC and 220-NP on
19 pages 27 starting at line 6, going to page 29,
20 line 12, would your answers be the same?

21 A. Yes.

22 Q. Do you adopt that testimony as your
23 surrebuttal testimony on the Sioux scrubbers in this
24 proceeding?

25 A. Yes.

1 Q. Is the information contained therein true
2 and correct to the best of your knowledge and belief?

3 A. Yes.

4 Q. Do you have any corrections?

5 A. No, I do not.

6 MR. DOTTHEIM: At this time I have copies
7 that I can give the court reporter of 220-NP and
8 220-HC, but I won't offer those into evidence.

9 Mr. Murray will be taking the stand on
10 rate of return, and based on the Commission's ruling
11 of yesterday afternoon, I have not offered those
12 portions of his surrebuttal testimony that have been
13 stricken.

14 JUDGE WOODRUFF: And just so the record's
15 clear, the order I issued yesterday afternoon struck
16 pages 29B and line 13, which is after what you
17 offered, and continuing through page 33, line 4, and
18 also page 33, line 16 thorough 19.

19 MR. LOWERY: One amendment, your Honor.
20 Page 33, line 6, it was struck on page -- through
21 line 6 on 33, I believe.

22 JUDGE WOODRUFF: No, actually, it was
23 not. My copy was slightly different --

24 MR. LOWERY: I'm sorry.

25 JUDGE WOODRUFF: -- than what you're

1 offering.

2 MR. LOWERY: I overlooked that.

3 JUDGE WOODRUFF: Okay. Otherwise we would
4 have been striking the heading for the next section
5 is what -- the difference there.

6 MR. LOWERY: Thank you.

7 MR. DOTTHEIM: Yes, and I -- what I'm
8 offering are the corrected versions of Mr. Murray's
9 surrebuttal testimony that were subsequently filed --

10 JUDGE WOODRUFF: Right.

11 MR. DOTTHEIM: -- in EFIS because of
12 spacing problems in his original surrebuttal
13 testimony.

14 JUDGE WOODRUFF: Which I think certainly
15 confused me when I first started to read.

16 MR. LOWERY: Your Honor, that's why my
17 confusing question now. I think we were looking at
18 the precorrected version.

19 JUDGE WOODRUFF: All right. Very good.

20 So a portion of Mr. Murray's testimony has
21 been offered at this point; correct?

22 MR. DOTTHEIM: Yes.

23 JUDGE WOODRUFF: Any objection to the
24 receipt of that portion of his testimony?

25 MR. LOWERY: No, your Honor.

1 JUDGE WOODRUFF: Hearing no objection, it
2 will be received.

3 (Staff Exhibit No. 220-NP and 220-HC
4 were marked and admitted.)

5 MR. DOTTHEIM: Staff tenders Mr. Murray
6 for cross-examination on the Sioux scrubbers issue.

7 JUDGE WOODRUFF: All right. Public
8 counsel wish to cross?

9 MR. MILLS: No questions.

10 JUDGE WOODRUFF: Ameren.

11 MR. LOWERY: Good afternoon, Mr. Murray.

12 THE WITNESS: Good afternoon.

13 CROSS-EXAMINATION BY MR. LOWERY:

14 Q. You agree that the proper way to evaluate
15 whether you should delay a project, slow it down,
16 whatever you want to call it, would be to look at the
17 amount of capital expenditures you expect to have
18 over a period of time to determine what the capital
19 needs are going to be and whether or not you're going
20 to be able to source those needs internally or
21 externally; correct?

22 A. Yes.

23 Q. And what I just described, would it be
24 fair to call that a liquidity analysis?

25 A. It depends on the time period. Sources to

1 use as liquidity is usually defined as less than a
2 year.

3 Q. If I was looking at delaying a project
4 over, say, up to a year or period of several months,
5 would it be fair to call what I described a liquidity
6 analysis in that context?

7 A. Yes.

8 Q. To your knowledge, Ms. Grissum did not do
9 a liquidity analysis before she recommended
10 disallowance that she's recommending in this case; is
11 that true?

12 A. Yes.

13 Q. You agree, do you not, that it's not
14 really an accurate comparison to look at the
15 31,000,000 in costs caused by the slowdown of the
16 Sioux scrubber project and say, Since you have "X"
17 dollars of capacity available under a credit
18 facility, you should just go ahead and not slow down
19 the project because 31,000,000 happens to be less
20 than that "X" dollar figure; isn't that right?

21 A. Yes. I believe I provided an explanation
22 of that in my deposition.

23 Q. And you don't even have an opinion about
24 whether Ms. Grissum actually expressed that opinion,
25 do you?

1 A. Yeah. At the time I was not aware of --
2 that of her opinion letters and testimony in her
3 deposition.

4 Q. You would agree, would you not, that the
5 prudence of Ameren Missouri's decision to slow down
6 the project in November of 2008 should be viewed in
7 light of the facts and circumstances known to the
8 Company at the time it made that decision; correct?

9 A. Yes.

10 MR. LOWERY: I have no further questions,
11 your Honor.

12 JUDGE WOODRUFF: Okay. Questions from the
13 Bench?

14 Mr. Chairman?

15 CHAIRMAN GUNN: When you were making your
16 determination of prudence as to the delay, tell me
17 exactly how you viewed the circumstances around the
18 financial collapse or the potential financial
19 collapse around -- in late 2008.

20 THE WITNESS: First, let me clarify. I
21 did not sponsor the disallowance. As far as the
22 prudence, I provided information regarding the
23 financial markets at the time and what I believe the
24 access to the capital markets may have been.

25 CHAIRMAN GUNN: Then let me revise my

1 question. So you believe that the financial -- that
2 there was sufficient access to capital during late
3 2008 that would cause the delay to be unnecessary?
4 Am I correct in that.

5 THE WITNESS: I don't -- I don't believe
6 that I independently made that determination. What I
7 did is I -- I provided Ms. Grissum some information
8 regarding what the access of the credit facilities
9 were at the end of 2008, and so I -- as was indicated
10 before, I did not specifically do a liquidity
11 analysis as to, you know, whether or not the -- you
12 know, that access was going to be sufficient.

13 CHAIRMAN GUNN: When you provided that
14 information to Ms. Grissum, tell me exactly what your
15 view was of the financial markets at the time.

16 THE WITNESS: Oh, my view of the financial
17 markets --

18 CHAIRMAN GUNN: In general.

19 THE WITNESS: -- in general was that all
20 but the most solid of companies -- I discussed
21 companies in general, not just utility companies --

22 CHAIRMAN GUNN: Right.

23 THE WITNESS: -- were, you know, having a
24 difficult time accessing commercial paper markets.
25 As was discussed earlier, though, I was also aware

1 that Kansas City Power and Light continued to issue
2 commercial paper during the fall of 2008, so it
3 wasn't that they were completely shut out of the
4 commercial paper markets, but it did come at a higher
5 interest rate and shorter terms.

6 As far as the credit facilities, those
7 are committed lines, so even though, you know, there
8 may have been some concerns about the syndicate of
9 lenders that were in that credit facility, as far as
10 their ongoing solvency, it's a committed contract, so
11 my opinion was that -- that they could directly draw
12 on that 'cause it is a -- it's a contract.

13 CHAIRMAN GUNN: And that's kind of the
14 point that I'm trying to get to, because, yes, it was
15 a committed contract. They had a committed contract
16 with Lehman; right?

17 THE WITNESS: Yes.

18 CHAIRMAN GUNN: But they woke up one
19 morning and there was zero way to be able to draw on
20 that credit facility because there was no more Lehman
21 Brothers.

22 THE WITNESS: At least that portion of the
23 credit facility, yes.

24 CHAIRMAN GUNN: Whatever was with Lehman
25 Brothers, they couldn't access.

1 THE WITNESS: Yes, that was my
2 understanding.

3 CHAIRMAN GUNN: So when you did your
4 analysis, did you look back and make a determination
5 as to what the fragility was of those contracts? I
6 mean, because during that time you had Citibank and
7 Bank of America and Goldman Sachs all kind of doing
8 this death dance around each other, trying to figure
9 out who was gonna take over who and who was gonna
10 bolst who and whether the Chinese were going to come
11 in or the Japanese were going to come in.

12 I mean, all of this stuff was going on
13 and, quite frankly, we almost didn't make it through
14 there, so although you have a committed contract, did
15 you take into kind of this, I guess, probably more
16 art than science idea about what exactly the
17 perception was even within those banking houses at
18 the time about what would happen if they tried to
19 access those?

20 THE WITNESS: I didn't go down the list
21 of -- bank by bank that were a part of the
22 commitment, describe the facility to determine which
23 ones, you know, are more at risk of possibly having
24 to file for bankruptcy, such as Lehman Brothers did.

25 I just simply looked at, you know,

1 subtracting Lehman Brothers, what we knew was the
2 case at the time of approximately a hundred million
3 and looked at, you know, what they claimed in their
4 own 10(k) that they had access to.

5 You know, I -- I don't recall seeing
6 anything specific in the 10(k) that discussed that
7 they were concerned that some of those other banks
8 may fall out. It may have been in there, but I just
9 don't recall seeing it.

10 CHAIRMAN GUNN: So your basic criteria
11 was, is there a contract and is the investment
12 banking house in existence?

13 THE WITNESS: Was it still -- yeah, as far
14 as, had it been eliminated? The only one that had
15 been eliminated was Lehman Brothers, so it was based
16 on the 1.05 billion after subtracting Lehman
17 Brothers.

18 CHAIRMAN GUNN: So you assumed that the
19 access to that credit facility was as if all of those
20 banking houses were fully capitalized and fully able
21 to meet their commitments under the credit
22 facilities?

23 THE WITNESS: That's correct.

24 CHAIRMAN GUNN: And you did that -- so you
25 didn't do a -- you didn't go bank by bank and say,

1 Well, these guys needed -- two weeks later needed the
2 massive infusion from Bank of America or from the
3 federal government or whatever in order to meet some
4 of their cash reserves? There wasn't that type of
5 analysis?

6 THE WITNESS: No, I did not do that.

7 CHAIRMAN GUNN: All right. All right. I
8 don't have anything further. Thank you.

9 JUDGE WOODRUFF: Commissioner Jarrett.

10 COMMISSIONER JARRETT: Good afternoon,
11 Mr. Murray.

12 THE WITNESS: Good afternoon.

13 COMMISSIONER JARRETT: I'm needing to go
14 into in-camera, Judge. I'm going to ask him about
15 Exhibit 234-HC.

16 JUDGE WOODRUFF: All right.

17 COMMISSIONER KENNEY: Is that the big
18 stack?

19 MR. MILLS: It's one with the paper clip.

20 JUDGE WOODRUFF: All right. We are
21 in-camera.

22 (REPORTER'S NOTE: At this point an in-camera
23 session was held, which is contained in Volume 20,
24 pages 547 to 560 of the transcript.)

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1 far as how I viewed the liquidity analysis that was
2 performed by Ameren and Ameren Missouri. The
3 liquidity analysis that they performed, and I don't
4 know when this came in. I have no idea when
5 Ms. Grissum was able to review this, but I saw this
6 was based on a consolidated review of Ameren's entire
7 operations, and so I -- my concern is -- was the
8 focus on Ameren Missouri, and I relied on my
9 knowledge of Kansas City Power and Light to continue
10 to be able to access the commercial paper markets,
11 albeit, obviously, that was a project that -- that I
12 don't believe there's much discretion on, but I also
13 believe that that -- that proved that there was
14 abscess. It was at a higher cost.

15 So even though the -- the -- the credit
16 lines themselves, there may be some dispute as to
17 whether or not that was enough or whether or not that
18 would all be there. You know, I believe that the --
19 the fact that Ameren Illinois was able to issue --
20 wasn't Ameren Illinois at the time. I believe it was
21 Cilco, Ameren Cilco and Ameren Illinois Power --
22 issued debt in the fall, long-term debt in the fall
23 of 2008.

