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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

December 1, 2008

Jefferson City, Missouri

Volume 18

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

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

JEFF DAVIS, Chairman,
CONNIE MURRAY,
ROBERT M. CLAYTON III,
TERRY JARRETT,
KEVIN GUNN,
COMMISSIONERS.

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1 P R O C E E D I N G S

2 JUDGE WOODRUFF: Let's go ahead and get
3 started. Welcome back for the continuation of the
4 hearing in ER-2008-318, the rate case for AmerenUE.
5 I guess there's a couple of housekeeping things you
6 wanted to bring up, Mr. Lowery?

7 MR. LOWERY: Yes, your Honor. Thank
8 you. We had inquired last Tuesday, I believe, of all
9 the parties as to whether they would have any
10 questions on off-system sales for Mr. Finnell and
11 Mr. Rahrer, who are the production cost modeling
12 experts, and I've heard back from almost everybody
13 and nobody did.

14 Now, I don't think I've heard back from
15 Mr. Mills, for example, but of course, Mr. Rahrer is
16 out of state, Mr. Finnell is not planning to come
17 unless he needs to and/or if the Commissioners were
18 to have questions, but I don't believe there's any
19 issues about the modeling in the case, and if there
20 wasn't an objection, we were going to see if they
21 could be excused.

22 We'd also inquired about Mr. Birk and
23 Mr. Taylor on FAC next week, and I don't think there
24 are any issues related to their narrow issues. It's
25 about efficiency testing and heat rate testing. And

1 so I guess I would inquire of the other counsel this
2 morning that I hadn't heard from whether they had any
3 questions for any of those four folks. And if not,
4 unless the Commissioners did, we can tell them that
5 they don't need to appear and we would just offer
6 their testimony in connection with the issue by
7 agreement.

8 JUDGE WOODRUFF: Okay. Anyone want to
9 respond to that?

10 MR. MILLS: I don't have any questions
11 on heat rate testing and I don't have any questions
12 for Mr. Rahrer or Mr. Finnell about their modeling
13 procedures. I'm not necessarily willing to concede
14 that there aren't any issues about those, but I don't
15 have any questions for them.

16 JUDGE WOODRUFF: Okay.

17 MR. CONRAD: Judge, I will confess to
18 having been overtaken a little bit by the holiday,
19 and I have not heard back from Mr. Johnstone. I do
20 not think we have questions from any of those people,
21 but I would respectfully like to confirm that with
22 him and then I'll certainly let Mr. Lowery know at
23 the earliest opportunity and your Honor also.

24 JUDGE WOODRUFF: All right. And I'll
25 discuss that with the Commissioners as well and let

1 you know as soon as we can.

2 MR. LOWERY: And we'll -- and -- and we
3 can hopefully advise them, you know, by after lunch
4 or something so that we -- if they did have to come.

5 MR. CONRAD: The -- the second is a
6 similar witness issue. Mr. Mark is scheduled to
7 appear on the hot weather rule this morning, and he's
8 also scheduled to appear on vegetation management.

9 We'd inquired of the parties whether or
10 not they could go ahead, and if they had any
11 questions on vegetation management and
12 infrastructure, go ahead and ask those this morning
13 so that he could be excused and then get back to
14 other business.

15 Mr. Zdellar, who really is the primary
16 witness on that issue, will be here this afternoon
17 for the company, so if that was acceptable to the
18 parties, we would -- we would request that we be able
19 to do that with Mr. Mark this morning.

20 MR. CONRAD: It is.

21 MR. LOWERY: We -- we have heard from
22 everybody? I guess we have heard from everybody now,
23 so unless the Commission has an objection to that, we
24 would appreciate being able to handle that issue that
25 way.

1 JUDGE WOODRUFF: Okay. Unless I hear
2 otherwise from one of the Commissioners, that would
3 be fine.

4 MR. LOWERY: The third issue, we had
5 filed a motion to strike just limited portions of the
6 union's testimony last week, and we are assuming that
7 the Commission would intend to take that motion up, I
8 guess, before Mr. -- I believe it's Mr. Datillo is
9 supposed to appear tomorrow. And I guess I'm just
10 asking if, in fact, that's what you intended, that we
11 would just take that up at that time.

12 JUDGE WOODRUFF: It is my intent, and I
13 understand from Staff's filing that the unions intend
14 to file a response, so we'll wait for that and deal
15 with that tomorrow.

16 One other thing. The -- the company
17 filed a motion for leave to file supplemental
18 surrebuttal testimony from Mr. Schukar. I can take
19 that up now if there's not going to be any objection
20 to it if anyone wants more time to look at it.

21 MR. MILLS: Judge, I would like to have
22 more time to look at it. There's a couple of things
23 going on with the issues for tomorrow that I'd --
24 that I'd like to address, and hopefully not until
25 tomorrow or at least at the very end of the day

1 today, which is the request for admissions from
2 Mr. Kind's deposition and the supplemental testimony
3 with regard to off-system sales. And I haven't
4 really -- I know that they're out there.

5 I haven't really had a chance to get to
6 them in any depth at all. I've been focusing on the
7 issues that are up for today. And if we can address
8 those first thing tomorrow or whenever we're done
9 with vegetation management, I would appreciate that.

10 JUDGE WOODRUFF: That's certainly
11 understandable.

12 MR. LOWERY: That was going to actually
13 be my suggestion, that those would just be addressed
14 before we take up the off-system sales issue whether
15 it's first thing tomorrow or right before the issue.

16 JUDGE WOODRUFF: Okay. That will be
17 fine.

18 Anything else we need to take up before
19 we get started?

20 MR. LOWERY: Just one or two minor
21 things. The Entergy issue which is scheduled, I
22 believe, for this week -- is that right,
23 Mr. Dottheim?

24 MR. DOTTHEIM: Yes, that's --

25 MR. LOWERY: For Wednesday?

1 MR. DOTTHEIM: Yes.

2 MR. LOWERY: Staff -- Staff and the
3 company were the only ones that had any -- an issue,
4 and we have reached a resolution on that issue,
5 and -- and it's going to consist of us reading a --
6 or one of us reading a two-sentence stipulation into
7 the record.

8 So I just wanted to advise the
9 Commission that I don't believe it will be a
10 necessity for any of those witnesses to appear again
11 unless the Commission for some reason had -- had --
12 had questions for them. But I -- but I think that
13 issue's been resolved.

14 JUDGE WOODRUFF: Okay.

15 MR. LOWERY: And -- and then finally, on
16 the off-system sales issue, you probably noticed that
17 there are several sub-issues like capacity, Taum Sauk
18 capacity, things like that. I am assuming that when,
19 for example, Mr. Schukar is up on -- for the first
20 time on off-system sales, that all of the cross on
21 all of those sub-issues would be -- take place, and
22 the same for Mr. Kind, et cetera, as opposed to folks
23 getting up three or four times. Is -- is that
24 understanding correct?

25 JUDGE WOODRUFF: That was my assumption

1 unless somebody objects to that.

2 (NO RESPONSE.)

3 JUDGE WOODRUFF: I think that's the way
4 it will go, then.

5 MR. LOWERY: Okay. Thank you.
6 That's -- that's all I had, your Honor.

7 JUDGE WOODRUFF: All right. Very good.
8 I believe the first issue is the hot weather issue?

9 MR. COFFMAN: Yes, your Honor.

10 JUDGE WOODRUFF: And so we'll be doing
11 mini openings on that. Who wants to start on -- for
12 the mini opening?

13 MR. COFFMAN: I suppose it would be
14 appropriate for me since it is an AARP proposal.

15 JUDGE WOODRUFF: That will be fine.

16 MR. COFFMAN: May it please the
17 Commission. I have to comment on the fact that it
18 seems that we're always here talking about cold
19 weather issues in July and hot weather issues in the
20 middle of the winter, but we -- we hope that you pay
21 attention to this issue. And I'm glad to see the
22 Commissioners here today because we do think it's a
23 very important health and safety issue.

24 It's a matter -- hot -- hot weather
25 safety is a matter that has been discussed quite a

1 bit in workshops, in collaboratives over the last few
2 years. And we have a new state law commonly called
3 the hot weather rule which now prohibits certain
4 disconnections when the temperatures are extremely
5 hot. There's some question about whether that
6 changes much because I think most utilities were
7 already making that part of their safety policy not
8 to do that.

9 But there is a remaining problem that we
10 continue to wrestle with as far as hot weather goes,
11 and it's the -- it's -- because as the utilities have
12 argued, I believe correctly, over the hot weather
13 rule debate, that most of the death and serious
14 injury does not occur as a result of disconnection
15 but, in fact, occurs in homes where there is
16 electricity and often air conditioning that's not
17 being used for some reason or another.

18 And so we are here with a proposal for a
19 program that is -- is new, but is a program that
20 would offer a targeted small credit to low income
21 seniors during the hot weather period in order to
22 encourage them to use their air conditioning where
23 they might otherwise not for fear of high cost.

24 And we believe that this is a very
25 important issue and deserves at least some portion of

1 the untold hours and millions of dollars that the
2 Public Service Commission discusses and Missouri
3 policymakers wrestle over involving extreme weather.
4 We already spend all those hours and money discussing
5 extreme cold weather and hypothermia, but in fact,
6 many more people die and suffer serious injury as a
7 result of hyperthermia and extreme heat-related
8 incidents.

9 And there are -- there's an increasing
10 focus on the fact that the reported deaths and
11 injuries that we have are probably under-reported
12 because they are not, you know, standards that
13 coroners use, and these deaths that are heat-related
14 may be reported as something else. And we have
15 evidence on that and would like to discuss that.

16 We'll be presenting the testimony of
17 John Howat and offer him up for cross-examination
18 today. John Howat is a distinguished policy expert
19 from the National Consumer Law Center and has done
20 quite a bit of research on low income energy issues.

21 We believe that one of the reasons that
22 individuals are still at risk is because of the fear
23 of high utility bills, and we believe that there
24 is -- there is some anecdotal reasoning to this and
25 that there is some evidence even from the somewhat

1 flawed survey that AmerenUE has done to show that
2 35 percent or 45 percent of those individuals who do
3 not run their air conditioning do not run it as a
4 result of high cost. We think that that can be
5 addressed and that we can save lives with some
6 version of the program that we're proposing today.

7 Now, I want to take you through what
8 we -- we have done. We have proposed our ideal
9 program in direct testimony, a program that would be
10 offered to all low income seniors. And we're
11 targeting low income at 175 percent of the poverty --
12 federal poverty level. That would have been offered
13 throughout the AmerenUE service territory and cost
14 approximately \$1.46 million.

15 In recognition of the fact that there is
16 still some disagreement and reservation about this
17 program, in surrebuttal we have proposed a pilot
18 program that would be offered in a couple of areas,
19 not -- not too particular where, but to study the
20 issue. And we proposed 22,000 participants still
21 with a credit. That would be about \$23 per month for
22 two months, about a \$47 credit to these individuals.

23 And that program would cost \$474,000.
24 And we are prepared to scale back our program even
25 further, and Mr. Howat is willing to discuss what we

1 might be able to do. We did have a -- we reached
2 somewhat of an agreement with the collaborative
3 earlier this year on a program that would have had
4 2,400 participants, and I think that a program of
5 that nature would at least allow us to study the
6 issue.

7 And so we are asking that at a minimum,
8 this Commission approve a program, something --
9 somewhere in the neighborhood of 100,000 or \$125,000
10 for a limited number of participants, a statistically
11 significant number, to study the issue. And maybe we
12 can get beyond the hypothesizing on each side about
13 whether this program will work or not and get some
14 data that we could analyze.

15 We believe the program is -- is very
16 significant in that it is targeted to those
17 individuals who are most at risk, and it's targeted
18 to the time period when we know that they are at
19 risk. And it seems a shame that we are not
20 addressing this problem when we know to a large
21 degree who is at risk and when they are at risk and
22 that it is such an important safety reason.

23 We're concerned with the economic
24 downturn that individuals, particularly low income
25 seniors, will -- are more likely to not run their air

1 conditioning when it's important for the health and
2 safety going forward in this economy and ask that you
3 at least approve a pilot.

4 I guess -- I guess we go with the other
5 programs. I have one question that I might ask now.
6 We have a revised surrebuttal exhibit. There's
7 nothing new, we simply have removed one of the
8 endorsement letters and I've distributed that to the
9 parties through e-mail. Would it be necessary to
10 refile the entire testimony or simply submit the
11 revised version without that one page?

12 JUDGE WOODRUFF: Why don't you bring it
13 up when the witness gets on the stand.

14 MR. COFFMAN: Okay. Thank you.

15 JUDGE WOODRUFF: We'll discuss it then.

16 MR. COFFMAN: We'll do that.

17 JUDGE WOODRUFF: Any other party other
18 than Ameren want to make an opening on this?

19 (NO RESPONSE.)

20 JUDGE WOODRUFF: Public Counsel, then?

21 MR. MILLS: Just very briefly, Judge.
22 Public Counsel understands the -- the motivation
23 behind this program and agrees that something ought
24 to be done in this area. There are a couple
25 concerns, though, that we have with the program, at

1 least as it was outlined in Mr. Howat's direct
2 testimony, and of course, less so as it's scaled down
3 in the surrebuttal testimony and perhaps even less so
4 depending on what we hear from Mr. Howat today.

5 But the -- the -- one of the biggest
6 concerns is that because the level of expense built
7 into rates is based on an assumption that 50 percent
8 of the eligible participants throughout UE service
9 territory would participate, at any participation
10 level lower than 50 percent, AmerenUE would receive a
11 windfall because they have this money built into
12 rates. And if they're not able to spend it on -- on
13 giving credits to customers because the number of
14 customers don't participate at the level anticipated,
15 then that simply goes to AmerenUE's bottom line.

16 Similarly, the -- the -- the costs
17 estimated for the proposal for outreach and for
18 administration seem to be not well thought out. It's
19 certainly not well -- perhaps they're well thought
20 out, but they're certainly not well documented in the
21 testimony.

22 Public Counsel has concerns that if you
23 simply set administration costs at 15 percent and
24 outreach costs at 15 percent, that -- that those may
25 be way too low or they may be way too high. But we

1 may hear more from Mr. Howat on how those are
2 developed today.

3 So those are the concerns that Public
4 Counsel has on the program. I hope that we will hear
5 something from the witnesses today that will show us
6 a path forward to address those concerns and perhaps
7 put a program like this in place. Thank you.

8 JUDGE WOODRUFF: Thank you.

9 CHAIRMAN DAVIS: Judge, can I inquire of
10 Mr. Mills?

11 JUDGE WOODRUFF: Sure.

12 CHAIRMAN DAVIS: Mr. Mills, you don't
13 have a witness on this issue, do you?

14 MR. MILLS: That's correct.

15 JUDGE WOODRUFF: Okay. Now, Mr. Kind is
16 going to be appearing later; is that correct?

17 MR. MILLS: He -- he will appear on
18 several issues later, yes.

19 JUDGE WOODRUFF: Okay.

20 CHAIRMAN DAVIS: Okay. Well, let me go
21 ahead and ask you, what's different here in this case
22 with the -- with the program proposed by AARP than
23 what Aquila proposed in EO-2007-395 where they were
24 seeking, you know, a fixed bill program and Mr. Kind,
25 in essence, opposed that fixed bill program because

1 it would lead to increased energy consumption? Maybe
2 that wasn't the only reason Mr. Kind opposed it.

3 MR. MILLS: Well, I can certainly tell
4 you one of the differences. One of the differences
5 is that -- is that this program is designed, as far
6 as I can tell, to try and save lives and prevent
7 heat-related illnesses.

8 And the program in the -- in the Aquila
9 case, the fixed bill program, was, from Public
10 Counsel's perspective at least, purely designed as a
11 load-building program so that they both may have some
12 load-building aspects. Although I assume that this
13 one would be relatively small, that's not the main
14 goal of this program. The goal is to -- is to
15 improve health and safety. But the goal in the
16 Aquila program was to improve Aquila's bottom line.

17 CHAIRMAN DAVIS: Okay. So increasing
18 energy consumption is okay under some socially
19 desirable circumstances?

20 MR. MILLS: Certainly, if it can save
21 lives, yes. I think a little extra usage to keep
22 somebody alive -- alive is definitely worth doing.

23 CHAIRMAN DAVIS: Okay. Thank you,
24 Judge.

25 JUDGE WOODRUFF: All right. Anyone

1 other than Ameren want to make an opening?

2 (NO RESPONSE.)

3 JUDGE WOODRUFF: Then Ameren?

4 MS. TATRO: Good morning, Commissioners,
5 Judge Woodruff. AARP is asking this Commission to
6 try something new and innovative in an effort to
7 reduce deaths among the elderly and low income and
8 that's a laudable goal.

9 AmerenUE doesn't disagree with that
10 goal, and, in fact, it's launched its own efforts to
11 assist these programs. Many of these efforts came to
12 fruition after discussions with AARP over the last
13 year, but AARP wants more. And the question is this:
14 Is it your role to undertake such an effort or is
15 that something better left -- more appropriately left
16 to the legislature?

17 AARP's proposal is to credit the elderly
18 low income customers \$47 a year. Oh, and households
19 with children under two years old. AARP can't tell
20 you how much this program is going to cost, it can't
21 tell you exactly how many households would be
22 eligible, they can't tell you that participating
23 households would actually turn on those air
24 conditioners after receiving the credits.

25 Now, AmerenUE is not denying that

1 elderly low income individuals die due to heat or
2 heat-related complications, but exactly how many of
3 those deaths relate to the refusal to turn on their
4 air conditioner is an open question. And an even
5 bigger question is whether or not a bill credit is
6 enough to raise the awareness of these individuals
7 and convince them to turn that air conditioning on.

8 AmerenUE does not believe this proposal
9 will get the result that AARP is looking for. It
10 believes its current information campaign and the
11 work it does in handing out free air conditioners
12 does that much and perhaps more than what can
13 realistically be expected from the AARP proposal.

14 However, regardless of what AmerenUE
15 believes, when you consider whether or not to adopt
16 this proposal or a pilot version of this proposal,
17 remember that the burden of proof on this proposal
18 lies with AARP, not with AmerenUE. And AmerenUE
19 doesn't believe this proposal is as effective as the
20 efforts it currently undertakes no matter how
21 honorable AARP's goal may actually be. Thank you.

22 JUDGE WOODRUFF: Thank you. We'll go to
23 the first witness, then, which I believe is
24 Mr. Howat.

25 MR. COFFMAN: Your Honor, I have copies

1 of Mr. Howat's two pieces of testimony, I guess, for
2 the record. And I also have more copies of the -- as
3 I said, the revised surrebuttal testimony. The
4 only -- the only change in it is that one -- one of
5 the endorsement letters has now been removed. I
6 would ask whether it would be the Commission's desire
7 to have the entire thing refiled?

8 JUDGE WOODRUFF: I don't know that it
9 would be necessary to have it refiled because I'm
10 assuming you're filing the corrected version with the
11 court reporter today?

12 MR. COFFMAN: Yes, I can file just the
13 corrected attachment.

14 JUDGE WOODRUFF: Yeah, go ahead and file
15 that with the court reporter. That's all that should
16 be necessary.

17 (EXHIBIT NOS. 850 AND 851 WERE MARKED
18 FOR IDENTIFICATION BY THE COURT REPORTER.)

19 (The witness was sworn.)

20 DIRECT EXAMINATION BY MR. COFFMAN:

21 Q. Would you please state your name and
22 your position.

23 A. My name is John Howat, senior policy
24 analyst with National Consumer Law Center in Boston,
25 Massachusetts.

1 Q. Are you the same John G. Howat that
2 caused to be filed in this case direct testimony and
3 surrebuttal testimony and which has been labeled as
4 Exhibits 850 and 851, respectively?

5 A. Yes.

6 Q. And if I ask you the questions contained
7 in there today, would your answers be the same or
8 substantially the same today?

9 A. Yes, they would.

10 Q. No corrections in those testimonies?

11 A. No.

12 MR. COFFMAN: Okay. I would now offer
13 Mr. Howat for cross-examination.

14 JUDGE WOODRUFF: All right. Did you
15 wish to offer the testimony also?

16 MR. COFFMAN: And offer Exhibits 850 and
17 851.

18 JUDGE WOODRUFF: All right. 850 and 851
19 have been offered. Any objection to their receipt?

20 (NO RESPONSE.)

21 JUDGE WOODRUFF: And Mr. Coffman,
22 which -- which one of these was the one that was
23 corrected?

24 MR. COFFMAN: Surrebuttal.

25 JUDGE WOODRUFF: Surrebuttal. Okay.

1 851 was the corrected version which was actually
2 offered?

3 MR. COFFMAN: I have additional copies
4 for you and the Commissioners if you want, one page
5 missing.

6 JUDGE WOODRUFF: All right. I believe I
7 indicated 850 and 851 have been received.

8 (EXHIBIT NOS. 850 AND 851 WERE RECEIVED
9 INTO EVIDENCE AND MADE A PART OF THE RECORD.)

10 JUDGE WOODRUFF: For cross-examination,
11 we'll begin with Public Counsel.

12 MR. MILLS: Judge, I just have a few
13 questions, and by your leave, I'll do them from here.

14 JUDGE WOODRUFF: That's fine.

15 CROSS-EXAMINATION BY MR. MILLS:

16 Q. Mr. Howat, let's start at the -- at the
17 end here. First of all, you submitted revised
18 surrebuttal testimony?

19 A. Yes.

20 Q. Can you tell me what was changed and
21 why?

22 A. Well, in discussions between parties
23 participating in this proceeding, counsel has
24 identified concerns, and also in looking at reply
25 testimony from parties in this case. I consider --

1 Q. I'm sorry. Let me back you up because
2 I'm not sure you understand my question. What --
3 what has changed between your original surrebuttal
4 testimony and your revised surrebuttal testimony?

5 A. That is -- is merely a matter of some of
6 the attachments, and I would leave -- I guess I would
7 leave that to counsel to respond to. There were
8 attachments -- letters of endorsement that were
9 provided, and, frankly, my role in this case wasn't
10 directly associated with development of those program
11 endorsements, those letters of endorsement. And I
12 would leave that -- and I would have to defer to
13 either another witness or counsel in this case to
14 describe that -- those changes.

15 Q. So you can't tell me what changed
16 between your original surrebuttal and your revised
17 surrebuttal? I thought I was starting with an easy
18 question.

19 A. There were -- there were letters of
20 attachment -- letters of endorsement attached to that
21 surrebuttal testimony initially that were changed.
22 And frankly, I wasn't party to the -- the discussions
23 around those changes.

24 Q. Okay. You were here for opening
25 statements this morning, were you not?

1 A. Yes.

2 Q. Did you hear the concerns that I raised
3 in my opening statement?

4 A. Yes, I did.

5 Q. Do you believe that those are valid
6 concerns?

7 A. I understand your concerns and -- and
8 share a concern that costs associated with public
9 health and safety is a matter that Public Counsel,
10 you know, is appropriately concerned with, yes.

11 Q. On -- on what basis do you anticipate
12 that 50 percent of eligible participants will
13 actually participate?

14 A. It's a -- it's an upper-end number based
15 on participation in low income energy security
16 programs around the country in states that are
17 operative, as well as in federal programs such as the
18 low income home energy assistance program.

19 In putting forward our proposals, I
20 think what we try to do in all cases in each phase of
21 this was to come up with conservative estimates that
22 would -- "conservative" meaning that would reflect
23 sort of the higher end of what program costs would
24 look like.

25 Fifty percent participation is a high

1 number when you look at low income payment assistance
2 programs. Not that this is completely analogous, but
3 when you look at participation rates, say, in LIHEAP
4 around the country, 50 percent is very high.

5 Q. And just in terms of ratemaking
6 practices, if -- if the level of expense set in this
7 case anticipates a 50 percent participation level --

8 A. Uh-huh.

9 Q. -- and the actual participation level is
10 considerably less, what will happen in terms of the
11 difference between the actual level of participation
12 and the amount built in rates?

13 A. One approach would be to revert excess
14 funds or unused funds to the -- a program such as
15 Utilicare. And the goals between our proposed hot
16 weather program, our bill credit program and
17 Utilicare are not completely overlapping, but some
18 similar populations are involved. And general low
19 income energy security goals associated with
20 Utilicare do overlap with some that are associated
21 with our hot weather bill credit program.

22 So rather than, as you indicated, simply
23 have the funds revert to -- to shareholders, that is
24 a concern, you know, I would -- I would agree
25 that actually, that that is a legitimate concern and

1 that excess funds should revert to Utilicare or a
2 similar fuel fund or low income benefit -- energy
3 benefit program.

4 Q. Okay. Now, in his -- well, let me ask
5 you another question. In -- in opening statements,
6 attorney for UE mentioned that you propose that this
7 program be -- involve not only households with
8 elderly, but households with -- with children under
9 two years old; is that correct?

10 A. Yes, we've withdrawn that. I --

11 Q. I was going to say that wasn't in your
12 surrebuttal testimony.

13 A. No, no. That -- that -- that proposal
14 has -- has really changed dramatically in the course
15 of this proceeding. The reason initially, if I can
16 speak to that briefly, that we've proposed that
17 households with children under two years of age be
18 considered is, if you look at the morbidity data that
19 come from the Center for Disease Control, you see two
20 primary groups that are vulnerable to hot weather
21 health-related issues, and that's the very young and
22 the aged. So the households under two were -- were
23 initially referenced.

24 The analysis we did in direct testimony
25 focused on numbers of households with elderly. That

1 clearly is our primary concern. But in surrebuttal
2 testimony, if -- if you look at that, you'll see that
3 the -- the proposal to -- to include households with
4 infants and young children has been removed.

5 Q. And in his opening statement, counsel
6 for AARP mentioned a -- an even more refined proposal
7 in terms of a pilot program. Can you describe for me
8 how that would work?

9 A. Yes. My understanding is that well
10 before the filing in this -- in this case, there had
11 been discussions underway among stakeholders in
12 Missouri around this issue. And as part of those
13 discussions, there was a document circulated by the
14 company entitled -- or headed "Hot Weather Safety
15 Pilot Program Key Elements."

16 And in this straw proposal or -- or
17 proposal for circulation among parties, a pilot was
18 proposed. And that's -- that's pretty much where
19 AARP is right now with its proposal. But in that
20 document, a very limited pilot of 2,400 households,
21 households would be identified and provided a credit
22 of five dollars per day based on 13 hot weather
23 events per year leading to a bill credit cost of
24 \$156,000 per year. We -- we've actually -- we've
25 proposed at this point to scale that back even

1 further.

2 My research indicates that there are an
3 average of 9.5 hot weather events in any given -- on
4 average in a -- a year in Missouri. And a hot
5 weather event in this case is defined as a day in
6 which the temperature exceeds 95 degrees.

7 So we would scale back the proposal
8 circulated by Ameren in March of '08 to -- from the
9 \$156,000 bill credit level to \$114,000 based on
10 moving from 13 events per year to 9.5 events per
11 year, and we would stick with the initial proposal
12 here from March of 2,400 households participating.

13 In my view, that would put -- that would
14 put a cap on the costs associated with this program
15 and make them very manageable and create a -- an
16 imperceptible bill impact across Ameren's service
17 territory.

18 I do believe, however, that this is a
19 legitimate, useful proposal in that it would
20 provide -- it would fill a void in information that
21 exists right now. Parties have gone back and forth
22 with respect to the question of whether a bill credit
23 is appropriate or necessary to address the issue and
24 the concern around the extent to which there are low
25 income elderly households that do not use air

1 conditioning in hot weather even when it's available
2 out of concern for costs -- of costs.

3 Now, if I -- if I can follow up briefly
4 one -- with one more point, that point is that we do
5 have evidence that cost is a concern among low income
6 households in using air conditioning even in hot
7 weather. We have survey data from some of Ameren's
8 own data, but there's -- there are national data as
9 well that -- that point to that dynamic.

10 We believe that a limited pilot, 2,400
11 participants, some of which could even be in a
12 control group and not receive a credit which -- which
13 would further lower the cost of this program, would
14 provide us with -- with information as to whether, in
15 fact, this is an issue that needs to be addressed on
16 a broader scale in order to protect public health and
17 safety.

18 We -- we feel that the survey work
19 that's been begun by Ameren is important and
20 essential, but it's inadequate in that it doesn't
21 speak directly to what's going on in the target
22 population addressed in -- in our proposal. It's a
23 broad survey. There's a lot of good information, in
24 my opinion, that came from that survey.

25 However, the sampling, given that it was

1 a broad residential survey rather than targeted to
2 low -- elder households and low income elder
3 households specifically, leaves us with a lack of
4 solid information on the extent to which
5 affordability, ability to pay for air conditioning
6 usage even during hot weather months is an important
7 factor in what -- what -- what we have identified I
8 think fairly clearly as a real health and safety
9 danger that exists in the Ameren service territory.

10 Q. Now, with respect to the pilot program
11 that you're describing this morning, what would you
12 build into that for outreach and for administration?

13 A. The 15 percent numbers that were
14 proposed earlier, again, were based on experience
15 in -- with much broader programs that are operative
16 in other states, and they're high numbers. Most
17 states look at a number closer to 10 percent in the
18 administration of LIHEAP, for example.

19 Other -- other states that -- where
20 they're -- across the state there are low income
21 payment assistance bill credits that come through the
22 utility companies, either in the form of discount
23 rates or percentage of income payment plans or
24 whatever model you want to look at, admin costs tend
25 to run between 10 and 15 percent in those programs.

1 In this case, we are looking at a much
2 smaller scale targeted program, and the overall
3 administrative costs should therefore be lower,
4 particularly in this -- in this limited pilot. I
5 would suggest that some administrative costs be
6 assumed, and -- and would recommend a 10 percent
7 number of the -- the 114,000 that it referenced
8 earlier be added to the total program cost to cover
9 the efforts at, say, the community action agencies
10 and within the utility company to provide credits for
11 customers.

12 But 10 percent should be reasonable. My
13 opinion would be to hear back from the company on
14 that to the extent to which that number makes sense
15 and to get some justification for increases over
16 that.

17 Q. Okay. How about outreach, what's the
18 appropriate level of outreach for the pilot you're
19 describing this morning?

20 A. Well, the Ameren representative who made
21 opening remarks I think pointed to an outreach effort
22 that currently is underway. And frankly, my opinion
23 is, that's a -- they have a good thing going there
24 with that outreach program. They do a good job. And
25 I still believe there's a need to address this --

1 this affordability issue.

2 However, the outreach efforts that are
3 currently underway I believe can be continued and
4 could be -- that -- that really, those costs are
5 already being incurred. So the 10 percent admin
6 costs in my opinion should be adequate to -- for
7 outreach purposes.

8 And also, if I can add to that quickly,
9 the agencies that are involved in LIHEAP intake right
10 now already have contact with sufficient numbers of
11 households to fill the proposed participation numbers
12 here.

13 In St. Louis alone, there are about
14 14,000 elder households that we'd consider low
15 income, below 175 percent of the poverty level. And
16 a number of these households are already in touch
17 with their community action agencies. Those
18 community action agencies are signing households up
19 for LIHEAP already.

20 In my view, a major out -- additional
21 outreach campaign is not necessary and that
22 implementation of a pilot as described today, we've
23 talked about today, could be piggybacked, if you
24 will, onto existing programmatic efforts.

