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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS  
Evidentiary Hearing  
December 11, 2008  
Jefferson City, Missouri  
Volume 26

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,  
KEVIN GUNN,  
COMMISSIONERS.

REPORTED BY:  
KELLENE K. FEDDERSEN, CSR, RPR, CCR  
MIDWEST LITIGATION SERVICES

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

2 JUDGE WOODRUFF: Good morning, everyone,  
3 and welcome back for another day of the AmerenUE rate case  
4 hearing. Are we ready to begin with the next witness,  
5 Mr. Arora, or does anything else need to be brought up?

6 MR. IVESON: Judge, if I may, I'd like to  
7 offer the substitute Exhibit 504 at this time.

8 JUDGE WOODRUFF: Okay. That's the one  
9 we -- yesterday we decided we wanted to get the entire  
10 exhibit in?

11 MR. IVESON: Correct. Yes.

12 MR. CONRAD: 504HC.

13 MR. LOWERY: It is HC, yes.

14 (SUBSTITUTE EXHIBIT NO. 504HC WAS MARKED  
15 FOR IDENTIFICATION BY THE REPORTER.)

16 JUDGE WOODRUFF: I think this was  
17 technically already admitted yesterday, but I'll ask  
18 again, does anybody have any objections to it?

19 MR. LOWERY: No objection.

20 JUDGE WOODRUFF: If it wasn't admitted  
21 before, it's admitted now.

22 (EXHIBIT NO. 504HC WAS RECEIVED INTO  
23 EVIDENCE.)

24 JUDGE WOODRUFF: Mr. Conrad?

25 MR. CONRAD: This is not an objection. I

1 just -- I had really not even seen the original version of  
2 this yesterday. Who is claiming the confidentiality? Is  
3 it the company or --

4 MR. LOWERY: No. It's confidential  
5 proprietary information of Barkley's?

6 MR. CONRAD: That's why it looked to me  
7 like there was a lot of this that probably was  
8 internetable.

9 JUDGE WOODRUFF: Yeah. I assume it's  
10 confidential because it's a report prepared by Barkley  
11 that they don't want -- somebody had to pay to get it, so  
12 they don't give it away for free.

13 MR. LOWERY: It's a subscription service  
14 that they sell so it's proprietary business information.

15 MR. CONRAD: Well, should it be  
16 proprietary? Not that it matters. I don't care. Never  
17 mind. It's not my exhibit anyway.

18 JUDGE WOODRUFF: All right. Let's go to  
19 the first witness, then, Mr. Arora.

20 MR. LOWERY: Call Ajay Arora to the stand,  
21 and your Honor, Mr. Arora's testimony's already in the  
22 record and he has been sworn.

23 JUDGE WOODRUFF: Good morning, Mr. Arora

24 THE WITNESS: Good morning.

25 JUDGE WOODRUFF: You're already sworn, so

1 you are still under oath. And you can inquire. Do you  
2 have any direct?

3 MR. LOWERY: I'm sorry. In fact, I don't.  
4 I just tender the witness for cross-examination.

5 JUDGE WOODRUFF: Very good. For  
6 cross-examination, then, beginning with Noranda?

7 MR. CONRAD: And we do not have any  
8 questions for this gentleman.

9 JUDGE WOODRUFF: For the State?

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

12 JUDGE WOODRUFF: Public Counsel?

13 MR. MILLS: No questions for Mr. Arora.

14 JUDGE WOODRUFF: For Staff?

15 MR. DOTTHEIM: Yes, the Staff does have  
16 some questions.

17 MR. LOWERY: We're going to move along  
18 better today, Judge, I think.

19 JUDGE WOODRUFF: Good.

20 MR. DOTTHEIM: And frankly, I do want to  
21 spend some time with Mr. Arora. I don't think it's going  
22 to be terribly long, but Mr. Arora's probably the one  
23 witness that I have the most questions for. And I think  
24 the vast bulk if not possibly all my questions deal with  
25 information that has been designated highly confidential,

1 so --

2 JUDGE WOODRUFF: Go in camera now?

3 MR. DOTTHEIM: So I think we're going to  
4 have to go in camera. Some material is possibly not  
5 necessarily highly confidential, but it is much the  
6 minority.

7 (REPORTER'S NOTE: At this point, an  
8 in-camera session was held, which is contained in  
9 Volume 27 of the transcript, pages 2408 through 2433.)