24 That long-term debt, if it was targeted
25 to specific needs that Ameren Missouri may have had

1 at the time, if they filed a finance case that
2 targeted how much short-term debt they had
3 outstanding or how much expenditures were that they
4 expected over the next few months, that that would
5 have freed up the credit facility, because that's
6 what you do, is you pay that credit facility off, the
7 amount of -- at least a certain amount of it off if
8 you issue long-term debt.

9 COMMISSIONER KENNEY: So let me see if I
10 understand your answer. A liquidity analysis wasn't
11 necessary on Staff's part because Ameren's asserted
12 reasons didn't establish that there was a liquidity
13 problem in the first place. Would that be a fair --
14 at least not to the extent that they needed to slow
15 down the project.

16 THE WITNESS: I -- I really can't say that
17 I made that specific determination. I think that's a
18 question probably better for Ms. Grissum. I just am
19 not sure. You know, as far as, you know, whether or
20 not that -- you know, if we tried to carve it out or
21 what have you.

22 JUDGE WOODRUFF: If I can interrupt here,
23 I realize we're still in-camera. Do we need to be
24 in-camera?

25 COMMISSIONER KENNEY: Oh, not for my

1 purposes, I don't think.

2 JUDGE WOODRUFF: Okay. we'll come back
3 into regular session. Go ahead -- I don't think any
4 of the questions that Commissioner Kenney has asked
5 would be highly confidential, so I'll direct the
6 court reporter to go back beginning with Commissioner
7 Kenney's questioning to make that open session.

8 MR. LOWERY: That's fine.

9 MR. MILLS: Judge, we may want to review
10 when the transcript comes out, because I think
11 perhaps a good portion of Commissioner Jarrett's
12 questions were also not highly-confidential.

13 JUDGE WOODRUFF: If you want to make a
14 motion along those lines --

15 MR. MILLS: And I'm not asking to do
16 anything now. I'm just raising the possibility that
17 I may raise the possibility again later.

18 JUDGE WOODRUFF: Okay. We're back in
19 regular session.

20 COMMISSIONER KENNEY: Here's my
21 hypothetical, and this is just a thought of my own.
22 You heard earlier about the delay in the Sioux
23 project allowing Ameren to learn some lessons from
24 some other scrubber projects that they were working
25 on, and based upon that they were able to make a

1 decision to change the tile of the inside of the
2 scrubbers to the Stebbins tiles. Were you present
3 for that?

4 THE WITNESS: I believe I heard some of
5 that testimony.

6 COMMISSIONER KENNEY: So during the period
7 in which there was the slowdown they were able to
8 learn some other lessons from other projects, and
9 they changed the tiles inside to the Stebbins tiles.
10 Am I pronouncing that correctly?

11 MR. LOWERY: Stebbins.

12 COMMISSIONER KENNEY: Stebbins tiles.

13 If it's determined that the savings that
14 were ultimately realized by virtue of that decision
15 exceeded 31,000,000, would your opinion change about
16 the disallowance?

17 THE WITNESS: If the savings was greater?
18 I mean, I think that would make sense but, once
19 again, because I didn't I -- I didn't do the -- the
20 initial analysis as far as sponsoring --

21 COMMISSIONER KENNEY: Sure.

22 THE WITNESS: The -- the disallowance, if
23 there were actually savings, I -- I -- I believe
24 Ms. Grissum actually requested some of the net
25 present value types of analysis that may have been

1 performed to determine if this was actually more
2 economical to do so, and I think that would be a
3 consideration that would be looked at. Should be.

4 COMMISSIONER KENNEY: Okay. All right. I
5 don't have any other questions. Thank you.

6 THE WITNESS: Thank you.

7 JUDGE WOODRUFF: I don't have any
8 questions, so we'll go to recross based on those
9 questions by the Bench.

10 MR. MILLS: No questions.

11 JUDGE WOODRUFF: Ameren?

12 RE-CROSS-EXAMINATION BY MR. LOWERY:

13 Q. Mr. Murray, in response to questions from
14 Commissioner Kenney, you are now today expressing an
15 opinion in support of the disallowance that
16 Ms. Grissum is proposing; isn't that true? Is that
17 what you just testified to?

18 A. Yes, I -- I don't -- I mean, even though I
19 didn't sponsor a disallowance, I don't think it's an
20 inappropriate disallowance.

21 Q. Well, I find that curious, because isn't
22 it a fact that you were asked on March 31, Do you
23 have an independent opinion about whether the 31
24 million incurred during the construction delay for
25 the Sioux scrubber should be disallowed, and your

1 answer was, I didn't sponsor that disallowance so,
2 no, I don't have any opinion either way? Wasn't that
3 your deposition testimony barely three weeks ago?

4 A. Yes, it was.

5 MR. LOWERY: Your Honor, based upon that,
6 I would move to his testimony related to an opinion
7 for which he gave the Company no notice, which the
8 Staff gave the Company no notice that he's expressed
9 here on the witness stand today be stricken from the
10 record. We're entitled to be advised if an expert is
11 changing their opinion after asking a question in
12 deposition.

13 JUDGE WOODRUFF: Staff, do you have any
14 response?

15 MR. DOTTHEIM: The -- the Staff's only
16 response was -- is -- was not intended -- it was not
17 set up. This was an answer in response to a question
18 from a commissioner and -- and that is the answer of
19 of the -- of the Staff.

20 If Mr. Lowery would like to further cross
21 Mr. Murray on his response, he has the opportunity to
22 do so at this time.

23 JUDGE WOODRUFF: Mr. Mills, did you want
24 to wait?

25 MR. MILLS: I was going to say the same

1 thing. I don't know that the statement of the
2 deposition was all that different from the answer he
3 just gave. In both instances he said that it wasn't
4 his disallowance and he's not really sponsoring it,
5 and second of all, you can't uses a deposition to
6 prevent a witness from testifying. I mean, his
7 testimony here today is what it is. If Mr. Lowery
8 wants to use the deposition to try to impeach him and
9 impugn the witness's credibility, he can, but he
10 can't use it to strike a sworn answer already given.

11 MR. LOWERY: Your Honor, Mr. Mills is --
12 his statement of law is incorrect, and we can brief
13 this, if that's necessary, but the law in Missouri is
14 that a party has an obligation to advise the other
15 party if a witness's opinion has changed, and
16 Mr. Mill's recitation of what the deposition said
17 wasn't accurate either.

18 When Mr. Murray said that he didn't have
19 an opinion either way, that's far different from,
20 Yes, I have an opinion and, yes, I believe they have
21 sufficient access to credit and I'm supporting
22 Ms. Grissum when he was asked the question in the
23 deposition, and as a matter of law, I think we're
24 entitled to have that testimony stricken, that new
25 opinion stricken.

1 JUDGE WOODRUFF: I'm going to overrule the
2 objection. You've certainly had an opportunity to
3 question his credibility. You have further
4 opportunity to question that as well --

5 MR. LOWERY: Very well.

6 JUDGE WOODRUFF: -- but the answer as --
7 as it was given on the stand in response to
8 Commissioner question.

9 BY MR. LOWERY:

10 Q. Mr. Murray, you spoke, I think, in
11 response to some questions from Commissioner Jarrett
12 about financing to KCPL and what Empire might have
13 done. Do you recall that?

14 A. Yes.

15 Q. And you also were talking about a
16 criticism that you expressed about the request that
17 Ameren Missouri came to the Staff with, was that
18 Ameren Missouri was not tying that to any specific
19 project; right?

20 A. Yes.

21 Q. Isn't it true that in your experience that
22 the Staff's practice has always been to limit long-
23 term debt issuances whether it's KCPL, whether it's
24 Empire, whether it's the Company, to the amount of
25 the short-term debt that the utility has on its books

1 as of the closing period before the application?

2 A. No.

3 Q. That's not your experience?

4 A. That's not my experience.

5 Q. Can you name an instance where you ever
6 supported an application for Ameren Missouri that
7 wasn't on that basis?

8 A. I believe this is the only application
9 Ameren Missouri has filed, but I know there's other
10 cases in which -- I mean, we just got done with a
11 LaClede finance case that asked for a very broad
12 authority amount that couldn't be tied to any short-
13 term debt or anticipated capital expenditures, so
14 we -- we -- we have dealt with it.

15 Q. That couldn't be tied.

16 A. That could not be tied, in our opinion.
17 That's our opinion, Staff's opinion.

18 Q. So do you treat other utilities different
19 than you treat Ameren?

20 A. No. We -- we -- we contested that finance
21 case.

22 Q. What did the commission decide?

23 A. The Commission allowed LaClede the full
24 amount, and then I'll point out that finance case was
25 subsequent to our discussions.

1 Q. I believe you testified -- you've
2 previously indicated that the global financial crisis
3 and the circumstances at the time were
4 unprecedented. Is that fair?

5 A. That's fair.

6 Q. You were here when Mr. Birdsong testified
7 that by the end of 2008 that Ameren Missouri had
8 approximately \$347 million of short-term debt on its
9 books?

10 A. I recall -- maybe that was his testimony.
11 I -- I -- from what I reviewed in the 10(q) or 10(k),
12 they had about 250 million on their books.

13 Q. Well, the record will be what the record
14 will be.

15 Were you hear when he testified that by
16 February 2 Ameren Missouri had \$500 million of short-
17 term debt on its book?

18 A. Yes, I was.

19 Q. So what that's telling us is, they were
20 drawing down on her available credit from the time
21 they talked to Staff through the end of the year and
22 through February 2; isn't that right?

23 A. That's correct.

24 Q. So when Ameren Missouri came back in
25 January and talked to the Staff about financing

1 authority, the Staff didn't have any problem with
2 supporting a long-term financing that was equal to
3 the short-term debt that was on the books; isn't that
4 right?

5 A. I don't know if it was equal. Actually,
6 if I recall, the requested authority was 350,000,000,
7 and I think -- I don't think that Ameren Missouri
8 requested enough to refinance all the short-term
9 debt. I think there's still short-term debt on the
10 books at the end of the first quarter of 2009.

11 Q. You don't know as you sit here today how
12 much short-term debt was on the books at the tend of
13 December 2008; is that right?

14 A. I believe it just said 250,000,000.

15 Q. Do you recall how much short-term debt was
16 issued in March?

17 A. 350,000,000.

18 Q. Does that refresh your recollection about
19 how much short-term debt was on the books at the end
20 of December 2008 since Ameren Missouri came in and
21 filed the application in mid-January 2009?

22 A. Yes, that's consistent.

23 Q. So it makes sense that Mr. Birdsong said
24 there was 347,000,000 on the books at the end of
25 December because Ameren Missouri essentially asked

1 for that long-term financing authority in that amount
2 in the middle of January; right?

3 A. Well, if I could point to the 10(k).

4 Q. That's wasn't my question,

5 A. Well, because I don't agree.

6 Q. Well, then say you don't agree.

7 A. I don't agree.

8 Q. Fair enough.

9 Now, when you were asked -- you've been
10 asked before about this memorandum that Commissioner
11 Jarrett questioned you about, have you not?

12 A. I mean, it's been discussed internally. I
13 don't think anybody's asked me.

14 Q. You haven't been asked about it before?

15 A. I don't recall the specific --

16 Q. Do you have a copy of your deposition from
17 earlier this week with you?

18 A. I'm sorry. Yes, in the deposition. I
19 apologize.

20 Q. That's not a problem. Not a problem.

21 The memo indicates that the Company told
22 the Staff that the Company would be restricted by its
23 use of those funds by law and even offered to provide
24 reports on how the funds were used after the
25 issuance.