25 Q. And I believe you mentioned in your

1 general description of how the pilot would work, the
2 concept of a control group; is that correct?

3 A. Yes, sir.

4 Q. And how would that work?

5 A. Well, I think if -- if we want to
6 develop empirical information with respect to the
7 extent to which households really do refrain from
8 using existing air conditioning equipment, even in
9 hot weather, we would want to provide a credit in
10 some households and identify some who would be -- all
11 households being surveyed as sort of a benchmark, if
12 you will, but then provide a credit in some and not
13 with others, and then follow up the survey to
14 determine the extent to which the -- the bill credit
15 itself played a role in people's behavior, air
16 conditioning usage behavior.

17 Q. And who determines which group of people
18 get the potentially lifesaving credit and which
19 don't?

20 A. They're not here. Why don't I suggest
21 that the caps do it. I -- legitimately, I think
22 that's where it belongs. No joking, all joking
23 aside, the folks on the front line that are dealing
24 with -- with households on a day-to-day level and
25 that have access and they have points of contact

1 within the community, I think that's -- that's where
2 this goes. And eligibility and participation
3 criteria should be identified carefully among
4 stakeholder groups, I would suggest.

5 If the Commission were to, in fact,
6 approve a pilot like this, my recommendation would be
7 that the folks sit down and hammer out details
8 including the specific eligibility criteria and
9 participation criteria, when credits would be
10 distributed. Our recommendation is that they would
11 be in the July and August bills.

12 But the details of that implementation,
13 the timing of the distribution of those credits as
14 well as design of survey questions to be -- to be
15 asked of participants should all be hammered out so
16 that everyone's on the same page as to the goals,
17 objectives and implementation details.

18 Q. And so in terms of the control group
19 versus the participant -- the participant group,
20 your -- your envision is the only difference is the
21 payment of the credits?

22 A. Yes, sir.

23 Q. All right. So that the control group
24 and the participant group would both get the same
25 information?

1 A. That's correct.

2 Q. You have to answer out loud so the court
3 reporter can get it down. And they would both
4 participate in the same surveys?

5 A. Yes.

6 Q. All right. Are you familiar with the
7 Heisenberg principle?

8 A. Yes, vaguely.

9 Q. Okay. Can you describe your
10 understanding of that?

11 A. Well, let me backtrack on that.

12 Q. Okay.

13 A. I'll -- I'll -- I -- I would rather not
14 do that on the record without --

15 Q. Okay. Let me ask you a more -- let me ask
16 you a more general question. Isn't it possible that by
17 receiving the information and participating in the
18 surveys that the control group will no longer be,
19 strictly speaking, a control group, that they will,
20 in fact, have much information that may influence
21 their behavior simply by participating in the survey?

22 A. Absolutely. And the -- I think what
23 we're trying to -- the information -- well, let me
24 back up a little bit. I think there's real value in
25 surveying -- following up on the survey work that's

1 already been conducted and targeting some specific
2 questions to this population group that we're talking
3 about, low income, elder households that are
4 particularly susceptible to this health and safety
5 issue.

6 The next question is to learn more about
7 the extent to which affordability and perceived
8 expense associated with running air conditioners even
9 in hot weather conditions contributes to behaviors
10 around nonusage and -- and people threatening their
11 own health and safety, if you will.

12 So, yes, by surveying people whether
13 they're receiving the credit or not will certainly
14 have some bearing on -- on whether people will use
15 air conditioning or not. But if we can see a
16 difference in -- in the follow-up as to -- in
17 follow-up survey work after the baseline and see a
18 difference in usage between people who received the
19 credit and people who did not, I think that would be
20 valuable information, bearing in mind the principle
21 that you have alluded to.

22 It would further validate the hypothesis
23 that expense is, in fact, a legitimate factor in
24 people not using air conditioning if we were in
25 follow-up survey work to learn that there was a

1 difference between the control group usage and the
2 participant group.

3 MR. MILLS: Thank you. I have no
4 further questions.

5 THE WITNESS: Thank you.

6 JUDGE WOODRUFF: Staff wish to cross?

7 MR. DOTTHEIM: No questions.

8 JUDGE WOODRUFF: The State?

9 MR. IVESON: No questions.

10 JUDGE WOODRUFF: Noranda?

11 MR. CONRAD: No questions.

12 JUDGE WOODRUFF: Safe Energy?

13 MR. ROBERTSON: No questions.

14 JUDGE WOODRUFF: Ameren?

15 CROSS-EXAMINATION BY MS. TATRO:

16 Q. Good morning, sir.

17 A. Good morning.

18 Q. My name is Wendy Tatro, and I'm an
19 attorney for AmerenUE. You work for the National
20 Consumer Law Center, right?

21 A. Yes.

22 Q. Okay. In fact, I think you're one of
23 the senior analysts there, wasn't that your title?

24 A. I am the senior policy analyst there.

25 Q. The senior policy analyst. Great.

1 MS. TATRO: I'm going to mark an
2 exhibit, please.

3 (EXHIBIT NO. 73 WAS MARKED FOR
4 IDENTIFICATION BY THE COURT REPORTER.)

5 BY MS. TATRO:

6 Q. Does that document look familiar to you?

7 A. Yes, it does. This is -- this is a
8 document that I'm hoping is still up -- and
9 apparently is still up on our web site.

10 Q. Okay. So you're familiar with this
11 document?

12 A. Yes, I am.

13 Q. And the last sentence of that first
14 paragraph talks about programs and policies to be
15 adopted to address the growing gap between home
16 energy costs and the ability of low income families
17 to bear those costs. Do you see that sentence?

18 A. Yes.

19 Q. And right below that, there's a link to
20 a document that says "Principles for energy and water
21 security for all Americans"?

22 A. Yes.

23 Q. Are you familiar with that document?

24 A. I am.

25 Q. And if you click on that link, would you

1 get the document that's on the third page of this
2 pile of paper that I handed you?

3 A. Well, yes, I believe that's where the --
4 where the link leads.

5 Q. And does that document look familiar to
6 you?

7 A. Glad to see it still works. Yes.

8 Q. Technology's a good thing when it works.
9 All right. So this first principle set forth by --
10 did you draft this document?

11 A. This was a document that was drafted
12 by -- in a collaborative effort among advocates from
13 all across the United States.

14 Q. Okay.

15 A. There were -- there were program
16 delivery agencies involved. National Consumer Law
17 Center played a -- sort of a convening role, an
18 expertise role. There were legal services
19 organizations involved, there were -- AARP, I
20 believe, had a hand in this.

21 Q. Okay.

22 A. Some --

23 Q. So it's fair to say that your
24 organization and AARP supports the principles
25 contained within this document?

1 A. I -- I don't want to speak for AARP on
2 this, but certainly National Consumer Law Center
3 does.

4 Q. Okay. Fair enough. Principle 1 talks
5 about "Electricity, heat and water, necessities of
6 life that must be affordable." And then there's
7 three sub-points under there. Can you read that
8 third sub-point for me, please?

9 A. "Consumers should pay their fair share
10 of costs of providing the household energy and water
11 they need. A fair share is an affordable amount
12 taking into account a household's income."

13 Q. So the National Consumer Law Center
14 would have rates set in a mechanism that takes into
15 account household's income?

16 A. Yeah. I -- I've been involved for years
17 in working with advocates in states on the
18 development of a concept associated with this that I
19 refer to as sort of an affordable energy bargain
20 where low income, vulnerable households don't
21 basically get off scot-free and pay nothing, but pay
22 an affordable amount toward their necessary energy
23 and utility costs in exchange on the other side of
24 the bargain for a level of energy security such that
25 they will not lose access to that service in a way

1 that threatens their health and safety.

2 Q. I think you said yes. Did you say yes?

3 A. No, I -- I -- I said several sentences,
4 but...

5 Q. But the National Consumer Law Center
6 believes in that principle, yes?

7 A. Yes, I do. You know, I work at National
8 Consumer Law Center. It's -- and --

9 Q. You're here representing them, right?

10 A. I'm representing AARP. I'm an employee
11 of National Consumer Law Center.

12 Q. Were you hired -- hired personally or
13 did AARP hire National Consumer Law Center?

14 A. The contract is with National Consumer
15 Law Center. I am the -- I'd have to look at the
16 specific language in the contract, but they've
17 contracted with me to perform the work --

18 Q. Okay.

19 A. -- associated with the contract, just to
20 be -- you know, to be specific --

21 Q. Certainly.

22 A. -- to be clear.

23 Q. Well, let's look at the second principle
24 which is on the next page.

25 A. Uh-huh.

1 Q. And it talks about "State, federal and
2 local governments acting together to assure
3 electricity, heat and water service are reliable,
4 safe, sustained and offered at a fair price." And it
5 says "Therefore," and under sub-point one, there's
6 four bullets. Do you see those, the little arrows?

7 A. In point No. 2?

8 Q. Principle No. 2 --

9 A. Okay.

10 Q. -- point No. 1 --

11 A. All right. I'm with you.

12 Q. -- the fourth arrow. And that arrow
13 also uses the language of "fair and affordable
14 share," right?

15 A. Uh-huh.

16 Q. And that language would refer to a fair
17 share being an affordable amount taking into account
18 a household's income as it's defined on the previous
19 page?

20 A. That's correct.

21 Q. Okay.

22 A. Well --

23 Q. That's -- that's fine.

24 A. -- affordability is -- that -- that's --
25 there's a whole conversation that, you know, one

1 could have about that, what -- what constitutes
2 affordability. And this document doesn't speak
3 specifically, it's sort of broad. But...

4 Q. Okay. Now, sir, have you provided
5 testimony in utility rate cases before?

6 A. I have.

7 Q. And have you ever made a proposal such
8 as this hot weather bill credit proposal?

9 A. I have not.

10 Q. Have you ever seen another utility
11 implement a proposal such as this hot weather bill
12 credit?

13 A. No. No, this is a -- this is an
14 innovation. I have testified on hot weather safety
15 before, if I can back up to your previous --

16 Q. But the question was hot weather bill
17 credits.

18 A. Right. No, this is a -- this is a fresh
19 idea.

20 Q. So it's your fresh idea?

21 A. This is an idea that AARP and others in
22 Missouri that -- have been dealing with for a while
23 now, and I've watched from a distance some of those
24 discussions. So I'm familiar with it from that
25 vantage point, but this is the first case I've worked

1 on where a hot weather bill credit has been proposed.

2 And you know, not to -- you know, to be
3 upfront about this, I believe this is a first. I
4 don't know that there's been another proceeding where
5 a credit like this has been proposed. It's possible
6 that there has been one, but if where you're going on
7 this is that, oh, this is an improvement --

8 Q. I wasn't going anywhere other than to
9 ask if you knew it had been done somewhere else.

10 A. Uh-huh. Uh-huh.

11 Q. That's the only information I was
12 seeking from you at this point.

13 A. Okay.

14 Q. Now, as a part of the discovery in this
15 case where a series of data requests were sent to
16 you, are you familiar with those data requests?

17 A. I am.

18 Q. Okay. Did you answer those questions?

19 A. I did.

20 Q. Did you draft those answers?

21 A. Yes, I did.

22 Q. Okay.

23 A. I did collaborate with respect to the
24 questions around negotiations that had taken place
25 absent my participation. But the questions directly

1 related to the programmatic aspects, I fully drafted
2 myself.

3 Q. Okay. Great. Now, Mr. Mills talked a
4 little bit with you about your Exhibit 13 that was
5 revised.

6 A. Yes.

7 Q. And I just want to make sure we're --
8 we're clear here. The revision that was made is, the
9 City of St. Louis withdrew their letter of support;
10 isn't that right?

11 A. I believe that's the case.

12 Q. Well, it was removed from your exhibits,
13 right?

14 A. That's correct.

15 Q. If you compare them, they're exactly the
16 same except for the letter from the City is gone?

17 A. That's correct.

18 Q. Okay. Did you discuss with the City why
19 they retracted their letter?

20 A. I did not.

21 Q. Do you know the reason why they
22 retracted their letter?

23 A. I --

24 Q. I'm not asking you to speculate.

25 A. Not -- not firsthand, no. No, I don't.

1 Q. Okay. Let's talk about the rest of the
2 letters.

3 MS. TATRO: And I'm going to mark
4 another exhibit.

5 JUDGE WOODRUFF: This will be No. 74.

6 (EXHIBIT NO. 74 WAS MARKED FOR
7 IDENTIFICATION BY THE COURT REPORTER.)

8 MS. TATRO: I have these as two
9 documents, but they're really one.

10 JUDGE WOODRUFF: Okay.

11 MR. COFFMAN: Would it be appropriate to
12 confer with my witness?

13 MS. TATRO: Why?

14 JUDGE WOODRUFF: For what purpose?

15 MR. COFFMAN: He requested.

16 THE WITNESS: I'm anticipating questions
17 about those exhibits, and I would like to confer with
18 counsel since I -- I -- as I've already explained,
19 I've not --

20 MS. TATRO: Your Honor, we've already --
21 we've already established the answer to these
22 questions. I asked him -- I'm not -- not sure --

23 JUDGE WOODRUFF: I don't think any
24 conference at this point would be appropriate.

25 MR. COFFMAN: That's fine.

1 MS. TATRO: And I apologize for not
2 having copies for everyone. I never know how many
3 people are going to be at these things, so I
4 apologize for that.

5 BY MS. TATRO:

6 Q. All right. The first part of this
7 exhibit is entitled "Case No. 2008-0318, Responses to
8 AmerenUE's First Set of Data Requests to AARP." Do
9 you see that?

10 A. Yes.

11 Q. And are these, indeed, the answers that
12 you prepared to AmerenUE's first set of data
13 requests?

14 A. Yes.

15 Q. Okay. Can you turn to No. 23, please?
16 And data request 23 to you specifically addresses the
17 letters that are attached to the surrebuttal
18 testimony that you provided. Do you see that?

19 A. Yes.

20 Q. And it asks for copies of all e-mails,
21 letters or other documents that were exchanged?

22 A. Yes.

23 Q. Okay. And you did so, you provided that
24 information?

25 A. That information is attached to this,

1 yes.

2 Q. Okay. And that would be the separately
3 stapled document?

4 A. That's correct.

5 Q. Now, at the bottom of that first page of
6 that second portion, there's a draft letter, correct?

7 A. Yes.

8 Q. And that letter was drafted by
9 Mr. Coffman, correct?

10 A. I believe it was.

11 Q. Okay.

12 A. Yes.

13 Q. So let's now turn to your surrebuttal
14 testimony and the remaining letters. I'd like to
15 start with the second one which is from the Southwest
16 Missouri Office on Aging.

17 A. Uh-huh.

18 Q. Do you have that in front of you?

19 A. Yes.

20 Q. And would you agree that the majority of
21 the language in that letter tracks exactly with the
22 proposed language Mr. Coffman had sent out?

23 A. Yes.

24 Q. Okay. The next letter is from the
25 Missouri Budget Project.

1 A. Uh-huh.

2 Q. Would you agree that after the sentence,
3 "The Missouri Budget Project," that letter tracks
4 word-for-word with the draft sent out by Mr. Coffman?

5 A. I haven't compared and contrast --

6 Q. I'm happy to let you read it.

7 A. It certainly appears to track closely,
8 yes.

9 Q. Okay. And then the last letter from the
10 Missouri Association of Social -- for Social Welfare,
11 again, pretty much tracks word-for-word, does it not?

12 A. It tracks very closely, yes.

13 MS. TATRO: Okay. I don't think I'd
14 move for Exhibit 73 to be admitted, but I would move
15 for 73 and 74 [sic].

16 JUDGE WOODRUFF: All right. 73 and 74
17 have been offered. Are there any objections to their
18 receipt?

19 (NO RESPONSE.)

20 JUDGE WOODRUFF: Hearing none, they will
21 be received into evidence.

22 (EXHIBIT NOS. 73 AND 74 WERE RECEIVED
23 INTO EVIDENCE AND MADE A PART OF THE RECORD.)

24 BY MS. TATRO:

25 Q. Okay. Now, earlier you discussed kind

1 of a series of meetings that occurred over 2007 and
2 '8 that discussed how to deal with the impact of heat
3 on elderly low income customers, right?

4 A. I did reference those discussions.

5 Q. Okay. Did AARP participate in those
6 discussions?

7 A. My understanding is, yes, it did.

8 Q. Did you participate in those
9 discussions?

10 A. I did not.

11 Q. So do you know what other groups
12 participated in those discussions?

13 A. I would have to defer on that. I don't
14 have firsthand knowledge of it.

15 Q. But you testified about it, right?

16 A. I testified based on information I
17 received from AARP, yes.

18 Q. Do you know if Staff participated in
19 those discussions?

20 A. Which --

21 Q. Staff of the Missouri Public Service
22 Commission.

23 A. I believe that they did, but I'm not --
24 again, don't know firsthand. This is --

25 Q. The Office of Public Counsel

1 participate?

2 A. I believe so. Again, not firsthand.

3 Q. Okay. Was AARP's hot weather bill
4 credit discussed as part of that process?

5 A. As far as I know, it was, yes.

6 Q. All right. And, in fact, there were
7 propose -- you were calling them proposals or
8 circulated -- or drafts circulated of how such a
9 process could work, correct?

10 A. Yes. Yes, I have one before me.

11 Q. Okay. Do you think there were others
12 that you don't have before you?

13 A. I couldn't testify to that.

14 Q. You don't know?

15 A. (No response.)

16 Q. Did the group explore other alternatives
17 such as an informational campaign?

18 A. My understanding is that an information
19 campaign was part and parcel of those discussions,
20 not mutually exclusive of the bill credit discussion.

21 Q. Okay. What did the group decide to do
22 going forward?

23 A. I would have to defer. Again, I wasn't
24 directly party to that.

25 Q. Well, do you know, did AmerenUE start

1 offering a bill credit program?

2 A. No.

3 Q. Okay. Did it start offering an
4 information awareness program?

5 A. As far as I know, yes.

6 Q. Okay. I want to talk specifically about
7 your testimony, please. Now, just to make sure that
8 we all understand your proposal, your direct proposal
9 is a \$47-a-year credit for households at or below 175
10 percent of poverty -- poverty with an individual in
11 the household at or above 65 years of age, right?

12 A. That's correct.

13 Q. And your surrebuttal proposes --
14 modifies that somewhat to propose a pilot?

15 A. It proposes a far more limited approach,
16 doesn't include households with infants and children,
17 geographically far more limited.

18 Q. So is AARP asking the Commission to
19 adopt the modified version that I'm referring to as a
20 pilot or the original proposal that's in your direct
21 testimony?

22 A. Well, as you heard in the discussion
23 earlier with Public Counsel, we're proposing a model
24 at this point based on concerns about cost, a
25 pilot -- a two-year pilot based on 2,400 participants

1 which is scaled back considerably from even that
2 which is included in the scaled-back surrebuttal
3 proposal.

4 Q. Okay. So just to be clear, you're no
5 longer asking for the overall bill credit program,
6 you're asking for the scaled-down model only?

7 A. That's correct.

8 Q. Okay. I'm -- now, I'm a bit unclear as
9 to when you would have the credits applied. Your
10 direct testimony -- you have that front of you?

11 A. Yes.

12 Q. Page 4.

13 A. I'm there.

14 Q. This talks about -- I believe it
15 identifies the months of July and August as the
16 months that the credits would be applied?

17 A. That's correct, those are the months
18 when there's a much greater likelihood to have days
19 in excess of 95 degrees.

20 Q. Okay. Then on page 5, line 2, it
21 identifies June and July. That should be July and
22 August?

23 A. Yes --

24 Q. Okay.

25 A. -- it should.

1 Q. So you're not proposing three months?

2 A. No.

3 Q. Okay. Tell me what the federal poverty
4 guideline is for a household of four.

5 A. Can you give me a second? I'll look
6 that up.

7 Q. Sure.

8 A. What year would you like?

9 Q. 2008.

10 A. I can give you that specifically if
11 you'd take that as an information request.
12 Otherwise, I'm going to have to -- if you want exact
13 figures, I'm going to have to go to --

14 Q. Let me see if I can help you out.

15 A. Thank you.

16 Q. Can you tell me what that document is?

17 A. Yeah. These are the 2008 Health and
18 Human Service poverty guidelines.

19 Q. And is that the guideline you're
20 referring to when you talk about setting the
21 parameters for this of 175 percent?

22 A. Yes.

23 Q. Okay. So what is the federal poverty
24 guideline for a household of four for 2008?

25 A. In the 48 -- the lower 48 contiguous

1 states, it's \$21,200.

2 Q. Okay. We'll set Alaska and Hawaii
3 aside, since, unfortunately, we don't have any
4 territory there. So 175 percent of that number is
5 what? I'm hoping you can do math.

6 A. Yeah, yeah. Give me a second here and
7 I'll give you an exact figure. That would be
8 \$37,100.

9 Q. Okay. So a household of four earning
10 \$37,100 would get this \$47-a-year bill credit if
11 anyone in the house is over -- is 65 years of age or
12 older?

13 A. That's correct.

14 Q. Okay. Now, can you tell me, do you know
15 if anyone in the St. Louis area or in AmerenUE's
16 service territory, let's say, for the summer of 2007
17 over the age of 65 -- 65 died because of heat?

18 A. The 2008 data I don't believe are
19 available yet.

20 Q. How about 2007?

21 A. I'm not able to answer that. I know
22 there were heat-related deaths in 2007 in St. Louis
23 and in the Ameren service territory, according to the
24 Missouri State Office of Health.

25 Q. Do you know if those individuals who

1 died had a working air conditioner that they were not
2 running?

3 A. No.

4 Q. Now --

5 A. I believe that information could be
6 obtained, though, through --

7 Q. But you didn't obtain it for this
8 hearing, did you?

9 A. Well, this is what we're proposing is a
10 survey in order to -- to learn. I -- there have been
11 heat-related deaths in St. Louis among households --
12 in households where there are elderly people where
13 there was air conditioning that hadn't been run. I
14 think there's evidence of that, and it's been
15 provided in this -- in this proceeding.

16 Q. Well, let's talk about your evidence.
17 Attached to your testimony as AARP -- and this is on
18 your direct.

19 A. Uh-huh.

20 Q. AARP JH-3, can you turn to that for me,
21 please?

22 A. Yes.

23 Q. And this is some kind of Missouri
24 Department of Health bulletin, right?

25 A. What do you mean by "some kind of" -- it

1 is a -- it is a bulletin from them, yes.

2 Q. Okay. Fabulous. The second
3 paragraph -- this is 1999 data, correct?

4 A. Yes.

5 Q. I don't see a date on this document. Do
6 you know what the date of the document is?

7 A. I couldn't tell you offhand. I'd take
8 it as a record request, though.

9 Q. That's okay. All right. That second
10 paragraph talks about in 1999 there were 68 elderly
11 deaths due to heat-related causes, correct?

12 A. Yes.

13 Q. And it identifies 19 who had an air
14 conditioner but would not use it, right?

15 A. Yes.

16 Q. And that's the group you're targeting
17 with your proposal?

18 A. That's correct.

19 Q. All right. It also says 24 didn't have
20 an air conditioner, right?

21 A. Yes.

22 Q. And your proposal doesn't address that
23 issue?

24 A. No.

25 Q. Okay. And 19 had an air conditioner --

1 I'm sorry -- I had an air conditioner but it didn't
2 work properly, correct?

3 A. Yeah, that's -- that's the way I read
4 this.

5 Q. Okay. And your proposal doesn't --
6 doesn't attempt to resolve that issue?

7 A. No.

8 Q. Okay.

9 A. My understanding is, though, Ameren and
10 others have done a pretty good job in the St. Louis
11 area in providing air conditioning in households
12 where it's needed.

13 Q. Okay.

14 A. And that's a laudable outcome, but that
15 doesn't get to the issue of people's reluctance to
16 use it over real or perceived affordability problems.

17 Q. And let's talk about that reluctance.
18 The last sentence in that paragraph indicates some
19 didn't run it because of concerns about cost, while
20 others stated they had made it through other hot
21 summers without air conditioning or the cold bothered
22 their arthritis, right?

23 A. That's correct.

24 Q. And the sentence before that says, "For
25 some, even encouragement from relatives and friends

1 could not convince them to use their air
2 conditioner," right?

3 A. That's correct.

4 Q. So this is really a mindset that has to
5 be changed in order to resolve that problem, would
6 you not agree?

7 A. I can't -- I can't answer that. I
8 think, you know, the -- the evidence here of people
9 not running air conditioning could be for any number
10 of reasons and --

11 Q. And you're not sure what the reason is?

12 A. -- the circumstances now relative to
13 1999, for example, in the numbers of households that
14 actually own air conditioning are very different, and
15 I think --

16 Q. So nine -- so we shouldn't be looking at
17 1999 data?

18 A. -- I think -- I think it could make
19 an -- well, the 1999 data that explains the dynamic
20 of people not using their air conditioning -- or the
21 fact that people didn't use their air conditioning
22 even when it existed is relevant, I think, but
23 circumstances around, for example, numbers of
24 households that own air conditioning have changed.
25 And some of this, quote, mindset information may have

1 changed as well. And the only way to learn about it
2 is to study it.

3 Q. So the fact --

4 A. We have to -- we need some -- if -- if
5 you're positing that this information is out of date,
6 then why don't we update it?

7 Q. Okay. I'm going to ask you to answer
8 the questions that I ask you --

9 A. Uh-huh.

10 Q. -- and to refrain from further
11 lecturing, okay? Now, is -- what you're telling me
12 is, it's fine to use 1999 data for the number of
13 people that died, but the reason they died is out of
14 date. Isn't that what you just said?

15 A. No.

16 Q. All right. Let's -- let's talk a little
17 bit about page 5 of your testimony, direct, please.
18 On line 7 you indicate that this \$47 annual credit is
19 about half of the annual cost to operate an Energy
20 Star-qualified air conditioner. You see where I am?

21 A. Yes, that's correct.

22 Q. So an Energy Star-qualified air
23 conditioner is more efficient than a nonEnergy
24 Star-qualified air conditioner, would you agree with
25 that?

1 A. In most cases. You know, I don't -- I
2 don't think this is a great place to get into the ins
3 and outs of the Energy Star rating program, but in
4 most cases, I believe that's true.

5 Q. So you accept the general premise?

6 A. Yes.

7 Q. Thank you. Now, can you tell me what
8 percentage of elderly low income individuals who have
9 an air conditioner have an Energy Star-rated air
10 conditioner?

11 A. I can't tell you that.

12 Q. Okay. Can you tell me what percentage
13 of elderly low income individuals who don't have an
14 air conditioner can afford to purchase an Energy
15 Star-rated air conditioner?

16 A. No.

17 Q. Okay.

18 A. And I -- I would posit that the ability
19 to afford one is lower in those households than in
20 nonlow-income households just by definition.

21 Q. Okay. I'll accept that. Page 12, you
22 talk about how you came to your original program cost
23 of \$1.46 million, and you refer to Exhibit 8 of your
24 testimony.

25 A. That's correct.

1 Q. And I want to make sure I understand
2 this chart, so if you could turn to that, please, I
3 would appreciate it.

4 A. Uh-huh.

5 Q. Are you there?

6 A. Yes.

7 Q. Okay. The third column is labeled
8 "Households By Householder, 65 Years and Over."

9 A. Right.

10 Q. So that's essentially head of households
11 that are 65 years or older?

12 A. That's correct.

13 Q. So if the head of household is 64 and
14 the spouse is 66, they're not going to be reflected
15 in that household?

16 A. That's correct.

17 Q. I'm reading that correctly?

18 A. Yes.

19 Q. All right. That's always good.

20 CHAIRMAN DAVIS: Judge, you want to ask
21 Ms. Tatro to refrain from her commentary too?

22 MS. TATRO: I apologize.

23 BY MS. TATRO:

24 Q. Now, sir, on page 4, you state that,
25 "The bill credit would serve as a means of

1 encouraging customers to use air conditioners during
2 [sic] the home during particularly hot weather." Do
3 you see that statement?

4 A. I'm sorry. Can you repeat that,
5 Counsel?

6 Q. On page 4 of your direct.

7 A. Yes, uh-huh.

8 Q. Can you tell me the basis for your
9 statement that the bill credit would encourage
10 customers to use their air conditioners?

11 A. The basis is an assumption that in those
12 households where perceived affordability or actual
13 affordability issues are in play, that when informed,
14 they're going to receive an offset to the cost of
15 operating that air conditioning, they'll be less
16 reluctant to do so.

17 Q. So if they have more information, they
18 will act on a rational basis?

19 A. More information and more money.

20 Q. Okay. But we already know there's no
21 other program like this currently in effect?

22 A. That's correct.

23 Q. So there's no -- so that's why we're
24 doing -- you're proposing this study because we don't
25 really know if it's going to work?

1 A. That's correct, this is a thesis. You
2 know, I'm -- I'm pretty clear about that.

3 MS. TATRO: All right. Thank you.

4 JUDGE WOODRUFF: All right. We'll come
5 up for questions from the Bench. Commissioner
6 Murray?

7 COMMISSIONER MURRAY: Just very briefly.

8 QUESTIONS BY COMMISSIONER MURRAY:

9 Q. Your proposal would provide a bill
10 credit; is that correct?

11 A. That's correct.

12 Q. And that bill credit could be used by
13 the recipients to, rather than paying that amount --
14 being required to pay that amount on their electric
15 bill, they could use that money and do something
16 else; is that correct?

17 A. Yes.

18 Q. And generally, when we provide -- when
19 you provide an incentive for something, you provide
20 it as a response to an action taken, a desired
21 action; is that correct?

22 A. I -- I think that's -- that's pretty
23 fair to say. You're trying to promote a desired
24 action or discourage a -- a particular action.

25 Q. So there's really nothing in this, what

1 you're calling an incentive, to actually incentivize
2 the people to perform the action that you desire, is
3 there?

4 A. Well, I think that bill credits, as used
5 in a broader scale, offset people's perceptions or
6 actual financial problems around the cost of their
7 utility service. And in some cases, bill credits are
8 provided as -- as a means of encouraging people to
9 stay current on their utility bill and yet not cut
10 back on other necessities threatening their health
11 and safety.

12 So -- but it's indirect, and there's an
13 assumption, if I may add here, that even though that
14 money -- that five dollars per month could be used --
15 or -- or per -- yes, per month could be used to
16 offset the cost of operating an air conditioning
17 unit, the money could be used elsewhere, but people
18 should no longer have the perception that -- or their
19 perceptions around affordability of operating that
20 air conditioning unit during those periods should be
21 reduced.

22 Q. What are you talking about, "five
23 dollars per month"?

24 A. I beg your pardon, that was a mistake.
25 Five dollars per day is the credit that would be

1 offered people, assuming 9.5 days per year. So it
2 would be 23 -- approximately \$23 per month over a
3 two-month period.

4 Q. And when would they receive these bill
5 credits?

6 A. One in the beginning of July -- in the
7 July bill and one in the August bill. And ideally,
8 those credits would be combined with outreach. For
9 example, households could receive -- could be
10 identified and put into a Robocall system and alerted
11 at the beginning of those months that they're
12 receiving this bill credit, please use your air
13 conditioning, the cost is being offset by these
14 credits, don't jeopardize your health and safety.