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1 JUDGE WOODRUFF: We're back in regular  
2 session. We'll come up to the Bench for questions.  
3 Chairman Davis?

4 CHAIRMAN DAVIS: I don't think I have any  
5 questions of Mr. Arora, but can I inquire of Mr. Dottheim  
6 briefly?

7 JUDGE WOODRUFF: Sure.

8 CHAIRMAN DAVIS: Mr. Dottheim, are you  
9 going to put on Mr. Proctor on this issue?

10 MR. DOTTHEIM: Yes.

11 CHAIRMAN DAVIS: Okay. And through  
12 Mr. Proctor, I might learn what the last hour's worth of  
13 cross-examination was trying to help educate me on?

14 MR. DOTTHEIM: Yes.

15 CHAIRMAN DAVIS: Okay. All right. So far  
16 I'm just not getting it.

17 MR. DOTTHEIM: Please ask Dr. Proctor any  
18 question you might have.

19 CHAIRMAN DAVIS: All right.

20 MR. LOWERY: And Mr. Chairman, I would  
21 encourage you ask Mr. Arora any question you might have.

22 CHAIRMAN DAVIS: Well, okay. I wasn't  
23 going to ask Mr. Arora any questions, but now that --

24 AJAY ARORA testified as follows:

25 QUESTIONS BY CHAIRMAN DAVIS:

1           Q.       Mr. Arora, do you understand where -- what  
2 Mr. Dottheim was trying to get at?

3           A.       Maybe. I think Mr. Dottheim may have been  
4 trying to test the reasonableness of the ranges I have on  
5 my schedules, and like I indicated to him, I have real  
6 world evidence that points to the reasonableness of  
7 those -- of those ranges.

8           CHAIRMAN DAVIS: Okay.

9           JUDGE WOODRUFF: Anyone wish to recross?

10                   (No response.)

11           JUDGE WOODRUFF: Any redirect?

12           MR. LOWERY: Yes, your Honor.

13 REDIRECT EXAMINATION BY MR. LOWERY:

14           Q.       Mr. Arora, Mr. Dottheim asked you some  
15 questions about the test year, a number of questions about  
16 the test year, and he also asked you some questions, I  
17 believe it was toward the end where he asked you about  
18 underlining some language on page 22, lines 13 to 16 of  
19 your surrebuttal testimony. Do you recall those?

20           A.       Yes, I do.

21           Q.       Does it matter whether you were looking at  
22 calendar year 2008 or 12 months ending March 31, 2008 or  
23 any other 12-month period? Is that the point in terms of  
24 exact 12-month period, or are you just looking at a  
25 typical 12-month period?

1           A.       Yeah. I don't think it matters which  
2 12-month period we look at. I was really trying to  
3 indicate that going into any calendar year what is the  
4 uncertainty faced by AmerenUE regarding its net fuel cost  
5 even when the typical hedge ratios of fuel commodities are  
6 applied.

7           Q.       And what did your results show is the  
8 uncertainty that AmerenUE faces going into any particular  
9 12-month period, say going into 2009 since we happen to be  
10 in December of 2008?

11          A.       Okay. So if -- if I could refer you to  
12 Table 1 on page 29 of my direct testimony, the ranges  
13 there show the uncertainty that would be faced by AmerenUE  
14 going into any calendar year. For example, the 25 percent  
15 to 75 percent range shows -- I believe this number may be  
16 highly confidential.

17                   MR. LOWERY: I think, Judge, we probably  
18 will have to go in camera because most of my questions  
19 deal with highly confidential questions that Mr. Dottheim  
20 asked.

21                   JUDGE WOODRUFF: We're back in camera.

22                   (REPORTER'S NOTE: At this point, an  
23 in-camera session was held, which is contained in  
24 Volume 27, pages 2437 through 2454 of the transcript.)

25

1                   JUDGE WOODRUFF: We're back in public  
2 session, and Mr. Arora's completed his testimony. Before  
3 we go to Mr. Neff, we're due for a break. We'll take a  
4 break now. Come back at 10:20.

5                   (A BREAK WAS TAKEN.)

6                   JUDGE WOODRUFF: We're back from break.  
7 Before we go with the next witness, with Mr. Neff, I had a  
8 quick question that was brought up by the court reporter  
9 during the break. 504 from yesterday, you filed a  
10 corrected copy or expanded copy this morning. The  
11 question is what to do with the 504 from yesterday, and I  
12 assume there's no reason that it needs to be in the  
13 record?