1 A. Can you direct me to the page and a line
2 number, please.

3 Q. In your deposition?

4 A. Yes, please.

5 Q. Page 83, line 13.

6 A. Yes, I'm there.

7 Q. You're not disputing that the Company told
8 the Staff that, are you, because you don't recall one
9 way or the other. Isn't that true?

10 A. That's true.

11 Q. And you're not disputing that the Company
12 told Staff that the Company would be prohibited by
13 law from funneling these funds to its unregulated
14 affiliates because you don't recall if the Company
15 told you that or not.

16 A. That's correct.

17 Q. And it sounded like earlier in response to
18 the questions of Commissioner Jarrett that maybe you
19 do now recall that Enron was mentioned; is that true?

20 A. After discussions with Mr. Shallenberg, I
21 believe that that -- you know, that, actually, he
22 believes that he's the one that may have brought up
23 the Enron issue, but at the time I didn't
24 specifically recall.

25 Q. Do you recall that the Company, when they

1 called Staff and spoke to them about this one billion
2 dollars of credit over three years, do you recall a
3 discussion that that would be -- the plan would have
4 been to issue that in phases, not one billion at one
5 time, but in increments over the next three years?

6 A. That would -- that would be logical. I
7 don't remember the specifics of -- of -- at least I
8 don't think there was any specifics provided, so I
9 don't recall.

10 Q. Do you dispute the fact that the Staff
11 indicated that the Company's willingness and ability
12 to conform to the law as well as any reports that the
13 Company was offering to provide the Staff could not
14 and would not be trusted, that the Staff told the
15 Company that? Do you recall that?

16 A. I don't recall that specifically.

17 Q. You don't -- but you don't deny it was
18 said either, do you?

19 A. Like I said, it was two and a half years
20 ago. I don't recall either way.

21 MR. LOWERY: I have no further questions,
22 your Honor.

23 JUDGE WOODRUFF: Redirect?

24 MR. DOTTHEIM: No questions.

25 JUDGE WOODRUFF: All right. Then

1 Mr. Murray, you can step down.

2 THE WITNESS: Thank you.

3 JUDGE WOODRUFF: Let's go ahead and take a
4 short break. We'll come back at 2:10.

5 (A recess was taken.)

6 JUDGE WOODRUFF: Let's come to order,
7 please. We're back from our break, and I believe
8 Mr. Thompson has some sort of announcement.

9 MR. THOMPSON: Judge, we're trying to
10 rework the schedule. As you know, Staff has a
11 problem with taking up the energy-efficiency DSM
12 issues tomorrow, and while we haven't yet worked out
13 exactly when we're going to take up these issues, I
14 think we can safely tell you that we will not be
15 doing them tomorrow. The parties will continue
16 discussions and we will provide a reworked schedule
17 as soon as we have it.

18 JUDGE WOODRUFF: So there will be no
19 hearing tomorrow. Is that what --

20 MR. THOMPSON: There will be no hearing
21 tomorrow, yes, sir.

22 Part of the issue is that the other
23 parties are not all here, and that's why we can't
24 work it all out, but I am going to go e-mail them and
25 we will work it out that way.

1 JUDGE WOODRUFF: But as of this moment,
2 and I'll make that official, there will be no hearing
3 tomorrow.

4 MR. THOMPSON: No hearing tomorrow. Thank
5 you, Judge.

6 JUDGE WOODRUFF: Okay. Ms. Grissum has
7 taken the stand, and if you'll please raise your
8 right hand, I'll swear you in.

9 ROBERTA GRISSUM, being sworn, testified as follows:

10 JUDGE WOODRUFF: You may inquire.

11 DIRECT EXAMINATION BY MR. DOTTHEIM:

12 Q. Would you please state your name for the
13 record.

14 A. Roberta Grissum.

15 Q. And would you please state your place of
16 employment.

17 A. I'm employed by the Missouri Public
18 Service Commission in the auditing department in
19 St. Louis office.

20 Q. And are you the same Roberta Grissum that
21 caused to be filed what has been marked as Exhibit
22 200-HC, Staff's construction audit and prudence
23 review of Sioux wet flue gas desulphurisation project
24 for cause recorded as of September 30, 2010?

25 A. I am.

1 JUDGE WOODRUFF: Mr. Dottheim, if I could
2 interrupt, your last question prompted something I
3 meant to bring up earlier.

4 MR. DOTTHEIM: Yes.

5 JUDGE WOODRUFF: 200 has an HC and NP.

6 MR. DOTTHEIM: Yes.

7 JUDGE WOODRUFF: Has anyone offered the NP
8 version of it that was filed later by Ameren?

9 MR. DOTTHEIM: No, and I'll offer that
10 also.

11 JUDGE WOODRUFF: Just need to make sure a
12 copy gets to the court reporter.

13 MR. DOTTHEIM: Yes, which I don't have,
14 which I'll have to supply it at a later time.

15 JUDGE WOODRUFF: Okay.

16 BY MR. DOTTHEIM:

17 Q. Ms. Griffen -- excuse me.

18 Ms. Grissum, do you at this time have any
19 corrections to make to what has at this point been
20 marked as Exhibit 200-HC and 200-NP.

21 A. Yes, I do. I have two corrections. The
22 first one appears to page 42 at line 11. And in
23 parentheses where it points the source, that should
24 read Ameren's 2008, 10(k) Report to the SEC.

25 And then the second correction is on page

1 43 at line 16, and the dollar amount stated there
2 should read 655,000.

3 Q. With those corrections, is the information
4 contained in what's been marked Exhibit 200-HC and
5 200-NP true and correct, to the best of your
6 knowledge and belief?

7 A. They are.

8 MR. DOTTHEIM: Also -- and I don't know if
9 anyone has been addressing this item, Judge, but
10 Appendix 1 to the Staff report on cost of service
11 contains the Staff credentials, the work history,
12 education, prior cases that the various members of
13 the Staff who filed in the cost of service report
14 filed on February 8, 2011, were contained in
15 Appendix 1, and Mr. Murray's credentials and
16 Ms. Grissum's credentials and work history are
17 contained in that Appendix 1.

18 JUDGE WOODRUFF: No one else has brought
19 that up, but it is a good point. Do you wish to
20 offer those at this time also?

21 MR. DOTTHEIM: Yes, or -- I could do that,
22 or I don't know if the Staff's Cost of Service
23 Revenue Requirement Report itself -- I assume it's
24 probably been marked.

25 JUDGE WOODRUFF: It has been marked as

1 201-HC and NP. It's not been offered yet.

2 MR. DOTTHEIM: Okay. I could give the
3 copy to the court reporter and ask that it be marked
4 at this time. The suggestion was that it be marked
5 201-1, or I think it's been premarked as 201-1.

6 JUDGE WOODRUFF: I don't have anything
7 that says "premarked" on it.

8 MR. DOTTHEIM: Okay.

9 JUDGE WOODRUFF: It was filed along with
10 201, I believe, as part of the report, was it not?

11 MR. DOTTHEIM: It's a separate document,
12 and there's a number of separate appendices. I think
13 there are three separate appendices.

14 JUDGE WOODRUFF: I would think that the
15 entire document should be a single exhibit but -- I
16 think that would be the easiest way to keep track of
17 it.

18 MR. DOTTHEIM: Okay. Should I address
19 that at a different time and have it marked
20 separately, or should we just mark it now as a
21 separate exhibit?

22 JUDGE WOODRUFF: I'm not understanding why
23 it would need to be marked as a separate exhibit.

24 MR. DOTTHEIM: Okay.

25 JUDGE WOODRUFF: Do you believe it needs

1 to be.

2 MR. DOTTHEIM: No.

3 JUDGE WOODRUFF: All right. We'll just
4 treat it as all part of 201.

5 MR. DOTTHEIM: Okay.

6 BY MR. DOTTHEIM:

7 Q. Ms. Grissum, do you have a copy of what
8 was prefiled as your surrebuttal testimony on the
9 Sioux wet flue gas desulphurisation scrubbers
10 project?

11 A. Yes.

12 Q. Okay. It's been designated as Exhibit
13 213-HC and NP.

14 A. Yes.

15 Q. Do you have any corrections to make at
16 this time to Exhibits 213-NP and HC?

17 A. I have one correction, and that appears on
18 page 3 at line 25. Dollar amount there should read
19 1.15 billion.

20 JUDGE WOODRUFF: Ms. Grissum, I think you
21 need to move the microphone closer to you. It tends
22 to get feedback from the speaker of others.

23 THE WITNESS: I heard that. That's why I
24 backed up.

25 BY MR. DOTTHEIM:

1 Q. If you were to ask you the same questions
2 that are contained in what has been marked as
3 Exhibits 213-HC and NP, would your answers be the
4 same as corrected?

5 A. Yes.

6 Q. And do you adopt Exhibits 213-HC and NP as
7 your surrebuttal testimony on the Sioux scrubbers
8 project issued?

9 A. Yes, I do.

10 MR. DOTTHEIM: At this time I would tender
11 Ms. Grissum for cross-examination.

12 JUDGE WOODRUFF: I assume you want to
13 offer approximate 213.

14 MR. DOTTHEIM: Yes, I'd like to offer
15 200-HC and NP, if I haven't, and 213-HC and NP.

16 JUDGE WOODRUFF: We were talking about the
17 portions of 200, portions of 201 which would be the
18 curriculum vitae.

19 MR. DOTTHEIM: Yes.

20 JUDGE WOODRUFF: And 213 in its entirety.

21 MR. DOTTHEIM: Yes.

22 JUDGE WOODRUFF: All right. Portions of
23 200, 201 and 213 in its entirety have been offered.
24 Any objections to their receipt?

25 MR. MILLS: No.

1 JUDGE WOODRUFF: Hearing none, they will
2 be received.

3 (Staff Exhibit Nos. 200, 201, and 213

4 were marked and admitted.)

5 JUDGE WOODRUFF: And for cross we begin
6 with public counsel.

7 MR. MILLS: Thank you, Judge.

8 BY MR. MILLS:

9 Q. Ms. Grissum, do you have a copy of your
10 surrebuttal testimony with you?

11 A. I do.

12 Q. Page 3, line 25, can you explain to me
13 your reference to the \$1.5 billion credit facility.
14 What credit facility is that?

15 A. Well, the 1.5 is a typo. It should be
16 1.15, and that is the credit facility that is shared
17 by Ameren, Ameren Missouri, and AERG.

18 Q. Now, with respect to the \$500 million on
19 line 29 -- were you listening to the testimony
20 earlier today?

21 A. No, I wasn't.

22 Q. Okay. Is it your understanding that
23 Ameren and Ameren Missouri can renegotiate that
24 sublimit with creditors?

25 A. I am not --

1 Q. You are not what?

2 A. Repeat your question. I think I
3 misunderstood what you're asking.

4 Q. The \$500 million is what Mr. Birdsong
5 referred as to a sublimit --

6 A. Okay.

7 Q. -- of the amount to Ameren Missouri within
8 the overall credit facility. Is that your
9 understanding?

10 A. Yes.

11 Q. Okay. Do you know whether or not Ameren
12 and Ameren Missouri can renegotiate that sublimit
13 within the overall limits with the creditors?

14 A. You're asking whether they could raise it
15 or lower it?

16 Q. Whether they can make changes to that
17 sublimit within the scope of the overall --

18 A. My understanding is they can.

19 Q. Okay.

20 MR. MILLS: Those are all the questions I
21 have. Thank you.

22 JUDGE WOODRUFF: Ameren.

23 MR. TRIPP: Good afternoon, Mrs. Grissum.

24 THE WITNESS: Good afternoon.

25 CROSS-EXAMINATION BY MR. TRIPP:

1 Q. First, I want to make sure that we're on
2 the same page about the disallowances that you're
3 proposing in the Sioux scrubber project.