15 Q. And the -- to be eligible for those
16 credits, would there be some kind of an analysis of
17 whether or not these people had air conditioning and,
18 if so, whether or not it was in working order?

19 A. Yes, those questions could be asked
20 during the intake process. And households currently
21 that apply for the low income home energy assistance
22 program do go through an intake process. And I
23 believe that it would be -- it would really be little
24 or no extra work for the intake agencies to ask
25 questions just as those that you've identified.

1 COMMISSIONER MURRAY: Okay. That's all
2 the questions I have. Thank you.

3 THE WITNESS: Thank you.

4 JUDGE WOODRUFF: Commissioner Jarrett?

5 QUESTIONS BY COMMISSIONER JARRETT:

6 Q. Good morning, sir. You know, you didn't
7 have to bring Boston weather down with you when you
8 came.

9 A. Well, I apologize for that. I wish I
10 could have brought Boston sports team success today.
11 It's been a very exciting couple of years out there.

12 Q. That would have been very welcome. I
13 just have a couple of quick questions. First of all,
14 I believe you said, am I correct, that the people
15 you're targeting are the low income people over 65
16 that have air conditioners but do not use them when
17 they need to be using them in the hot weather?

18 A. Yes.

19 Q. Okay. I guess my question is, how do
20 you stop people from -- who are low income
21 individuals who have air conditioners who really do
22 use them but are otherwise eligible from an income
23 standpoint for the program, how do you keep them from
24 applying and getting the money and getting it to
25 the -- the real people who you propose need it?

1 A. Well, sort of by definition, I -- while
2 I haven't done a -- sort of a recent cost of living
3 analysis for, say, the City of St. Louis folks who
4 are eligible to participate in this, who would be
5 eligible to participate in this program -- and by the
6 way, the 175 percent of poverty guidelines in my view
7 is -- is a discussion point. And if that -- if that
8 figure needed to be -- to exactly mirror the
9 eligibility guidelines associated with LIHEAP, in my
10 opinion that would be fine.

11 But to answer your question directly, I
12 think that since, in all likelihood, households
13 participating in this program aren't making ends meet
14 anyways, you know, to -- to run air conditioning or
15 to meet their full utility obligations in a timely
16 manner usually entails cutting back on some other --
17 some other basic necessity.

18 So in my view, providing a small and
19 limited credit like that to make sure that folks
20 either continue to operate their air conditioning or
21 for those that don't, they do so, the money wouldn't
22 just go to waste. I hope that gets to...

23 Q. So if I'm hearing you correctly, what
24 you're really proposing is to -- whoever walks in the
25 door and qualifies from an income standpoint gets the

1 money, and whether they spend it on food or whether
2 they spend it on utilities is really no concern?

3 A. Well, the outreach would -- would speak
4 to a concern that the money actually be spent to
5 operate air conditioning. But I'm not proposing some
6 sort of a -- some sort oversight to this program to
7 ensure that people take the credit and turn on their
8 air conditioners. I think that would be -- that
9 would create a whole level of bureaucracy and sort of
10 big-brother oversight that may not make sense.

11 Q. But of course, you know, our role is
12 regulating utilities and utility service. I mean,
13 should we be in the business of giving money to
14 people who are going to spend it to buy groceries? I
15 mean, is that our role or is that maybe a social
16 issue that the legislature needs to address?

17 A. Well, I think different states have
18 answered that -- that important question in different
19 ways. There -- there are examples of states that
20 have offered much broader bill discounts than is
21 proposed here that -- that really are more of a
22 utility affordability model than this is intended to
23 be that have acted without legislative mandate and
24 have -- while I'm -- I'm not a lawyer, I understand
25 there have been states that without legislative

1 mandate or approval have adopted low income payment
2 assistance programs that have been challenged and
3 upheld to the courts. And we'd be happy to provide
4 examples of that, of those cases in those states if
5 that would be helpful.

6 COMMISSIONER JARRETT: Thank you. I
7 don't believe I have any further questions. But I do
8 have a request, Judge. If I could request Mr. Mills
9 to brief the Heisenberg issue. You know, the case
10 isn't complicated enough. We need some quantum
11 physics in this and more charts and graphs. Thank
12 you.

13 MR. MILLS: Absolutely.

14 JUDGE WOODRUFF: All right.
15 Commissioner Gunn?

16 COMMISSIONER GUNN: Thanks.

17 QUESTIONS BY COMMISSIONER GUNN:

18 Q. I have a couple of specific questions
19 and then -- and then some more general ones. But
20 specifically in your original surrebuttal, you
21 have -- you requested for administrative costs 15
22 percent and then an additional 15 percent for
23 outreach. And I just wanted to be clear. I think
24 you said in your testimony today that you would
25 combine that -- that 30 percent additional down to

1 the 10 percent, you think that -- that it's not --
2 it's not 10 percent for administrative costs and
3 10 percent for outreach, it is 10 percent for both?

4 A. Yes, that's what I'm proposing. And the
5 reason for such a reduction is that to limit
6 participation to 2,400 customers, I think -- you've
7 got -- you've almost got a readymade participant
8 group through your LIHEAP program.

9 Q. And so the amount of the credit would
10 be, in your estimation with that 2,400 group, not
11 pulling out a control group, would be about 114,000,
12 and then you add an additional 10 percent on that to
13 get 125,000 and change?

14 A. 125 to 126 was my back-of-the-envelope
15 on that, yes.

16 Q. Now, a lot of the -- a lot of the
17 questions in the opening statements have been that
18 there is -- there are a lot of unanswered questions
19 about the relationship between a billing credit and
20 asking someone to use their air conditioner in a --
21 during a weather event; is that correct?

22 A. Yes.

23 Q. And I'm kind of a simple person, but
24 that's kind of my idea of what a pilot program does
25 is help answer some of those questions, right?

1 A. Yes, sir.

2 Q. If -- if -- if there was -- if you -- if
3 there was no correlation or if the study -- or the
4 pilot program found that there was no correlation
5 between -- between the bill credit and turn -- and
6 using the air conditioning, you would think that it
7 wouldn't be a good idea to continue that, I'm
8 assuming?

9 A. Well, not to be flip about this, my --
10 my opinion is there is a need for low income bill
11 payment assistance, generally.

12 Q. Great, great.

13 A. But --

14 Q. Let me -- let me give you an assumption.

15 A. But -- but, you know, I guess I would
16 agree with you. Just to be very direct, you know, I
17 would have to agree. If we were able to obtain
18 statistically significant survey evidence that
19 there -- there really is no relationship between
20 people getting a limited credit like this and whether
21 they were to actually operate air conditioning when
22 it was absolutely needed, then I would have to agree
23 with some of the concerns of Public Counsel and --
24 and suggest that a focus merely -- exclusively on
25 outreach would be appropriate and distributing air

1 conditioning systems.

2 Q. So -- so if we went through the pilot
3 program and we found that there is -- that what
4 Ameren is -- is doing today works as well or better
5 than the bill credits, then you're all for continuing
6 and concentrating on those efforts rather than --
7 rather than continuing the bill credit -- bill
8 credit?

9 A. I believe that -- you know, and I'll
10 restate, I agree that the -- the outreach efforts
11 that Ameren is engaged with in partnership with some
12 community-based organizations in this state are
13 laudable, and I would hope that they're continued.

14 Q. That's all I'm just -- I'm trying to
15 clarify is that it seems to me that pilot programs
16 are designed to answer some of the unknowns and we've
17 got a lot of unknowns here in that if -- if the
18 evidence comes back and shows that it's an -- it's an
19 ineffective program or that -- you know, that the
20 money is being spent not on turning on your air
21 conditioning but on groceries, then that would be
22 something that we would finally have updated
23 answers -- answers to?

24 A. Yes, I would agree with that, that --
25 that if evidence is developed and evaluation

1 demonstrates that the program is ineffective and
2 isn't meeting its intended purposes and stated goals
3 and objectives, it shouldn't be continued.

4 Q. For about \$125,000 a year?

5 A. Yeah, yeah -- yes, sir. And you know, I
6 would think that a two-year period would -- would be
7 appropriate for something like this.

8 COMMISSIONER GUNN: All right. Thank
9 you. I don't have any further questions, Judge.

10 JUDGE WOODRUFF: Mr. Chairman?

11 QUESTIONS BY CHAIRMAN DAVIS:

12 Q. Good afternoon, Mr. -- or good morning,
13 Mr. Howat. I'm sorry. If we are going to do such a
14 pilot program and we wanted to model it along the
15 eligibility principles for LIHEAP and the Utilicare
16 program in this state, can you supply us with a
17 revised estimate for the number of households and
18 everything?

19 A. Yes, I can. I can --

20 Q. And costs and the whole -- the whole
21 ball of wax?

22 A. Absolutely.

23 Q. Okay. Could you go ahead and do that?
24 I mean, you don't have to do it here now, but...

25 A. I can give it to you within 24 hours.

1 Q. Okay. Next question. If we are going
2 to have a pilot program, do you think it would be
3 possible to set a floor based on the actual
4 customer's prior usage or the actual household's
5 prior usage and say that you have to use more
6 electricity than what you've used previously in the
7 months of July and August before you get that credit?
8 Would it be possible to do that?

9 A. I'd have to think about that. I -- you
10 know, I think it would be complicated -- you'd have
11 to weather-normalize, I would think, such a -- such
12 an analysis or such a screening process. I think it
13 could be possible to do it. I would respectfully
14 request, you know, an opportunity to think a little
15 bit about that --

16 Q. Okay.

17 A. -- to try to figure out exactly how that
18 would work and how intake workers -- the extent to
19 which intake workers are equipped to conduct such a
20 screening. Having, you know, thought the first time,
21 if I can continue, I think there would have to be --
22 there would have to be informational exchange between
23 the company and billing records and the intake
24 agencies. The extent to which that exists right now,
25 you know, I guess that would -- the extent to which

1 you'd be adding a layer of -- a big layer of
2 complexity on -- might depend on the sort of
3 information that's exchanged currently between the
4 company and the LIHEAP agencies.

5 Q. Okay. Mr. Howat, in -- in -- in some
6 questions from Commissioner Jarrett, you made -- you
7 made a reference to -- to big brother. Have you
8 heard of the quote, big-brother thermostats?

9 A. No, I don't believe I have. I can -- I
10 can imagine, though, what you -- what they refer to,
11 but -- but I haven't heard that.

12 Q. Well -- and, you know, by way of
13 analogy, you're familiar with private schools that
14 don't accept public funding?

15 A. Yes.

16 Q. Okay. And if you're going to accept
17 public funding, then you have to allow also for a
18 modest amount of government regulation and maybe in
19 some cases not even a modest amounts.

20 So if customers are going to receive a
21 benefit, you know, then shouldn't they be willing to
22 accept a little more regulation to go along with it?

23 A. I do believe that there's a
24 responsibility among all households, participants and
25 nonparticipants, associated with this issue. And in

1 terms of participants, some -- perhaps signing some
2 sort of a statement or acknowledgment that the bill
3 credit is intended to operate their air conditioning
4 unit may be -- may be a mechanism to -- to accomplish
5 what you're getting at.

6 But, yes, I would accept your -- your
7 premise that if there's going to be -- if there's
8 going to be a benefit like this handed out, that
9 there's a -- you know, that the public is showing
10 some responsibility essentially in providing it, and
11 on the other side, the recipient households should
12 have some commensurate responsibility and --

13 Q. Sure.

14 A. Yeah.

15 Q. All right. So hypothetically speaking,
16 let's say Mr. Coffman is 65 years old and below the
17 income threshold, so he's qualified.

18 A. I can see that.

19 Q. Okay. And let's say -- let's say
20 Ms. Tatro, you know, comes with the Ameren truck on a
21 service call to Mr. Coffman's house and she wants to
22 make sure everything's done right. And you know,
23 it's July, Mr. Coffman's running the air conditioner
24 and he's got his windows open. What should we do
25 about that?

1 A. Well, the reason -- I think that's a
2 complicated question because we don't always know why
3 people's windows are open. You know, maybe
4 Mr. Coffman had --

5 Q. Maybe he had a gas leak.

6 A. Well, it's possible. That's better than
7 the example I was going to use. I think I'll stick
8 with yours. But -- but, yes, I think we would need
9 to -- we always need to encourage as best we can,
10 especially in low income households, efficient,
11 responsible energy usage.

12 And in this case it's -- it's -- it
13 really is usage, it's not conservation or nonusage.
14 But, yeah, I -- you know, I think the extent to which
15 participants in this program could also, for example,
16 be referred to low income weatherization services or
17 any other energy efficiency services that may be
18 available to them would be -- would be a very
19 positive measured endeavor as well.

20 And it's possible that LIHEAP recipients
21 already are in Missouri, I'm not sure about that.
22 But energy education, efficient usage are all
23 important cornerstones of affordability.

24 Q. Okay. So let me ask you this: If -- if
25 we were to develop some sort of curriculum, and we'll

1 make it short and simple, you know, so it would take
2 less than an hour, on energy -- the efficient use of
3 energy, do you think that would be an -- an
4 appropriate precondition for -- for customers before
5 they get the bill credit?

6 A. I would -- I guess I would want to see
7 the parameters of the educational effort. And I
8 have -- I've some mixed feelings about -- about
9 conditioning receipt of a -- of a credit like this or
10 other forms. Not that this is a bill payment
11 assistance program, but conditioning bill payment
12 assistance, you know, exclusively on a requirement to
13 take a class or to do something like -- there are
14 circumstances in individual households that -- that
15 may make that problematic.

16 Q. But what if you -- if you were going to
17 design those parameters, I mean, what -- what would
18 you suggest?

19 A. I would suggest that as people go in to
20 apply for LIHEAP and if they were going to be
21 referred to a pilot like this, that they be given
22 outreach materials, education materials that the
23 intake workers at the CAP agencies, as part of their
24 protocol, deliver energy education and information to
25 households along those lines.

1 And I would agree also that making
2 available to people and encouraging participation
3 in -- in workshops or a class makes sense. I think
4 that if there is a -- if there's a tenant situation,
5 that the landlord be provided with information
6 regarding the low income weatherization program to
7 the extent landlords can participate in that and
8 benefit their tenants through that.

9 And if the applicant is a homeowner,
10 then they also be referred to those energy efficiency
11 resources that may be available and strongly
12 encouraged to participate in them if it makes sense
13 to do so for that household if they -- if they
14 qualify and their dwelling unit is -- is -- falls
15 within the criteria that makes sense for the program.

16 Q. Okay. Going back to my previous
17 analogy, if we were to find that there were customers
18 that are abusing the system, if the Staff of the
19 Public Service Commission felt that there were
20 residential customers receiving the credit that were
21 abusing the system, is there any mechanism under your
22 pilot program for which they could move to disconnect
23 those customers? Or not disconnect, but to -- to
24 deny them the \$47 credit?

25 A. Well, may I -- may I ask what you mean

1 by abusing the...

2 Q. Well, let's say that the -- let's say
3 that they, you know, set their thermostat on 55 all
4 day, every day, let's say that they leave their
5 windows open all day, every day all during the month
6 of July, let's say that they're a hard core just
7 energy hog.

8 A. Well, I really don't mean to be evasive
9 here, but I'm having difficulty answering that
10 question because I'm not sure how that would be --
11 you know, how the energy hog status would be
12 identified. And I'm just not sure from a practical
13 perspective how you'd -- how you'd do that.

14 My -- my opinion is, as someone who
15 works on these issues and as a ratepayer, that I
16 wouldn't want money going in a wasteful manner, that
17 I would want to ensure as -- to the greatest extent
18 feasible and practical that the money was going
19 directly toward the policy objectives.

20 In this case, I'm not sure -- I'm really
21 not sure how you -- how you get at that without
22 spending a lot more than the five-dollar-per-day
23 credit than...

24 Q. Well -- and -- and that's, I think, part
25 of the problem that -- that Ameren would face, is it

1 not? I mean, is it -- do you think it would really
2 be worth their time to say, you know, we have 20 or
3 30, you know, constituents who are abusing the
4 program and therefore we're here at the Commission to
5 move to cut them off?

6 I mean, one, it's a PR nightmare in and
7 of itself for them. I mean -- but two, I mean, would
8 you -- do you think it would be worth their expense
9 to send Ms. Tatro and Mr. Byrne down here?

10 A. To -- to ensure that the program wasn't
11 being abused?

12 Q. Correct.

13 A. Yeah, I -- well, I don't want to speak
14 for them on that. But, I think with some thought,
15 there could be some -- some sort of controls built
16 into the pilot to get at what you're --

17 Q. Okay.

18 A. -- what you're speaking about. And I
19 guess I'd like to think about that some more, how --
20 how you can accomplish -- provide some assurances
21 that the program is being targeted correctly and that
22 the credit is being used -- yeah. In my view --

23 Q. Okay. I'm more than willing -- I'm more
24 than willing to let you -- let you -- let you file
25 something in response to that request and --

1 A. Uh-huh.

2 Q. -- let the other parties file something
3 in response to that request if they choose to do so.

4 A. That -- that's fine with me. And
5 certainly, if -- to follow up, if it were to be
6 learned that a household receiving the credit that
7 owned an air conditioning unit wasn't using it on --
8 on -- on one of the days over 95 degrees, if someone
9 were to actually prove that and demonstrate it, you
10 know, perhaps that household would --

11 Q. What if they --

12 A. I just don't know how to answer that.

13 Q. What if they pack up and go see their --
14 go see their kids in, you know, Arizona or Florida in
15 the summer? I mean, should they still be entitled to
16 the credit?

17 A. You know, from -- from a sort of an
18 ethical perspective, I'd say no, my opinion would be
19 no. But again, going back to sort of practical
20 program implementation discussion, I just don't know
21 how you -- how you get a handle on that in a cost
22 effective way without exceeding the cost of the
23 credit itself.

24 Q. All right.

25 A. And so, you know, I really do -- I

1 understand what you're asking me about, and it's sort
2 of a program design challenge and issue that I think
3 needs to be -- needs to be addressed. And with --
4 with a credit that's this small, I'm questioning the
5 extent to which it's possible to design a program
6 feature like that that wouldn't exceed -- you know,
7 wouldn't dramatically exceed the design costs that
8 are reflected in the proposal we're talking about
9 today.

10 Q. Okay. Now, in your surrebuttal
11 testimony, your attachment AARP JH-11 --

12 A. Yes, sir.

13 Q. -- you estimated that there were
14 approximately 218,000 total households and that at a
15 50 percent participation rate, you'd have
16 approximately 22,697 households participating; is
17 that correct?

18 A. Yes, in Jefferson County and the City of
19 St. Louis, that's correct. And so that -- that
20 reflects, right, households over 65 -- with the
21 householder, the head of household over 65 years of
22 age --

23 Q. Okay.

24 A. -- and under 175 percent of the federal
25 poverty guideline.

1 Q. Okay. Now, do you know how many
2 residential customers AmerenUE has?

3 A. I -- I do have an estimate of that based
4 on their -- I think their 2007 Form 1. I can try to
5 find that.

6 Q. Well, to cut to the chase here, if I
7 told you that they had approximately 1,027,000
8 residential customers in this state, would you accept
9 that estimate?

10 A. That sounds -- that sounds very close to
11 the numbers that I looked at, yes.

12 Q. Okay. Now -- so assuming you had
13 218,000 total households in JH-11, you estimated
14 roughly 22,700 households participating, that's
15 roughly 10 percent. If we extrapolated that to
16 AmerenUE's 1,027,000 residential customers, that
17 would basically give us 102,000 residential customers
18 that if we were going to expand this all over the
19 Ameren territory that would be eligible?

20 A. Well, the caveat would be, Mr. Chairman,
21 I think the poverty rates in St. Louis are so much
22 higher than in much of the rest of the -- much of the
23 rest of the service territory that that number would
24 be lower.

25 Q. Okay. Mr. Howat, have you ever been to

1 Hayti, Missouri?

2 A. No, sir, I've not.

3 Q. Do you know anything about Hayti,
4 Missouri?

5 A. No, sir, I don't.

6 Q. Do you know that Hayti, Missouri is very
7 comparable to St. Louis City in terms of poverty, in
8 terms of teenage pregnancy and in terms of literacy
9 levels, did you know that?

10 A. No, I did not.

11 Q. Did you know that the entire six
12 counties that comprise the Boot Heel of Missouri,
13 many of them have those same demographics as well or
14 close thereto?

15 A. I'll take your word for it.

16 Q. Okay. And you're familiar with the
17 American community survey?

18 A. Yes.

19 Q. Okay. So if you look, the American
20 community survey put out by the U.S. Census Bureau in
21 2007 --

22 A. Uh-huh.

23 Q. -- if the U.S. Census Bureau estimated
24 we had approximately 2.3 million households in
25 Missouri, you wouldn't have any reason to doubt that,

1 would you?

2 A. No.

3 Q. Okay. And if they estimated that there
4 were 354,000 households earning less than \$15,000 per
5 year in Missouri, you'd have no reason to doubt that,
6 would you?

7 A. No.

8 Q. Okay. And for -- for simple math
9 purposes, if we were going to divide 354,000 into
10 2.3 million, that would be more than 10 percent,
11 wouldn't it?

12 A. Yes, sir.

13 Q. Okay. Now, if the American community
14 survey also showed that there were another 296,000
15 households earning between 15 and \$25,000 a year, you
16 don't think it would be fair to assume that maybe
17 half of those households would also be below poverty?

18 A. Maybe even more than half.

19 Q. Okay.

20 A. Yeah.

21 Q. So you know, what I'm getting at here
22 is, let's assume that we have 500,000 households
23 below poverty in this state and 2.3 million
24 households total, and that's roughly -- that's more
25 than 20 percent, is it not, for the entire state?

1 A. Are you asking if poverty rate is above
2 20 percent in the state or -- I'm sorry. Could you
3 repeat that last --

4 Q. No, I'm saying -- I'm just saying,
5 looking at the number of households in this state and
6 their income levels, I mean, do you think it would be
7 possible to infer that roughly 20 percent of the
8 households in this state are below poverty?

9 A. I -- I think that's a very high number.

10 Q. Okay. Well, I mean, that's --

11 A. Below -- below the 100 percent of the
12 poverty guidelines, I think there -- there are
13 somewhat fewer than that in Missouri.

14 Q. Okay. But you know, that's, in essence,
15 what you represented for Jefferson County and
16 St. Louis County if you figure that 50 percent
17 participation rate -- in fact, if you assumed 100
18 percent participation rate, you would have about
19 20 percent, would you not?

20 A. That was -- yes, sir. That was -- well,
21 that was among elders in those -- elders below 175
22 percent of poverty in those counties -- or in
23 Jefferson County and the City of St. Louis.

24 Q. Okay. Okay. So let's just assume,
25 then, that there are possibly 20 percent of the

1 households in Ameren's service territory that would
2 qualify. Then you're potentially talking about more
3 than 200,000 households that would qualify for this
4 \$47 credit, are you not?

5 A. Well, let's see. At 175 percent of the
6 poverty level -- if you give me a moment, I would
7 like to refer to one of the exhibits in the direct
8 testimony.

9 Q. Certainly.

10 A. If I could refer you, Mr. Chairman, to
11 AARP JH-8 in my direct testimony.

12 Q. I'm at JH-7, so hold on just a moment.

13 A. Yeah.

14 Q. Okay. JH-8.

15 A. Yes, sir. Consistent with what you said
16 a moment ago -- well, according to this Census
17 Bureau, there are approximately 1.3 million
18 households in the counties served --

19 Q. Uh-huh.

20 A. -- by AmerenUE. However, AmerenUE
21 doesn't serve each household or each of the counties
22 in which it operates because there's some cities and
23 towns in some of those counties that aren't in their
24 service territory, and --

25 Q. Right.

1 A. -- just the way the lines are drawn.

2 Q. Right.

3 A. So if you look at the actual number of
4 residential households, and you essentially adjust
5 that census data on total households in those
6 counties, you get the number of households served
7 by -- by Ameren --

8 Q. Uh-huh.

9 A. -- in those counties. And --

10 Q. Well, don't you think we could just go
11 off of their FERC Form 1 or what they have filed here
12 at the Missouri Public Service Commission which --

13 A. Absolutely, yeah. And -- and that --
14 that number's reflected in here on the top right-hand
15 corner.

16 Q. Uh-huh.

17 A. The 2007 FERC Form 1 reflected one
18 thousand -- or excuse me -- 1,027,000.

19 Q. 1,027,000, okay.

20 A. So it sounds like it's a little lower
21 than the figure you have which could be a reporting
22 thing. Maybe you have 2008. But -- but still, we're
23 in the ball park here.

24 Q. Right.

25 A. And -- and according to -- when one

1 adjusts the census data for the -- to get a household
2 count in the Ameren service territory where the
3 householder is above 65 years of age, there -- there
4 are about 283,000 such households.

5 Q. Right.

6 A. And then you've got --

7 Q. And that's with one senior -- one --
8 that's with a head of household 65 years and over?

9 A. Right, right.

10 Q. Okay.

11 A. So there actually could be a few more
12 because the householder in some cases may be 64 or 63
13 as alluded to earlier, and the spouse-holder. But --
14 but this is the best proxy I could --

15 Q. Could you -- could you guarantee me that
16 if we adopt this program, that no one is ever going
17 to come in here and try to remove the 65-year age
18 requirement?

19 A. Well, I can't guarantee what somebody in
20 the future is going to propose. I can tell you,
21 though, that --

22 Q. You can't guarantee me that someone
23 won't want to come back and expand it to households
24 with children?

25 A. No, I can't guarantee that.

1 Q. That would open it up to quite a few
2 more households, would it not?

3 A. Yes, sir.

4 Q. Okay. And if we were just going to take
5 in all low income households, that would even open it
6 to a larger universe, would it not?

7 A. Absolutely, yeah.

8 Q. Okay.

9 A. There are -- I think there -- there are
10 ways that commissions in other states have -- have at
11 the time with expanding eligibility pools even
12 without changing the eligibility guidelines
13 associated with certain programs. And that is
14 through, you know, capping the overall dollar amount
15 that can be attributed to a particular endeavor.
16 That's certainly one straightforward means of doing
17 that.

18 But I can't -- I can't speak to whether
19 people or parties in the future would come in and ask
20 to just give everyone in AmerenUE's service territory
21 a much larger credit each month just because it would
22 be a nice thing to do.

23 Q. But you could certainly see them coming
24 in and saying we should expand this to households
25 with children, could you not?

1 A. I think such a proposal wouldn't be
2 unreasonable, to tell you the truth. There's --
3 there's a vulnerability in the heat-related death
4 data among households with children. Whether the
5 Commission were to consider such an expansion
6 appropriate, I think a measure based on that data and
7 what -- whether the threat was real enough to -- to
8 approve such an expansion, you know, that would be
9 up -- that would be up to the Commission obviously.

10 But I really can't speak to the extent
11 to which a party, known or unknown, will -- will come
12 in -- in the future and propose anything.

13 CHAIRMAN DAVIS: Thank you, Judge.
14 Thank you, Mr. Howat. No further questions.

15 JUDGE WOODRUFF: All right. We're due
16 for a break. We'll come back for recross at ten
17 minutes till 11:00.

18 (A RECESS WAS TAKEN.)

19 JUDGE WOODRUFF: We're back from break
20 and we were going to go to recross based on questions
21 from the Bench. Before we do that, I want to take
22 care of a couple of matters that were raised
23 specifically by Chairman Davis's questions about
24 exhibits. I believe the witness indicated he would
25 be filing a -- an exhibit revising costs based on

1 LIHEAP eligibility; is that correct?

2 MR. COFFMAN: Yes, I understand that,
3 and I think I understand the second request, but I
4 may want to clarify it on the record.

5 JUDGE WOODRUFF: All right. Let's deal
6 with the LIHEAP eligibility issue first. We'll --
7 I'll reserve No. 852 for that.

8 THE COURT REPORTER: I'm sorry, Judge.
9 852?

10 JUDGE WOODRUFF: Yeah, 852.

11 And the second request will reserve
12 No. 853. And Mr. Coffman, if you want to explain
13 what you intend to be filing.

14 MR. COFFMAN: And I may be a little off
15 on this, but it's my understanding from Chairman
16 Davis's questions that he wanted some proposal
17 regarding controls on the behavior of participants to
18 ensure that they are using air conditioning and using
19 it wisely.

20 JUDGE WOODRUFF: Okay. And if you go
21 ahead and late-file those exhibits, then, I'll, of
22 course, give the other parties an opportunity to
23 respond to --

24 MR. COFFMAN: And I'm assuming that
25 would -- that filing would be Exhibit 853?

1 JUDGE WOODRUFF: That's correct. All
2 right. Let me ask, does any party other than
3 AmerenUE wish to recross?

4 MR. MILLS: I have no further questions.

5 JUDGE WOODRUFF: Okay. AmerenUE, do you
6 have any recross?

7 MS. TATRO: I do not.

8 JUDGE WOODRUFF: All right. Any
9 redirect?

10 MR. COFFMAN: Yes, just a -- just a few
11 here.

12 REDIRECT EXAMINATION BY MR. COFFMAN:

13 Q. Mr. Howat, I want to make sure the
14 record is clear in -- with regard to your answers to
15 Mr. Mills' questions and his concerns about an
16 open-ended program that might provide a windfall to
17 AmerenUE.

18 Am I correct in saying that you are now
19 proposing a pilot program that would have a set
20 limited number of participants set at 2,400?

21 A. That's correct.

22 Q. And how would that address the concern
23 about the risk of windfall to the utility?

24 A. In addition to capping the number of
25 participants at 2,400, the proposal as we discussed

1 this morning would entail reverting any unused funds
2 to the Utilicare Missouri program.

3 Q. And in response to Chairman Davis's
4 questions regarding information about how such a
5 pilot would operate if the 175 percent of poverty
6 eligibility were changed to match the eligibility for
7 LIHEAP, is that something that would be -- would make
8 the program more workable, less workable?

9 A. I -- I think it would -- it would lower
10 the administrative complexity to the program. If we
11 were to hold the participant level -- or participant
12 numbers at 2,400, the cost of the credits themselves
13 would remain constant.

14 However, by piggybacking along with
15 LIHEAP eligibility -- income eligibility criteria, I
16 think it would be -- you have a -- sort of a ready --
17 readymade pool of participants and you have an intake
18 process that already exists.

19 Q. And you were asked about -- by Chairman
20 Davis about the concern about a participant who might
21 be an energy hog, who might open the windows or turn
22 their thermostat down significantly or be wasteful.
23 Is that a concern given that your proposal for a set
24 amount of credit, \$23-a-month credit?

25 A. While -- while the issues around that

1 question, I think are real and legitimate, I think by
2 capping the credit at five dollars per weather event
3 or \$23 per month in each of the two months where the
4 credit were to be delivered, that that design
5 continues to put the energy hog at risk of wasting --
6 they -- they open their windows at their own peril if
7 they decide to do so.

8 The five dollars per day will -- will --
9 will go so far, and if -- if individuals for whatever
10 reason are wasteful, they continue to pay a premium
11 for that, for that waste.

12 Q. So to further explain, in other words,
13 it would be a different incentive if you were
14 proposing a percentage of bill credit as opposed to a
15 set amount?