14                  MR. IVESON: I would assume that it would  
15 be withdrawn at this time.

16                  JUDGE WOODRUFF: Then the court reporter  
17 can have that shredded.

18                  All right, then. Mr. Neff has taken the  
19 stand, and if you'd please raise your right hand.

20                  (Witness sworn.)

21                  JUDGE WOODRUFF: Thank you very much. You  
22 may inquire.

23 ROBERT NEFF testified as follows:

24 DIRECT EXAMINATION BY MR. BYRNE:

25                  Q.        Good morning, Mr. Neff.

1           A.       Good morning.

2           Q.       Could you please state your name and  
3 business address for the record.

4           A.       My name is Robert Neff. My business  
5 address is 1901 Chouteau Avenue, St. Louis, Missouri.

6           Q.       And by whom are you employed, Mr. Neff?

7           A.       I'm employed at Ameren Energy Fuels and  
8 Services Company.

9           Q.       Are you the same Robert K. Neff who caused  
10 to be filed in this proceeding direct testimony that's  
11 been marked as Exhibit 47 in HC and NP formats and  
12 rebuttal testimony that's been marked as Exhibit 48 in HC  
13 and NP formats?

14          A.       Yes.

15          Q.       Do you have any changes that you need to  
16 make to either of those pieces of testimony?

17          A.       No.

18          Q.       Is the information contained in that  
19 testimony true and correct to the best of your knowledge  
20 and belief?

21          A.       Yes, it is.

22          Q.       And if I was to ask you the same questions  
23 contained in that prefiled testimony here today when you  
24 are under oath, would your answers be the same?

25          A.       They would.

1                   MR. BYRNE: Okay. I would offer  
2 Exhibits 47HC and NP and 48HC and NP and tender Mr. Neff  
3 for cross-examination.

4                   JUDGE WOODRUFF: Exhibit 47 and 48 have  
5 been offered. Any objections to their receipt?

6                   (No response.)

7                   JUDGE WOODRUFF: Hearing none, they will be  
8 received.

9                   (EXHIBIT NOS. 47HC, 47NP, 48HC AND 48NP  
10 WERE MARKED FOR IDENTIFICATION AND RECEIVED INTO  
11 EVIDENCE.)

12                  JUDGE WOODRUFF: For cross-examination,  
13 then, we begin with Noranda.

14 CROSS-EXAMINATION BY MR. CONRAD:

15                  Q. Good morning, Mr. Neff.

16                  A. Good morning.

17                  Q. For a number of reasons, my cross will be  
18 very brief. You have Mr. Lyons to thank you -- or to  
19 thank for this question. He was gracious enough to refer  
20 a question to you. How many people in the coal hedging  
21 operation do you have?

22                  A. We have four people with a -- and one  
23 supervisor that buy all the coal for the Ameren  
24 Corporation. They don't buy just coal. They also hedge  
25 the fuel oil and they do the emissions trading as well.

1 Q. But they do the hedging?

2 A. Yes. They buy the coal, yes.

3 Q. And supervisor is you or --

4 A. Supervisor is Tony Conseky (phonetic).

5 Q. And he reports to you?

6 A. Yes, he does.

7 Q. The other area that we occasionally asked

8 folks, and I think Mr. Lyons did not directly refer this

9 to you. The question comes up, are you, sir, on an

10 incentive pay or portion of your pay is based on

11 incentive?

12 A. Yes, I am.

13 Q. Do you feel that motivates you?

14 A. Yes, it does.

15 Q. How much is that percentage?

16 A. 35 percent.

17 MR. CONRAD: Okay. Thank you. That's all

18 I have.

19 JUDGE WOODRUFF: Questions from the

20 Staff -- or from the State?

21 MR. IVESON: I have no questions, your

22 Honor.

23 JUDGE WOODRUFF: Public Counsel?

24 MR. MILLS: Yes. Thank you.

25 CROSS-EXAMINATION BY MR. MILLS:

1           Q.       Mr. Neff, I see you've got a number of  
2 charts there with you. What are those?

3           A.       They're blowups of exhibits in my testimony  
4 that I would -- if I need to, I would refer to if the  
5 appropriate question came up.