4 In your surrebuttal testimony,
5 Ms. Grissum, you've updated the audit report to
6 remove some of the proposed disallowances that you
7 originally included in that audit report; true?

8 A. That's correct.

9 Q. In your original audit report you included
10 some placeholders for potential disallowances that
11 you no longer recommend at this time?

12 A. That is correct.

13 Q. Included is a potential disallowance
14 related, for example, to 1400 invoices that you were
15 reviewing at the time.

16 A. Yes.

17 Q. You also included a potential disallowance
18 for how the Company calculated it's AFUDC rates when
19 calculating the AFUDC. Fair?

20 A. Whether they could change their AFUDC rate
21 on a monthly basis versus the semiannual, which is
22 dictated by FERC.

23 Q. You stated that better than me, but that
24 was one of the placeholders you put in your audit
25 report.

1 A. It is.

2 Q. You had another placeholder for potential
3 disallowance pending your review of some work
4 packages that you suspected may have exceeded their
5 proposed budget; true?

6 A. That is true.

7 Q. As I understand it, this is the only time
8 in an audit report that you have actually placed --
9 or put in placeholders for potential disallowances?

10 A. It's the first time I have used
11 placeholders.

12 Q. As you sit here today, the only
13 disallowance that you're proposing on the Sioux
14 scrubber project is the adjustment related to the
15 cost resulting from Ameren Missouri's decision to
16 delay the Sioux scrubber project in November of 2008;
17 correct?

18 A. That is correct.

19 Q. You resolved all of those other potential
20 disallowances?

21 A. I did.

22 Q. That's included in your surrebuttal
23 testimony.

24 A. It is.

25 Q. Now, going back to the remaining

1 disallowance, the one regarded to the delay, in
2 continuing to support that disallowance, you've
3 rejected the Company's justification for that
4 decision; in other words, that its effort to preserve
5 liquidity by reducing capital expenditures at that
6 time in light of the world-like financial crisis;
7 true [sic]?

8 A. Yes, based on information I've seen with
9 their third quarter earnings release of November 4 of
10 2008, I do still disagree that there was a liquidity
11 issue and that they could have continued the project.

12 Q. So yes?

13 A. Yes.

14 Q. All right. And simply put, what you're
15 saying is that Ameren Missouri had no reason to delay
16 the Sioux project because it had sufficient credit at
17 the time?

18 A. I believe they did.

19 Q. Before we delve into that opinion,
20 Ms. Grissum, I'm going to ask you about your
21 qualifications to provide that opinion.

22 The Sioux audit was only the second
23 construction prudence audited report and review that
24 you've ever conducted.

25 A. That is true.

1 Q. The first one was an audit that you
2 performed on the Empire District case back in 2005?

3 A. That is correct.

4 Q. And that audit, the Empire District
5 construction audit, was a much smaller construction
6 project than the Sioux scrubber project.

7 A. I believe it was, yes.

8 Q. It was about one-tenth the size of the
9 Sioux scrubber project; correct?

10 A. Yes.

11 Q. And even though you've been involved in
12 other Staff audits, none of those other particular
13 assignments involved a prudence review of a
14 construction project.

15 A. That is correct.

16 Q. In terms of the formal training that
17 you've received in order to conduct a prudency
18 construction audit review, you were sent to a two-day
19 training course in mid-September of last year?

20 A. That is correct.

21 Q. And that was right after you were assigned
22 to the Sioux project audit; correct?

23 A. Yes.

24 Q. You have no training in construction?

25 A. No, other than being a bookkeeper for a

1 small construction firm.

2 Q. Right. And obviously no engineering
3 training.

4 A. Correct.

5 Q. But I do understand that you do have a
6 business degree -- or I'm sorry -- a business
7 administration degree with an emphasis in accounting
8 and finance.

9 A. Correct, and I have a master's degree.

10 Q. Sorry. I didn't mean to slight your
11 education and training.

12 You've never worked in a finance
13 department of a public utility.

14 A. I have not.

15 Q. You did mention that you did work as an
16 accountant in a small manufacturing firm in
17 Washington, Missouri, but even with that, you've not
18 worked in a finance department in a nonutility
19 setting, true, in a corporate setting?

20 A. Say that again.

21 Q. You've not worked in a finance department
22 in anything utility or nonutility; correct?

23 A. Well, I considered the cost accounting job
24 as being part of the finance department for that
25 particular company.

1 Q. You were a cost accountant?

2 A. Yes.

3 Q. That was before you even had your
4 accounting degree?

5 A. Yes, but I still had adequate experience
6 to perform that job.

7 Q. Didn't say you didn't, all right?

8 Now, as I understand it, Ms. Grissum,
9 Staff has no written internal procedure that provides
10 guidance to you on how to conduct a prudency review
11 of a construction audit project.

12 A. Nothing specific to a construction audit,
13 correct.

14 Q. You did, however, when you were doing the
15 audit in this case, look at the KCPL audit to see
16 what type of information Staff had requested in that
17 case' true?

18 A. That is true.

19 Q. Your primary supervisor on this audit was
20 Mr. Shallenberg.

21 A. That is correct.

22 Q. And he would give you feedback on whether
23 you were headed on the right track on this audit;
24 correct?

25 A. Correct.

1 Q. For example, you talked to Mr. Shallenberg
2 to make sure you understood what a back charge on a
3 construction project was and how it could occur;
4 true?

5 A. Correct.

6 Q. I'm going to ask you about your role as a
7 Staff auditor as it relates to performing this
8 audit. As I understand it, how the audit division
9 works here is that while you may have a professional
10 engineer review the construction aspects of the
11 project, such as change orders and progress reports,
12 and you have a finance expert that may look and
13 review the Company's financial decision-making, it's
14 only you, the Staff auditor, who makes the final
15 decision as to whether a disallowance will be
16 sponsored on the prudence of the company's conduct.

17 A. That is correct.

18 Q. For example, Mr. Taylor was a Staff
19 engineer who was working on the Sioux project?

20 A. Yes.

21 Q. And as I understand while you are at the
22 plant one time, Mr. Taylor and his crew were out
23 there several times throughout Sioux's construction.

24 A. That's my understanding, yes.

25 Q. But what Mr. Taylor does from a

1 engineering perspective has no bearing specifically
2 on the dollars that you would actually recommend on a
3 disallowance.

4 A. Not on the dollars that I recommend for
5 disallowance, yes.

6 Q. And just as an aside, Mr. Taylor didn't
7 identify to you following his review, based his
8 engineering perspective, any concerns after he'd
9 reviewed change orders, progress reports, and these
10 site visits; true?

11 A. True.

12 Q. So it's strictly your responsibility to
13 sponsor the disallowance.

14 A. Yes.

15 Q. Same would be true for finance issues.
16 It's your responsibility, for example, not
17 Mr. Murray's, to propose or support a disallowance;
18 correct?

19 A. Correct.

20 Q. Now, let's return to the disallowances
21 that you're proposing for the Sioux project. From
22 the time that Ameren Missouri filed its direct case,
23 you were aware that the Company's position was that
24 it had to delay the Sioux project because of
25 liquidity concerns related to the financial crisis;

1 true?

2 A. Yes. There was a sentence in Mr. Birk's
3 testimony that related to that, yes.

4 Q. Well, and at the time the decision was
5 made, you admit that the Company gave that very
6 reason for delaying the project in monthly progress
7 reports it submitted to Staff at the time it was
8 making that decision; isn't that correct?

9 A. I don't know that I was aware of that. I
10 can't agree with that.

11 Q. Actually, after you started your audit
12 work in this project, you were alerted by another
13 Staff member that Ameren Missouri had actually been
14 submitting monthly status reports on their project to
15 staff; correct?

16 A. I am aware of monthly status reports, but
17 I believe I informed you that the first date on those
18 was June of '09, which is some time after the
19 decision.

20 Q. You'll admit that that's the first time
21 you saw one; correct?

22 A. No, the date on the first report that I
23 had was -- was June of '09. If there was anything
24 prior to that, I did not -- I did not see that.

25 Q. All right. In fact, Ms. Grissum, you

1 yourself were aware in the 2010 rate case that the
2 maintenance project and the Sioux project were being
3 slowed down and that the financial crisis was the
4 driving force; correct?

5 A. I knew that they were slowing down. I
6 don't know that I knew all the particulars of that.
7 I'm sure the financial crisis was part of that.

8 Q. Well, I thought that you told me they were
9 the driving force.

10 A. If you can point me to some document that
11 you have -- that I said that, I would like to review
12 that, please.

13 Q. Sure. Do you recall giving your
14 deposition in this case?

15 A. Sure.

16 MR. TRIPP: May I approach the witness,
17 your Honor?

18 JUDGE WOODRUFF: You may.

19 BY MR. TRIPP:

20 Q. I'm showing your deposition taken in this
21 case on April 22, 2011.

22 A. Okay.

23 Q. And if you will go to -- just a second,
24 please. I'm sorry.

25 A. That's okay.

1 Q. We actually took two different depositions
2 so I may have to --

3 A. We did.

4 Q. -- hang on just a second. Actually, your
5 first one.

6 A. Trade you.

7 Q. You can hang on to it.

8 A. Okay.

9 Q. This is the deposition you gave on
10 April 12, 2011; correct?

11 A. Yes, it is.

12 Q. All right. If you'll look at page 107 in
13 that deposition --

14 A. Okay.

15 Q. -- on page 107 at line 16, I asked you
16 this question, You testified in your deposition that
17 you were aware that they were delaying the outages
18 because of the financial crisis in 2008. Did you?

19 Your answer was, I knew that that was a
20 driving force. I didn't know that that was the only
21 reason they were delaying.

22 Did I read that correctly?

23 A. You did, and that is what I said.

24 Q. All right. Now, the entire disallowance
25 that you've proposed is based on your belief that at

1 the time of the worldwide financial crisis Ameren
2 Missouri's slowdown of the Sioux construction project
3 was unnecessary; correct?

4 A. I believe that -- that they did not show
5 me evidence to convince me that they could not have
6 borrowed the money to continue the project. I did
7 not see that analysis in my Data Request 139, and to
8 this day I have still not seen any type of analysis
9 performed by the Company that shows that borrowing
10 the money and continuing the project may have been
11 more of a cost beneficial approach than the delay of
12 the project.

13 Q. And we'll get to that 139 in just a
14 second.

15 A. Okay.

16 Q. Ms. Grissum, the reason given for that
17 disallowance that you'd disagree with was that the
18 delay was not necessary due to the financial crisis;
19 true?

20 A. I'll have to review back to my cost report
21 to see what I said exactly.

22 Q. Let's deal with the Data Request 139.

23 A. Okay.

24 Q. You understand that you have an obligation
25 to support a proposed disallowance; correct?

1 A. Yes.

2 Q. I mean, that's what you do when you're
3 looking at the project in performing an audit.

4 A. Yes.

5 Q. If you believe there's a disallowance
6 that's appropriate that you -- you have the
7 obligation to support that or make that point;
8 correct?

9 A. Yes, and I believe I have done that.

10 Q. You actually believe that the Company's
11 decision was an overreaction, true?

12 A. I do.

13 Q. You weren't -- now, let's talk about that,
14 though, Ms. Grissum. You weren't very familiar about
15 specific events of the financial crisis in 2008 until
16 after you read Mr. Birdsong's rebuttal testimony;
17 isn't that true?

18 A. The specifics of all the company's that
19 may have been having trouble? No, I did not have
20 that knowledge.

21 Q. Well, you know, that there were some
22 bankruptcies that may have been going on before you
23 read Mr. Birdsong's testimony, but you couldn't speak
24 as to whether Lehman Brothers, for example, whether
25 that bankruptcy occurred at that time or not; isn't

1 that fair?