16 A. Oh, yes, I see what you're asking. A
17 fixed credit as -- does continue to -- to leave in
18 place an incentive for people to be efficient as
19 opposed to a percentage of bill that -- that -- where
20 the amount of the benefit would -- would increase
21 with increased volumetric consumption, essentially.

22 Q. You were asked questions about the
23 number of reported heat-related deaths in Missouri.
24 Is -- do you have reason to believe that that -- that
25 the reported deaths are far under-representative of

1 the actual number of deaths related to heat in
2 Missouri?

3 A. Yes, and especially in Missouri. This
4 does apply to other states as well, but the reporting
5 of deaths in Missouri is concentrated among coroners
6 rather than medical examiners. There are also --
7 there's also a real lag in reporting. There's an
8 18-month lag currently in the reporting of deaths in
9 Missouri, and this could lead to a -- my
10 understanding is to a reduction in the specificity of
11 the -- in causes of death or at least when
12 hyperthermia is involved.

13 Also another consideration in -- that
14 leads to under-reporting of heat-related deaths has
15 to do with the confidential -- confidentiality
16 requirements that are in federal law and that -- and
17 that shield respondents, family respondents from
18 providing information that might lead to a
19 heat-related cause of death finding.

20 Q. Ms. Tatro asked you some questions
21 regarding the mission statement of the National
22 Consumer Law Center?

23 A. Yes.

24 Q. And it is, indeed --

25 A. It's -- well, it's a -- it's an energy

1 and utility policy principle statement, to be
2 specific.

3 Q. Okay. All right. I'm corrected on
4 that. But I mean, it is fair to say, isn't it, that
5 National Consumer Law Center does propose programs
6 that would subsidize utility bills for low income
7 individuals including such things as percentage of
8 bill and percentage of payment plans?

9 A. Yes, sir. I -- in fact, that's
10 probably -- that's probably my primary line of work
11 these days.

12 Q. And is the program that you're
13 testifying in support of here today similar to those
14 programs?

15 A. It's -- well, I -- it's more different
16 than similar. I think that the -- the payment
17 assistance programs that I work on in -- in states
18 and before Congress are year-round programs. They --
19 they really are total energy security programs.
20 Total energy affordability on a broad, comprehensive
21 scale is involved in program design efforts
22 associated with those programs.

23 This -- this really is very different.
24 It's -- the intent is to get at a specific health and
25 safety issue during a specific time of year and look

1 at a specific set of participant behaviors.

2 MR. COFFMAN: That's all the questions
3 that I have.

4 JUDGE WOODRUFF: Okay. Thank you. You
5 can step down.

6 THE WITNESS: Thank you.

7 CHAIRMAN DAVIS: Judge, can I -- can I
8 inquire of Mr. Coffman just for a second?

9 JUDGE WOODRUFF: Sure.

10 CHAIRMAN DAVIS: Mr. Coffman, we had --
11 there was a lot of discussion about, you know, if
12 this could be done -- be done in conjunction with the
13 programs that are currently run by the community
14 action agencies.

15 Is there -- have you had any
16 discussion -- I don't see anything -- I didn't see
17 anything in the record here. Have you had
18 anything -- any discussions with them about them
19 administrating eventually or what the cost would be
20 or -- I'm just trying to get a -- you know...

21 MR. COFFMAN: They've participated to a
22 certain degree in the collaborations earlier this
23 year.

24 CHAIRMAN DAVIS: Uh-huh.

25 MR. COFFMAN: If you check the

1 transcript of the local public hearings, I believe
2 the St. Louis Human Development Corporation testified
3 in support of the program.

4 CHAIRMAN DAVIS: Okay.

5 MR. COFFMAN: I think there's some
6 information in the record there about it.

7 CHAIRMAN DAVIS: Okay. Okay. Thank
8 you.

9 JUDGE WOODRUFF: All right. Next
10 witness, then, is Mr. Mark. And it's my
11 understanding Mr. Mark is also going to be subject to
12 cross on the vegetation management issue at this
13 time. Is that the understanding of parties?

14 MS. TATRO: Yes.

15 JUDGE WOODRUFF: And Mr. Mark, as I
16 recall, you testified earlier in this hearing; is
17 that correct?

18 THE WITNESS: Yes.

19 JUDGE WOODRUFF: So you're still under
20 oath, so I won't need to swear you in again.

21 THE WITNESS: Okay.

22 MS. TATRO: And I believe that
23 Mr. Mark's testimony was accepted into the record
24 last week, so I will just tender him for
25 cross-examination.

1 JUDGE WOODRUFF: All right. And for
2 cross, we begin with Safe Energy.

3 MR. ROBERTSON: No questions.

4 JUDGE WOODRUFF: AARP?

5 MR. COFFMAN: Thank you.

6 JUDGE WOODRUFF: I'm a little -- does
7 anyone else want to cross before AARP?

8 MR. CONRAD: Well, if we're going in the
9 usual order, I just had a couple of questions.

10 JUDGE WOODRUFF: All right.

11 MR. CONRAD: And how does your Honor
12 want to handle the breakout between the two issues?

13 MR. DOTTHEIM: Yeah. Judge, Staff
14 doesn't have any questions for Mr. Mark on the hot
15 weather safety program, but I do have some questions
16 for --

17 JUDGE WOODRUFF: The vegetation
18 management?

19 MR. DOTTHEIM: Yes, and on another
20 matter that I've advised the company of. So I don't
21 know --

22 JUDGE WOODRUFF: Is that your situation
23 also, Mr. Conrad?

24 MR. CONRAD: I -- I would have just a
25 very brief question or two on the hot weather thing,

1 and then possibly two or three on the vegetation. I
2 just wanted to know how you...

3 JUDGE WOODRUFF: For the benefit of
4 keeping the record clear, let's try and separate the
5 two. Let's do the hot weather first and then we'll
6 do a second round of it on the vegetation management.
7 So hot weather.

8 MR. CONRAD: All right.

9 CROSS-EXAMINATION BY MR. CONRAD:

10 Q. Mr. Mark, I'm Stu Conrad here for
11 Noranda. I've read through your testimony on this
12 issue, the hot weather, and I want to confine the
13 questions to that. Is it your understanding that the
14 proposal from AARP would be recovered if it were to
15 be approved only from residential customers?

16 A. From the testimony I heard today, that's
17 what I understand.

18 Q. And you've not seen anything in any
19 discussions that you've had with them on or off the
20 record that suggests anything to the contrary?

21 A. No. Only -- the only thing I know is
22 what has been submitted in testimony and what was
23 discussed today.

24 MR. CONRAD: Okay. Thank you, your
25 Honor. That's all.

1 JUDGE WOODRUFF: Anyone else want to
2 cross on the hot weather?

3 (NO RESPONSE.)

4 JUDGE WOODRUFF: All right. Then we'll
5 go to AARP.

6 MR. COFFMAN: Okay. I assume I'll just
7 keep in the custom here and stay seated to ask my
8 questions, if that's --

9 JUDGE WOODRUFF: That's fine.

10 MR. COFFMAN: -- if that's okay.

11 CROSS-EXAMINATION BY MR. COFFMAN:

12 Q. Good morning, Mr. Mark.

13 A. Good morning.

14 Q. Your testimony on this hot weather
15 safety program is limited to three pages in your
16 rebuttal testimony, correct, and maybe an attachment;
17 is that fair?

18 A. I believe so, yes, in the attachment,
19 yeah.

20 Q. Maybe a good place to start is to ask
21 you, what -- could you list for me all of the
22 objections that -- that you might have to AARP's
23 proposal to this program so that I'm clear?

24 A. Well, I don't think the decision not to
25 participate with this program was totally my

1 objections. I mean, there was a committee that was
2 put together, and that committee decided not to
3 participate in the credits. It wasn't Richard Marks'
4 decision.

5 Q. Well -- and you weren't on that
6 collaborative or you didn't participate personally on
7 that?

8 A. No, I didn't.

9 Q. Okay. Let me ask just you personally
10 because you're the witness on the stand.

11 A. Okay.

12 Q. What -- what are your personal concerns
13 or objections to the hot weather safety program as
14 proposed?

15 A. First of all, I'd say that the --

16 Q. Just a list of them, if you will.

17 A. The way it was proposed -- I -- I guess
18 my concern is when it was first brought to our
19 attention last November, it was a concept. The
20 proposals that we've seen have just developed as of,
21 you know, as late as today in the surrebuttal. So
22 you know, it's hard to say what the proposal is. I
23 can tell you my concerns about the concept of -- of
24 offering rebates or incentives.

25 I -- I -- just in concept, I thought it

1 would be very, very difficult to administer and that
2 we would be making the decision, hot weather is not
3 just in St. Louis. It's throughout the entire state
4 of Missouri. And that's a public policy issue that
5 we were -- and I just thought trying to administer it
6 at the local level through community action agencies,
7 it was very unclear how it was going to be
8 administered, the parameters, the guidelines.

9 I mean, much of that information is
10 still being developed today, I think. So I just
11 didn't want to say yes to a concept that -- not
12 knowing how much it's going to cost, the feasibility,
13 is it our role to make a social decision like that or
14 not, social policy decision.

15 Q. Okay. Does that cover the objections
16 that you have?

17 A. Well, I guess I would have to see a
18 specific proposal to give you -- and walk through all
19 the details that were discussed here today to talk
20 about every one of the -- the issues.

21 Q. So you might have objections that are
22 not contained in your testimony?

23 A. My testimony wasn't based on the
24 specific -- specific proposal because I hadn't seen
25 one at that time.

1 Q. Were there -- are there additional
2 objections that have come to your mind based on the
3 testimony you heard today so far?

4 A. I -- I -- I have a lot of confusion
5 based on the testimony today, yes --

6 Q. Okay.

7 A. -- that I would think that would need to
8 be answered to make a decision that I think would set
9 a precedent for the state.

10 Q. Could you list those concerns?

11 A. Well, I guess the whole -- number one
12 concern would be the whole concept about targeting
13 credits for one specific targeted group of those
14 people 65 and older when I discussed this with other
15 people who worked in Social Service agencies.

16 And you know, my experience has been
17 once you target one group, then someone else is going
18 to say, well, why not me, and then it goes -- even
19 with this proposal, it started off with 65 and over.
20 Then it went to 65 -- households of 65 and under --
21 over with a two-year-old. Then it's back to 65 and
22 older but who lives in a dwelling.

23 So you could have someone that's under
24 65 that has -- or that has someone living with them
25 that's 65, and I just think to administer that and to

1 monitor that to make sure that it's true and
2 accurately -- funds are going to the people who
3 deserve them, is almost impossible.

4 Q. Do you disagree with the testimony that
5 individuals over 65 are more at risk for heat-related
6 death and injury?

7 A. I think our actions have -- Ameren's
8 actions of working with agencies to provide
9 assistance to people 65 and over demonstrate that we
10 do have a concern for customers 65 and over and
11 that --

12 Q. Would you answer my question, please?

13 A. Could you restate your question?

14 Q. Do you disagree that individuals over 65
15 are more at a risk for heat-related injury and death?

16 A. More than --

17 Q. Than individuals --

18 A. They do have a higher vulnerability to
19 heat-related deaths, yes, they do.

20 Q. Thank you. Let me -- do you understand
21 that LIHEAP applications involve indicating whether a
22 participant is elderly or not? Do you understand
23 that's one of the intake questions that are required?

24 A. LIHEAP -- could you rephrase the
25 question, please?

1 Q. In LIHEAP eligibility and LIHEAP
2 application processing --

3 A. Uh-huh.

4 Q. -- do you understand that there is a
5 designation for elderly and disabled individuals and
6 that information is regularly requested and recorded?

7 A. I have not seen a LIHEAP application
8 recently.

9 Q. Are you aware of any protect -- consumer
10 protections for elderly consumers that don't apply to
11 the general body of consumers in this state?

12 A. I don't know. I mean, I don't
13 understand your question, I guess. I mean, do you
14 say are there special benefits for people like --
15 that are 65 and older, is that what you're asking?

16 Q. Or -- yes, or shutoff protections or any
17 other type of protections that apply to --

18 A. Well, there's a shutoff protection when
19 there is a hot weather rule for -- that if the -- you
20 know, for all customers. If it's 65 -- 95 and over,
21 we do not do disconnections, that's true. But that's
22 for anyone, not particularly what age group you're
23 in.

24 Q. Does -- does AmerenUE record information
25 regarding whether an individual is elderly or not?

1 Do you have a...

2 A. Not -- not that I know of. We do have a
3 medical assistance role that you can sign up for, and
4 then -- you know, but you could -- it's not -- it's
5 not only for 65 and over. It's anyone with a medical
6 condition can be on that list. But I don't know.

7 Q. There is a designation in the
8 cold-weather rule, is there not, regarding elderly
9 consumers?

10 A. I'm not for sure. I don't know.

11 Q. Are you familiar with the State
12 Utilicare program and whether it designates elderly
13 and disabled consumers?

14 A. Somewhat.

15 Q. Are you aware that there are separate
16 designations for elderly individuals in the law?

17 A. I have not seen that, no.

18 Q. Does AmerenUE do anything other than, I
19 guess, the recent "Be Cool" program that specifically
20 targets elderly customers?

21 A. Well, we've -- we've sponsored many
22 activities. I have not gone back and looked over the
23 course of years of what types of funding we've
24 provided to organizations, senior citizen
25 organizations. But I do know that we've -- or the

1 last number of years we've participated in the summer
2 air conditioner giveaway program.

3 We basically target the agencies more so
4 than a specific group. We've worked with many Social
5 Service agencies, the Urban League, NAACP, the City
6 of St. Louis, Heat-up, Cool-Down St. Louis, all --
7 and community action agencies, worked with the
8 clients that they serve.

9 Q. Does the "Be Cool" air conditioner
10 program make any special designation for elderly
11 consumers? Is there any consideration for whether a
12 consumer is elderly and participating in that
13 program?

14 A. No. The "Be Cool" air conditioning
15 program, the 500 air conditioners that we've donated
16 to community groups throughout our service area go to
17 the agencies that we work with and we let those
18 agencies designate those clients most in need to
19 need -- to use those air conditioners.

20 Q. Your testimony on page 9 is that
21 eligible participants were low income and low income
22 elderly consumers, correct?

23 A. Sure.

24 Q. And out of curiosity, is anything that
25 you describe in the question-and-answer that goes

1 from page 8 to page 9 of your rebuttal testimony and
2 is referenced with the "Be Cool" program, is any of
3 that activity included in the revenue requirement
4 that you're requesting in this case?

5 A. Let me find it. If you're specifically
6 talking about the "Be Cool" donation of air
7 conditioners, no, those were donations from our
8 charitable arm of our corporation as a charitable
9 donation. And the "Be Cool" program, I believe they
10 were also.

11 Q. So nothing in that Q and A refers to --

12 A. And in the survey, I think the survey
13 was actually paid for out of those funds also,
14 corporate funds.

15 Q. In reference to that survey, that was
16 done in conjunction with the Center For Advanced
17 Social Research at the University of
18 Missouri-Columbia, correct?

19 A. Correct.

20 Q. And Ameren had a hand in crafting that
21 survey, did it not?

22 A. I believe we worked with them, yes.

23 Q. Ameren was concerned with the initial
24 proposed survey, was it not, with regard to questions
25 that referred to disconnections and affordabil --

1 affording to run air conditioners?

2 A. I don't know.

3 Q. Are you aware of any changes that were
4 made to ensure that nothing in those questions
5 referred to an incentive to run an air conditioner?

6 A. No, I do not.

7 Q. Did you participate personally in any of
8 the communications involving the development of that
9 survey?

10 A. No.

11 Q. Okay. In the answer to a question that
12 is -- that goes over to page 10 -- the paragraph that
13 runs from page 9 to page 10, you refer to some of the
14 results of that survey. And the last sentence --
15 well, could I ask you to read the last sentence of
16 that paragraph on page 10?

17 A. "Already are running their air
18 conditioners during the hottest days of summer."

19 Q. No, the sentence that begins "These
20 results seem..."

21 A. Oh, that's the third to the last. Okay.
22 "These results seem to indicate that providing a
23 credit on the bill of AmerenUE's low income elderly
24 customers would not make a significant difference.
25 98 percent are already running their air conditioners

1 during the hottest days of summer."

2 Q. Now, that 98 percent figure does not
3 refer exclusively to low income elderly customers,
4 does it?

5 A. That -- let me see, back up to page 9.
6 That -- on page 9, that -- the statement that I just
7 read, that sentence, would refer to those 400 -- the
8 percentage of the 405 customers that were in the
9 telephone survey.

10 Q. Well, despite what that sentence you
11 read states, the -- the 98 percent figure actually
12 refers to the entire body of recipients whether they
13 were low income or not and whether they were elderly
14 or not?

15 A. It was the entire body of the 405
16 surveyed, yes.

17 Q. Would it be fair to assume that low
18 income customers might run their air conditioning
19 less?

20 A. I don't know. I don't have any data to
21 support that.

22 Q. We don't -- we don't have that data, do
23 we?

24 A. No, we don't.

25 Q. Would it be constructive to -- to

1 conduct a survey that was able to dig deeper into
2 that, that breakdown?

3 A. I would have thought we would have that
4 information prior to talking about the proposal, was
5 my general feeling. That we started talking about a
6 program before we had any information to develop the
7 program around.

8 Q. Well, it was AmerenUE, wasn't it not,
9 that actually developed this survey?

10 A. Well, we developed the survey, right. I
11 believe we developed that survey in June after our
12 initial meeting was in November when the concept was
13 brought to our attention.

14 Q. And --

15 A. Because we wanted a baseline in order to
16 judge whether the information and educational program
17 we were going to do had any impact or not.

18 Q. But you're not suggesting that that
19 survey has any statistically significant reference as
20 it relates to low income elderly customers and their
21 behavior?

22 A. No, no, not at all. We were trying to
23 gather some bits of information for a concept that
24 was just given to us without much other detail.

25 Q. But even based on the survey that you

1 did conduct, isn't it accurate that 35 percent
2 responded -- of those who did not run their air
3 conditioners, 35 percent responded that they did not
4 run because of high cost of electric bill; is that --
5 is that correct?

6 A. What part of the survey are you
7 referring to?

8 Q. The follow-up questions regarding that
9 percent of individuals who said they did not run
10 their air conditioning in the hot summer days.

11 A. Well, nine -- well, let me find it here.
12 Okay. Could you repeat the question, please?

13 Q. Of the -- of that percentage that --
14 that responded in the survey that they did not run
15 their air conditioner, 35 percent gave as a reason
16 specifically high cost of electric bills; is that --
17 is that not correct?

18 A. Not exactly. Because if you read the
19 survey, it says, "Of the 37 respondents who would not
20 routinely run their air conditioning during summer
21 months." That's a different question than is do you
22 use the air conditioning during heat waves.

23 Q. Well, what was the percentage that
24 responded to that question, that they -- that high
25 cost was the reason?

1 A. 35 percent indicated it was too
2 expensive as the main reason.

3 Q. And there were some responses that
4 didn't fall into any category; is that correct?

5 A. 11 percent were -- said that they were
6 not sure, and 6.5 percent said others.

7 Q. And if you dig into the details of that
8 survey, there were unique answers given by
9 individuals that didn't fall into those unique
10 categories. Have you reviewed those responses?

11 A. In -- yes, uh-huh.

12 Q. And would it be fair to say that another
13 10 percent of those gave some answer that referred to
14 the high cost of electricity as -- as the reason that
15 they do not run their air conditioner?

16 A. I don't know if that's the percentage or
17 not, I do not know.

18 Q. Did you -- did you review the
19 surrebuttal testimony of John Howat on that point or
20 do you recall that?

21 A. Yeah, I've read it.

22 Q. Do you have any reason to disagree with
23 his description of those?

24 A. No, not at all.

25 Q. So that percentage may be as high as

1 45 percent who did not run their air conditioner as a
2 result of high cost?

3 A. I would disagree with that assumption.
4 Based on this survey?

5 Q. Yes, it's --

6 A. I think based on this survey, I would
7 say that 98 percent said that they use their air
8 conditioning during the hottest days of summer.

9 Q. Well --

10 A. I believe 1 percent said, no -- or one
11 customer -- 1 percent said no and 1 percent said they
12 didn't know, which makes up the 100 percent.

13 Q. Well, what -- what is -- do you know of
14 1 percent of Ameren's residential customers what
15 would be the number of households that constitute
16 1 percent of Ameren's households or 2 percent of
17 Ameren's households?

18 A. 2,000. Or if it's 1 percent, it's
19 1,000, I believe.

20 Q. Okay.

21 A. Approximately.

22 Q. Are you -- are you testifying that --

23 A. Or, no.

24 Q. -- that you can see no -- no possible
25 way that a hot weather safety program incentive could

1 potentially save a life or protect someone's health
2 by encouraging them to run their air conditioning?

3 A. Could you rephrase that? Could you --
4 could you repeat that, please?

5 Q. Can you -- can you state today for
6 certain that a hot weather financial incentive
7 program would have no impact on the health and safety
8 of low income elderly?

9 A. No, I can't.

10 Q. We -- and neither side here has solid
11 numbers to suggest either way, would that be fair?

12 A. That's correct.

13 Q. Is there a set number of -- if you knew
14 that a program of this type would save the life of
15 ten -- ten customers, would that be worth pursuing or
16 at least exploring?

17 A. That's an assumption that I have no
18 idea.

19 Q. Hypothetically, is --

20 A. I try -- you know --

21 Q. Is there a threshold number of
22 individuals whose life or safety would be impacted
23 that would make the program worthwhile?

24 A. I'm -- I'm -- I'm not going to even try
25 to play that game, no.

1 Q. What is your understanding of AmerenUE's
2 legal obligation to provide safe and adequate service
3 as it relates to the word "safe"?

4 A. Providing safe service is to make sure
5 it's safe, that, you know, no one -- that it's
6 provided and it goes into the home safe, we take safe
7 care of our -- of our system, our infrastructure so
8 that no one's going to get hurt around it, that it's
9 going to provide -- that it's -- that it's safe,
10 we're providing it in a safe manner.

11 Q. And you obviously believe that it's
12 appropriate for Ameren to participate in the
13 worthwhile air conditioning program such as the "Be
14 Cool" program. Do you believe that's part of
15 Ameren's mission to focus on hot weather safety in
16 that manner?

17 A. Well, we don't focus on the "Be Cool"
18 program because it's part of Ameren's mission. We
19 put focus on it because with discussions and the
20 communities that we serve, that is the need that has
21 been expressed by a number of the community
22 organizations. And they have -- they have expressed
23 that there's concern for senior citizens, for
24 children's activities, for a number of different
25 activities, and we try to work with those community

1 organizations to develop programs to meet the needs
2 of the community and for those that are most
3 vulnerable such as low income and elderly. And that
4 is one of the programs that we help fund.

5 Q. Okay. Let me ask you about the letters
6 of endorsement from organizations that were attached
7 to the surrebuttal testimony of AARP.

8 A. Yes.

9 Q. Did Ameren contact those organizations
10 when they saw those letters and then encourage those
11 organizations to pull their endorsements?

12 A. Absolutely not. We did not -- let me
13 rephrase that and say absolutely not encourage anyone
14 to pull an endorsement. What they did do was said
15 that these people made statements that people were
16 dying -- had died in their area for heat-related
17 causes.

18 And -- and I believe that our staff
19 asked them where did they get the data and what data
20 were they basing those statements on. That's all
21 they were asked. And from what I understand, that
22 they were told -- they were just asked to sign a
23 letter.

24 Q. With regard to those contacts with
25 organizations, did you direct that contact --

1 A. Yes.

2 Q. -- with these organizations?

3 A. Uh-huh.

4 Q. And with regard to the St. Louis
5 Division on Aging, did you initiate a contact with
6 that organization?

7 A. Not that I know of.

8 Q. Did you receive a call from the mayor
9 with regard to that?

10 A. Yes.

11 Q. But you didn't initiate that contact?

12 A. No.

13 Q. To your knowledge, did anyone at Ameren
14 initiate that contact?

15 A. Not that I know of.

16 MR. COFFMAN: I'd like to mark an
17 exhibit.

18 JUDGE WOODRUFF: All right. Your next
19 number will be 854.

20 (EXHIBIT NO. 854 WAS MARKED FOR

21 IDENTIFICATION BY THE COURT REPORTER.)

22 BY MR. COFFMAN:

23 Q. Can you identify what I've handed you
24 and what's been marked as Exhibit 854?

25 A. It's an e-mail from Gaye Suggestt to a

1 number of people, and it's got a draft of a key
2 element hot weather safety pilot program.

3 Q. Have you seen this before? I know you
4 didn't participate in the collaboratives that took
5 place earlier this year.

6 A. You know, I may have. I can't say for
7 sure. I mean, this was dated in March. I just
8 don't -- I mean, it wouldn't be uncommon that I would
9 see it, I just don't remember seeing it specifically.

10 Q. Even though you didn't participate
11 directly in the meetings that took place earlier this
12 year, do you -- were you involved in any way in
13 briefing or directing Ameren employees in that
14 collaborative exercise?

15 A. I would get feedback from them as far
16 as, you know, what was going on from time to time,
17 yes.

18 Q. So can you characterize what this
19 communication from AmerenUE was in that process?

20 MS. TATRO: I'm going to object. He
21 said he hasn't -- he's not familiar with this
22 document and maybe he saw it but he doesn't really
23 recall it. So I'm not sure he can characterize it.

24 JUDGE WOODRUFF: I think I'll sustain
25 the objection.

1 MR. COFFMAN: All right.

2 BY MR. COFFMAN:

3 Q. Mr. Mark, did you review discovery
4 responses that were sent to AARP and with regard to
5 this issue?

6 A. In regard to this issue?

7 Q. The hot weather safety program.

8 A. Yeah, I -- I looked at them.

9 Q. Do you have the response that AmerenUE
10 gave to AARP, data request 16?

11 A. Not in front of me, no.

12 Q. But you have seen it, you have reviewed
13 it?

14 A. I don't know what it is. I -- if I -- I
15 don't have a copy. I mean, I don't know.

16 Q. Okay. I could --

17 MR. COFFMAN: May I approach?

18 JUDGE WOODRUFF: (Nodded head.)

19 BY MR. COFFMAN:

20 Q. It's my one and only copy. Does that
21 look familiar to you?

22 A. Yeah, I've seen it.

23 Q. And what is that? What is it?

24 A. It's a data request marked AARP 016.

25 Q. And can you describe what it -- what's

1 contained in that response generally?

2 A. A summary of hot weather -- weather
3 pilot program discussion, key milestones, looks like
4 a matrix with some dates, meetings, persons invited.

5 Q. And if -- and if you would turn to
6 the -- that response and what it says with regard to
7 the date of March 11th, 2008.

8 A. Uh-huh.

9 Q. And does that contain substantially what
10 was in the e-mail from Gaye Suggett?

11 A. "Internal meeting to draft key elements
12 of hot weather program."

13 Q. Yes?

14 A. That's what it says, yes.

15 Q. And is that -- is the response
16 essentially the same thing that's contained in
17 Exhibit 854?

18 A. Which one is 854?

19 Q. That's the first document that was
20 handed to you --

21 A. This one? This one?

22 Q. -- of that the e-mail from Gaye Suggett.

23 A. Okay. They look to be -- the first...

24 Q. Did you participate in drafting that --
25 those key elements?

1 A. No.

2 Q. Could I refer you further in that
3 response to data request 16 to what is on the next
4 day, March 12th, 2008?

5 A. Okay.

6 Q. Would you read what's listed for
7 March 12th, 2008?

8 A. E-mails to -- "E-mails to Suggett from
9 Coffman and Gay Fred. John liked key elements and
10 stated that AARP would pledge \$5,000 for rebate piece
11 of the program. Gay Fred stated to Suggett that she
12 thinks the rebate is a waste of time internally to
13 UE. The decision is made to pull any support for a
14 rebate component."

15 Q. Is -- was that decision yours to pull
16 support for the rebate or incentive?

17 A. I don't -- well, I don't remember the
18 specific date. I just remember conversations that --
19 when it was brought to my attention that it wasn't
20 being supported by the Staff and that other members
21 in the participation group had problems with it.
22 I -- my -- my -- I don't remember a specific
23 conversation, but I'm sure my comment to the people
24 that worked for me who were on this program was that
25 then we shouldn't do it.

1 Q. So whose decision was it to pull the
2 plug?

3 A. Well, I think the whole group kind of
4 felt that way.

5 Q. That -- that is the whole group of --

6 A. Of stakeholders that attended that
7 meeting. I mean, the people that are on this group,
8 if they -- you know, if the Staff doesn't want it, my
9 people had problems with it, other folks expressed
10 concerns.

11 Q. What -- what other groups had problems
12 other than those?

13 A. Well, I believe from what I hear, some
14 of the Social Service groups I believe actually had
15 problems with it.

16 Q. Which Social Service groups
17 specifically?

18 A. Well, in conversations that I've had
19 actually with -- I believe with Jackie Hutchinson
20 with HDC.

21 Q. Have you referred -- have you reviewed
22 the transcripts from the local public hearings in
23 this case?

24 A. I haven't read every transcript, no.

25 Q. Do you recall testimony from the

1 St. Louis Human Development Corporation?

2 A. Not specifically. Which hearing were
3 they at?

4 Q. One of the St. Louis -- I don't have
5 the --

6 A. I attended all of the St. Louis
7 hearings. I do not remember -- I remember them
8 talking about the ability of people to pay their
9 bill, but to specifically point to this program, I do
10 not remember that coming up. I do not particularly
11 remember them advocating for this program, no, I
12 don't. And I attended all of the St. Louis regional
13 ones.

14 Q. Well, I guess we'll refer to the record
15 on that point.

16 A. That's fine.

17 Q. But back to my question, you -- you
18 never made the decision personally to pull the plug
19 on the program?

20 A. I mean, what do you mean "pull the
21 plug"?

22 Q. Well, that's the --

23 MR. COFFMAN: If I may approach?

24 JUDGE WOODRUFF: Sure.

25 BY MR. COFFMAN:

1 Q. If I may refer you to that entry on
2 page -- the page marked -- marked March 12th, 2008.

3 A. Uh-huh.

4 Q. Okay. What is that -- that reference?

5 A. It's an e-mail from Bruce Fritz to Steve
6 Kidwell, Gaye Suggett, Mark Mueller, Molly Martin,
7 all Ameren employees. "I agree it's time to pull the
8 plug on the rebates. We have good momentum now
9 around a good program to educate."

10 Q. Okay. I'll just take that back.

11 A. Okay.

12 MR. COFFMAN: I'll end there. That's
13 all I have. Thank you.

14 JUDGE WOODRUFF: Do you wish to offer
15 854?

16 MR. COFFMAN: Yes, I would. Thank you.

17 JUDGE WOODRUFF: 854 has been offered.
18 Any objection to its receipt?

19 MR. CONRAD: Could I, Judge, inquire?
20 This is with some hesitancy, I think, on my part
21 because I'm not really sure we have a dog in this --
22 in this battle.

23 But what I'm looking at is identified as
24 a draft, and these collaboratives that the -- we seem
25 to have a penchant for. I'm just curious if -- if

1 we're getting afoul or running afoul of settlement
2 discussions when we're getting into drafts that are
3 going back and forth between participants in a -- in
4 a collaborative -- the rules are kind of loose. And
5 you understand what I'm -- what I'm saying?