6           Q.       Now, you're responsible for coal purchasing  
7 and coal hedging; is that correct?

8           A.       That's correct.

9           Q.       As well as hedging having to do with rail  
10 transportation surcharges, diesel fuel surcharges?

11          A.       I'm responsible for the transportation  
12 contracts. The diesel, the actual hedging of the diesel  
13 fuel is done by another -- is supervised by another person  
14 who does not report to me.

15          Q.       Okay. But the same people that do the coal  
16 purchasing and coal hedging also do those activities; is  
17 that correct?

18          A.       Right.

19          Q.       And so they report to two separate  
20 supervisors, only one of whom reports to you?

21          A.       Right. There's a dual reporting  
22 relationship.

23          Q.       Are you familiar with the rail surcharge  
24 hedging practices?

25          A.       Yes, I am.

1 Q. Now, as part of your responsibility for --  
2 and let me ask you this. Do you have responsibility for  
3 overseeing the day-to-day activities of the coal hedging?

4 A. Yes, I do.

5 Q. Okay. As part of those responsibilities,  
6 do you need up-to-date information on the current status  
7 of coal hedges?

8 A. Yes. Yes. We have a system that supplies  
9 our daily position, the risk management group.

10 Q. So you know almost on a day-to-day basis  
11 the percentages hedged you are for particular periods of  
12 time in the future?

13 A. That's correct.

14 Q. You filed direct testimony in this case on  
15 April 4th; is that correct?

16 A. I believe that's the date, yes.

17 Q. Do you have a copy of that with you?

18 A. Yeah.

19 Q. Is that the date that appears on that  
20 testimony?

21 A. That is the date, yes.

22 Q. And I'm going to ask you some general  
23 questions before I get into highly confidential stuff,  
24 but -- for example, on page 16, the percentages shown on  
25 lines 1 through 4 --

1 A. Yes.

2 Q. -- those are based on hedges as of  
3 February 28th, 2008? If you look back to the previous  
4 page, page 15.

5 A. Yes. That's correct.

6 Q. And then carrying forward into your  
7 rebuttal testimony, you use those same February 28th hedge  
8 positions for the analysis you did in your rebuttal  
9 testimony; is that correct?

10 A. What page are you referring to in rebuttal  
11 testimony?

12 Q. Well, throughout your rebuttal testimony  
13 you do an analysis of hedge percentages.

14 A. Could you refer me to a page where I  
15 referred to hedge percentages? I'm not finding it right  
16 now.

17 Q. Well, okay. Can you point to any -- we'll  
18 strike that question. I'll ask it a different way.

19 Can you point out what portions of the  
20 analysis in your rebuttal testimony would change if you  
21 were to update from February 28th numbers? And just for  
22 an for example, on page 13, the question and answer that  
23 begins on line 16 and goes to 21, and without talking  
24 about the specific numbers, is that not based on the  
25 numbers that you used in your direct testimony which were

1 February 28th numbers?

2 A. Yes, that's correct.

3 Q. Okay. Are there portions of your rebuttal  
4 testimony that don't rely on those February 28 hedge  
5 positions when you're talking about hedged positions?

6 A. Did you have a particular portion in mind?

7 Q. I'm asking you for any portions.

8 A. Okay. Can I have a second to review it  
9 then?

10 Q. Please do. Take all the time you need.

11 A. After a quick review, I don't see any place  
12 where I would have used a different hedge percentage.

13 Q. What was the date that your rebuttal  
14 testimony was filed?

15 A. October 10th, 2008.

16 Q. And you chose not to file surrebuttal  
17 testimony; is that correct?

18 A. I did not.

19 Q. You did not?

20 A. I did not file, yes.

21 Q. So that at the time that you filed your  
22 rebuttal testimony, on October 10th, the hedge positions  
23 you were basing your analysis on were a little over seven  
24 months old?

25 A. We provided updated hedge positions under a

1 Data Request later on, but we used the original. To avoid  
2 changing all the numbers from the original testimony, we  
3 used the original hedge percentages in the rebuttal.

4 Q. Do you have an understanding about when the  
5 rates that will change as a result of this case will go  
6 into effect, when the Commission's Report and Order will  
7 go into effect?

8 A. I believe it will be February next year.

9 Q. March 1, end of February?

10 A. End of February, right.

11 Q. At which point the numbers in your direct  
12 testimony will be a year old?

13 A. 11 months. Yes, they'll be a year old,  
14 yes.

15 MR. MILLS: Judge, I'm going to talk about  
16 some specific numbers now, and I think we'll need to go in  
17 camera, and I'd like to have an exhibit marked.