2 A. That is fair.

3 Q. You were not personally aware of the
4 impact of the financial crisis on credit spreads
5 until you read Mr. Birdsong's testimony in this case;
6 true?

7 A. That is true. I did not follow that
8 during that time period.

9 Q. And even though you knew well before you
10 drafted your audit report that the Company's position
11 has always been that the global credit crisis cause
12 it to delay the Sioux project, you did not do any
13 independent investigation at all into the financial
14 crisis at the time you wrote that report; isn't that
15 true?

16 A. No, I did not. As I said, I expected that
17 analysis to be provided to me in DR 139 when I --
18 required -- or requested that information.

19 Q. We'll get to DR 139.

20 A. Thank you.

21 Q. But you yourself did not do any
22 independent investigation into the financial crisis?

23 A. I did not.

24 Q. In fact, you didn't conduct any
25 independent investigation on the financial crisis

1 that was occurring in 2008 since you weren't familiar
2 with it until after you read Mr. Birdsong's rebuttal
3 testimony.

4 A. That is correct.

5 Q. And even then, really your investigation
6 consisted of looking at information about Ameren and
7 Ameren's annual reports and the reports it filed with
8 the SEC.

9 A. Yes.

10 Q. You didn't go out and look at outside data
11 to determine what the market conditions were or
12 anything like that; isn't that fair?

13 A. That's fair. I was focusing strictly on
14 Ameren and Ameren Missouri.

15 Q. And, in fact, really what you were doing
16 when you were looking at Ameren's annual report and
17 transcript for a call with its market analyst in 2008
18 was, you were looking for information to put in your
19 surrebuttal testimony to support your disallowance,
20 isn't that true?

21 A. I was looking for information that would
22 provide more detail than what I had in my direct,
23 yes.

24 Q. Well, you did cite both of those in your
25 surrebuttal testimony; isn't that right?

1 A. Yes.

2 Q. Other than that, the only research that
3 you did that had anything to do with the financial
4 crisis was your conversation with Staff member David
5 Murray in the finance division; isn't that right?

6 A. That is correct.

7 Q. Now, your opinion is that Ameren Missouri
8 had sufficient access to credit facilities in the
9 fall of 2008 to continue the Sioux scrubber project.
10 That's right?

11 A. Repeat your question, please. I want to
12 make sure I understand.

13 Q. I'm sorry. Sometimes I talk too fast.
14 Sorry.

15 Your opinion is that Ameren Missouri had
16 sufficient access to its credit facilities in the
17 fall of 2008 such that it should have continued the
18 Sioux scrubber project; correct?

19 A. Yes.

20 Q. Now, to support your disallowance, you
21 state in your audit report that Ameren and Ameren
22 Missouri had access to \$540 million in a joint credit
23 facility as of December 31, 2008; correct?

24 A. That is correct.

25 Q. And that was based on information that

1 Mr. Murray provided you at the time?

2 A. And also information that I observed in
3 the 2008 annual report in my surrebuttal.

4 Q. At the time you wrote your audit report,
5 you hadn't looked at that annual report?

6 A. That is correct.

7 Q. When you wrote your audit report, you were
8 relying strictly on information Mr. Murray provided
9 you.

10 A. Yes. As our financial expert at the PSC,
11 I relied on his knowledge and firsthand knowledge of
12 Missouri -- Ameren Missouri.

13 Q. You did not independently verify at that
14 time that you decided to disallow the delay costs;
15 true?

16 A. Repeat that, please.

17 Q. Well, in terms of its credit facility, at
18 the time you actually stated your disallowance in the
19 audit report, you had done no independent
20 verification as to even, if that's the question, the
21 access to credit facilities was 540,000,000.

22 A. No.

23 Q. You hadn't looked at the annual report.

24 A. No, because, again, I relied on the
25 expertise of Mr. Murray.

1 Q. Now, just a few weeks ago, however, you
2 actually analyzed the amount that you believe Ameren
3 Missouri had direct access to after taking into
4 account the amount that was lost to Lehman Brothers
5 bankruptcy and outstanding short-term debt at the
6 time; isn't that right?

7 A. That is correct.

8 Q. And that appears in Schedule 1 of your
9 surrebuttal testimony.

10 A. Yes, it does.

11 Q. And at that time you determined that
12 Ameren Missouri had direct access to \$205 million of
13 that credit facility; isn't that correct?

14 A. The 500,000,000? Yes.

15 Q. Where did we get the 205 at?

16 A. Oh, you mean after they -- after you
17 consider what they've already drawn? Yes, 205
18 million.

19 Q. Yes. Your Schedule 1 to your surrebuttal
20 testimony says that, really, Ameren's access to that
21 credit facility was 205 million, not 540.

22 A. Correct.

23 Q. Even with that, though, your opinion
24 continues to be that Ameren Missouri had sufficient
25 access to credit in order to continue the Sioux

1 project; isn't that right?

2 A. Yes.

3 Q. Ms. Grissum, isn't the true question for
4 you simply this: Why would the Company add \$31
5 million to a project when they could have continued
6 the project and drawn the \$31 million out of the
7 credit facility?

8 A. And it's unfortunate that you feel that my
9 response in my first deposition was that I was
10 looking strictly at the 31,000,000, and I think I
11 clarified in my second deposition that I would have
12 done more of a capital budgeting analysis, and now
13 that I know that Ameren Missouri was proposing to cut
14 76,000,000 in costs out of their budget for that year
15 in response to the financial crisis, I would have
16 looked at how much the cost would have been to
17 finance that \$76 million and at what cost and compare
18 that amount to the 31,000,000 to see which approach
19 was more cost beneficial.

20 Q. I certainly understand why you're saying
21 that today, but in your deposition when I asked you
22 your opinion, and it was well after your audit
23 report, that was the question that you said. I
24 actually accurately stated what you told me in your
25 deposition; isn't that correct?

1 A. And I will agree that's what it says in my
2 deposition, in my first one. And in my second one, I
3 realized that you had taken that -- or you had gained
4 that perspective from what I said, so I cleared it up
5 in my second deposition.

6 Q. Ms. Murray -- I'm sorry.

7 Ms. Grissum, that analysis, regardless of
8 when you held that opinion, or when you changed that
9 opinion, that analysis focuses only on the Sioux
10 project; true?

11 A. Repeat that, please.

12 Q. When you look at strictly, well, I've got
13 \$31 million in delay costs and I have a credit
14 facility that's at least \$205 million, that analysis
15 focuses only on the Sioux project; isn't that right?

16 A. It does focus on the Sioux project.

17 Q. Not on any other capital expenditures or
18 operating and maintenance expenses or even just
19 operating expenses; isn't that right?

20 A. That is true. And like I said, I
21 requested those types of analysis in DR 139, and I
22 did not get it provided to me --

23 Q. Ms. Grissum --

24 A. -- so I had nothing else to look at.

25 Q. We'll talk about that 139 in a minute.

1 And you also understand --

2 A. Thank you.

3 Q. -- that your attorney is going to get a
4 chance to come up and let you explain; correct?

5 A. Sure.

6 COMMISSIONER DAVIS: CHAIRMAN GUNN.
7 Judge, can you instruct Ms. Grissum to answer the
8 questions, please.

9 JUDGE WOODRUFF: Yes, Ms. Grissum, just
10 answer the questions that are asked rather than
11 elaborating, unless somebody asks you to do that,
12 decipher it.

13 BY MR. TRIPP:

14 Q. In your audit report, in any deposition
15 you've given me, in our surrebuttal testimony, you
16 haven't identified any capital project or any
17 operations or maintenance costs that the Company did
18 not defer that you believe it could've deferred or
19 delayed so that it could've continued funding the
20 Sioux project and not delayed construction: isn't
21 that true?

22 A. That is true.

23 Q. And despite this, you state in your
24 surrebuttal that Ameren Missouri stated liquidity
25 concerns did not justify the slowdown; isn't that

1 right?

2 A. Correct.

3 Q. You did no analysis in your audit report,
4 after any deposition I gave you, in your surrebuttal
5 testimony as to what Ameren Missouri's actual needs
6 for capital was at the time; isn't that correct?

7 A. That is correct.

8 Q. When you spoke with the finance expert,
9 Mr. Murray, you didn't even talk about liquidity when
10 you were preparing your audit report; isn't that
11 true?

12 A. I don't believe we did.

13 Q. And although you didn't know at that time
14 whether Mr. Murray had done any liquidity analysis,
15 you didn't even think you needed to know that; isn't
16 that correct?

17 A. I know that we did not discuss it.

18 Q. You didn't even think you needed to know
19 it; isn't that true?

20 A. You apparently have something in one of my
21 depositions that I maybe said something to the
22 contrary, so if you could point me to that, I would
23 like to review that.

24 Q. Yes. Let's go back to your first
25 deposition, page 90.

1 A. Okay.

2 Q. At line 12 -- are you there?

3 A. Yes.

4 Q. I asked you this question, Well, you're
5 the one proposing a disallowance because you don't
6 believe that the project should have been delayed.
7 Wouldn't that be important for you to have the
8 information that you're relying upon to draw that
9 conclusion? It's pretty significant.

10 Your answer was this: Well, I'm not
11 relying on his financial knowledge and his expertise
12 with Ameren Missouri in particular. I don't know
13 that I needed to know what analysis he performed or
14 he provided details of it. I was seeking his
15 financial opinion based on being the financial expert
16 for the Commission. Did I read that accurately?

17 A. Yes, you did.

18 Q. You told me that you didn't even know if
19 you needed to know that information; isn't that
20 right?

21 A. I didn't need to know the specifics of his
22 analysis, because I was relying on his expertise
23 and --

24 Q. Ms. Grissum, you didn't even know that
25 he'd done any analysis; isn't that fair?

1 A. I did not know what analysis he performed
2 before giving me the information, yes.

3 Q. Or if he had performed an analysis; isn't
4 that fair?

5 A. That's fair.

6 Q. As you sit here today, though, you know,
7 that David Murray did not do a liquidity analysis;
8 isn't that correct?

9 A. That is correct.

10 Q. So at the time you decided to disallow
11 these costs, you had no idea if Ameren Missouri had
12 sufficient liquidity in the fall of 2008 to continue
13 construction and to meet its daily operational needs;
14 isn't that true?

15 A. I did not do a liquidity analysis so, yes,
16 that's true.

17 Q. That wasn't the question I asked you.

18 A. I'm sorry.

19 Q. The question I asked you: At the time you
20 decided to disallow those costs, you had no idea if
21 Ameren Missouri had sufficient liquidity in the fall
22 of 2008 to continue construction and meet its daily
23 operational needs; isn't that true?

24 A. That is true.

25 Q. And actually, you don't have any idea as

1 you sit here today; isn't that correct?

2 A. No, I do not.

3 Q. So basically, your reasoning is really
4 like this: This is -- my daughter says she need a
5 laptop for school next year, costs \$500. She looks
6 at her checkbook. She sees she has \$1000, so she
7 buys it now. Doesn't matter that she's got a rent
8 payment due of \$450, a car payment of \$125, that she
9 might need groceries next week or she may have an
10 unexpected expense because she has an illness or an
11 accident. She goes in and spends the \$500 leaving
12 herself with little or no reserve.

13 Isn't that really the reasoning that you
14 used to base your disallowance on this project.

15 A. Can I have you repeat that example? I'm
16 sorry. You kind of lost me.

17 Q. Yeah. I'll be happy to.

18 A. Okay.

19 Q. My daughter, she needs a computer for
20 school next year, 500 bucks. She looks at her
21 checkbook. Oh, I've got \$1000, so she goes and buys
22 the computer without any regard to whether she had to
23 pay rent in two weeks, 450 bucks, a car payment of
24 \$125. She has no groceries for next week and she may
25 have an illness and she may have to go to the

1 doctor. Without any regard to that, she buys that
2 computer.