6 JUDGE WOODRUFF: Yes.

7 MR. CONRAD: I mean, if we're having a
8 settlement conference as such, clearly, that's --
9 that's privileged. But these collaborative things,
10 it's not really clear sometimes whether they're fish
11 or fowl. I just -- just partly for my own
12 clarification, what was -- what the Commission's
13 policies and rulings are going to be on that.

14 JUDGE WOODRUFF: Well, I don't know if I
15 can give a definite, definitive answer at this point.

16 MR. CONRAD: I don't know -- I don't
17 know if it's an objection or not. As I say --

18 JUDGE WOODRUFF: I'm certainly sensitive
19 to that concern that we don't want to be getting into
20 settlement discussions, and I don't know if this is
21 or not. Ameren, do you have a concern about that?

22 MS. TATRO: Ameren decided that they did
23 not believe this was a settlement discussion and did
24 not object on that ground. Although I'd share Mr.
25 Conrad's concern and we'll be making that more clear

1 in future collaboratives so that our good efforts
2 aren't attempted to be used against us.

3 JUDGE WOODRUFF: Okay. All right.

4 MS. TATRO: And are we on 854? I
5 apologize for asking the question.

6 JUDGE WOODRUFF: Yes, this is 854.

7 MR. CONRAD: Judge, I don't have an
8 objection. I just needed to raise the point.

9 MS. TATRO: I do.

10 JUDGE WOODRUFF: What is your objection?

11 MS. TATRO: I have an objection on
12 foundation. This is the -- this is the document that
13 Mr. Mark said he was unfamiliar with, he wasn't sure
14 he'd even seen and he's not even listed as someone
15 who's a recipient on it.

16 I don't have an objection to the second
17 one where he indicated that he had seen it. But he
18 hasn't seen this one, there's no foundation.

19 JUDGE WOODRUFF: Well, the second one
20 was never offered, and I assume that the second --

21 MR. COFFMAN: I mean, I can offer --

22 JUDGE WOODRUFF: Well, I think --

23 MR. COFFMAN: -- a response to AARP 16.
24 I'd be happy to do so.

25 JUDGE WOODRUFF: I don't know that it's

1 necessary, but I'm assuming you were using that
2 second document to try and lay the foundation for
3 this first one?

4 MR. COFFMAN: Well, with the --

5 JUDGE WOODRUFF: Is that correct?

6 MR. COFFMAN: With the exception of
7 the -- well, I'm not sure that the -- you know,
8 all of the recipients are listed, but otherwise, I
9 think that all the information that I'm interested
10 in is included in the response to that data request.

11 JUDGE WOODRUFF: All right. Well, I'm
12 going to overrule the objection to 854 and admit that
13 into evidence.

14 (EXHIBIT NO. 854 WAS RECEIVED INTO
15 EVIDENCE AND MADE A PART OF THE RECORD.)

16 JUDGE WOODRUFF: And I believe you said
17 that you were finished with this witness, then?

18 MR. COFFMAN: I am. Thank you.

19 JUDGE WOODRUFF: All right. We'll come
20 up to Commissioner questions on the hot weather
21 issue.

22 MR. MILLS: Judge, I know I declined
23 earlier. Can I just ask a clarifying question?

24 JUDGE WOODRUFF: Go right ahead.

25 CROSS-EXAMINATION BY MR. MILLS:

1 Q. Mr. Mark, you were asked the clarifying
2 question what is -- what is 1 percent of about a
3 million households.

4 A. A hundred, I guess, huh? Or no. But
5 I'd say, 1,000. I'd probably --

6 MR. LOWERY: Mr. Mills is coaching the
7 witness.

8 MR. MILLS: I'm trying, Mr. Lowery. I'm
9 trying to coach him as best I can.

10 THE WITNESS: No.

11 MS. TATRO: You know, we'll just
12 stipulate that that answer is 10,000.

13 JUDGE WOODRUFF: That's very good. I
14 had noticed the same thing.

15 THE WITNESS: 10,000, yeah, I got my
16 zeros in the wrong spot. I'm sorry.

17 MR. MILLS: That's all I had.

18 JUDGE WOODRUFF: Okay. We'll come up
19 for Commissioner questions on the hot weather rule
20 and we'll come back to the parties for questions on
21 the vegetation management. Commissioner Gunn?

22 QUESTIONS BY COMMISSIONER GUNN:

23 Q. Good morning, Mr. Mark.

24 A. Good morning.

25 Q. And I know you've enjoyed this

1 three-hour foray as much as I have, and with the
2 danger of extending it all, I just want to boil this
3 down kind of -- kind of quickly, so I have some very
4 quick questions.

5 A. we all agree that helping low income
6 seniors survive hot weather is a good thing?

7 A. Yes.

8 Q. And then so as a general -- as a general
9 proposition, we agree on that. So this program comes
10 down to two things: It comes down to cost and kind
11 of meaningful implementation. Would you agree with
12 that?

13 A. I would say that that's part of it. I
14 would think also just in principle is, it's something
15 that the State of Missouri wants to enact.

16 Q. And -- and -- and I agree with that.

17 A. I think that's a -- kind of a policy
18 issue.

19 Q. And that's kind of what I mean by -- by
20 meaningful implementation --

21 A. Okay.

22 Q. -- that there is some good end to -- to
23 doing -- to doing the program.

24 A. Okay.

25 Q. And -- and the cost, the -- the actual

1 cost of the credit would be passed through to the
2 ratepayers, so that's not out-of-pocket for Ameren?

3 A. Correct.

4 Q. So that leads me to this question:

5 Mr. Howat said that he believed that the
6 10 percent -- that that 10 percent -- would allow a
7 10 percent for administrative costs which would
8 include outreach and -- as well as the administrative
9 costs of the program. Do you agree with that figure
10 or do you think that figure would be higher?

11 A. Well, which program -- is it on the
12 program with the surrebuttal, the limited number, is
13 that what you're referring to?

14 Q. Absolutely. That's a -- that's a --
15 that's a -- that's a fair point. Under the 2,400
16 pilot program that they're talking about where the
17 credits would equal about \$114,000 --

18 A. Uh-huh.

19 Q. -- \$47 for the 2,400 people. And the
20 contention was that -- that in conjunction with some
21 of your other programs and with the administration of
22 the Social Service agencies, that 10 percent in
23 addition to that 114,000 would be all that would be
24 necessary to administer and outreach the program. Do
25 you agree with that figure or do you think it would

1 be higher or lower?

2 A. I don't think -- I think it would be
3 higher. I think it would be higher because, you
4 know, it depends on if you get into providing
5 administrative fees for the community action agencies
6 to administer it.

7 And then also, you know, from my
8 experience in just trying to target messaging to
9 certain groups, it's very, very difficult to get a
10 message and -- and let groups know. And with a small
11 budget for -- for doing that, I don't know -- I don't
12 know if you could do it. I mean -- I just don't
13 know. I don't think you could do it for that amount.

14 Q. All right. And so if we only allow
15 10 percent for administrative costs, then -- and we
16 implemented the program, then those additional costs
17 would be borne by Ameren -- by Ameren, essentially?

18 A. I would assume, yes.

19 Q. Assume so. All right. And then as a
20 very general -- general question, if we decide to go
21 with the pilot program, I'm assuming that you would
22 agree and work with whatever groups that we decided
23 in order to create a meaningful program, that -- that
24 if -- if we did do it, that that -- and I would
25 expect that all the parties would be able to come

1 together and design a pilot program that would --
2 that would give us some measurable results or that
3 would give us some ability to determine whether a
4 program like this actually works or whether it
5 doesn't work?

6 A. Well, I can guarantee from Ameren's part
7 that we would work -- AmerenUE would work to make
8 it -- do the best job we can. I would hope that all
9 other parties could give you the same guarantee.

10 COMMISSIONER GUNN: Perfect. Thank you.
11 I don't have any other questions. Thank you, sir.
12 Appreciate your time.

13 JUDGE WOODRUFF: Chairman Davis?

14 CHAIRMAN DAVIS: No questions. Thank
15 you, Mr. Mark.

16 THE WITNESS: Thank you.

17 JUDGE WOODRUFF: Does anyone wish to
18 recross based on questions from the Bench?

19 (NO RESPONSE.)

20 JUDGE WOODRUFF: I don't see anybody
21 responding, so redirect, again, limiting to the hot
22 weather issues.

23 MS. TATRO: Thank you.

24 REDIRECT EXAMINATION BY MS. TATRO:

25 Q. Mr. Mark, you were asked some questions

1 by counsel for AARP dealing with this survey. Do you
2 remember those questions?

3 A. Right.

4 Q. Can you tell me the -- what the -- what
5 was that survey designed to do?

6 A. Well, the survey was designed to try to
7 get some baseline information and identify a targeted
8 group of customers, and then -- so that when we did
9 the follow-up -- so that we could -- after we
10 initiated the education and communication program, we
11 could do a follow-up and measure how successful or
12 unsuccessful the program was.

13 Q. So it was designed to deal with the
14 information campaign that was ultimately implemented
15 by you?

16 A. Right. It had to do with the
17 information. I mean, it wasn't a scientifically
18 designed, you know, program to target demographics or
19 any other types of things other than to measure
20 awareness.

21 Q. Was it designed to test AARP's bill
22 credit proposal?

23 A. No.

24 Q. Okay. Mr. Coffman also asked you about
25 the air conditioner handouts. Do you remember that

1 on the questioning?

2 A. Yes.

3 Q. Are those efforts funded by UE
4 shareholders or UE ratepayers?

5 A. Shareholders.

6 Q. Okay. And then, finally at the end,
7 Commissioner Gunn was asking you about kind of the
8 policy question behind this and whether or not -- and
9 the discussion was who should be setting the policy
10 for the State of Missouri. What body do you think's
11 appropriate to set the policy for the State of
12 Missouri on low income elderly issues?

13 A. Well, I -- I -- I base my decision -- I
14 base my opinion just on my previous experiences.
15 I've -- I've worked with low income elderly
16 communities for probably most of my career one way or
17 another, and I know many times these programs have
18 unintended consequences and they don't really
19 direct -- they don't really get to the point that
20 you're trying to accomplish.

21 And I -- I really felt that it's -- it's
22 a state-wide issue. There's just not heating
23 problems in St. Louis, there's -- there's problems
24 throughout the state. And I think that's a statewide
25 issue that needs to be addressed not by just us in

1 St. Louis. And so I would think it's the legislative
2 body's responsibility to look at those social issues
3 on what types of social programs should be funded.

4 MS. TATRO: Thank you. I have nothing
5 further.

6 JUDGE WOODRUFF: All right. All right.
7 That concludes the part about the hot weather. Then
8 we'll go back and do it all over again on vegetation
9 management.

10 All right. For cross-examination on the
11 vegetation management issue, AARP wish to cross on
12 that?

13 MR. COFFMAN: I have no questions on
14 that.

15 JUDGE WOODRUFF: Noranda?

16 MR. CONRAD: Just a couple of things,
17 your Honor.

18 CROSS-EXAMINATION BY MR. CONRAD:

19 Q. Good morning again, Mr. Mark.

20 A. Good morning.

21 Q. I'll try to be short. Let me ask you --

22 A. Okay.

23 Q. -- to look at your direct testimony with
24 me for just a moment. And I believe I'm going to
25 direct you to what is page 10, and I think that's

1 where you discussed this part of the program; am I
2 correct?

3 A. Correct.

4 Q. Toward the bottom of that page, lines 22
5 and 23, there's reference to what you're doing in
6 this program. And that's -- if I read that
7 correctly, it's trimming urban distribution lines
8 every four years and rural distribution lines every
9 six, right?

10 A. Correct.

11 Q. And no change from that in your later
12 testimony. That's -- that's appropriate. What were
13 you doing before?

14 A. I don't think there was -- I don't know
15 the specific cycles that they had. It was -- in the
16 rural areas, it fluctuated. There was not a, you
17 know, a hard core four- and six cycle in the cities.
18 I think it -- you know, I think Ron Zdellar probably
19 could answer that a lot better than I do.

20 But there was not -- with the Public
21 Service Commission requirement in one of the prior
22 rate cases, the four- and six-cycle -- four-year and
23 six-year cycles were what was decided upon. And so
24 that's why that cycle becomes important. I -- I
25 cannot remember the exact cycle and how they handled

1 it prior to that.

2 Q. So I would refer that to Mr. Zdellar?

3 A. Yeah, he -- he has been over that area
4 for, I think, 30 -- over 35 years, and he would know
5 that off the top of his head, yes.

6 Q. Okay. Looking then at the next page on
7 your direct, which would be 11.

8 A. Okay.

9 Q. And I think that's actually a
10 continuation of the answer to that question that was
11 on the prior page, but about lines 13 and 14 and so
12 on, talking about in 2007, 1,500 overhead line miles
13 trimmed and 4,700 overhead line miles, I take it also
14 trimmed in the entire service territory?

15 A. Right.

16 Q. When you say "trimmed," what does
17 that -- what does that entail?

18 A. Well, vegetation management trimming is
19 really trim the -- the -- the limbs from -- with
20 having direct contact with our lines. And usually
21 that trim is between 10 and 15 feet from the line.

22 Now, during the early parts of these
23 programs, we did do complete ground-to-sky clearing.
24 We cleared, you know, 15 feet, tried to give
25 clearance on each side of the line, below line -- or

1 each side of our power lines below and above. We did
2 not go from ground to sky.

3 So that -- but we -- now we have -- with
4 the vegetation management rules, we have implemented
5 the more aggressive tree trimming and we're going
6 ground-to-sky on that.

7 We had a less invasive trimming policy
8 prior to the 2006 and 2007 storms because -- I think
9 mostly because of public opinion and customers were
10 very reluctant to let us trim trees. Not till after
11 the -- those severe storms that we had did we get
12 more cooperation from the public in being able to cut
13 back the trees a lot more severely.

14 Q. And you're talking, I think, about --
15 you mentioned the term "aggressive" right above where
16 you pointed to, and you used the term "danger trees";
17 am I correct?

18 A. Yes.

19 Q. That's -- that's referring, again, to
20 this ground-to-sky removal to get those out of there?

21 A. Well, no, not that. Danger trees are
22 more trees that may -- in St. Louis -- in Missouri
23 it's not uncommon to have trees that are 90 to 100
24 foot or higher -- or taller. I'm sorry. You could
25 have a tree 125 foot tall. That tree can be a

1 significant distance from a power line.

2 But what we saw in those storms, that if
3 that tree is weakened, it could be off easement. So
4 those danger -- and if it falls, it still could take
5 out our power line. And what we saw in the '06 storm
6 especially, it seemed that when the ground gets very
7 saturated, many of those trees would just fall over
8 at the root -- at the base level and the whole root
9 system. And so it could be off easement.

10 If we notice those -- if we -- what we
11 tried to do was identify those trees that looked like
12 they were weakened or dead and they were off
13 easement, those are considered the danger trees that
14 we actually wanted to expand to take out.

15 Q. Okay.

16 A. Those we wouldn't normally -- under
17 normal circumstances, we'd probably -- we would not
18 trim under a normal vegetation management tree
19 trimming cycle.

20 Q. Okay. To kind of summarize that, then,
21 this -- as I read your testimony, this is -- and I
22 understand there may be other -- other people, but
23 your testimony is indicating to me that this is a
24 program that you have enhanced here in the last
25 year -- year or so since, really, the storms?

1 A. Uh-huh.

2 Q. But you've done that to preserve the
3 integrity of the distribution system; am I right?

4 A. Yes, to improve reliability, yes.

5 MR. CONRAD: Okay. Very good. Thank
6 you, sir.

7 THE WITNESS: Thank you.

8 JUDGE WOODRUFF: I skipped over Safe
9 Energy. Do you have any questions?

10 MR. ROBERTSON: No questions.

11 JUDGE WOODRUFF: For the State?

12 MR. IVESON: No questions, your Honor.

13 JUDGE WOODRUFF: Public Counsel?

14 MR. MILLS: Just a couple.

15 CROSS-EXAMINATION BY MR. MILLS:

16 Q. Mr. Mark, with respect to the -- to the
17 KEMA report attached to your direct testimony, do you
18 recall the date of that report?

19 A. The date of the final report?

20 Q. Uh-huh.

21 A. I don't recall off the top of my head.

22 Q. Could you refer to the report itself?

23 A. It's dated November '07.

24 Q. Okay. And do you recall over what
25 period of time the information that KEMA looked at

1 took place?

2 A. Could you ask that --

3 Q. KEMA analyzed a fairly large body of
4 information to put together this report; is that
5 correct?

6 A. Yes.

7 Q. Do you know what period of time the
8 information that they looked at covered?

9 A. I -- I just -- I do not know specific
10 dates. We brought them in in early '07. They
11 provided the report. I don't have that specific
12 date. I could read through this and find it out for
13 you, but --

14 Q. Well, in any event, it's necessarily
15 some -- it's information that was available before
16 November of 2007 when the report was finalized; isn't
17 that correct?

18 A. Right.

19 Q. Okay. If I can get you to turn to
20 page 3 of the report. And this is in the executive
21 summary section, so it's relatively high level.

22 A. Okay.

23 Q. There KEMA is talking about 12
24 improvements that KEMA has identified. Do you see
25 that about a third of the way down the page?

1 A. Uh-huh, yes. Uh-huh.

2 Q. And does not the report say that Ameren
3 has already established a need for these 12
4 improvements and has incorporated them into current
5 budgets?

6 A. It says -- yes, it says AmerenUE has
7 established a need for these 12 improvements and
8 incorporated them into budgets.

9 Q. So as of November 2007 at the latest,
10 AmerenUE had incorporated the KEMA improvements into
11 their current budgets at that time; is that correct?

12 A. Parts of them, I assume, yes. I don't
13 know which specific -- I have not gone back and
14 looked at these specific budget-by-budget, but I --
15 you know, I based -- all I know is what their
16 document says.

17 Q. Would you have any reason to disagree
18 with that document?

19 A. I would just know that -- how budgets
20 work and how when you start putting your plans
21 together for what a project actually costs, budgets
22 change. So you know, I mean, that would be the only
23 thing that would change if the cost was -- at one
24 point was higher than another or something was taken
25 out or added, you know. But if the -- if -- if --

1 you know, I wouldn't disagree with the fact that the
2 issues were budgeted at some level.

3 Q. Okay. So at -- at least at the time and
4 given the caveat that budgets change from time to
5 time --

6 A. Sure.

7 Q. -- UE in November 2007 had incorporated
8 into current budgets the 12 improvements that KEMA
9 identified; is that correct?

10 A. That's correct.

11 MR. MILLS: That's all I have.

12 JUDGE WOODRUFF: Cross from Staff?

13 MR. DOTTHEIM: Yes, thank you.

14 CROSS-EXAMINATION BY MR. DOTTHEIM:

15 Q. Good morning, Mr. Mark.

16 A. Good morning.

17 Q. Mr. Mark, you've already been asked some
18 questions about the KEMA study which is attached to
19 your direct testimony. You are the AmerenUE witness
20 that is sponsoring the KEMA study, are you not?

21 A. I -- I spoke to it in my direct
22 testimony and referred to it, yes.

23 Q. For what purpose is the KEMA study
24 attached to your direct testimony?

25 A. Well, the reason we attached the -- I

1 attached the KEMA study to my testimony was that we
2 were trying -- I wanted to make it clear that we were
3 going -- we were committed to doing whatever is
4 possible to improve our reliability of our system and
5 that we expanded that or included, you know, bringing
6 in an outside firm to maybe look at it a little bit
7 differently and to see if there was something that we
8 may have missed.

9 And the reason it's attached to my
10 testimony is that I wanted the Commission to
11 understand that, you know, we take our commitment to
12 reliability and to -- you know, serious. And we went
13 out and commissioned this group to do this study
14 because, you know, we -- we -- we really, truly
15 wanted someone to try to look at it objectively and
16 see if there were ways to improve things or not.

17 I mean -- so I thought it was
18 appropriate to use that point and use this document
19 as our effort just to try to show that commitment.

20 Q. The KEMA personnel was onsite at
21 AmerenUE with certain regularity, was it not?

22 A. Sure. Yes, yes.

23 Q. When the KEMA personnel were onsite
24 at -- at AmerenUE, did you meet with the KEMA
25 personally?

1 A. I did occasionally. Not every time.
2 They were on and they would do data gathering and,
3 you know, they would -- each -- each area that they
4 would -- would talk with, they would meet with
5 representatives of those areas, subject matter
6 experts, and then, you know, I would get maybe a
7 briefing every few weeks of what the status was and
8 where they're going and that type of thing.

9 Q. Do you know whether the Staff was
10 involved in the -- in the process in any manner?

11 A. You mean the Commission Staff?

12 Q. The Commission Staff, I'm sorry.

13 A. I -- I don't know. I know it was
14 presented to the Staff. The -- there was a
15 presentation at the end. I know Ron Zdellar and Dave
16 Wakeman had comments or discussions with the Staff
17 informing them of what we were doing. And I do -- I
18 think I recall a time when one of the Staff who came
19 to one of the meetings there, I believe, but I'm not
20 for sure.

21 Q. Okay. You are aware that -- that there
22 was a presentation of the KEMA study to the
23 Commission at an agenda session this past summer?

24 A. Yes, uh-huh.

25 Q. Okay. Were you present at that

1 presentation?

2 A. No, I wasn't.

3 Q. Okay. Do you recall or do you know the
4 names of the representatives from KEMA who were
5 involved in the presentation?

6 A. I don't know who made the exact
7 presentation, no.

8 Q. Okay. I looked rather quickly, and as a
9 consequence may have missed it, but in my going
10 through the KEMA study that's attached to your direct
11 testimony, I tried to find the names of the
12 individuals for -- for KEMA who were responsible for
13 the -- the study itself; names, their disciplines --

14 A. Uh-huh.

15 Q. -- experience, what have you, and I
16 couldn't find anything like that. Did I -- did I
17 miss something?

18 A. I may not have included it. We'd be
19 more than happy to provide that from you -- for you.
20 Actually, I met with -- I would meet with the
21 principle, the guy who was setting -- you know, kind
22 of coordinating it, and then they would bring
23 different experts in at different times. But we
24 could get you all of that information.

25 Q. Do you recall -- do you recall the

1 project director's name?

2 A. I can't think of his last name right
3 now, but Bill -- I've met with him a number of times
4 on customer -- on other customer issues, but I can't
5 think of his last name right off the top of my head.
6 But you know, Ron's going to be here later, Ron
7 Zdellar. He may know what the -- what the
8 gentleman's last name is.

9 Q. Does AmerenUE agree with all of the
10 recommendations, I think it's 37 that -- that KEMA
11 reached?

12 A. You know, I don't think we -- we tried
13 to implement the ones that we can. Some of them,
14 I -- I think we don't totally 100 percent agree with,
15 so we've tried to implement those that would make
16 sense, a couple of them that I personally have
17 concerns about, and I know I've discussed those with
18 other people. But for -- for example, the one that
19 I'm familiar with, the call gapping issue with the
20 call center --

21 Q. Yes.

22 A. -- they want us to test that. So you
23 know, they wanted us to test what would happen --
24 what happened during the -- I believe it was the '06
25 storm when we got flooded with just, I believe it was

1 600,000 phone calls in a few hours' span, the -- all
2 of a sudden the lines went down, all the phone lines
3 went down.

4 And we called in our technicians and we
5 couldn't figure out what was going on. And then
6 finally, I think a day and a half into the storm, we
7 found out that AT&T had a system that they called
8 gapping, "call gapping," where they could -- if a
9 system -- if their system is going to be shut down,
10 they automatically divert the calls or drop the
11 calls.

12 Well, you know, we were thinking it was
13 our system, we couldn't find out. Finally, we got a
14 call from them saying, "We did it to protect the
15 St. Louis area grid on the -- on the AT&T system."
16 Well, you know, to try to duplicate that situation
17 again, which KEMA recommended, is virtually
18 impossible. And you know, I remember having a
19 discuss -- you know, I mean, I think it is
20 impossible. I hope it never happens again.

21 But -- so, you know, we -- we tried to
22 tell them that and we did have discussions with them
23 that, you know, we didn't feel that -- that that was
24 possible, but we would look at different types of
25 testing to the system where you could simulate other

1 things.

2 And then what we did internally, we came
3 up with a different way of actually we're going to
4 revert our calls to a 1-800 system which would not
5 then be subject to AT&T gapping. So we're moving
6 away from our regular call-in number and moving to an
7 800 number in order to respond to that recommendation
8 from KEMA. But that -- that's the type of thing that
9 we -- we just didn't -- we disagreed with them on.

10 Q. Do you recall any other of the KEMA
11 recommendations that AmerenUE has not agreed with?

12 A. Well, I think the call center -- I mean,
13 I'm sorry -- the -- the -- the vegetation management,
14 the tree trimmers during the event of a storm, they
15 recommended working them in shifts around the clock.
16 You know, I know I have some concerns about that,
17 with that -- with that policy, just the fact of
18 safety.

19 You know, we had a -- unfortunately, had
20 an employee killed in 2006 in a heavily forested
21 area, touched a downed wire in broad daylight because
22 he couldn't see it. Having those crews out in the
23 middle of the night, sometimes I -- we have concerns
24 with that. We try to use our best judgment, and so
25 we did push back on that issue.

1 Q. Any others?

2 A. Those are the two that would come to my
3 attention --

4 Q. Certainly.

5 A. -- and that I have had discussions with
6 I know of.

7 Q. Mr. Mark, you filed testimony in
8 AmerenUE's last rate increase case, didn't you, Case
9 No. ER-2007-0002?

10 A. I think so, yes. Yes, I did.

11 Q. Mr. Mark, I'm going to hand you a copy
12 of your direct testimony from Case No. ER-2007-0002.
13 It's marked Exhibit No. 38.

14 MR. DOTTHEIM: May I approach the Bench?

15 JUDGE WOODRUFF: Yes.

16 MR. DOTTHEIM: I mean may I approach the
17 witness?

18 JUDGE WOODRUFF: Just to be clear,
19 that's marked as Exhibit 38 from the last proceeding,
20 not in this; is that correct?

21 MR. DOTTHEIM: Yes, I'm sorry. That --
22 that's -- it's marked Exhibit No. 38 in the 2007-0002
23 case, not this proceeding.

24 JUDGE WOODRUFF: All right.

25 MR. DOTTHEIM: Yes.

1 BY MR. DOTTHEIM:

2 Q. And Mr. Mark, I'd -- I'd like to direct
3 you to --

4 MS. TATRO: Mr. Dottheim, do you have an
5 extra copy of that?

6 MR. DOTTHEIM: No. I'm sorry, I don't.

7 MS. TATRO: Okay. Thanks.

8 MR. DOTTHEIM: I have one other copy
9 which I'll give you, and I'll try to work from my
10 notes.

11 BY MR. DOTTHEIM:

12 Q. Mr. Mark, do you recognize that
13 document?

14 A. Yes, I do.

15 Q. Okay. Is that your direct testimony in
16 AmerenUE's last rate increase case?

17 A. Yes.

18 Q. Okay. I'd like to direct you to page 4,
19 and I'd like to direct you to lines 13 to 15. And on
20 lines 13 to 15, I'd like to direct you to the -- the
21 sentence that states, quote, AmerenUE already
22 inspects and treats all subtransmission poles on a
23 cyclical basis, and on an average spends
24 approximately \$600,000 annually for inspection and
25 treatment of poles and nearly \$2 million dollars

1 annually for pole replacement or reinforcement,
2 closed quotation marks. Did I read that accurately?

3 A. Yes.

4 Q. Okay. Are you familiar with the
5 Commission's recently promulgated infrastructure
6 rule?

7 A. Somewhat, yes.

8 Q. Okay. Do you know whether the
9 Commission's infrastructure rule refers to
10 transmission and distribution?

11 A. I believe it does, yes. Yes.

12 Q. Do you know whether the transmission
13 poles that you referred to in your direct testimony
14 in the last rate case would be classified as
15 distribution for purposes of the infrastructure rule?

16 A. Basically, I said subtransmission, not
17 transmission.

18 Q. Okay. I'm sorry. I meant to say
19 subtransmission, I misspoke.

20 A. Okay. Yeah, the subtransmission would
21 be.

22 Q. Okay. Would it be fair to say, would it
23 not -- it would be fair to say, would it not, that
24 AmerenUE was spending funds for infrastructure
25 inspections and repairs back in 2006?

1 A. Yes.

2 Q. Okay. It also would be fair to say,
3 would it not, that the rates that resulted from
4 AmerenUE's last rate case included rates for
5 inspection and treatment and repair of
6 subtransmission poles?

7 A. Of these costs that were included, yes.

8 Q. Okay. Are you aware whether the company
9 is proposing that all inspection and repair costs
10 from January 1, 2008 to September 30, 2008, should be
11 amortized over three years?

12 A. Excuse me. Could you ask -- you're
13 asking am I aware of that?

14 Q. Yes, if you're aware that that's a
15 position of the company in this case.

16 A. I've read that, yes, yes.

17 Q. Okay. Are you aware whether the company
18 is proposing that all inspection and repair costs
19 from October 1, 2008 to February 28, 2009, should be
20 deferred for treatment in AmerenUE's next rate case?

21 A. I'm not familiar with that. I couldn't
22 tell you.

23 Q. Mr. Mark, earlier in response to a
24 question of mine, I think you made reference to the
25 company's KEMA study, when I was referring you to the

1 KEMA study, and you were referencing back, I think,
2 to 2006 of the overload, to the situation.

3 I -- I've mentioned to counsel for the
4 company that -- that based on your responsibilities,
5 I -- I had some questions relating to the data
6 center.

7 A. Okay.

8 Q. Based on -- well, your direct testimony,
9 page 1, if I could refer you to it, lines 12 to 13,
10 you -- you indicate that amongst your
11 responsibilities are customer service operations
12 consisting of, among other things, the -- the
13 customer contact center, do you not?

14 A. Yes.

15 Q. In customer service operation?

16 A. Yes.

17 Q. Have you had occasion to review the
18 direct testimony of one of the union witnesses,
19 Mr. Datillo?

20 A. Yes, I did.

21 Q. Okay. And Mr. Datillo -- in fact, I
22 have a copy of his testimony which I'm going to hand
23 you a copy of. And I'd like to refer you page 2,
24 lines 18 to 20 --

25 A. Okay.

1 Q. -- where Mr. Datillo states, quote,
2 Since approximately 2000, Ameren is subcontracting
3 call center work to the CSI Companies where the work
4 is performed in North Carolina, close quote. Did I
5 read that accurately?

6 A. Yes. Yes, I'm sorry.

7 Q. Is -- is that an accurate statement?

8 A. As it's written, no, it's not accurate.

9 Q. Could you -- could you identify -- are
10 the CSI Companies performing call center work for
11 AmerenUE in North Carolina at the present time?

12 A. Well, first of all, I would say it's not
13 accurate, if I could, because CSI Companies is a
14 company that we had used in the past for surveys, and
15 they do -- they do survey information for us,
16 customer surveys for customer satisfaction. They --
17 they do not do call center work. And so they do not
18 do anything other than survey our customers.

19 What we do is we take customer
20 information, we take -- we pull the data out of the
21 call center provided to CSI, and CSI would then, you
22 know, with our customer service surveys, would
23 contact our customers using our database. But they
24 don't do call center work.