18 JUDGE WOODRUFF: All right. We'll go in  
19 camera.

20 REPORTER'S NOTE: At this point, an  
21 in-camera session was held, which is contained in  
22 Volume 27, pages 2464 through 2478 of the transcript.)

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1 JUDGE WOODRUFF: And we're out of in-camera  
2 session, back in regular session for Staff's questions.

3 MR. DOTTHEIM: No questions.

4 MS. VUYLSTEKE: We have a few questions,  
5 Judge.

6 JUDGE WOODRUFF: We'll go back to MIEC  
7 then.

8 MS. VUYLSTEKE: Thank you.

9 CROSS-EXAMINATION BY MS. VUYLSTEKE:

10 Q. Good morning, Mr. Neff.

11 A. Good morning.

12 Q. I want to refer you to your direct  
13 testimony, page 14.

14 A. Yes.

15 Q. At the top of the page there, you note the  
16 price of on-highway diesel in January 2007 and February  
17 2008. Do you see that?

18 A. Yes, I do.

19 Q. You state a price increase from about \$2.50  
20 a gallon in January 2007 to February 2008 of about \$3.38;  
21 is that correct?

22 A. Yes. That's correct.

23 Q. Is it true that on-highway diesel prices  
24 have since then dropped back to about \$2.50 per gallon?

25 A. Since I wrote this, they -- and most people

1 know that buy gasoline, you know, that on-highway diesel  
2 went up to 4.50 in the summer, and I guess driving down  
3 here I saw it around 2.45. So it's gone up and it's come  
4 down.

5 Q. Then I want to change the subject.  
6 Mr. Conrad had asked you about incentive compensation, and  
7 I just want to follow up on that. What do you do  
8 differently because of the incentive compensation than you  
9 would? How do you perform your job differently because of  
10 incentive compensation, in what specific respects?

11 A. Well, I started with Union Electric in 1982  
12 when there was no incentive compensation, and since then  
13 this program has evolved. And I think I did a good job  
14 without compensation, but I think the difference with  
15 incentive compensation is it tends to focus your  
16 performance on certain aspects. I think by incenting  
17 people to pay attention to particular items, it  
18 coordinates the whole corporate effort towards meeting  
19 budgets, towards meeting goals, and I think the incentive  
20 compensation focuses good performance.

21 MS. VUYLSTEKE: Thank you.

22 JUDGE WOODRUFF: Okay. We'll come up for  
23 questions from the Bench. Commissioner Murray?

24 COMMISSIONER MURRAY: No questions.

25 JUDGE WOODRUFF: Commissioner Clayton?

1                   COMMISSIONER CLAYTON: No questions. Thank  
2 you.

3                   JUDGE WOODRUFF: Commissioner Gunn?

4                   COMMISSIONER GUNN: No questions.

5                   JUDGE WOODRUFF: Chairman Davis?

6 QUESTIONS BY CHAIRMAN DAVIS:

7           Q.       Mr. Neff, do you recall Mr. Conrad asking  
8 you about your compensation?

9           A.       Yes, I do.

10          Q.       Okay. And there was a reference to  
11 35 percent. Is that a 35 percent bonus or a 35 percent  
12 motivation?

13          A.       It's 35 percent of my pay that's at risk  
14 for not being paid, I guess is the way I look at it.

15          Q.       So it's sort of this is your pay, but if  
16 you don't do well, then you're going to lose roughly a  
17 third of it?

18          A.       Or more, yes.

19                   CHAIRMAN DAVIS: Okay. Thank you.

20                   JUDGE WOODRUFF: Anyone wish to recross  
21 based on that question?

22                   (No response.)

23                   JUDGE WOODRUFF: Any redirect?

24                   MR. BYRNE: Yes, your Honor, just a bit.

25 REDIRECT EXAMINATION BY MR. BYRNE:

1           Q.       Mr. Neff, Mr. Mills asked you about -- had  
2 a long series of questions about updating your percentage  
3 hedged for coal and transportation and the like. Do you  
4 remember that?

5           A.       Yes, I do.

6           Q.       And let me ask you this: Are you -- if you  
7 were to update your amounts hedged, what other updates  
8 would be appropriate for your analysis?