3 Isn't that the same analysis that you
4 used to propose a disallowance on this project for
5 Ameren Missouri?

6 A. I don't believe that it is. I know I did
7 not perform the analysis, but that does not mean that
8 I didn't feel that the Company should have done that
9 analysis and provided it to me in DR 139, so I don't
10 think I can agree that I didn't think it was
11 important.

12 Q. In your audit report you cited the
13 response to DR 139; correct?

14 A. Yes.

15 Q. There's no place in that audit report
16 where you indicate that the Company should have
17 provided me with a liquidity analysis, but they
18 didn't; isn't that correct?

19 A. Unfortunately, it does not.

20 Q. And actually, in your first deposition you
21 told me that you had been provided all of the
22 information that you needed in order to arrive at the
23 decision that you made to propose your disallowance;
24 isn't that correct?

25 A. Again, you'll have to point me to the

1 deposition and let me read.

2 Q. Be happy to.

3 A. Please.

4 Q. Why don't you turn to page 66 of your
5 first deposition. The first question I asked you at
6 line 11 on page 66 was, Is there any pertinent
7 information that the Company -- that you've requested
8 that the Company refused to provide you? I'm talking
9 not in the same things that they're still getting it
10 for you, but they just said, No, will not give it to
11 you?

12 And your answer was, I'm thinking back to
13 the objections, and although they've objected, I
14 think they've given sufficient-enough response that I
15 can make a sufficient-enough response from that
16 material. Isn't that correct?

17 A. Yes.

18 Q. And on page 68, line 2, my question was,
19 So at least up to that point --

20 A. Excuse me. Let me get to that.

21 Q. I'm sorry. I forget yours is different
22 pages.

23 A. Yeah.

24 Q. Are you there?

25 A. Yes.

1 Q. Question line 2, So at least up to that
2 point you got all the pertinent information that you
3 questioned. Fair? Your answer was, Correct.

4 A. Yes. By the time of this deposition, the
5 Company had given me additional information regarding
6 the 31,000,000.

7 Q. Now, in your surrebuttal testimony, which
8 you filed after that first deposition --

9 A. Yes.

10 Q. -- are you able to point me to any place
11 where you say, The Company did not provide me a
12 liquidity analysis?

13 A. Hang on just a second. I do not use the
14 specific phrase that they did not provide me with the
15 liquidity analysis. No, I do not.

16 Q. All right. Now, let me ask you -- let me
17 move on and ask you a few more questions about your
18 surrebuttal testimony. In your surrebuttal
19 testimony -- and I believe it's at page 8, line 6
20 through 25.

21 A. Okay.

22 Q. You make the statement that Ameren had
23 more flexibility to delay the scrubbers in Illinois
24 in the fall of 2008 than it did at Sioux; isn't that
25 correct?

1 A. I believe I say that it likely had more
2 flexibility.

3 Q. That's because you didn't know; isn't that
4 fair?

5 A. I don't know any specifics other than the
6 fact that they were trying to get away from EPA,
7 which could've moved some of those projects out to a
8 much further, later date.

9 Q. I heard you just say that they were trying
10 to get away from EPA. Let's talk about what you're
11 saying there. You, actually, in the audit report and
12 in your deposition when I asked you about this -- in
13 your surrebuttal testimony and in your deposition
14 when I asked you about this, you were under the
15 impression that they had gotten a waiver of some
16 environmental requirements that would've relaxed the
17 requirements for them to complete the scrubber
18 projects in Illinois; isn't that true?

19 A. That was my understanding based on what I
20 was reading, yes.

21 Q. But you agree with me that you don't know
22 whether a waiver was granted or not --

23 A. That is true.

24 Q. -- right?

25 And, in fact, you don't even know which

1 plants in Illinois for which the waiver was being
2 sought; isn't that true?

3 A. I'd have to review my deposition, but I
4 don't -- I don't recall sitting here today which --
5 which projects were impacted by that.

6 Q. You have absolutely no idea.

7 A. I would assume it was Duck Creek and
8 Coffeen since they had scrubbers.

9 Q. I know that's your assumption, but the
10 fact is, you don't know; isn't that true?

11 A. That is true.

12 Q. At page 6 of your surrebuttal you state
13 that the position that the Company had anticipated on
14 drawing -- let me strike that.

15 I forgot I wanted to ask you another
16 question about your Illinois comment. In your
17 surrebuttal testimony, after you talk about the fact
18 that the Company, perhaps, may have had more
19 flexibility to delay those scrubbers in Illinois as
20 opposed to the Sioux project, you give a discussion
21 about AFUDC; isn't that right?

22 A. Yes, I do.

23 Q. But you're willing to assure this
24 commission that you're not implying that Ameren
25 favored nonregulated at the expense of its regulated

1 facilities; isn't that true?

2 A. True, I am not implying that.

3 Q. All right. Let's go back to page 6 of
4 your surrebuttal, and I want you to look at lines 6
5 through 8 on page 6.

6 A. Yes.

7 Q. In your surrebuttal, you state, The
8 position that the Company -- that had the Company
9 anticipated on drawing on its credit facility in the
10 fourth quarter of 2008, that it could have refinanced
11 that amount with long-term debt; isn't that right?

12 A. Yes.

13 Q. You initially told me the basis for that
14 conclusion was a transcript of statements made by
15 Mr. Baxter in November of 2008 in a call with market
16 analysts; isn't that true?

17 A. That particular sentence?

18 Q. That's what you told me the basis for that
19 sentence was; isn't that true?

20 A. I said that in a deposition?

21 Q. Let's look at your second deposition, page
22 61.

23 A. Page again?

24 Q. 61, please.

25 A. Okay.

1 Q. Actually, the questioning about that
2 passage starts at page 60.

3 A. Okay.

4 Q. And I asked you about this, actually,
5 before we took a recess, but after the recess, we
6 returned to the questions, and I asked you beginning
7 at line 10 -- on page 6 at line 6 through 8,
8 Ms. Grissum, you concluded that if Ameren had
9 anticipated drawing on its credit facility during the
10 fourth quarter of 2008 that this could've been
11 refinanced with long-term debt as demonstrated by
12 Ameren's ability to issue debt at its Illinois
13 subsidiaries; correct?

14 A. Yes.

15 Q. Your answer was, That's correct. That's
16 what I said. Correct?

17 A. Yes.

18 Q. And then the question was, And you said
19 that you drew that conclusion from looking at the
20 transcript of the conference call on November 4,
21 2008, with market analysts; correct?

22 A. Yes.

23 Q. And that was the answer you had given me
24 before the break; correct?

25 A. Yes.

1 Q. So I've asked you to identify what
2 portions of the transcript that led you to that
3 conclusion, Can you do that? And your answer was, I
4 believe I can. The comments about Illinois.

5 Does this refresh your memory about our
6 discussion at that time?

7 A. Yes.

8 Q. All right. And then when we looked at
9 that, you realized that, actually, Mr. Baxter, in
10 fact, said they had no plans to issue debt in 2008;
11 correct?

12 A. Is there -- I'm not seeing where you're
13 referring to. Now you've jumped on me.

14 Q. I'm sorry. Let me go back to it, because
15 I'm just trying to shorten this up a little bit.

16 A. Okay. Well, I think it's important to
17 leave in that based on Mr. Baxter's original
18 comments, based on page 14, I had a conversation with
19 Mr. Murray, so that I think it's important to leave
20 that in.

21 Q. And I understand that, and we'll get to
22 that.

23 A. Okay.

24 Q. So when I asked you at page 61, line 14,
25 I'm actually referring you to, actually, the call

1 transcript you pointed me to; isn't that fair?

2 A. Yes.

3 Q. Then I say, In Mr. Baxter's response
4 there, the first thing he says is that they're taking
5 aggressive actions to do several things. Yes?

6 A. Yes.

7 Q. One is certainly to reduce levels of
8 spending to limit the need for incremental finances;
9 correct?

10 A. Yes.

11 Q. Or to reduce the level of financing that
12 we have to make it cross our enterprise during these
13 choppy and turbulent markets; correct?

14 A. Yes.

15 Q. So the first thing out of his mouth is, We
16 are reducing capital expenditures; true?

17 A. Yes.

18 Q. So we think that those plans certainly go
19 a long way in terms of what plans we may have to do
20 in terms of equity or, really, frankly, debt
21 finances; true?

22 A. Yes.

23 Q. So as we said earlier in the year, we had
24 no plans for the rest of 2008 to issue equity;
25 correct?

1 A. Yes.

2 Q. And so somehow -- and now, 62, line 23, So
3 somehow that quote led to you conclude that Ameren,
4 if it did actually draw on its credit facility, it
5 could've refinanced with long-term debt --

6 A. And again, I go back to my conversation
7 with Mr. Murray. I think we have to keep that all in
8 context.

9 Q. I understand why. I understand, but
10 that's true, isn't that, what I read?

11 A. Yes.

12 Q. So it's fair to say -- this is on page 63,
13 line 8 -- first of all, that there's nothing in the
14 November 4, 2008, transcript that in and off itself
15 supports the conclusion that's stated on page 6, line
16 6 through 8; fair? And your answer was, Directly
17 that is fair. Correct?

18 A. That is true.

19 Q. And you mentioned several times right
20 there when we were going through that series of
21 questions, Ms. Grissum, that you had a conversation
22 with Mr. Murray; right?

23 A. Yes.

24 Q. Prior to this, though, you told me you'd
25 had no conversations with Mr. Murray; isn't that

1 fair?

2 A. Again, you need to point me to wherever I
3 seem to be contradicting myself so I can review it.

4 Q. Well, it was actually the next question.

5 A. Okay.

6 Q. Go back to page 63, line 16. You told me
7 before the break that the only thing that you talked
8 about with Mr. Murray was Schedule 1; correct? And
9 you said, I believe I did say that.

10 A. Correct. And then in the next Q and A I
11 indicated I misspoke.

12 Q. Well, let's make sure we get it in.
13 That's not true, and your answer was, That is not. I
14 misspoke. This was the only other item that I spoke
15 to him about that I'm aware of. Correct?

16 A. Correct.

17 Q. Still not finished, though, with that, are
18 we? You didn't actually even write that line in your
19 surrebuttal testimony; isn't that true?

20 A. No, I did not.

21 Q. What you did was, you took your
22 surrebuttal testimony, you e-mailed it to Mr. Murray,
23 and he sent it back, a red-lined version; correct?

24 A. He did.

25 Q. And he inserted that line.

1 A. He offered a suggestion, yes, and I
2 adopted it.

3 Q. But you didn't cite him as a reference.
4 You adopted it as your own testimony; isn't that
5 true?

6 A. That is correct.

7 Q. And you don't cite anything in the -- your
8 surrebuttal testimony indicating that he was even the
9 source for that information, let alone write it.

10 A. That is correct.

11 Q. In fact, that's not the only thing he's
12 written for you; correct?

13 A. He wrote the one paragraph in the prudence
14 and audit review, and there were a couple of other
15 sentences that he red-lined for me, yes.

16 Q. When you say that one paragraph in the
17 audit report, what you did was, you took your audit
18 report and you sent it to him, and you left a blank
19 for a paragraph.

20 A. Yes.

21 Q. And what you did then was, he e-mailed you
22 a paragraph to insert.

23 A. Yes.

24 Q. You inserted it.

25 A. Yes.

1 Q. And that paragraph was the paragraph that
2 you rely on to support the disallowance in this case;
3 true?

4 A. Yes, because that was a memorialization of
5 the conversation we had had previous to me making the
6 disallowance.

7 Q. He wrote it?

8 A. Yes.

9 Q. You put it in.

10 A. Yes. I accepted it.

11 Q. All right. I want to follow up on a
12 thought that Ameren Missouri could have accessed the
13 long-term debt market in the fall of 2008. You have
14 no idea what the interest rates would have been in
15 November 2008 for long-term debt; isn't that true?