25 Q. When you say survey work, "customer

1 survey work," what do you mean by customer survey
2 work?

3 A. Well, much like a -- any -- just like a
4 transaction -- we do both MH surveys and
5 transactional surveys. Transactional surveys would
6 be we went out and repaired your streetlight and we
7 would survey that customer, the month -- you know,
8 the end of the month and, say, we give the survey
9 company a database that says here's the customers
10 that received service during this period of time.

11 They would then try to get a good sample
12 of customers and ask them were they satisfied with
13 their service, did they respond on time, that type of
14 thing, just like JD Powers would do a survey.
15 Just -- and this is specifically targeted at customer
16 service.

17 Q. Does AmerenUE have call center work
18 performed in North Carolina?

19 A. We do have a call center -- we do have a
20 company that we use in North Carolina called First
21 Contact. Now, they may have changed their name in
22 the recent months. I think they -- they did merge
23 with another company. But it's called First Contact
24 that we'd use for what we call overflow work.

25 Q. And could you explain what overflow work

1 is?

2 A. Well, they do two things: One, we have
3 them for overflow, we have them under contract in
4 case of an emergency, an outage or storm and we need
5 extra people to call in. Then we -- we can just make
6 one call to them, they have a call center that's
7 operated 24 hours a day. And then they can help pick
8 up some of those, what -- overflow calls until we can
9 staff up internally to meet the demand.

10 During nonstorm or emergency times like
11 that, what they do is they take billing calls for
12 like the disconnects. They take those on a random --
13 on a regular basis during nonstorm outages. And
14 that's how we keep them under a retainer type of a
15 contract in order to have them available for standby
16 in the event of an emergency.

17 For example, if a storm occurs, they
18 usually occur on a holiday or in the middle of the
19 night, and you know, we just aren't fully staffed up,
20 and so calls are going to still start coming in.
21 This way, you have a call center that's already
22 operational. You can put them in place and start
23 managing some of those calls until our people start
24 coming in.

25 Q. You have call centers in Missouri?

1 A. All of our -- our call centers are
2 located in Missouri for AmerenUE, yes.

3 Q. Okay. And where in Missouri are they
4 located?

5 A. St. Louis, we have one in Jefferson City
6 and we have some agents that -- home agents that are
7 in the Cape Girardeau area.

8 Q. And what work do they perform for the --
9 for the company?

10 A. They take approximately two -- two
11 million calls per year for the company.

12 Q. And calls of what nature?

13 A. Anything that a customer would call in
14 for, service -- new service, disconnects, on/offers,
15 billing information, change of address, just about
16 anything a customer would call the company for, gas
17 leaks, wire-downs, billing issues, budget billing,
18 credit.

19 Q. The reference to Mr. Datillo's testimony
20 to work being performed by the CSI Companies or work
21 being performed in North Carolina since 2000, is that
22 accurate, is work being performed in North Carolina
23 since 2000?

24 A. I -- I only started with the company in
25 2002, and so I did -- when I saw this, I did ask

1 around, and some of the managers -- one of my
2 managers, Bruce Fritz, who is over the call center,
3 you know, from what I understand, that work has been
4 done there since the mid to late '90s in the same
5 capacity to have that extra availability on call.

6 Q. Mr. Mark, are you aware of the
7 information technology work which Mr. Datillo
8 references which I think he indicates is performed
9 by, is it Accent Tour in India?

10 A. Accent Tour. Yes. It is not under my
11 area of responsibility, but when I saw the comment,
12 you know, I did contact the vice president that's
13 over that area and ask him to explain to me what he
14 meant or what -- what that meant.

15 Q. Okay. Does the -- does AmerenUE have
16 any call center work performed in India?

17 A. Not -- no, no. And I believe the only,
18 you know, work -- you know, we have, at least in the
19 call center, customer service area that I'm familiar
20 with, we have taken a number of precautions to make
21 sure that the work that does get outsourced has been,
22 you know, with firms that are located in our country
23 that are in the United States because, you know,
24 we -- we listen -- or we look at the feedback that we
25 get from customer surveys, even.

1 And even with the surveys, sometimes --
2 but customers will complain and not give information
3 to the person who's doing the survey if they, you
4 know, think that they think they have an accent or
5 something.

6 So we -- we -- we have not -- we look at
7 that, but none of the companies that we have dealt
8 with outsource anything to over -- any -- out of the
9 country from what I know.

10 MR. DOTTHEIM: If I could have a moment,
11 please. I'd like to have an exhibit marked. And
12 Judge, pardon me. If you could tell me what is the
13 next Staff exhibit?

14 JUDGE WOODRUFF: I'm just getting there.
15 It will be 232.

16 MR. DOTTHEIM: I'd like to have marked
17 as -- and offered as an exhibit as Exhibit 232, a
18 copy of a AmerenUE news release dated July 12, 2007.

19 (EXHIBIT NO. 232 WAS MARKED FOR
20 IDENTIFICATION BY THE COURT REPORTER.)

21 MR. DOTTHEIM: If I may approach the
22 Bench -- the witness?

23 JUDGE WOODRUFF: Yes, please.

24 BY MR. DOTTHEIM:

25 Q. Mr. Mark, have you had an opportunity to

1 review what has been marked as Exhibit 232?

2 A. Yes, uh-huh.

3 Q. I will represent to you that it is an
4 AmerenUE news release that I printed off of the
5 Ameren Corporation web site. Do you recognize or
6 recall this document?

7 A. I remember seeing it, yes.

8 Q. Okay. And you're familiar with Project
9 Power On, are you not?

10 A. Yes.

11 Q. Okay. I'd like to refer you to the
12 fourth paragraph, the third bullet point -- excuse
13 me -- the second bullet point -- bullet point, which
14 begins "\$130 million over three years (\$45 million
15 annually) for tree trimming." Did I read that
16 accurately?

17 A. Yes.

18 Q. Okay. Is that your understanding of the
19 tree trimming component of Project Power On when
20 Project Power On was first announced?

21 A. Yes.

22 Q. Thank you. Mr. Mark, do you recall
23 whether the Internet address for Ameren is on the
24 postcard bill that is used by AmerenUE?

25 A. If it's on the bill? I don't know. I

1 don't remember.

2 MR. DOTTHEIM: Mr. Mark, you've been
3 very patient. Thank you. That's the last of my
4 questions.

5 JUDGE WOODRUFF: Did you wish to
6 offer --

7 MR. DOTTHEIM: And I'd like to offer
8 232.

9 JUDGE WOODRUFF: 232 has been offered.
10 Any objection to its receipt?

11 (NO RESPONSE.)

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

14 (EXHIBIT NO. 232 WAS RECEIVED INTO
15 EVIDENCE AND MADE A PART OF THE RECORD.)

16 JUDGE WOODRUFF: We'll come up for
17 questions from the Bench. Commissioner Gunn?

18 COMMISSIONER GUNN: I don't have any
19 questions.

20 JUDGE WOODRUFF: Chairman Davis?

21 CHAIRMAN DAVIS: No questions.

22 JUDGE WOODRUFF: All right. No need for
23 recross. Any redirect?

24 REDIRECT EXAMINATION BY MS. TATRO:

25 Q. Mr. Mark, you were asked a couple

1 questions by the attorney for Noranda and you talked
2 about the fact that the vegetation management was
3 done to preserve the integrity of the distribution
4 system.

5 A. Yes.

6 Q. Does AmerenUE use vegetation management
7 and tree trimming on its transmission system as well?

8 A. Yes, it actually is -- yeah,
9 transmission comes under a different group
10 internally, the way it's structured. But yes, we
11 do -- they do do tree trimming on their system.

12 MS. TATRO: That's all I have. Thank
13 you.

14 JUDGE WOODRUFF: All right. Thank you.
15 And you can step down. And we'll break for lunch in
16 a moment. Mr. Lowery?

17 MR. LOWERY: I was just going to inquire
18 if we could perhaps close the loop on Mr. Rahrer and
19 Mr. Finnell in particular since they would be
20 scheduled tomorrow and I really don't want to ask --
21 have to ask Staff to bring Mr. Rahrer from Florida if
22 it's not necessary. But anybody else?

23 MR. DOTTHEIM: I think we've brought him
24 in for training just to be safe, so he's here if
25 need -- if need be.

1 MR. LOWERY: Oh, okay.

2 MR. DOTTHEIM: We have in his contract
3 that he comes in on occasion to do training with the
4 Staff, so if the Commission has any questions or if
5 he's needed, he's available.

6 JUDGE WOODRUFF: All right. That was
7 Mr. Finnell and Mr. Rahrer are both on off-system
8 sales modeling.

9 MR. LOWERY: Right. Although, as far as
10 I know, nobody has any questions for them.

11 JUDGE WOODRUFF: Right. I'll ask the
12 Commissioners here, do you have any questions for
13 them? They would be the technical experts on the --

14 CHAIRMAN DAVIS: Are they going to be --
15 they're going to be here anyway, Mr. Dottheim?

16 MR. LOWERY: Well, Mr. Finnell, I mean,
17 certainly can be here, but he's not -- he's not
18 otherwise here.

19 MR. DOTTHEIM: The last I was aware,
20 that Mr. Rahrer was -- was going to be here. I will
21 verify that.

22 CHAIRMAN DAVIS: Okay. Can you just
23 verify that after lunch? I don't think I have many
24 questions --

25 MR. DOTTHEIM: Certainly.

1 CHAIRMAN DAVIS: -- but I may just want
2 to ask a couple of questions to satisfy my curiosity.

3 MR. DOTTHEIM: Certainly.

4 JUDGE WOODRUFF: The other two you
5 mentioned this morning were Mr. Birk and Mr. Taylor.
6 Which issues were they on?

7 MR. LOWERY: They -- they only had
8 testimony on heat rate and efficiency testing, and
9 their testimonies indicate they're in agreement on
10 that and nobody else had any testimony on it.
11 They're not on until next week.

12 JUDGE WOODRUFF: Okay.

13 MR. LOWERY: But I was going to advise
14 Mr. Birk if there weren't any questions that we can
15 go ahead and deal with his schedule accordingly.

16 JUDGE WOODRUFF: Okay. What I'll do is
17 send out an e-mail to the Commissioners and see what
18 response we get over the lunch hour.

19 CHAIRMAN DAVIS: All right. Thank you.

20 JUDGE WOODRUFF: Let's go ahead and take
21 a break. Let's take a break until, let's say, 2:00.

22 (THE LUNCH RECESS WAS TAKEN.)

23 JUDGE WOODRUFF: We're back from lunch.
24 And while we were at lunch, there was some further
25 discussion about the availability of witnesses.

1 Mr. Dottheim, did you wish to be heard?

2 MR. DOTTHEIM: Yes. Before lunch there
3 was a question regarding whether Mr. Rahrer would be
4 available. Mr. Rahrer, who is the Staff's production
5 cost model witness on off-system sales will be
6 available tomorrow if there are any questions from
7 the Bench. He will be here doing some training with
8 the Staff. So at the convenience of the Bench, if
9 there are any questions, the Staff will produce
10 Mr. Rahrer.

11 JUDGE WOODRUFF: Okay. And then he's
12 here tomorrow?

13 MR. DOTTHEIM: He actually -- we're
14 expecting him sometime this afternoon.

15 JUDGE WOODRUFF: Okay. But I mean, he
16 won't be here Wednesday?

17 MR. DOTTHEIM: No.

18 JUDGE WOODRUFF: So if we want him --

19 MR. DOTTHEIM: I don't believe so, no.
20 It's -- it's, I believe, just tomorrow --

21 JUDGE WOODRUFF: Okay.

22 MR. DOTTHEIM: -- that he will be here.

23 MR. LOWERY: Judge, I did clarify with
24 Chairman Davis whether he wanted us to have
25 Mr. Finnell come down, and he did not want

1 Mr. Finnell to make a particular trip. So we're
2 planning to tell Mr. Finnell he does not need to
3 appear, if that suits the Bench.

4 JUDGE WOODRUFF: I did send an e-mail
5 out to all the other Commissioners during lunch, and
6 the replies have indicated they did not have
7 questions for any of those four witnesses, either
8 Mr. Birk, Mr. Taylor, Mr. Finnell and Mr. Rahrer.

9 MR. LOWERY: Thank you.

10 MR. CONRAD: Judge?

11 JUDGE WOODRUFF: Yes, sir.

12 MR. CONRAD: I think on our list, the
13 two pending ones were -- were Mr. -- Misters Taylor
14 and Birk. Is that --

15 MR. LOWERY: Yes.

16 MR. CONRAD: -- those were yours. After
17 consulting with our expert on that, I think we may
18 have questions. So one or the other or possibly
19 both.

20 MR. LOWERY: All right. If you'd just
21 let us know if maybe if you -- if you figure it out.

22 MR. CONRAD: Yeah, if there's a change
23 in that, I'll certainly let you and Judge Woodruff
24 know. So that's where we are now.

25 JUDGE WOODRUFF: What issue does that

1 fall under? Is that --

2 MR. CONRAD: That's on the FAC and it
3 was -- I believe it was on -- I'm jumping -- I think
4 you've characterized it as on heat rate and
5 efficiency issues.

6 MR. LOWERY: Yes.

7 MR. CONRAD: And there are some aspects
8 of that that bear on some of the things that are of
9 concern to us.

10 JUDGE WOODRUFF: Okay. That's fine.

11 MR. CONRAD: Sorry. I'm trying to be
12 cooperative.

13 JUDGE WOODRUFF: Sure. All right.
14 Well, let's go ahead and get started on the next
15 issue which is the Callaway 2, Unit 2 COLA costs.
16 We'll start with mini openings on that. We want --
17 Ameren want to go first on that?

18 MR. LOWERY: Certainly. May it please
19 the Commission. Earlier this year, AmerenUE filed an
20 application with the Nuclear Regulatory Commission
21 for a combined construction and operating license,
22 also known as a COLA, for a possible Callaway Unit 2.

23 Had the company not filed an application
24 at the time that it did, substantial production tax
25 credits for new nuclear generating units that were

1 made possible by the Federal Energy Policy Act of
2 2005 would have been lost forever.

3 AmerenUE's analysis of these tax credits
4 indicates that they could save approximately \$500
5 million in production costs. Those savings would
6 reduce ratepayer costs associated with Callaway 2 if
7 it's built as a regulated generating unit.

8 My read of the testimony would indicate
9 that no one has seriously challenged the prudence of
10 the decision to file a COLA application when the
11 company filed it. Instead, others, Staff, the Office
12 of the Public Counsel and the environmental groups
13 claim that the COLA-related costs cannot be included
14 in the company's rate base because of Proposition 1.

15 I would note that the company spent
16 about \$45 million on the COLA application during the
17 test year, but it's booked in the books of account as
18 a rate base item. So the issue in the case is not a
19 \$45 million revenue requirement issue, it's a
20 approximately \$5 million revenue requirement issue.

21 I think this is largely a legal issue
22 that the company will address further in its brief.
23 In short, the company believes the COLA is not part
24 of the construction cost of a new Callaway 2 unit,
25 and thus, does not violate Proposition 1 because a

1 COLA may have independent value apart from the
2 construction of a specific unit.

3 As the Commission knows, UE has not
4 decided whether the Callaway 2 unit would or would
5 not be built. UE might not build it or another unit
6 might be built as a merchant plant. In those cases,
7 another operator might find the COLA to be valuable
8 as it would carry with it the tax credits that I
9 mentioned a moment ago, and it would also carry with
10 it the fact that it's in the NRC's queue ahead of
11 many other applications which also may have value.

12 The company seeks recovery of these
13 costs in this rate case because the company believes
14 it would be appropriate -- it would be inappropriate
15 to saddle the company's shareholders with the cost
16 and risks associated with pursuing the COLA and the
17 cost is pretty substantial given that the filing of
18 the COLA when it was filed preserved these protection
19 tax credits for the potential benefit of ratepayers.

20 If the costs are not allowed, then the
21 shareholders effectively will have borne all of the
22 risks associated with what I believe may end up being
23 something on the order of \$70 million in order to
24 prosecute that application to completion.

25 Finally, if a regulated Callaway Unit 2

1 were not built, the sums collected from customers
2 relating to the COLA could be returned to customers
3 with interest through an amortization in connection
4 with a later rate case. The company believes this is
5 the most fair ratemaking approach to this issue and
6 it would fully protect customers while not saddling
7 shareholders with the risks associated with pursuing
8 the COLA when it did. Thank you very much.

9 JUDGE WOODRUFF: Thank you. For Staff?

10 MR. DOTTHEIM: May it please the
11 Commission. The company proposes to include in
12 plant-in-service the cost of the Callaway 2 combined
13 construction and operating license application. The
14 Staff opposes this inclusion. The application
15 licensing process has not been completed. The
16 application has been sent to the NRC, but a license,
17 if granted, is not expected until 2011.

18 What AmerenUE proposes is not consistent
19 with procedures previously filed in the State of
20 Missouri. AmerenUE's argument that the COLA could be
21 used by another power plant operator to allow
22 construction of a merchant plant is not in AmerenUE's
23 prefiled prepared testimony.

24 AmerenUE's argument that the COLA will
25 be a separate asset with an independent value apart

1 from any new plant itself is speculative. This item
2 is not proper for inclusion in AmerenUE's rate base
3 under Section 393.135 RSMo 2000. Thank you.

4 JUDGE WOODRUFF: Thank you. Public
5 Counsel?

6 MR. MILLS: Thank you. I'll be very
7 brief. Our position is somewhat similar to the
8 position of the Staff. Public Counsel does believe
9 that Section 393.135 prohibits the recovery of these
10 costs in this case, but that's a legal issue that
11 we're not really trying here today. We'll brief that
12 and we'll get to that in due course.

13 However, if the Commission decides that
14 it is allowed pursuant to that statute, Public
15 Counsel also submits that under traditional
16 ratemaking theory, this is a plant held for future
17 use that should not be included in rates even if it
18 were legal to do so, which we allege it is not.

19 There is no evidence in this case that
20 shows that this particular asset, as you will, has any
21 particular value. Any value it may have will perhaps
22 be achieved at some indefinite point in the future when
23 some market may or may not develop for it as an asset.
24 It is entirely too speculative to allow -- to be
25 recovered from ratepayers in the current case.

1 That being said, I have to disagree to
2 some extent with Mr. Lowery's opening statement. It's
3 not the shareholders who entirely bear the risk of
4 these dollars. The way that ratemaking traditionally
5 works is that if the company continues to accrue costs
6 related to the construction of Callaway 2 licensing
7 additional site preparation, what have you, those costs
8 are captured.

9 They're booked to CWIP and they're kept
10 for later recovery, so that it is not the case that
11 if the Commission does not allow recovery of these
12 costs in this case, that they are written off and
13 they're gone forever. They're still subject to
14 recovery at a later time should recovery from
15 ratepayers be appropriate. Thank you.

16 JUDGE WOODRUFF: Opening for the State?

17 MR. IVESON: I have nothing to add, your
18 Honor.

19 JUDGE WOODRUFF: All right. For Noranda?

20 MR. CONRAD: Your Honor, we would, by
21 your leave, I guess, stay here. It will be short.

22 JUDGE WOODRUFF: All right.

23 MR. CONRAD: We think that Staff and OPC
24 have stated the case. There's nothing in 393.135
25 that I read that permits this. In fact, it appears

1 to be by that statute, unjust, unreasonable and is
2 prohibited. And in my book it is not different than
3 if somebody came in and said, well, we'd like to have
4 some money to start up a licensing program or some
5 kind of inspection program for medical doctors.

6 It's simply something that's completely
7 outside the scope of the activities of this company.
8 We don't think the application was filed to create
9 some marketable asset that you could speculate with
10 on some kind of apparently -- apparent market that
11 exists only in hypothetical terms.

12 It was -- was done to facilitate and as
13 an initial step of building a plant which is not
14 fully operational, never used for service. And thus,
15 we've heard lots of discussion at an earlier point in
16 this case about whether Ameren was intending on
17 filing some kind of a legislative effort to overturn
18 the will of the people in Proposition No. 1 back in
19 1976 that's expressed in 373.135. Until that
20 happens, if it happens, 393.135 states the law.

21 Accordingly, I frankly would move to
22 dismiss the application insofar as it comprehends
23 this 50 million -- or I'm not sure, I thought I heard
24 counsel say 5 million -- completely out of this case
25 as being something that is asking this Commission to

1 approve what is unjust, unreasonable and is
2 prohibited.

3 Alternatively, counsel may very well
4 have stated that this is a matter of law that can be
5 briefed. We had an issue like that earlier. I don't
6 know if it's possible to stipulate to facts on this,
7 but it sure would save some time if we could.

8 JUDGE WOODRUFF: I'm certainly open to a
9 stipulation of facts if the parties can agree upon
10 that. I'll deny your Motion to Dismiss at this
11 point. Do the parties want to have time to
12 discuss -- discuss that possibility?

13 MR. MILLS: Judge, I think that's
14 unlikely to be fruitful based on our discovery
15 efforts to date.

16 JUDGE WOODRUFF: All right. Then
17 Mr. Robertson for Safe Energy.

18 MR. ROBERTSON: Mr. Chairman, your
19 Honor, the prudence or not of these expenses is
20 irrelevant under the No-CWIP Law and whether it is an
21 asset that has market value, we believe is also
22 irrelevant. It would seem to me that they should not
23 be allowed to recover for these costs and then turn
24 around and sell it on the market. They should either
25 sell -- recover when the time is right or they can

1 sell beforehand, but I would think not both.

2 Mr. Voss contended that this constitutes
3 planning just like integrated resource planning and
4 therefore should be recoverable. But this goes one
5 step beyond resource planning and is a step towards
6 the construction, operation and owning of a specific
7 plant. And that brings it within the terms of the
8 No-CWIP Law.

9 So I agree that those who had said that
10 this is by and large a legal issue and we would ask
11 the Commission to disallow the recovery of these
12 expenses.

13 JUDGE WOODRUFF: Thank you. I believe
14 that's all the parties who wanted to make an opening
15 on this.

16 CHAIRMAN DAVIS: Judge, can I -- can I
17 inquire of counsel for all the parties?

18 JUDGE WOODRUFF: Certainly.

19 CHAIRMAN DAVIS: For those of you who
20 feel that these expenses should be disallowed or are
21 statutorily prohibited by 371, I think it's 135,
22 Prop 1, would you be willing to stipulate that if the
23 Commission denies recovery to Ameren, that this is a
24 below-the-line investment and if they somehow do want
25 to sell their place in line and sell their castings

1 or whatever they've got ordered, that -- that they
2 can do so and it not -- and it not be counted against
3 them in rates? Are you willing to stipulate to that?

4 JUDGE WOODRUFF: Does anyone want to
5 respond to that?

6 CHAIRMAN DAVIS: I guess what I'm trying
7 to get at here is, can we avoid another EEI Joppa
8 catastrophe? Mr. Dottheim?

9 MR. DOTTHEIM: Well, I think the Staff's
10 position is -- and I think Mr. Mills addressed this
11 in stating the Office of Public Counsel's position,
12 that this is not a disallowance, at least from --
13 from the Staff's perspective. It's a proposal that
14 the cost continue to be treated as CWIP, that the
15 cost not be treated as plant in service.

16 So it's not a proposal that the cost be
17 below the line. So I don't think, Chairman, it's --
18 it's of the nature of the EE, Inc. issue. The EE,
19 Inc. issue, it was an argument as to whether -- and I
20 think the Commission found that EE, Inc. was
21 nonjurisdictional. That's not what the Staff or the
22 company is asserting in this situation. It is
23 jurisdictional. It's just not properly -- at least
24 from the Staff's perspective, it shouldn't be treated
25 as --

1 CHAIRMAN DAVIS: It's just not timely is
2 what you're saying?

3 MR. DOTTHEIM: Yes. Yes, Chairman.

4 CHAIRMAN DAVIS: Okay.

5 MR. MILLS: And if I may add to that, I
6 think -- I think it's helpful to look at how this
7 issue arises. The reason that this issue is in this
8 case is because UE has asked this Commission to
9 approve nontraditional accounting and nontraditional
10 ratemaking treatment for these assets.

11 These assets -- I mean, expenditures --
12 these expenditures, I believe -- and we'll talk about
13 this when we -- when we get to the evidentiary
14 cross-examination portion -- these expenditures, I
15 believe, were originally recorded in plant held for
16 future use which is where they would normally be
17 recorded which was -- which is where they would
18 normally stay until the plant is either built or
19 canceled.

20 UE has asked that they be moved into
21 plant in service and thereby raising the issue.
22 Public Counsel's position is that the Commission
23 should follow traditional accounting and traditional
24 ratemaking through these, and they would stay in --
25 in a plant held for future use until there's some

1 change in that status.

2 And to get to your question, I believe
3 that under accounting practices, if they are in plant
4 held for future use, UE is free to sell assets that
5 are in those kind of accounts and they're not really
6 below the line but they are essentially the same as.

7 And we can -- we will talk about that
8 with Mr. Weiss and Mr. Rackers, but I think,
9 essentially, they are as long as they are where -- as
10 long as they're booked where they're supposed to be
11 as opposed to where UE asked them to be booked, they
12 can sell them.

13 CHAIRMAN DAVIS: Okay.

14 MR. CONRAD: We agree.

15 CHAIRMAN DAVIS: Mr. Robertson, did you
16 have anything to add?

17 MR. ROBERTSON: No, sir.

18 CHAIRMAN DAVIS: Okay. Mr. Dottheim,
19 back -- back to you to follow up.

20 MR. DOTTHEIM: Well, Chairman, and in
21 the manner in which AmerenUE's describing the COLA
22 as a -- as an asset, I think that even raises the
23 question of must AmerenUE come before the Commission
24 for authorization to sell the COLA before it does
25 sell under 393.190.1, I think it is.

1 CHAIRMAN DAVIS: Okay. Now, is it fair
2 to say, though, that if Callaway 2 doesn't get built,
3 then Ameren ends up eating all these expenses?

4 Mr. Lowery, I see you wanting to jump in.

5 MR. LOWERY: Well, Mr. Chairman, I
6 believe that's historically what happened in this
7 state when a unit was canceled, a nuclear unit was
8 canceled, and --

9 CHAIRMAN DAVIS: And wait a minute,
10 Mr. Lowery. Can you refresh for my recollection,
11 didn't the Commission have a docket open on something
12 like that?

13 MR. LOWERY: Mr. Dottheim can
14 probably --

15 MR. DOTTHEIM: Yeah.

16 MR. LOWERY: I was barely out of high
17 school then, I think, so I don't think I can answer
18 that.

19 CHAIRMAN DAVIS: Okay.

20 MR. DOTTHEIM: Yes, and there was a
21 Missouri Supreme Court case which reversed the
22 Commission and the Commission decided the case again,
23 and I -- it only went up to the Western District
24 Court -- Court of Appeals. And my recollection is
25 that the Western District Court of Appeals found

1 that -- that AmerenUE -- that Union Electric Company
2 had been compensated for -- for Callaway 2 in its --
3 in its rate of return, that -- that that had been --
4 that that risk of the cancellation had been -- had
5 been figured in. And that --

6 CHAIRMAN DAVIS: But isn't it true in
7 that last, what is it, generation resource planning
8 docket or whatever that the -- I mean, my lay
9 impression is the Commission had literally just sat
10 on it.

11 MR. DOTTHEIM: Yes. I think, Chairman,
12 I filed a pleading in the docket that -- that the
13 Office of the Public Counsel sought to have a case
14 established for the -- for Callaway Unit 2, and I
15 tried to set out some of the history of the
16 generation capacity expansion dockets for Callaway 1
17 and the first ill-fated Callaway 2.

18 And there was some thought that the
19 Commission did not issue a decision on the Callaway 2
20 case and let -- and let Union Electric Company decide
21 to cancel the unit itself rather than the Commission
22 make that decision for Union Electric Company. Now,
23 that is all surmised.

24 CHAIRMAN DAVIS: Okay.

25 MR. DOTTHEIM: But there -- I think

1 the -- the case where -- where Union Electric Company
2 sought that the cancellation costs for Callaway 2 is
3 ER-83-163, the Commission decided it went up to the
4 Missouri Supreme Court. The Missouri Supreme Court
5 decided that Section 393.135 did not preclude the
6 recovery of the cancellation costs of Callaway 2.

7 I --

8 MR. BYRNE: Your Honor -- go ahead. I
9 don't want to interrupt you. Are you still going,
10 Steve?

11 MR. DOTTHEIM: Well, Mr. Byrne, if you
12 wanted to interrupt, I'll --

13 MR. BYRNE: I don't mean to interrupt.
14 I'm sorry.

15 MR. DOTTHEIM: Well, I was going to give
16 you that opportunity, Mr. Byrne, because I didn't --
17 I didn't necessarily --

18 CHAIRMAN DAVIS: All right.
19 Mr. Dottheim, did you have anything else to add?

20 MR. DOTTHEIM: No. I was just going
21 to -- Chairman, to set out a little bit of the
22 history as I recalled it, but I thought that's maybe
23 what -- what -- what you were -- you were seeking.
24 And for those who might be seeking it, I was trying
25 to set out the -- the case numbers if they wanted to

1 look at it themselves and have the opportunity to
2 correct me if I've misstated anything.

3 CHAIRMAN DAVIS: Okay. And what was the
4 last case that you were referring to, Mr. Dottheim?
5 What was it?

6 MR. DOTTHEIM: It was a Commission
7 case -- it was actually a rate case, ER-83-163. And
8 when the Commission was reversed by the Missouri
9 Supreme Court, the case was remanded and the
10 Commission issued another decision on Callaway 2 in
11 the remand case, and the Commission was affirmed in
12 the Western District Court of Appeals. I'm sorry.
13 I -- I think that the Western District Court of
14 Appeals case where the Commission was affirmed was
15 maybe a 765 S.W. 2d case. I may be mistaken about
16 that.

17 CHAIRMAN DAVIS: That's all right. All
18 right. Mr. Mills, did you want to add something
19 before we go back to Mr. Byrne?

20 MR. MILLS: Well, I can do it before or
21 after, but I think -- and along the lines of your
22 question, it's Public Counsel's position that simply
23 because a -- costs were expended going down the
24 process to possibly building a plant and the plant is
25 never built, that does not necessarily mean that all

1 of those costs expended during that period were
2 imprudent and should not be recovered from
3 ratepayers.

4 There are some circumstances in which
5 it's prudent at one point to spend money to
6 investigate the building of a plant, and at a later
7 point to -- to -- to decide not to go forward with
8 that.

9 If the costs were prudent at the time
10 that they were incurred, regardless of whether the
11 plant is later -- later canceled, it may be
12 appropriate to capitalize those costs to a different
13 plant, for example. Something similar came up in a
14 recent Empire case and the parties were able to agree
15 on that approach.

16 CHAIRMAN DAVIS: So --

17 MR. MILLS: In other words, it's Public
18 Counsel's position that it's not helpful to require a
19 utility once it starts to go down the path of looking
20 at a particular plant, to absolutely, positively
21 build that plant, no matter what, in order to recover
22 those costs.

23 It may be prudent in some circumstances
24 to look at a plant at one point, cancel it later and
25 still have the opportunity to recover some of those

1 costs.

2 CHAIRMAN DAVIS: And so where -- where
3 would you draw the -- I mean, how -- is there a
4 bright line test that you would employ?