9           A.       I think you would want to look at the time  
10 frame going forward. The analysis I did looked forward  
11 over a five-year period, and in my rebuttal testimony that  
12 is, and I think you would -- you'd have to shift  
13 everything. You can't just say, okay, right now 2009 is  
14 more hedged than it was when you did your testimony. You  
15 would have to then look further out, which is also  
16 unhedged. So it's kind of like you described a moving  
17 window of consumption and further hedging.

18          Q.       With regard to coal, and I think the  
19 hedging percentages are set forth on page -- well, I don't  
20 remember what page -- page 16 of your testimony?

21          A.       Yes, they are.

22          Q.       And you have a four-year window there  
23 starting with 2009. Is that -- is that a representative  
24 amount of hedging for any forward-looking four-year period  
25 you might pick? Is that about how much you have hedged

1 going forward for any four-year period at any given time?

2 A. I would say it would be representative  
3 of -- if February, if you looked at each February, that  
4 would be representative of what we had hedged going  
5 forward, yes.

6 Q. So if you moved the window forward to  
7 February of 2009, it would look similar to this for 2010,  
8 '11, '12 and '13?

9 A. That's correct.

10 Q. You also talked about the fact in response  
11 to Mr. Mills' question that 100 percent of the coal is  
12 hedged for 2009. Do you remember that?

13 A. Yes.

14 Q. And is there -- when 100 percent of the  
15 coal is hedged, does that mean that there's no volatility?

16 A. No. Well, we still face a substantial  
17 volatility even when we have all the coal purchased and  
18 all the base transportation locked in and the diesel fuel  
19 hedged.

20 Q. What would that volatility be attributed  
21 to?

22 A. That volatility is attributed to variations  
23 in burn that occur due to weather or power sales. There's  
24 variations due to the diesel fuel hedges that we have not  
25 being entirely 100 percent correlated to -- we use heating

1 oil to hedge our diesel fuel exposure. There's not a  
2 perfect correlation there. We have supply disruptions.  
3 Seems like every four years the railroads fail to perform,  
4 we have some kind of problem. Like 2005 we had the joint  
5 line maintenance issue that slowed deliveries out of  
6 Powder River Basin and which caused us to not get the coal  
7 we need, and so we have to conserve off-system sales.  
8 There's a number of things that can happen within the year  
9 that affect our coal price.

10 Q. What's the magnitude of that potential  
11 volatility within a year where you're 100 percent hedged  
12 in terms of dollars?

13 A. In my testimony I calculated it'd be  
14 roughly 20 million due to the variation in burn and the  
15 diesel fuel surcharge hedge. The supply disruptions which  
16 occur periodically are roughly -- our last disruption cost  
17 us \$10 million. Between 20 and 30 million.

18 Q. And I guess Mr. Mills was asking you about  
19 out years were less than 100 percent hedged. Do you  
20 recall him talking about those years?

21 A. Yes, I do.

22 Q. And I assume for the part in each year  
23 that's not hedged -- well, are you subject to volatility  
24 for the part that's not hedged in the out years?

25 A. Yes, we are.

1 Q. In the coal markets?

2 A. Yes. In my testimony I calculated the high  
3 and low estimated fuel prices going on five years, and for  
4 example, at the time I did my testimony, I estimated a  
5 range of \$106 million from a high to low fuel cost in  
6 2009, and there's a range of \$270 million in 2010 from the  
7 low to high expected cost and \$360 million in 2011.

8 Q. And let me ask you about the part that's  
9 hedged in those out years. Does the fact that quantities  
10 are hedged in the out years mean that the price is going  
11 to stay the same?

12 A. The price for the commodities that we buy  
13 during the out years will stay the same, but at any given  
14 time we have 50 percent of our coal over the next five  
15 years is unhedged. So if you look at the -- the amount of  
16 coal that AmerenUE uses, that's roughly 58 million tons  
17 over five years that's unhedged at any given time from  
18 this point forward. So each dollar movement in the coal  
19 market affects our future coal costs by \$58 million.

20 Q. But the coal that's under contract, does  
21 the price stay the same every year, year after year?

22 A. The prices are fixed, but normally they're  
23 in a contract, they're escalated. So you would have fixed  
24 escalation from year to year.

25 Q. And how much do they escalate from year to

1 year?