16 A. I believe I do now, but only as a result
17 of looking at those rates after your deposition on
18 the 22nd.

19 Q. Okay. So you didn't at the time you did
20 your audit report.

21 A. Correct.

22 Q. Didn't at the time you did your
23 surrebuttal testimony.

24 A. Correct.

25 Q. You didn't at the time I deposed you

1 either time; correct?

2 A. Correct. I realized it would be a higher
3 rate, but I did not look to see specifically what
4 that rate would have been.

5 Q. You've not performed any analysis to
6 determine the difference in interest costs had Ameren
7 Missouri issued \$350 million of long-term debt in
8 November 2008 as opposed to March of 2009; isn't that
9 true?

10 A. I did not.

11 Q. And you're unable to tell me how this
12 proposal to finance long-term debt that you suggest
13 could have happened, how that's any different than
14 Ameren Missouri's request that it made to the Staff
15 in October of 2008 to issue long-term debt. Wasn't
16 that correct? That's your testimony?

17 A. That's correct, and I believe that it
18 was --

19 Q. That was your testimony at the time --

20 A. Okay.

21 Q. -- right?

22 I understand it may have been changed
23 since the last time I deposed you but --

24 A. No, I was going to -- going to be more
25 specific.

1 Q. Well, go ahead.

2 A. I mean, what I was going to say was, I
3 think what you're saying here is that you believe
4 Staff would have opposed the financing that was
5 discussed with them on October 21 during the
6 conference call. And I believe as we heard this
7 morning, that was not Staff's -- it was -- it wasn't
8 that Staff was going to not approve or recommend.
9 They had concerns about the amount that was being
10 requested, so I don't know that I can agree with what
11 you just asked me.

12 Q. Well, when I asked you in your deposition,
13 you agreed with me; correct?

14 A. Again, you'll have to point me to it and
15 let me read it in context.

16 Q. While I'm finding that cite, you didn't
17 even know about that conference call until
18 Mr. Birdsong's rebuttal testimony was filed; correct?

19 A. That is correct.

20 Q. In fact, you weren't present during the
21 conference call.

22 A. I was not a party to that conference call.

23 Q. And you've not seen any notes from Staff
24 as to what actually occurred in that conference call?

25 A. No notes.

1 Q. No. And so what you're relying on is what
2 others have told you in this case after you've
3 already proposed a disallowance and while we're in a
4 contested hearing on that issue; correct?

5 A. Correct.

6 Q. Actually, I think what you told me in your
7 deposition -- it's on page 74.

8 A. First or second one?

9 Q. Oh, yeah. That's right. Number two.

10 A. Okay. Line, please.

11 Q. Yes. I don't want to misstate what you
12 told me. It was on -- the question began on line 17
13 of page 74, and my question was this: Well, tell me
14 why your suggestion that Ameren Missouri could have
15 refinanced with long-term debt in the fall of 2008 is
16 different than the proposal Ameren Missouri discussed
17 with Staff in a conference call on October 21, 2008.

18 And what you told me at that time was, I
19 wasn't part of that conference call so I can't speak
20 to that. Correct?

21 A. That is correct. Mr. Murray was
22 addressing that conference call.

23 Q. Now, for Ameren Missouri to issue long-
24 term debt, you're aware it would have to get
25 Commission approval to do that; correct?

1 A. Correct.

2 Q. Are you aware that at the time, at least,
3 with regard to Ameren Missouri or even today, Staff
4 would not support an authorization of long-term debt
5 in excess of the Company's outstanding short-term
6 debt?

7 A. I do not know that that's a criteria that
8 our finance department looks at or uses.

9 Q. You don't know one way or the other?

10 A. No, I do not.

11 Q. Do you have any idea how much outstanding
12 debt Ameren Missouri had in November of 2008?

13 A. Not in November of 2008. I do know what
14 they had out in December.

15 Q. The decision to delay the project was made
16 in November?

17 A. Sometime in November, yes.

18 Q. Now, at page 4 in your surrebuttal, you
19 state that -- and I believe it starts at line 6. I
20 hope I can find it here. Oh. Your question starts
21 at line 16. I apologize.

22 Your question was, Did Ameren Missouri
23 have access to other funds in addition to the credit
24 facilities mentioned above? Your answer was, Yes.
25 And then you go on to cite some information that you

1 believe supports that answer; correct?

2 A. Correct.

3 Q. All right. When you talk about other
4 funds, you think that might refer to mortgage bonds
5 or other long-term debt but, frankly, you were
6 unconcern; correct?

7 A. It would also include cash on-hand.

8 Q. At the time -- we talked about this in
9 your deposition after you filed this surrebuttal
10 testimony. You were frankly uncertain as to what it
11 included; isn't that true?

12 A. Correct.

13 Q. Nevertheless, you're unable to provide me
14 with any specific amount of these other funds that
15 were available at the time; isn't that correct?

16 A. Other than what I may have stated in my
17 testimony, no, I do not.

18 Q. Couldn't give me a specific amount,
19 though, isn't that true, Ms. Grissum?

20 A. Correct.

21 Q. A few last questions for you. When you
22 told me that you hadn't reviewed the Company's
23 response to Staff Data Request 442 last Friday, I
24 asked you to look at it before the hearing today.

25 A. Did you.

1 Q. Did you do that?

2 A. I did. I looked at all the data requests.

3 Q. Well, because at the time you told me you
4 didn't know if you'd have the time to do it or not.

5 A. I made the time.

6 Q. Good. You saw that Data Request 442
7 demonstrated that Ameren Missouri categorized its
8 capital expenditures and its operating and
9 maintenance expenses and conducted an analysis to
10 determine what reductions it could make in the fall
11 of 2008; isn't that true?

12 A. It did show what reductions they were
13 proposing to make, yes.

14 Q. You did not dispute that in the fall of
15 2008 that Ameren Missouri reduced capital
16 expenditures; isn't that correct?

17 A. I do not dispute that.

18 Q. And that included not only the delay of
19 the Sioux project, but the delay of every single
20 plant maintenance outage at the time; true?

21 A. I don't know if it was every, but there
22 was a list that told me which projects they were
23 looking at, consideration to delay or defer.

24 Q. You're not aware of any other outages that
25 were -- that continued as planned. Fair enough?

1 A. Fair enough.

2 Q. All right. And there were also, as you
3 well know, having looked at all the data request
4 responses, large reductions at Ameren's nonregulated
5 plants as well; true?

6 A. Yes, there were.

7 Q. So instead of buying a laptop, like my
8 daughter, isn't it true that Ameren Missouri did the
9 reasonable thing by analyzing its needs and making
10 the difficult decision to cut back its capital
11 expenditures in the fall of 2008?

12 A. I believe the analysis that's in 442 is a
13 part of what I would have expected them to do, but
14 it's not all of what I expected them to do, so I
15 don't think I could agree with that.

16 Q. You will agree that, unlike my daughter,
17 Ameren Missouri look at what it was -- money that was
18 going out the door and what it had in its available
19 credit facilities, and it made those decisions in
20 fall of 2008; correct?

21 A. Say that again, please.

22 Q. I'll try to.

23 A. I'm sorry.

24 Q. That's all right.

25 A. It just gets confusing sometimes.

1 Q. Unlike my daughter with her laptop, you
2 will agree with me, won't you, that Ameren Missouri,
3 in the fall of 2008, looked not only at how much
4 money it had, how much credit it had available,
5 whether or not that credit was firm or not, and
6 looked at its expenses and then made a decision to
7 reduce its capital expenditures so that it could
8 preserve its liquidity in the fall of 2008; correct?

9 A. If we're speaking strictly to DR 442's
10 response, they did look at reducing their
11 expenditures, and in another DR response they did do
12 a liquidity analysis. I will agree to those two
13 things.

14 Q. Well, they also did a specific analysis
15 with regard to the Sioux plant; true?

16 A. Could you provide me with a copy of that
17 so I could review it?

18 Q. Sure.

19 A. I've looked at thousands of documents at
20 this point, so I --

21 Q. When I said "specific analysis," I'm going
22 to show you, this has been admitted into evidence as
23 153-HC, and it's the data request -- the response to
24 Data Request 434. All right.

25 A. Okay.

1 MR. TRIPP: May I approach?

2 JUDGE WOODRUFF: You may.

3 MR. TRIPP: Sorry.

4 BY MR. TRIPP:

5 Q. Have you had time to review that,
6 Ms. Grissum?

7 A. Yes. This was what was provided to me as
8 Attachment No. 29 to DR 130, and there is a page in
9 there that shows an outage shift summary, which was
10 laying out an estimated 53.8 million to delay the
11 project for one full year.

12 Q. So not only was there an analysis across
13 the board of operating expenses, maintenance
14 expenses, and all capital projects, they actually did
15 a specific analysis as to what the delay would be for
16 the Sioux project; isn't that fair?

17 A. They did do an analysis to estimate what
18 they believed the impact and increased costs would
19 be, yes.

20 Q. And you understand that the delay that's
21 described in that exhibit is not actually the delay
22 that ended up happening; fair?

23 A. That is correct.

24 MR. TRIPP: No further questions.

25 JUDGE WOODRUFF: All right.

1 Questions from the Bench?

2 Commissioner Davis.

3 COMMISSIONER DAVIS: Ms. Grissum, is there
4 anything else in your testimony that was written by
5 someone else that you haven't identified?

6 THE WITNESS: I don't believe there is.

7 COMMISSIONER DAVIS: You don't believe
8 there is?

9 THE WITNESS: There is not.

10 COMMISSIONER DAVIS: Okay. I mean, were
11 you told to -- told to write anything else and throw
12 it in and it was just accepted or --

13 THE WITNESS: No. This was my analysis,
14 my writing. I did have it reviewed for accuracy.

15 COMMISSIONER DAVIS: Except for the parts
16 that you've already acknowledged that Mr. Murray
17 wrote.

18 THE WITNESS: Correct.

19 COMMISSIONER DAVIS: No further questions,
20 Judge.

21 JUDGE WOODRUFF: Commissioner Jarrett.

22 COMMISSIONER JARRETT: I don't have any
23 questions. Thank you.

24 JUDGE WOODRUFF: Commissioner Kenney.

25 COMMISSIONER KENNEY: Just a couple of

1 brief ones. Ms. Grissum, thank you for being here.

2 THE WITNESS: Thank you.

3 COMMISSIONER KENNEY: You probably heard
4 me ask this question earlier to Mr. Murray, and it's
5 with reference to the Stebbins tile that was inserted
6 in the Sioux plant, the scrubbers, rather.

7 If during the slowdown, if that slowdown
8 allowed Ameren to learn lessons from the other plants
9 in Illinois, and those lessons resulted in a savings
10 in excess of \$31 million, would it still be your
11 recommendation to make that disallowance?

12 THE WITNESS: I don't believe it would be.

13 COMMISSIONER KENNEY: And then you did not
14 do your own independent liquidity analysis, because
15 you were expecting that Ameren would have done such
16 an analysis in response to DR 139?

17 THE WITNESS: Yes. In DR 139, I
18 specifically requested scenario analysis and economic
19 analysis that supported their decision to delay the
20 Sioux project.

21 COMMISSIONER KENNEY: What would you have
22 wanted that liquidity analysis to have yielded to
23 have satisfied you that it was a prudent decision?

24 THE WITNESS: Well, I understand that the
25 liquidity is the reason given by the Company, but in

1 last night when you got here or this morning before
2 your testimony?