5 MR. MILLS: No. I think it's
6 fact-specific and it involves a lot of judgment in
7 terms of what is reasonable at one point and what's
8 reasonable at another point and there may be
9 disagreements about that. But I'm just saying, it's
10 not an absolute -- if you -- if you -- if you don't
11 build the plant, you never get the costs, it's not
12 that clear. There may be circumstances in which it
13 is appropriate to allow recovery of some costs even
14 for a plant that is not ultimately built.

15 CHAIRMAN DAVIS: You just -- you just
16 can't put them in rate base?

17 MR. MILLS: You can't put them in rate
18 base until ultimately a decision is made.

19 CHAIRMAN DAVIS: Right.

20 MR. MILLS: You can't -- pending the
21 outcome of the decision of whether the plant is going
22 forward or not, you can't recover it in rate base,
23 but it may be appropriate to write off exploratory
24 costs, licensing costs, if that's the prudent course
25 at the time.

1 JUDGE WOODRUFF: Okay. Mr. Robertson,
2 did you have anything else to add?

3 MR. ROBERTSON: No, sir.

4 CHAIRMAN DAVIS: Mr. Conrad?

5 MR. CONRAD: No, that's fine.

6 CHAIRMAN DAVIS: Mr. Lowery, Mr. Byrne?

7 MR. BYRNE: Yeah, just -- just real
8 briefly. You know, there is a -- sort of a long
9 legal history associated with this, but if the
10 question is, did we recover the cancellation costs of
11 Callaway 2, the answer is no.

12 CHAIRMAN DAVIS: All right. Thank you,
13 Judge.

14 JUDGE WOODRUFF: Thank you. Let's go to
15 the first witness, then. Who did you want to call
16 first?

17 MR. LOWERY: We're going to put up
18 Mr. Weiss first.

19 JUDGE WOODRUFF: All right.

20 MR. LOWERY: And your Honor, his
21 testimony is already in the record.

22 JUDGE WOODRUFF: All right.

23 MR. LOWERY: With that, I think I'll
24 just tender him for cross-examination. I don't think
25 there are any preliminaries that we need to deal

1 with.

2 JUDGE WOODRUFF: Mr. Weiss, I believe
3 you testified last week also, or the week before.

4 THE WITNESS: Yes, I did.

5 JUDGE WOODRUFF: So you're still under
6 oath so I don't need to swear you in.

7 THE WITNESS: Yes, I am.

8 JUDGE WOODRUFF: Okay. For
9 cross-examination, then, beginning with Safe Energy?

10 MR. ROBERTSON: No questions.

11 JUDGE WOODRUFF: For Noranda?

12 MR. CONRAD: Thank you, Judge.

13 CROSS-EXAMINATION BY MR. CONRAD:

14 Q. Just a couple, Mr. Weiss. Do you
15 believe there's a possibility that Callaway 2 will be
16 built by AmerenUE for the benefit of AmerenUE
17 investors and customers?

18 A. Really, that's not my testimony. I did
19 not testify to that issue.

20 Q. I don't care. I asked you a question.
21 Do you believe that there's a possibility that
22 Callaway 2 will be built by AmerenUE for the benefit
23 of AmerenUE investors and customers?

24 A. I do believe there's a possibility.
25 Mr. Voss has testified to the fact that we are -- we

1 are looking at that option and keeping it open. So
2 it's a possibility that sometime in the future we
3 could build a Callaway 2.

4 Q. What, sir, is the time frame when
5 Callaway 2 will be needed according to the 2008 IRP
6 filing?

7 A. I do not know that.

8 Q. Did you obtain or apply for an operating
9 or combined operating license in order to create a
10 salable asset --

11 THE COURT REPORTER: I'm sorry,
12 Mr. Conrad?

13 BY MR. CONRAD:

14 Q. A salable asset, let's call it that.
15 Did you intend to -- did AmerenUE intend to enter
16 into that application in order to create an asset
17 that it could sell to someone else?

18 A. There again, I have not reviewed that.
19 I did not make that decision, so I cannot answer that
20 question.

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

22 A. That's correct. That's not my area of
23 responsibility.

24 Q. You don't -- you don't know that your
25 company did or did not spend \$50 million to apply for

1 an operating license with the intention of creating
2 an asset that you could sell to someone else?

3 A. I guess the -- part of the question I
4 did not agree with was the creating an asset that was
5 salable. I know we applied for a license to build
6 and operate Callaway 2. I do not necessarily agree
7 that we applied for a license to be able to sell an
8 asset.

9 Q. Is Callaway 2 operational at this point?

10 A. No, it is not.

11 Q. Does the COLA by itself generate any
12 energy?

13 A. No, it does not.

14 MR. CONRAD: Thank you. That's all.

15 JUDGE WOODRUFF: Okay. Then for the
16 State?

17 MR. IVESON: I have no questions.

18 JUDGE WOODRUFF: Public Counsel?

19 MR. MILLS: Thank you. I do have a few
20 questions.

21 CROSS-EXAMINATION BY MR. MILLS:

22 Q. Mr. Weiss, where were the expenditures
23 at issue recorded before your proposed adjustment?

24 A. They are recorded in the construction
25 work in progress and to the construction overhead

1 accounts.

2 Q. Are there other dollars in those
3 accounts other than the ones that are at issue here?

4 A. That is correct.

5 Q. And what would be the accounting
6 treatment for those that remain in those accounts in
7 this rate case?

8 A. I guess I'm not following your question.

9 Q. Well, for the -- or the dollars that
10 remain in those accounts, will UE -- as rates are
11 calculated in this case, will UE earn a return on
12 those dollars?

13 A. The construction overhead accounts
14 includes costs from every -- from all the projects
15 that are currently being built by AmerenUE, so the
16 construction overheads that apply to other projects
17 that will be going through service would be collected
18 in rates when those facilities were placed in
19 service.

20 Q. But only when they're placed in service?

21 A. That's correct.

22 Q. And up until the time they are placed in
23 service, does UE earn a return on those dollars?

24 A. No, they do not.

25 Q. Okay.

1 A. I would add, though, they do recover the
2 financing cost to the FU -- AFUDC calculation.

3 Q. And if the COLA costs at issue here were
4 to remain in those accounts, would -- would UE
5 recover AFUDC on those dollars?

6 A. Currently we are calculating AFUDC on
7 those charges.

8 Q. So the answer is yes?

9 A. I'm not sure how long we can continue to
10 do that. That's still being researched by our
11 property accounting department.

12 Q. Now, can you explain how -- how it came
13 about that you sponsored this issue in your direct
14 testimony?

15 A. Yes, I can. Our attorney, Mr. Byrne,
16 approached me and said he had had discussions with
17 the AmerenUE senior management, and the decision was
18 made that they thought it would be appropriate to
19 include the Callaway 2 COLA costs in rate base and
20 requested I make a pro forma adjustment to include
21 that amount.

22 Q. And do you know who made the decision to
23 propose that pro forma adjustment?

24 A. I would assume it would be Mr. Voss.

25 Q. Now, the proposed adjustment that you

1 have in this case moves the COLA costs into the
2 miscellaneous and tangible plant production account;
3 is that correct?

4 A. That's correct.

5 Q. And is it correct that UE has a
6 five-year depreciation rate for that account?

7 A. The proposal in this filing was not to
8 start amortizing the COLA costs. Our proposal --
9 proposal was just to earn a return on and not a
10 return of that investment.

11 Q. So in terms of depreciation, the dollars
12 for -- for the COLA costs would be treated
13 differently from the other items in that account; is
14 that correct?

15 A. That's correct. We have various
16 amortization periods for intangible plant.

17 Q. And what is your proposal for
18 amortization of the COLA costs?

19 A. I would assume we would amortize the
20 cost of the COLA over the life of the Callaway 2
21 plant.

22 Q. Beginning when?

23 A. When Callaway 2 went into service.

24 Q. And when is the most likely day that
25 Callaway 2 will go into service?

1 A. I do not know that date.

2 Q. Well, let's just for -- for purposes of
3 assumption, let's say it's 2018. Can you make that
4 assumption?

5 A. I can make that assumption.

6 Q. Okay. Between now and 2018, it's your
7 proposal that Ameren -- AmerenUE will earn a return
8 on the COLA costs at whatever its authorized rate of
9 return is; is that correct?

10 A. That's correct.

11 Q. Between now and 2018, will that asset
12 depreciate at all?

13 A. No, that is not in the proposal.

14 Q. If, for example, the Callaway 2 plant
15 doesn't go into service until 2020, is it your
16 proposal that you'll earn a return on those dollars
17 until 2020?

18 A. That is correct.

19 Q. Assume with me that a decision is not
20 made about whether or not to proceed with Callaway 2
21 until 2018. Is it your proposal that AmerenUE will
22 earn a return on those dollars until such time as a
23 decision is made?

24 A. That is correct.

25 Q. And if in -- at some time in the future,

1 say, for example, 2018, AmerenUE decides not to
2 proceed with the building of Callaway 2, what will
3 happen to the returns that ratepayers have -- have
4 paid according to your proposal between now and then?

5 A. I would assume those returns would be
6 refunded to ratepayers or amortized over a period of
7 years with interest. The ratepayers would be made
8 whole.

9 Q. And why would you assume that?

10 A. If we decide not to build the plant and
11 the ratepayers have paid the carrying costs of that
12 plant, then they should receive a refund of the cost
13 that they paid.

14 Q. So you're willing to commit as part of
15 your proposal in this case that they will be
16 returned?

17 A. I am.

18 Q. Are you authorized to make that
19 commitment on behalf of your company?

20 A. I'm not sure, but I -- you know, you
21 asked me the question and that's my opinion.

22 Q. Okay. And when you say "amortized," is
23 it your proposal that the returns that the -- that
24 the customers have paid over the years up until the
25 point when the plant is either canceled or decided

1 not to go forward with could be amortized over some
2 period of years rather than returned immediately?

3 A. That is correct. The returns would have
4 been earned over a period of years, so the refund
5 should be over a period of years.

6 Q. And do you have any proposal on how you
7 would treat customers who are no longer on the system
8 that have paid in -- on those returns but are not
9 customers at the time when a decision is made not to
10 move forward with the plant?

11 A. I have no proposal for that issue.

12 Q. Now, let me -- let me talk to you about
13 another hypothetical. There -- there has been some
14 allegations in this case that the -- the COLA may
15 have some separate value. Are you aware of that?

16 A. I've -- no. I know what Mr. Rahrer's
17 testified to, and he would be the witness to answer
18 any questions on that issue.

19 Q. Well, can you assume with me that there
20 is -- that there is at least some testimony in this
21 case that the COLA may have a value in and of itself?
22 Can you just make that assumption?

23 A. Yes, I can.

24 Q. Okay. And assume further that -- that
25 that turns out to be the case and that in, say, 2018,

1 AmerenUE actually does sell the COLA. What is your
2 proposal for returning the returns that the
3 ratepayers have paid in the interim between now and
4 2008 under those circumstances?

5 A. It would be my same proposal, that the
6 ratepayers would receive a refund of the returns they
7 have paid to an amortization with interest.

8 Q. Okay. And further assume with me that
9 it turns out that the COLA is really, truly valuable
10 and it is sold for more money than the ratepayers
11 have contributed over the years. Who would -- who
12 would get the excess in those circumstances?

13 A. Under my proposal, AmerenUE would get
14 the excess.

15 Q. Now, Mr. Weiss, can you explain to me
16 your understanding of the general ratemaking
17 treatment that's awarded to plant held for future
18 use?

19 A. I think it varies. Sometimes plant for
20 future use is allowed in rate base and return
21 earned -- earned on that investment, other times it's
22 not allowed in rate base. I think there generally is
23 a rule that if there is a specific plan to use -- use
24 that future use plant, it can be allowed in rate
25 base.

1 Q. And where have you seen that -- that
2 rule annunciated?

3 A. I've experienced that in various rate
4 filings over my 30-year career in Illinois, Missouri
5 and Iowa and at the -- at the FR -- FERC.

6 Q. Can you name any -- any Missouri cases
7 in which that has happened?

8 A. I'm trying to recall that. It
9 appears -- I seem to remember that in some of our
10 earlier rate cases back in the early '80s, that we
11 were allowed to include some future use plan in a
12 rate base, but recently we have not.

13 Q. Can you name -- can you name any
14 specific cases where any specific items of property
15 for which that treatment was allowed in Missouri?

16 A. The cases I am recalling, it -- the
17 future use plant was substation land or transmission
18 line or distribution line, land that we had purchased
19 in order to provide facilities for our customers.

20 Q. Now, if I were to tell you that the
21 Commission itself has annunciated the general rule by
22 stating, "Plant which is held for future use
23 generally includes property required for future
24 utility service," would you agree with that
25 statement?

1 A. I think that's -- that is the current
2 ruling by the Commission.

3 Q. Okay. They go on to state, "In
4 Missouri, plant held for future use generally is not
5 allowed in the rate base if the use is to occur
6 outside the test year." Would you agree that that is
7 the appropriate general rule?

8 MR. LOWERY: I'm -- I'm going to object
9 just to the extent it calls -- calls upon the witness
10 to testify that there's an established, binding legal
11 principle since there's no stare decisis in
12 administrative law. The commissions are free to make
13 different rules in different cases. So to that
14 extent, I'm going to object to the question.

15 MR. MILLS: Judge, the witness himself
16 brought up what he considers to be the general rule.
17 I'm trying to pin him down on what he thinks the
18 general rule is.

19 JUDGE WOODRUFF: I'll allow you to go
20 forward with that understanding that he's not
21 establishing any policy for the Commission,
22 obviously.

23 MR. MILLS: No, I understand that.

24 BY MR. MILLS:

25 Q. Do you recall the question?

1 A. I do not.

2 Q. Let me ask it again. The Commission
3 goes on to state, "In Missouri, plant held for future
4 use generally is not allowed in the rate base if the
5 use is to occur outside the test year." Would you
6 agree that that is also a statement of the general
7 rule?

8 A. There again, it's been my experience
9 that there was a plan, say, within five years, to use
10 that property that has been allowed in the rate base.
11 Currently, I -- we have not asked for any property to
12 be included in rate base, but that hasn't been my
13 experience in past years.

14 Q. But you can't name any specific cases in
15 which that happened, can you?

16 A. Unlike Mr. Dottheim, I didn't recall
17 those case numbers that go back in the late '70s and
18 early '80s, but you can look in the -- in the records
19 of the AmerenUE rate cases we're filing almost every
20 year and you will find some of those cases where we
21 did have future use plan allowed in a rate base.

22 Q. Now, if I were to tell you that in a
23 water case, the Commission went on after making those
24 general statements to make a finding that -- well,
25 actually, made two findings: One, that the property

1 in question is not being used for the production of
2 service to customers, and there is no competent or
3 substantial evidence to prove that it shall be so
4 used in the foreseeable future and disallowed the
5 plant as being included in a rate base.

6 Would that be consistent with your
7 understanding of the general rule?

8 A. Right. The term "foreseeable future" is
9 what I've -- what I've been referring to in my
10 previous testimony, that projects with plants to be
11 used within five years have been allowed, and those
12 without a foreseeable use have not been allowed.

13 Q. So you would agree that the standard is
14 that there should be competent and substantial
15 evidence to prove that it shall be used in the next
16 five years?

17 A. I'm not saying that's the only standard,
18 but it has been the standard that's been applied to
19 facilities such as substation sites or transmission
20 line right-of-ways.

21 Q. I'm sorry. Go ahead. Were you
22 finished? I didn't mean to interrupt.

23 A. No, I'm saying for something like for
24 COLA if you wanted to put that in future use plant,
25 then there could be a longer term of five years

1 applied to that situation because it does have a
2 definite use in plan.

3 Q. Okay. What is the definite use in plan
4 for that COLA?

5 A. The definite use in plan is to either
6 build the Callaway plant by AmerenUE or to sell the
7 license to another company to build the plant.

8 Q. Okay. What other company?

9 A. That's a hypothetical. You keep asking
10 me hypotheticals and that's a hypothetical response,
11 that if UE doesn't build a plant and the license has
12 a value, we may be able to sell that license to
13 another company.

14 Q. Okay. I'm sorry. I thought you were
15 talking about definite plans in your previous answer.

16 A. Oh, no, I'm not talking about any
17 definite plans. I'm just --

18 Q. So there are no definite plans to either
19 build Callaway or to sell more COLA; is that true?

20 A. The -- the plan at this point in time to
21 review all the facts and information and keep our
22 options open to build the Callaway 2.

23 Q. All right. Let me break it down since
24 you seem to have trouble understanding that question.
25 Are there definite plans to build Callaway 2?

1 A. That's not my decision. I think
2 Mr. Voss has testified to that fact numerous times in
3 the last -- last week or two about what the plans are
4 for the Callaway 2.

5 Q. Okay. So your answer is you don't know
6 whether there are definite plans to build Callaway 2?

7 A. At this point in time, I do not know
8 that for sure.

9 Q. Okay. Do you know if there are definite
10 plans to sell the COLA?

11 A. At this point in time, there is no
12 definite plans to sell the COLA.

13 Q. Do you know at what point in time there
14 will be definite plans to go to either of those
15 courses or a different course?

16 A. There again, I think Mr. Voss testified
17 that at the end of the next IRP, a decision will be
18 made at that point in time whether to go forward with
19 Callaway 2 or not.

20 Q. And when will that be?

21 A. There again, I don't remember --
22 remember the exact date Mr. Voss gave, but it was six
23 months after the filing of the next IRP.

24 Q. Do you know whether there is evidence in
25 this case that there is a market for an item such as

1 the COLA?

2 A. I have not studied that issue. I am not
3 aware of any facts around that issue.

4 MR. MILLS: Judge, I think I just have a
5 couple of more questions and they're going to involve
6 some highly confidential information.

7 JUDGE WOODRUFF: All right. We'll go
8 in-camera at this time. If there's anyone in the
9 room that needs to leave, please do so and please
10 look around.

11 MR. MILLS: I'd like to have an exhibit
12 marked.

13 (Reporter' Note: At this point, an
14 in-camera session was held, which is contained in
15 Volume 19, pages 1311 through 1313 of the
16 transcript.)

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

3 MR. MILLS: Judge, while we were
4 in-camera, I had marked Exhibit 425 HC, and the
5 witness indicated he was not very familiar with that
6 document, so I'm not going to offer it at this time.
7 I believe the next witness may be familiar with it,
8 and I will reserve offering it until the next witness
9 testifies.

10 JUDGE WOODRUFF: Okay.

11 MR. MILLS: And that completes the
12 cross-examination I have for Mr. Weiss, I believe.
13 Let me check one other document. Yes, I'm through.

14 JUDGE WOODRUFF: All right. Cross for
15 Staff?

16 MR. DOTTHEIM: Yes, thank you.

17 CROSS-EXAMINATION BY MR. DOTTHEIM:

18 Q. Good afternoon, Mr. Weiss.

19 A. Good afternoon, Mr. Dottheim.

20 Q. Mr. Weiss, AmerenUE books Chapter 22
21 electric resource planning expense sometimes referred
22 to as integrated resource planning expense as an
23 expense rather than the plant in service or CWIP,
24 does it not?

25 A. That's correct. Those costs are charged

1 to operating expenses.

2 MR. DOTTHEIM: Thank you, Mr. Weiss.

3 JUDGE WOODRUFF: All right. We'll come
4 up with questions from the Bench. Commissioner
5 Murray?

6 COMMISSIONER MURRAY: I have no
7 questions. Thank you, Judge.

8 JUDGE WOODRUFF: Commissioner Clayton?

9 COMMISSIONER CLAYTON: No questions
10 today. Thank you.

11 JUDGE WOODRUFF: Commissioner Jarrett?

12 COMMISSIONER JARRETT: No questions.
13 Thank you.

14 JUDGE WOODRUFF: Commissioner Gunn?

15 COMMISSIONER GUNN: No questions. Thank
16 you.

17 JUDGE WOODRUFF: Chairman Davis?

18 CHAIRMAN DAVIS: No questions.

19 JUDGE WOODRUFF: All right. No
20 questions from the Bench, so no need for recross.

21 Any redirect?

22 MR. LOWERY: No redirect, your Honor.

23 JUDGE WOODRUFF: All right. And
24 Mr. Weiss, you can step down.

25 I believe the next witness is Mr. Arora.

1 Good afternoon. Is this the first time you've
2 testified at this hearing?

3 MR. ARORA: That is correct.

4 (The witness was sworn.)

5 JUDGE WOODRUFF: Thank you. You may
6 inquire.

7 DIRECT EXAMINATION BY MR. LOWERY:

8 Q. Please state your name for the record.

9 A. My name is Ajay Arora.

10 Q. And what's your title?

11 A. My title is director, corporate
12 planning, Ameren Services.

13 Q. Mr. Arora, did you cause to be prepared
14 in this docket direct testimony, both an HC and an NP
15 version, rebuttal testimony and then surrebuttal
16 testimony, both an HC and NP version?

17 A. I did.

18 Q. If I were to ask you the same questions
19 that are posed in that testimony, would you give the
20 same answers?

21 A. I would.

22 Q. And you have no corrections?

23 A. Not at this time.

24 MR. LOWERY: Your Honor, with that, I
25 would offer Exhibits 22 HC and NP, Exhibit 23 and

1 Exhibits 24 HC and NP into the record and tender the
2 witness for cross-examination.

3 JUDGE WOODRUFF: Exhibits 22, 23 and 24
4 have been offered into evidence. Are there any
5 objections to their receipt?

6 MR. CONRAD: Yes, your Honor. Insofar
7 as -- excuse me -- insofar as they deal with the
8 effort to obtain recovery of COLA costs, I object on
9 the basis that they are not only legally irrelevant,
10 but they are legally immaterial.

11 JUDGE WOODRUFF: Okay. And your
12 foundation for that objection?

13 MR. CONRAD: 393.135.

14 JUDGE WOODRUFF: All right. We'll deal
15 with the legal issues on the briefs. Your objection
16 is overruled and those Exhibits 22, 23 and 24 will be
17 received into evidence.

18 (EXHIBIT NOS. 22 HC AND NP, 23 AND 24 HC
19 AND NP WERE RECEIVED INTO EVIDENCE AND MADE A PART OF
20 THE RECORD.)

21 JUDGE WOODRUFF: Okay. Cross, Safe
22 Energy?

23 MR. ROBERTSON: No questions.

24 JUDGE WOODRUFF: And Noranda?

25 MR. CONRAD: Yes, sir.

1 CROSS-EXAMINATION BY MR. CONRAD:

2 Q. Good afternoon, sir.

3 A. Good afternoon.

4 Q. Does Ameren believe there's a
5 possibility that Callaway 2 will be built by the
6 company for the benefit of AmerenUE investors and
7 customers?

8 A. It is my understanding that AmerenUE
9 senior management is evaluating that option as to
10 whether they would build Callaway 2 for the benefit
11 of AmerenUE customers and investors.

12 Q. So is that a yes?

13 A. It's my understanding that they're
14 evaluating that option, yes.

15 Q. So that's a yes to the question that I
16 asked you?

17 A. My response is they're evaluating that
18 option. It's possible they may build it or they may
19 not.

20 Q. There is a possibility?

21 A. Yes.

22 Q. And what is the time frame when
23 Callaway 2 would be needed according to the 2008 IRP
24 filing?

25 A. According to the 2008 IRP filing, the

1 time frame is in the years 2018 to 2020.

2 Q. Was it the intention of Ameren in making
3 the COLA filing to create a salable asset?

4 A. It's my understanding that it was the
5 intention of AmerenUE senior management to make the
6 COLA filing for several reasons, the first one being
7 to maintain the option of building a nuclear power
8 plant at Callaway if that is in the best interest of
9 the AmerenUE ratepayers and that's the most cost
10 effective alternative to meet the future energy needs
11 of -- of AmerenUE's customers.

12 In addition, it also allowed us to be
13 eligible to obtain federal incentives for building
14 new nuclear, specifically the production tax credits
15 and the DOE loan guarantees. As a consequence of
16 going down that road of filing the COLA, AmerenUE is,
17 in essence, able to create an asset that is
18 potentially marketable.

19 Q. So is that a yes or a no?

20 A. I don't think it's specifically to
21 market as an asset. It's built as a prudent planning
22 option.

23 Q. Is Callaway 2 presently on line and
24 generating electricity?

25 A. It is not.

1 Q. Does the COLA itself generate any power?

2 A. It does not.

3 Q. Could you build Callaway 2 lawfully
4 without a COLA?

5 A. It's my understanding that we could not.

6 MR. CONRAD: Thank you, your Honor.

7 That's all. Thank you, sir.

8 THE WITNESS: Thank you.

9 JUDGE WOODRUFF: Cross for the State?

10 MR. IVESON: Just a few, your Honor.

11 CROSS-EXAMINATION BY MR. IVESON:

12 Q. Good afternoon, Mr. Arora.

13 A. Good afternoon.

14 Q. I'm Todd Iveson for the State of
15 Missouri. Just a couple of questions. What is the
16 market value for a COLA?

17 A. At this time I don't know what the
18 market value would be for a COLA.

19 Q. Has there ever been a COLA sold, to your
20 knowledge?

21 A. Not to my knowledge.

22 Q. To your knowledge, is it more likely or
23 not that the Unit 2 at Callaway would be an
24 appropriate -- excuse me -- long-term resource for
25 AmerenUE?

1 A. I don't think I can answer that question
2 at this time because there's several variables that
3 AmerenUE will have to consider before it makes that
4 decision. You know, some of those variables being
5 what happens with carbon legislation, for example,
6 what happens with load growth, what happens with
7 energy efficiency, what happens with natural gas
8 prices, what happens with capital costs of various
9 supply site and demand site resources.

10 Q. So is the answer I don't know?

11 A. At this time, I don't know.

12 Q. If you would take a look at your
13 surrebuttal testimony at page 30, line 21 --
14 actually, it begins on line 20.

15 What I'm trying to get is a better
16 understanding of the phrase that you use here, "It
17 may very well be an appropriate long-term resource
18 for AmerenUE." If I understood your last question
19 [sic], you don't know whether it will be; is that
20 correct?

21 A. That's right. We have to evaluate it
22 further and then decide if it would be or not.

23 MR. IVESON: I have nothing further.

24 JUDGE WOODRUFF: All right. Public
25 Counsel?

1 MR. MILLS: Judge, I have -- I have a
2 few questions. Most of them are going to be highly
3 confidential, but I'll try to do the nonhighly
4 confidential ones first. And if I may, I will --
5 I'll start with Exhibit 425 HC simply to see if I can
6 get this witness to authenticate it, and I won't go
7 into any questions regarding it. May I approach?

8 JUDGE WOODRUFF: Yes.

9 CROSS-EXAMINATION BY MR. MILLS:

10 Q. Just -- I'm just going to just ask you a
11 couple of general questions, Mr. Arora, because
12 we're -- we're in open session and it's a highly
13 confidential document. Did you prepare the response
14 to Public Counsel's data request?

15 A. I did prepare that response.

16 Q. And is the document that's attached as
17 part of Exhibit 425 HC one of the documents that you
18 provided in response to that?

19 A. I believe it is.

20 MR. MILLS: Judge, with that, I'd offer
21 Exhibit 425 HC.

22 JUDGE WOODRUFF: All right. 425 HC has
23 been offered into evidence. Are there any objections
24 to its receipt?

25 (NO RESPONSE.)

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

3 (EXHIBIT NO. 425 HC WAS RECEIVED INTO
4 EVIDENCE AND MADE A PART OF THE RECORD.)

5 MR. MILLS: And I'd like to have another
6 exhibit marked. This one is not highly confidential.

7 JUDGE WOODRUFF: It will be 426.

8 (EXHIBIT NO. 426 WAS MARKED FOR
9 IDENTIFICATION BY THE COURT REPORTER.)

10 BY MR. MILLS:

11 Q. Mr. Arora, do you -- do you recognize
12 Exhibit 426 as Public Counsel data request 2141 and
13 the company's response to that request?

14 A. That's what it states on the document.
15 The response was not prepared by me.

16 Q. I understand that. The question asks
17 UE's response to Staff data request 0096, states
18 that, "The operating license has a separate value
19 whether or not the Callaway 2 plant is ever built by
20 AmerenUE. Please provide a copy of all documents
21 created within the last 24 months by or for UE or its
22 affiliates that contain descriptions or analysis of
23 the separate value that the operating license is
24 expected to have even if Callaway 2 is never built by
25 AmerenUE." Is that a correct reading of the

1 question?

2 A. It is a correct reading of the -- of
3 what's stated on the DR response.

4 Q. And the response from AmerenUE prepared
5 by Scott Bond is that, "No such document exists." Is
6 that an accurate reading of the response?

7 A. Yes, it is.

8 Q. Do you agree that that is a true
9 response to that question?

10 A. I'm not familiar with this data request,
11 so I believe Mr. Scott Bond is probably the best
12 person to answer that question, and if he states that
13 no such document exists, I assume that's correct.

14 Q. Do you have any reason to believe that
15 it's not correct? Do you know of any such documents?

16 A. No, I do not.

17 MR. MILLS: Okay. Judge, with that, I'd
18 like to offer Exhibit 426.

19 JUDGE WOODRUFF: Okay. 426 has been
20 offered. Any objection to its receipt?

21 (NO RESPONSE.)

22 JUDGE WOODRUFF: Hearing none, it will
23 be received.

24 (EXHIBIT NO. 426 WAS RECEIVED INTO
25 EVIDENCE AND MADE A PART OF THE RECORD.)

1 BY MR. MILLS:

2 Q. Mr. Arora, are you familiar with the
3 COLA application itself that was filed with the NRC?
4 Granted, it's a large document, but were you involved
5 in its preparation?

6 A. I was involved with parts of its
7 preparation, not the entire 8,000 pages.

8 Q. Do you have a copy of what's been
9 admitted in -- into the record in this case as
10 Exhibit 411 which is the first part of the general
11 information of the COLA?

12 A. No, I do not have it here with me.

13 MR. MILLS: Judge, may I approach?

14 JUDGE WOODRUFF: You may.

15 BY MR. MILLS:

16 Q. Mr. Arora, I'm going to ask you some
17 questions in -- in general about page 1-12 of that
18 document. And the exhibit itself is part of the
19 public record at the NRC and it's part of the public
20 record in this case, but there are some -- some
21 figures that are not shown on Exhibit 411.

22 And I don't -- I'm going to ask
23 questions that I don't think will require you to
24 reveal any of that information, but if we need to, we
25 can go in-camera to do that to ask general questions,

1 if that's all right?

2 A. Okay.

3 Q. And if my questions would call for the
4 provision of highly confidential information, just
5 let me know and we can go in-camera.

6 A. Okay.

7 Q. Were you -- were you involved in the
8 projected project cost calculation shown on
9 page 12 -- 1-12 of Exhibit 411?

10 A. I wasn't involved in the preparation. I
11 was asked to review the number before it went into
12 application, yes.

13 Q. Okay. And when you reviewed the number,
14 did you believe that it was calculated accurately?

15 A. Based on the assumptions we were using
16 for the COLA application, I believe it was calculated
17 accurately.

18 Q. And -- well, let me ask you about some
19 of those assumptions, and if you can't answer without
20 getting highly confidential, just let me know.

21 Did those assumptions include the
22 assumption that the project would be financed by
23 the -- by allowing CWIP and rate base?

24 A. I'm not sure if that response is highly
25 confidential or not, but yes, it did assume that we

1 would have CWIP and rate base.

2 Q. Okay. And did the analysis show that UE
3 was able to maintain financial ratios at level that
4 would main -- levels that would maintain UE's investment
5 grade rating during the construction period?

6 A. I'm not sure if COLA required that
7 analysis, and if so, I haven't seen that analysis.

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

9 A. I don't know.

10 Q. Okay. Do you know what level of return
11 on equity was projected to be necessary to maintain
12 UE's investment grade rating during that construction
13 period?

14 A. I don't know.

15 MR. MILLS: Judge, I think the rest of the
16 questions I have are going to be highly confidential.

17 JUDGE WOODRUFF: All right. At this
18 time we'll go in-camera, and if anyone needs leave,
19 please do so.

20 (Reporter' Note: At this point, an
21 in-camera session was held, which is contained in
22 Volume 19, pages 1328 through 1347 of the transcript.)

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1 JUDGE WOODRUFF: All right. We're back
2 in regular session. And cross from Staff?

3 MR. DOTTHEIM: Thank you.

4 CROSS-EXAMINATION BY MR. DOTTHEIM:

5 Q. Good afternoon, Mr. Arora.

6 A. Good afternoon, Mr. Dottheim.

7 Q. Mr. Arora, you have a copy of your
8 surrebuttal testimony which is Exhibit 24, do you
9 not?

10 A. I do.

11 Q. Your testimony on the Callaway 2
12 combined construction and operating license
13 application is contained in your surrebuttal
14 testimony, is it not?

15 A. Yes, it is.

16 Q. Can you direct me to where in your
17 surrebuttal testimony you address the COLA being an
18 asset that is potentially marketable?

19 A. I do not address that in my surrebuttal
20 testimony.

21 Q. AmerenUE made its COLA filing with the
22 NRC on July 28th of this year, did it not?

23 A. I believe that's correct.

24 Q. Okay. Do you know whether the NRC
25 conducts an acceptance review of a COLA filing before

1 it commences any technical reviews of a COLA?

2 A. I think NRC conducts an acceptance
3 review for docketing and it's possible that's before
4 the technical review. I'm not sure.

5 Q. Okay. Do you know what comprises what
6 is involved in the NRC's acceptance review?

7 A. No, I do not.

8 Q. Do you know whether AmerenUE was
9 required by the NRC to supplement its July 2008
10 filing before the NRC acceptance review commenced?

11 A. I don't know exactly what they
12 requested, but -- and they may have asked for some
13 clarifications and some additional support.

14 MR. DOTTHEIM: At this time I'd like to
15 have marked as exhibits a number of documents.

16 JUDGE WOODRUFF: All right. Your next
17 number is 233.

18 MR. DOTTHEIM: I'd like to have marked
19 as Exhibit 233 an October 3, 2008 letter from
20 Surinder Arora, S-u-r-i-n-d-e-r, A-r-o-r-a, project
21 manager, U.S. EPR -- EPR, Project Branch, Division of
22 New Reactor Licensing, Office of New Reactors, NRC.

23 (EXHIBIT NO. 233 WAS MARKED FOR
24 IDENTIFICATION BY THE COURT REPORTER.)

25 MR. DOTTHEIM: I next would like to have

1 marked as Exhibit 234 an October 14, 2008 letter from
2 Scott Bond, manager, new plant of AmerenUE, to the
3 U.S. Nuclear Regulatory Commission.

4 (EXHIBIT NO. 234 WAS MARKED FOR
5 IDENTIFICATION BY THE COURT REPORTER.)

6 MR. DOTTHEIM: I next would like to have
7 marked as Exhibit 235 a letter from Mr. Timothy E.
8 Herrmann, vice president, engineering, of AmerenUE to
9 Surinder Arora, S-u-r-i-n-d-e-r, A-r-o-r-a, project
10 manager, U.S. EPR, Project Branch, Division of New
11 Reactor Licensing, Office of New Reactors, Nuclear
12 Regulatory Commission.

13 (EXHIBIT NO. 235 WAS MARKED FOR
14 IDENTIFICATION BY THE COURT REPORTER.)

15 MR. DOTTHEIM: And I'd like to have
16 marked as Exhibit 236 an October 28, 2008 letter from
17 R. W. Borchardt, B-o-r-s -- excuse me --
18 B-o-r-c-h-a-r-d-t, executive director for operations,
19 Nuclear Regulatory Commission to the Honorable Ike
20 Skelton, 1401 Southwest Boulevard, Jefferson City,
21 Missouri.

22 (EXHIBIT NO. 236 WAS MARKED FOR
23 IDENTIFICATION BY THE COURT REPORTER.)

24 BY MR. DOTTHEIM:

25 Q. Mr. Arora, have you had an opportunity

1 to review what's been marked as Exhibits 233, 234,
2 235 and 236?

3 A. I've looked at them, Mr. Dottheim, but
4 these documents are really outside my area of
5 responsibilities. I'm not really familiar with them.

6 Q. Okay. Exhibit 233, which is addressed
7 to Mr. Timothy E. Herrmann, H-e-r-r-m-a-n-n, vice
8 president, engineering, AmerenUE, can you identify
9 Mr. Herrmann? Do you know who Mr. Herrmann is?

10 A. Yes, I do.

11 Q. Okay. Do you work with Mr. Herrmann at
12 all?

13 A. I work with Mr. Herrmann on some issues,
14 yes.

15 Q. Which issues do you work with
16 Mr. Herrmann?

17 A. Currently it's -- it's involving the DOE
18 loan guarantee issues, potential financing issues and
19 potential contractual relations with any potential
20 partners.

21 Q. Okay. I think you've indicated
22 previously that you have some familiarity, you've
23 reviewed the combined construction and operating
24 license application, have you not?

25 A. I have reviewed a part of a section, I

1 believe.

2 Q. And pardon me. I don't recall whether
3 you literally addressed this, whether you actually
4 worked on the application itself before it was
5 submitted to the NRC. Did you perform any work on
6 the application itself?

7 A. I was asked to review portions of the
8 application, you know, the area that dealt with the
9 need for power, because it was based on the filed
10 AmerenUE IRP.

11 Q. In the letter that's Exhibit 233, in the
12 second paragraph, there's -- the last sentence,
13 there's reference to AmerenUE submitting supplemental
14 information on September 24th, 2008. Are you
15 familiar at all with that submittal on
16 September 24th, 2008?

17 A. No, I am not.

18 Q. I'd like to refer you next
19 to Exhibit 234, but before I do that, in that last
20 sentence in the second paragraph, the abbreviation
21 FSAR, can you identify what that abbreviation stands
22 for?

23 A. No. I was trying to look for it myself.

24 Q. Might it be Final Safety Analysis
25 Report?

1 A. I'm not sure.

2 Q. If I could direct you to Exhibit 234, do
3 you recognize that document?

4 A. I've not seen this document before.

5 Q. The document is a letter from Scott
6 Bond, manager of new plant, is it not?

7 A. Yes, it is.

8 Q. Can you identify who Mr. Scott Bond is?

9 A. Yes, I can.

10 Q. Could you identify who he is at
11 AmerenUE?

12 A. Yes.

13 Q. Please do so.

14 A. Oh, he's -- he's the manager of new
15 plant at AmerenUE.

16 Q. Do you have occasion to work with him?

17 A. Occasions, yes.

18 Q. What do you have occasion to work with
19 him on?

20 A. Mr. Bond occasionally calls into our --
21 sort of status calls on the DOE loan guarantee, and
22 from time it time sets up status meetings on
23 Callaway 2 that I attend.

24 Q. Okay. If I could refer you to the
25 second page of the -- of the letter, the top

1 paragraph, the sentence says, "A revision of FSAR,
2 Section 2.5 will be submitted on or about
3 November 17, 2008." Did I read that accurately?

4 A. Yes, you did.

5 Q. Are you familiar with the revision of
6 FSAR, Section 2.5 which is referred to in that
7 sentence?

8 A. No, I am not.

9 Q. As a consequence, you're not aware
10 whether AmerenUE submitted to the NRC a revision of
11 FSAR, Section 2.5 on or before November 17, 2008?

12 A. I'm not sure. I expect if Scott Bond
13 said yes, they would, they probably did. It's my
14 understanding, though, that AmerenUE expects to have
15 this COLA docketed before the end of the year.

16 Q. Okay. I'd like to refer you to
17 Exhibit 235.

18 A. Okay.

19 Q. Do you recognize that document?

20 A. I have not seen it before today.

21 Q. That's a letter, or I'll represent that
22 it's a letter dated October 16, 2008, to
23 Mr. Timothy E. Herrmann from Surinder Arora, project
24 manager, U.S. EPR, Project Branch at the NRC.

25 And I'd like to direct you to the second

1 paragraph, the second sentence -- at the end of the
2 second sentence there's a parenthetical which says,
3 "Sections 2.5.1-2.5.3 of the Final Safety Analysis
4 Report (or FSAR)." Did I read that accurately?

5 A. Yes, you did.

6 Q. So it -- it would appear that FSAR is
7 the abbreviation for Final Safety Analysis Report?

8 A. Yes, it would.

9 Q. Do you know what the Final Safety
10 Analysis Report in the COLA is?

11 A. No, I do not.

12 Q. Okay. I'd like to refer you in that
13 same paragraph to the second-to-last sentence. That
14 sentence states, "The staff reviewed the supplement
15 and concluded that it did not sufficiently address
16 the issues raised by the staff. In addition, the
17 staff identified several quality-related issues with
18 the supplement. These issues have been discussed
19 with your staff and are summarized in the enclosure
20 to this letter."

21 And I'll continue to the next paragraph.

22 "In a letter dated October 14, 2008, AmerenUE
23 informed the NRC that it will supplement its
24 application with a revision of FSAR, Section 2.5 on
25 or about November 17, 2008. Upon receipt of this

1 revision and completion of its review, the staff will
2 make a docketing decision on the Callaway Unit 2 COLA
3 application." Did I read that accurately?

4 A. Yes, you did.

5 MR. LOWERY: Your Honor, I don't have an
6 objection, but -- and we're not going to object to
7 the admission of these documents if Mr. Dottheim
8 plans to offer them, but it seems we're just reading
9 the documents. And if they were admitted, they'd be
10 in the record and Mr. Arora's never seen them and I
11 guess I'm trying to save the Commission some time.

12 JUDGE WOODRUFF: I appreciate that. Do
13 you want to just offer them, Mr. Dottheim?

14 MR. DOTTHEIM: Yes, if I could just ask
15 Mr. Arora a brief question about Exhibit 236.

16 JUDGE WOODRUFF: Go right ahead.

17 BY MR. DOTTHEIM:

18 Q. Mr. Arora, you have Exhibit 236?

19 A. Yes, I do.

20 Q. Okay. And it's a -- well, I'll
21 represent to you it's a letter from Bruce Mallett,
22 RA -- Bruce Mallett, for R. W. Borchardt, executive
23 director for operations, NRC, to the Honorable Ike
24 Skelton. Have you ever seen that document before?

25 A. I have not seen that document before

1 today.

2 Q. And you've had an opportunity to review
3 that document?

4 A. I've quickly looked at it, yes.

5 Q. And I -- to direct you to the third,
6 fourth paragraphs. Those paragraphs set out in some
7 detail the NRC procedures for reviewing COLA filings,
8 do they not?

9 A. Yes, they seem to.

10 MR. DOTTHEIM: At this time I'd like to
11 offer into evidence Exhibits 233, 234, 235 and 236.

12 JUDGE WOODRUFF: All right. 233, 234,
13 235 and 236 have been offered. Any objection to
14 their receipt?

15 (NO RESPONSE.)

16 JUDGE WOODRUFF: Hearing none, they will
17 be received into evidence.

18 (EXHIBIT NOS. 233, 234, 235 AND 236 WERE
19 RECEIVED INTO EVIDENCE AND MADE A PART OF THE
20 RECORD.)

21 MR. DOTTHEIM: I'd like have marked
22 another Exhibit, Exhibit 237. Exhibit 237 is a chart
23 showing expected new nuclear power plant
24 applications, updated November 25, 2008, printed from
25 the NRC web site.

1 (EXHIBIT NO. 237 WAS MARKED FOR
2 IDENTIFICATION BY THE COURT REPORTER.)

3 MR. LOWERY: 237, your Honor?

4 JUDGE WOODRUFF: 237.

5 BY MR. DOTTHEIM:

6 Q. Mr. Arora, have you had an opportunity
7 to review Exhibit 237?

8 A. Yes, I have.

9 Q. Have you ever seen that document before?

10 A. No, I haven't.

11 Q. Okay. Well, I'll represent to you that
12 it's a document printed from the NRC web site. I'd
13 like to refer you to the center of the document, the
14 first yellow row across the page, which identifies
15 AmerenUE and the indication -- that yellow indicates
16 "Acceptance review ongoing." Do you see that?

17 A. Yes, I do.

18 Q. And whereas, other documents indicate
19 the date of application is 7/28/2008, this document
20 shows "Date of Application 7/24/2008," does it not?

21 A. Yes, it does.

22 Q. Yeah. What I really wanted to direct
23 you to was above AmerenUE, there's Detroit Edison
24 which shows "Date of Application 9/18/2008."

25 A. Okay.

1 Q. And the Date of Application column and
2 the Date Accepted column, it shows 11/25/2008. And
3 also, for example, there are other companies like
4 Exelon which is even above it, "Date of Application
5 9/3/2008, Date Accepted 10/29/2008." The AmerenUE
6 column has a Date of Application maybe six weeks or
7 so earlier, but it doesn't show as yet a Date
8 Accepted, does it?

9 A. No, it doesn't. And like I said, it's
10 my understanding that AmerenUE expects to get it
11 docketed before the end of 2008.

12 MR. DOTTHEIM: I'd like to offer
13 Exhibit 237.

14 JUDGE WOODRUFF: 237's been offered.
15 Any objection to its receipt?

16 (NO RESPONSE.)

17 JUDGE WOODRUFF: Hearing none, it will
18 be received.

19 (EXHIBIT NO. 237 WAS RECEIVED INTO
20 EVIDENCE AND MADE A PART OF THE RECORD.)

21 BY MR. DOTTHEIM:

22 Q. Mr. Arora, there's -- in the column
23 that -- that shows "Design" of Exhibit 237 for
24 AmerenUE, it shows "EPR." Does EPR stand for
25 evolutionary power reactor?

1 A. I think it may be evolutionary
2 pressurized reactor.

3 Q. And that's designed by AREVA -- AREVA,
4 A-R-E-V-A?

5 A. Yes.

6 Q. Has that design been certified as yet by
7 the NRC?

8 A. No. I believe it's been submitted for
9 certification to the NRC, yeah, in December 2007.

10 Q. Must the NRC certify the EPR design
11 before the COLA can be approved?

12 A. I think that would be the case, yes.

13 Q. Do you know what is the -- if there is a
14 projected date for certification of the EPR design?

15 A. I think there is. I don't recall when
16 exactly that is, but it's -- I think it's before we
17 expect our COLA to be approved by the NRC.

18 MR. DOTTHEIM: I'd like to have another
19 Exhibit marked, 238, and this one is highly
20 confidential.

21 JUDGE WOODRUFF: All right. Well, let
22 me know when we need to go in-camera, then.

23 (EXHIBIT NO. 238 HC WAS MARKED FOR
24 IDENTIFICATION BY THE COURT REPORTER.)
25 BY MR. DOTTHEIM:

1 Q. Mr. Arora, have you had a chance to look
2 at what's been marked as 238 HC?

3 A. Yes, I have.

4 Q. And I believe Mr. Mills has had marked
5 earlier in the proceedings as Exhibit 411 some
6 pages from the AmerenUE COLA, the section which
7 is part 1, general information, and he had the
8 public version marked as Exhibit 411. I have two
9 pages, the cover page to part 3 which is the
10 environmental report and page 1-8 which counsel for
11 AmerenUE has indicated to me that that page 1-8 is
12 highly confidential.

13 Do you recognize page 1-8? I'm not
14 going to ask you any of the information that's
15 contained on that page.

16 A. I think I may have seen it before.

17 MR. DOTTHEIM: Okay. And I'll just
18 identify the page as titled "Major Activity Start and
19 Completion Dates." At this time I'd like to offer
20 Exhibit 238 HC.

21 JUDGE WOODRUFF: All right. 238 HC has
22 been offered. Any objection to its receipt?

23 (NO RESPONSE.)

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

1 (EXHIBIT NO. 238 HC WAS RECEIVED INTO
2 EVIDENCE AND MADE A PART OF THE RECORD.)

3 MR. DOTTHEIM: And I'd like to have one
4 last exhibit marked, Exhibit 239, which is another
5 page copied from the NRC web site titled, "New
6 Reactor Licensing Applications" and it's dated
7 Wednesday, October 22, 2008.

8 (EXHIBIT NO. 239 WAS MARKED FOR
9 IDENTIFICATION BY THE COURT REPORTER.)

10 BY MR. DOTTHEIM:

11 Q. Mr. Arora, have you had a chance to
12 review what's been marked as Exhibit 239?

13 A. Yes.

14 Q. Do you recognize that document?

15 A. No.

16 Q. There's a legend as it's identified on
17 the second page at the bottom, is there not, which
18 provides an explanation for the color coding of the
19 lines on the page?

20 A. Yes, it does.

21 Q. And on the first page at the lower
22 third, approximately, of the page, there's a line
23 showing "Design Certification For EPR," kind of a
24 timeline for design certification and a timeline for
25 AmerenUE Callaway COL, is there not?

1 QUESTIONS BY CHAIRMAN DAVIS:

2 Q. All right. Good afternoon, Mr. Arora.

3 A. Good afternoon, Chairman.

4 Q. I've read your direct testimony, and
5 Mr. Lowery asked you at the beginning what your title
6 was. I mean, could you just basically summarize
7 again what you do for Ameren?

8 A. Okay.

9 Q. Tell us what you do.

10 A. Okay. Under my area of responsibility
11 we look at the integrated resource plan for AmerenUE.
12 We perform the analysis --

13 Q. You're in charge of that, aren't you?

14 A. Yes.

15 Q. Okay.

16 A. But it's done on behalf of AmerenUE.

17 Q. Right.

18 A. Also under my area of responsibility is
19 done fuel budgeting for AmerenUE.

20 Q. And you'll be back to talk about that
21 later, won't you?

22 A. Yes, possibly. Yes, that's correct.

23 Q. Okay.

24 A. Also, we publish the Ameren Forward View
25 on Power.

1 Q. Uh-huh.

2 A. That's within my area of responsibility.

3 The load forecasting and load research groups for
4 AmerenUE and for the Ameren Illinois utilities,
5 that's under my responsibility as well. And there's
6 a group that supports the AmerenUE gridding
7 operations, looks at gridding analysis and pricing,
8 long-term-structure transactions for AmerenUE.

9 And collectively, the group from time to
10 time participates in analysis on various strategic
11 issues for Ameren or for AmerenUE.

12 Q. Okay. Assuming that AmerenUE cannot or
13 chooses not to build Callaway 2 --

14 A. Okay.

15 Q. -- and assuming that construction of new
16 coal plants is also off the table --

17 A. Okay.

18 Q. -- where do you think Ameren -- how do
19 you think Ameren will meet its load in 2020, 2025?

20 A. I expect at that time AmerenUE would
21 have to consider other alternatives to meet that load
22 requirements. They could potentially be natural
23 gas-fired plants or at -- and then the worse case
24 potentially buying from the market its needs.

25 Q. Okay. Is it possible that AmerenUE

1 could give Noranda notice and terminate its contract
2 with Noranda?

3 A. I'm not familiar with the terms of that
4 contract.

5 Q. You're not familiar with the terms of
6 the contract?

7 A. No. So I'm not sure if we could give
8 them notice or not.

9 Q. Are you familiar with the size of the
10 load at all?

11 A. Yes, I am.

12 Q. And it's a sizeable load, isn't it?

13 A. Right. I believe it's close to 500
14 megawatts.

15 Q. Okay. And are you familiar with the
16 rate that they're getting?

17 A. I am familiar with the -- with the level
18 of the rate, yes, approximately.

19 Q. Do you think it's a good rate?

20 A. In my opinion, given the current market
21 conditions, I think it's an extremely good rate.

22 Q. Okay. Do you think they could get that
23 rate and that -- for that much power anywhere else
24 here in the continental United States?

25 A. No. In my opinion, it could be

1 virtually impossible for them to get that rate under
2 the current market conditions.

3 CHAIRMAN DAVIS: No further questions,
4 Judge.

5 JUDGE WOODRUFF: All right. Does anyone
6 wish to recross based on those questions from the
7 Bench?

8 (NO RESPONSE.)

9 JUDGE WOODRUFF: All right. Redirect,
10 then?

11 MR. LOWERY: Just briefly, your Honor.

12 REDIRECT EXAMINATION BY MR. LOWERY:

13 Q. Mr. Arora, quite some time ago -- excuse
14 me -- Mr. Iveson, I think, asked you some questions
15 about market value of COLA. Do you remember those
16 questions?

17 A. Yes, I do.

18 Q. When's the last time a COLA was issued
19 to your knowledge?

20 A. For a new nuclear plant?

21 Q. Correct.

22 A. I don't think one has been issued yet.

23 Q. Did that explain why there's not a lot
24 of information about what the market value of COLAs
25 would be?

1 A. Yes, it would.

2 MR. LOWERY: I don't have any other --
3 any further questions. Thank you.

4 JUDGE WOODRUFF: All right. And you may
5 step down, Mr. Arora.

6 We have two other witnesses on this
7 case. I assume you want to try and get them done
8 today? All right. Our next witness, then, I
9 believe, is Mr. Rackers. And Mr. Rackers, as I
10 recall, you also testified previously in this case so
11 you're still under oath as well.

12 THE WITNESS: Okay.

13 JUDGE WOODRUFF: You may inquire.

14 DIRECT EXAMINATION BY MR. DOTTHEIM:

15 Q. Mr. Rackers, you have a copy of the
16 Staff's cost of service report which has previously
17 been marked Exhibit No. 200?

18 A. Yes.

19 Q. And is your portion of the Staff report
20 on the Callaway 2 COLA on page 6 of the cost of
21 service Staff report?

22 A. Yes, it is.

23 Q. Okay. And do you have a copy of what's
24 previously been marked as Exhibit No. 202, your
25 surrebuttal testimony --

1 A. Yes, I do.

2 Q. -- in this proceeding? And is your
3 portion of surrebuttal testimony on the Callaway 2
4 COLA on pages 4 through 6, starting at line 11 on
5 page 4?

6 A. Yes.

7 Q. Do you have any corrections to either
8 the paragraph on page 2 of the Staff's cost of
9 service report for pages 4 to 6 of your surrebuttal
10 testimony on Callaway 2 COLA?

11 A. No, I don't.

12 Q. Is the information contained in there
13 true and accurate to the best of your knowledge and
14 belief?

15 A. Yes.

16 Q. Do you have any corrections to make?

17 A. No.

18 MR. DOTTHEIM: Okay. I tender
19 Mr. Rackers for cross-examination and offer those
20 portions of the Staff report and Mr. Rackers'
21 surrebuttal testimony. I probably should offer at
22 this time his complete surrebuttal testimony. The
23 Callaway 1 relicense issue is an issue that has been
24 resolved.

25 JUDGE WOODRUFF: All right. Portions of

1 200 and 202 have been offered -- actually, all of 202
2 has been offered. Any objection to their receipt?

3 (NO RESPONSE.)

4 JUDGE WOODRUFF: Hearing none, a portion
5 of 200 will be received as well as all of 202.

6 (EXHIBIT NOS. 200 AND 202 WERE RECEIVED
7 INTO EVIDENCE AND MADE A PART OF THE RECORD.)

8 JUDGE WOODRUFF: And you did not offer
9 201; is that right? There's nothing on vegetation in
10 that.

11 MR. DOTTHEIM: That is -- that is
12 correct.

13 JUDGE WOODRUFF: Okay. All right. For
14 cross-examination, then, we begin with Public
15 Counsel.

16 MR. MILLS: No questions.

17 JUDGE WOODRUFF: For the State?

18 MR. IVESON: No questions.

19 JUDGE WOODRUFF: Noranda?

20 MR. CONRAD: No questions.

21 JUDGE WOODRUFF: For Safe Energy?

22 MR. ROBERTSON: I'll be the exception
23 this time and ask a few.

24 CROSS-EXAMINATION BY MR. ROBERTSON:

25 Q. On page 4 of your surrebuttal testimony,

1 you refer to FERC USOA. Can you enlighten me what
2 "USOA" stands for?

3 A. Uniform System of Accounts.

4 Q. All right. Is that an industry
5 standard?

6 A. It's the standard that FERC uses for
7 bookkeeping.

8 Q. Okay. Is that binding on this
9 Commission?

10 A. The Commission has adopted its use, but
11 we can deviate from that.

12 Q. All right. And are you testifying that
13 these COLA costs would not properly be classified as
14 cost of service under that system of accounts; is
15 that correct?

16 A. Yes, in general.

17 Q. And on page 4 of your direct testimony,
18 you set up the equation of the formula for
19 calculating cost of service in Missouri. Now, you're
20 an accountant, right?

21 A. Yes.

22 Q. And is there an accounting question
23 involved with assigning costs like this to see if
24 they fit the terms of this equation?

25 A. I'm not sure I understand your question.

1 Q. Okay. I don't blame you. Is there
2 account -- an accounting issue involved in
3 determining whether costs like these COLA expenses
4 fit in the various terms of this equation, this
5 evaluation of property required, et cetera?

6 A. I'm not sure this is responsive to your
7 question, but it would be a component of V if they
8 were included in the rate base.

9 Q. Okay. Is it part of your job as a staff
10 accountant to make that kind of decision?

11 A. Yes.

12 Q. All right. And you're testifying that
13 these COLA costs are not properly included under the
14 term "V" in the cost of service formula?

15 A. Correct.

16 Q. All right. And that's because they
17 are -- they do not represent plant that's in service?

18 A. That's -- that's one of the reasons,
19 yes.

20 MR. ROBERTSON: Okay. That's all I
21 have. Thank you.

22 JUDGE WOODRUFF: All right. For
23 AmerenUE?

24 CROSS-EXAMINATION BY MR. LOWERY:

25 Q. Mr. Rackers, an NRC COLA could have

1 value apart from whether or not Callaway Unit 2 is
2 actually built; isn't that right?

3 A. I don't know that.

4 Q. Might not have any value at all?

5 A. I don't know.

6 Q. Under your position, who's bearing the
7 risk if the plant ends up not being built and the
8 COLA ends up being worthless, ratepayers or
9 shareholders?

10 A. Unless it's never -- unless the plant is
11 never built, right now I don't think I'm shifting the
12 risk to anyone.

13 Q. Well, my question was premised upon two
14 facts: One, that the plant ends up not being built,
15 and two, that the COLA ends up being worthless.
16 Who's going to bear the loss of the 60, \$70 million
17 that was spent on the COLA?

18 A. I haven't attempted to evaluate that.

19 Q. Is your answer I don't know?

20 A. I don't know.

21 Q. Is Staff going to support costs recovery
22 for the COLA costs incurred by AmerenUE if the
23 Callaway unit is not built but the decision to incur
24 the COLA -- COLA cost was prudent and the decision
25 not to build the plant was prudent?

1 A. Would you ask me that again?

2 Q. Sure. Two facts for you to assume:

3 Fact No. 1 is that the plant's not built -- maybe
4 three facts. Fact No. 2 is that pursuing the COLA
5 and the cost expended on the COLA were prudently
6 incurred costs, and fact No. 3, the decision not to
7 build the plant was prudent. Is Staff going to
8 support cost recovery of those costs under those
9 circumstances?

10 A. I don't know.

11 Q. You're not willing to commit to that?

12 A. I don't know.

13 MR. LOWERY: That's all the questions I
14 have, your Honor.

15 JUDGE WOODRUFF: All right. I have no
16 questions from the Bench so there's no need for
17 recross. Any redirect?

18 MR. DOTTHEIM: No questions.

19 JUDGE WOODRUFF: All right. Then
20 Mr. Rackers, you may step down. Next witness, then,
21 is Ryan Kind.

22 MR. MILLS: I believe all of Mr. Kind's
23 testimony has been admitted into the record, so I'll
24 simply tender him for cross-examination.

25 JUDGE WOODRUFF: Okay. For

1 cross-examination, then, beginning with Staff?

2 MR. DOTTHEIM: No questions.

3 JUDGE WOODRUFF: All right. For the
4 State?

5 MR. IVESON: No questions.

6 JUDGE WOODRUFF: Noranda?

7 MR. CONRAD: We have no questions for
8 Mr. Kind. Thank you.

9 JUDGE WOODRUFF: Safe Energy?

10 MR. ROBERTSON: No questions.

11 JUDGE WOODRUFF: Down to Ameren, then?

12 MR. LOWERY: We have no questions, your
13 Honor.

14 JUDGE WOODRUFF: And I have no questions
15 from the Bench, so no recross and no redirect. And
16 you can step down.

17 THE WITNESS: Thank you.

18 JUDGE WOODRUFF: And that I believe
19 takes care of the COLA issue. We had one other issue
20 on the agenda for today which was incentive
21 compensation. Is there any reason we need to take
22 that up today or can that wait until tomorrow?

23 MR. DOTTHEIM: It can wait.

24 MR. BYRNE: Wait until tomorrow.

25 MR. DOTTHEIM: Yeah, I'm not aware if

1 anyone's got a scheduling problem.

2 MR. BYRNE: I think it can wait until
3 tomorrow, your Honor.

4 JUDGE WOODRUFF: All right.

5 MR. MILLS: And Judge, with respect to
6 the two exhibits that I was fumbling with, 428 and
7 429, it turns out that one of those was a 90-page
8 presentation, and I believe Mr. Lowery indicated a
9 preference for a complete document, so that is being
10 copied even as we speak, but it's not ready yet.

11 MR. LOWERY: Well, actually, I didn't --
12 I didn't indicate a preference for a complete
13 document. I was just reserving the right to review
14 the whole document and offer portions if I felt that
15 for a fair picture of the whole thing needed -- or
16 another portion needed to be put in. So you might be
17 able to save some trees. I'm not at all sure that we
18 need the complete document.

19 MR. MILLS: In any event, I -- it's my
20 understanding it's almost ready but it's not ready
21 now. I don't think there's any reason to stick
22 around for that.

23 JUDGE WOODRUFF: Well, I agree with
24 that.

25 MR. MILLS: Thank you.

1 JUDGE WOODRUFF: All right. Anything
2 else we need to pick up?

3 (NO RESPONSE.)

4 JUDGE WOODRUFF: All right. We'll see
5 you tomorrow morning at 8:30. We're adjourned.

6 (WHEREUPON, the hearing of this case was
7 recessed until December 2, 2008, at 8:30 a.m.)

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32	E-mail from Gaye Suggett	
33	* Exhibits not provided to the court reporter to	
34	mark for identification.	
35	** Previously marked in a preceding volume.	
36	*** Only a portion of the exhibit was received into	
37	evidence.	
38		