3 A. Yes, I did.

4 Q. About this particular case?

5 A. Yes. That's not uncommon for Staff to do
6 that.

7 MR. TRIPP: And I need an exhibit number,
8 please.

9 JUDGE WOODRUFF: Okay. Your next number
10 is 156.

11 MR. TRIPP: I'm sorry, Judge. What number
12 did you say that was?

13 JUDGE WOODRUFF: 156.

14 (Ameren Exhibit No. 156
15 was marked for identification.)

16 JUDGE WOODRUFF: Do you have copies for
17 the Bench.

18 MR. TRIPP: I apologize. I don't. I'll
19 provide those this afternoon or in the morning. I
20 just didn't anticipate --

21 JUDGE WOODRUFF: That's fine. Can you
22 just tell me what it is?

23 MR. TRIPP: Yes. Exhibit 156 is the
24 Company's initial response to Data Request 139.

25 JUDGE WOODRUFF: I just wanted to have

1 something.

2 MR. TRIPP: Sure. And I'll provide copies
3 for the Commission and everyone else.

4 May I approach.

5 JUDGE WOODRUFF: Yes.

6 BY MR. TRIPP:.

7 Q. Ms. Grissum, this is Staff Request 139 --

8 A. Yes.

9 Q. -- and company's first response; true?

10 A. It is.

11 Q. All right. And I apologize to have to
12 read over your shoulder. I just don't have a copy.

13 A. That's okay. This is a narrative. It
14 does not have all the attachments, but I will accept
15 that this is their initial response.

16 Q. You actually cite the response in set it
17 out in your audit report; correct?

18 A. Let me look back.

19 Q. Go ahead.

20 A. Do you have a particular page in mind?

21 Q. I tell you what, I'll have someone look
22 for that and go back.

23 Cheryl, would you look?

24 MS. LOBB: For? I'm sorry.

25 MR. TRIPP: Reference to DR 139 in the

1 audit report.

2 And we'll come back to that question.

3 MS. LOBB: Okay.

4 BY MR. TRIPP:

5 Q. Nevertheless, you received the answer to
6 this data request; correct?

7 A. Yes, I did.

8 Q. Actually, I've highlighted the portion
9 that you are now referring to about what you
10 anticipated you would get but didn't get.

11 A. Yes.

12 Q. And that states, Include copies of any
13 scenario or economic analyses performed by Ameren,
14 Ameren Services, AmerenUE, POS, or other affiliated
15 company to justify any actions taken by Ameren,
16 Ameren Services, AmerenUE, Project Operation
17 Services, or other affiliated company; isn't that
18 correct?

19 A. That is correct.

20 Q. And so you got this response --

21 A. Yes.

22 Q. -- and you followed up on this response,
23 didn't you? You asked for some more information
24 on --

25 A. I asked for more information about the \$31

1 million, yes.

2 Q. And it was about the construction costs
3 and how those got calculated and the AFUDC costs and
4 how those got calculated?

5 A. Yes. I was trying to determine if the \$31
6 million was the appropriate number to be proposing
7 for disallowance.

8 Q. And in fact, as you hit here today, you're
9 comfortable with that number?

10 A. I am.

11 Q. Okay. So you followed up, and the Company
12 filed several responses after you kept indicating you
13 hadn't gotten enough information on the 18 and the
14 13,000,000; correct?

15 A. Correct.

16 Q. Never did you mention or send a data
17 request requesting more information about any
18 liquidity analysis or anything else that you thought
19 you should have gotten that you didn't get; isn't
20 that fair?

21 A. That is fair.

22 Q. And you didn't mention it in your first
23 deposition; correct?

24 A. I don't believe I did.

25 Q. All right. I think you did mention it

1 Friday in your last deposition. That was the
2 first --

3 A. I may have.

4 Q. Okay. But nonetheless, the information --
5 until just recently, the Company had no notice that
6 you anticipated that they would provide you
7 information that you didn't think you'd gotten in
8 response to 139 relating to a liquidity analysis or
9 any scenario?

10 A. Say that again, please. I'm sorry.

11 Q. I don't know if I can. I'll try to.

12 A. All right. I think I heard what you said,
13 but I wanted to be sure what I interpret.

14 Q. Fair enough.

15 Last Friday was the first time that you
16 gave any indication to the Company that they didn't
17 provide a liquidity analysis or an economic analysis
18 that you thought you should have gotten in response
19 to DR 139; isn't that fair?

20 A. Correct.

21 Q. In fact, in your deposition on Friday,
22 when you stated that opinion, we looked at DR 442,
23 the response; correct?

24 A. Yes, you showed that to me.

25 Q. Right. Looked at Mr. Birdsong's response

1 with regard to the analysis of the credit facility
2 and how long that would last; correct?

3 A. Correct.

4 Q. And also looked at the outage summary that
5 the Company prepared at that time; correct?

6 A. Correct.

7 Q. And at that time, at least with regard to
8 the economic analysis, you were even unaware that the
9 Company provided that to the Staff; isn't that true?

10 A. Say that again.

11 Q. Yeah, it wasn't very good. I apologize.

12 JUDGE WOODRUFF: Mr. Tripp, you need to
13 get back to the microphone.

14 MR. TRIPP: Oh. I'm sorry.

15 THE WITNESS: And maybe that's my problem.
16 I'm having a little feedback and not hearing you.

17 MR. TRIPP: I'm sorry. I apologize. I'm
18 not used to the microphone.

19 BY MR. TRIPP:

20 Q. DR 442, the response where Ameren Missouri
21 provided the analysis of the cash flows, the analysis
22 that it was performing with regard to operating and
23 maintenance expenses, capital projects that it could
24 delay or defer, you weren't even aware of that when I
25 took your deposition last Friday; isn't that correct?

1 A. I had not had an opportunity to look at
2 those spreadsheets attached, but I have since done
3 that.

4 Q. So as you sit here today, I understand
5 your testimony to be, Ms. Grissum, that now that
6 you've looked at that information and you've seen the
7 other analysis that the Company's provided to Staff,
8 you still don't believe that the Company has
9 responded properly to DR 139?

10 A. Correct.

11 Q. All right.

12 A. And I'm concerned that that information
13 was not provided when I did submit DR 139.

14 Q. Well, I understand that's your concern
15 about that today but --

16 A. Yeah.

17 Q. -- until last Friday, we didn't know about
18 that concern; fair?

19 A. Fair.

20 MR. TRIPP: All right. I have no other
21 questions.

22 JUDGE WOODRUFF: Okay. You had marked No.
23 156. Do you wish to offer it at this point?

24 MR. TRIPP: Oh, yeah. I'm sorry. I will
25 offer 156.

1 JUDGE WOODRUFF: 156 has been offered.

2 Any objections to its receipt?

3 MR. DOTTHEIM: No objection.

4 JUDGE WOODRUFF: It will be received.

5 (Ameren Exhibit No. 156 was admitted.)

6 JUDGE WOODRUFF: Redirect?

7 MR. DOTTHEIM: Very briefly.

8 REDIRECT EXAMINATION BY MR. DOTTHEIM:

9 Q. Ms. Grissum, if I could direct you to
10 Exhibit 200, the Staff's construction audit and
11 prudence review of the Sioux scrubbers, page 42,
12 lines 3 to 16.

13 A. Yes.

14 Q. And in particular lines 15, 16 -- the very
15 end of line 15 onto 16 -- you sourced that paragraph
16 to Mr. Murray, have you not?

17 A. Yes, I have.

18 Q. Okay. And in your surrebuttal
19 testimony -- and, again, these questions are in
20 response to questions you received in regards to
21 Mr. Murray's input into the Staff's report and
22 surrebuttal testimony.

23 In your surrebuttal testimony, those
24 portions of your surrebuttal testimony that
25 Mr. Murray had input that reflected in your

1 surrebuttal testimony, do you indicate those are a
2 result of comments?

3 A. No, I do not.

4 Q. Those were a result of comments from
5 Mr. Murray?

6 A. Oh, yes, they were a result of comments
7 through the editing process of the testimony, yes.

8 Q. When you say "comments as a result of the
9 editing process," you mean written comments by
10 Mr. Murray?

11 A. Yes, they would be red-lining of the
12 original.

13 Q. When you say red-lining, is that through
14 the -- on the computer, for example, or --

15 A. Yes.

16 Q. -- written --

17 A. That's where you would use a track changes
18 feature, and if you were replacing or editing
19 language, it would draw a line through the language
20 you want to delete and it would put in a different
21 color the comments or suggested change.

22 Q. Yeah. Would you make changes that you did
23 not agree with?

24 A. No, I would not.

25 Q. Was I one of the individuals who reviewed

1 your testimony in the Staff report?

2 A. You were.

3 Q. Okay. Did I make comments?

4 A. Yes, you did.

5 Q. Did you adopt any of my comments?

6 A. Yes.

7 Q. Did you adopt any comments that you didn't
8 agree with?

9 A. No, I did not.

10 MR. DOTTHEIM: No further questions.

11 JUDGE WOODRUFF: Ms. Grissum, you can step
12 down.

13 THE WITNESS: Thank you.

14 JUDGE WOODRUFF: I believe that concludes
15 this issue.

16 Anything else you want to take up today?

17 MR. LOWERY: I don't believe so, your
18 Honor.

19 JUDGE WOODRUFF: All right. It's my
20 understanding, then, that we will not be having a
21 hearing tomorrow, so we will resume on Monday, and
22 I'm assuming we will still be on -- well, it looks
23 like for Monday we've got Taum Sauk --

24 MR. LOWERY: That's correct, your Honor.

25 JUDGE WOODRUFF: -- and municipal

1 lighting, so we'll start with those two, and then the
2 rest of the schedule may be changed.

3 MR. LOWERY: Mr. Thompson did circulate a
4 revised document via e-mail, probably to your
5 Honor --

6 JUDGE WOODRUFF: No.

7 MR. LOWERY: He did not.

8 JUDGE WOODRUFF: We have not seen that.

9 MR. LOWERY: I think he's making sure all
10 the parties were --

11 COMMISSIONER KENNEY: What's on that date?

12 MR. LOWERY: Then we'll be providing it to
13 you.

14 The Taum Sauk. Monday has not changed,
15 as I understand it.

16 JUDGE WOODRUFF: Right. Monday is Taum
17 Sauk and municipal lighting is virtually on the
18 schedule.

19 COMMISSIONER KENNEY: So we haven't
20 decided to when we're going to go back to DSM and
21 energy efficiency?

22 JUDGE WOODRUFF: That's correct. And it's
23 my understanding that Staff would be circulating a
24 revised scheduling proposal at some future time.

25 MR. LOWERY: I believe they circulated it

1 to the parties, and I'm assuming you have to sign
2 off, which I think we expect we'll be submitting that
3 to the Commission -- I don't know -- today or
4 tomorrow, but probably very soon.

5 JUDGE WOODRUFF: Then we are adjourned
6 until 8:30 on Monday morning.

7 (WHEREUPON, the hearing is adjourned
8 until 8:30 a.m. on Monday, May 2, 2011.)

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CERTIFICATE

1
2 I, Nancy L. Silva, RPR, a Certified Court
3 Reporter, CCR No. 890, the officer before whom the
4 foregoing hearing was taken, do hereby certify that
5 the witness whose testimony appears in the foregoing
6 hearing was duly sworn; that the testimony of said
7 witness was taken by me to the best of my ability and
8 thereafter reduced to typewriting under my direction;
9 that I am neither counsel for, related to, nor
10 employed by any of the parties to the action in which
11 this hearing was taken, and further, that I am not a
12 relative or employee of any attorney or counsel
13 employed by the parties thereto, nor financially or
14 otherwise interested in the outcome of the action.

15
16 _____
17 Nancy L. Silva, RPR, CCR
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