2 A. It varies from contract to contract. I'd  
3 say typical range would be 3 to 5 percent.

4 Q. And how much in dollars would that be?

5 MR. MILLS: Judge, I'm going to have to  
6 object. This is beyond the scope of my cross-examination.  
7 I didn't ask him about any contract escalation.

8 MR. BYRNE: He asked about the hedged  
9 contracts.

10 JUDGE WOODRUFF: I'll overrule the  
11 objection.

12 THE WITNESS: I'm sorry. Could you repeat  
13 the question?

14 BY MR. BYRNE:

15 Q. About how much in dollars would that be for  
16 the escalating portion of the hedged coal contracts? I  
17 don't need to know exactly, if you have an order of  
18 magnitude.

19 A. I haven't calculated that number, but  
20 considering that AmerenUE burns 23 million tons and  
21 average coal price is around \$10, that would be  
22 230 million. Would be -- let's see. 5 percent of that  
23 would be \$10 million.

24 Q. And how about the hedged portion of your  
25 transportation contracts? Does the price of those

1 transportation contracts, even when hedged, change from  
2 year to year?

3 A. Yeah, those typically also go up. Most  
4 recent contracts we signed about 5 percent escalator from  
5 year to year.

6 Q. And how many dollars is that, if you know  
7 about? Is it millions of dollars?

8 A. Yes, it is millions of dollars. It's tens  
9 of millions of dollars.

10 Q. It's tens of millions of dollars?

11 A. Yes.

12 MR. BYRNE: I think that's all the  
13 questions I have. Thank you, Mr. Neff.

14 JUDGE WOODRUFF: Thank you, Mr. Neff. You  
15 can step down. Next witness I believe is Mr. Glaeser.

16 Good morning, Mr. Glaeser.

17 THE WITNESS: Good morning.

18 JUDGE WOODRUFF: Please raise your right  
19 hand.

20 (Witness sworn.)

21 JUDGE WOODRUFF: You may inquire.

22 SCOTT GLAESER testified as follows:

23 DIRECT EXAMINATION BY MS. TATRO:

24 Q. Good morning. Could you please state your  
25 full name and business address for the Commission.

1           A.       My name is Scott A. Glaeser, G-l-a-e-s-e-r.  
2 My business address is 1901 Chouteau Avenue, St. Louis,  
3 Missouri.

4           Q.       And what's your business title?

5           A.       I am the vice president of gas supply and  
6 system control for Ameren Energy Fuels and Services  
7 Company.

8           Q.       And are you the same Scott A. Glaeser that  
9 caused to be filed direct testimony and rebuttal testimony  
10 which have been marked, the direct's been marked 34HC and  
11 NP and the rebuttal's been marked Exhibit 35?

12          A.       Yes, that's correct.

13          Q.       Do you have any corrections or additions to  
14 your testimony?

15          A.       Yes, I have one, a typographical error on  
16 my direct testimony, Schedule SAG-E4. The actual error is  
17 the --

18          Q.       I'm sorry. That is -- that's a highly  
19 confidential exhibit. Is the --

20          A.       Yes, it is.

21          Q.       Is the correction --

22          A.       I believe so.

23          Q.       Do we have to go in camera to make that  
24 change?

25          A.       It's just one number on the table. I don't

1 know if it reveals the whole table.

2 JUDGE WOODRUFF: I'll leave that to your  
3 counsel.

4 THE WITNESS: I believe it --

5 MS. TATRO: I think we should go in camera  
6 to make that change.

7 JUDGE WOODRUFF: All right. We'll go in  
8 camera.

9 REPORTER'S NOTE: At this point, an  
10 in-camera session was held, which is contained in  
11 Volume 27, page 2490 of the transcript.)

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1 BY MS. TATRO:

2 Q. With that correction, if I asked you the  
3 questions that are contained within your direct and  
4 rebuttal testimony, would your answers remain the same?

5 A. Yes, they would.

6 Q. And are they correct and accurate to the  
7 best of your knowledge?

8 A. Yes, they are.

9 MS. TATRO: I would offer 34HC and NP and  
10 35 into the record.

11 JUDGE WOODRUFF: 34 and 35 have been  
12 offered. Any objections to their receipt?

13 (No response.)

14 JUDGE WOODRUFF: Hearing none, they will be  
15 received into evidence.

16 (EXHIBIT NO. 34HC, 34NP AND 35 WERE MARKED  
17 FOR IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

18 MS. TATRO: I tender the witness for  
19 cross-examination.

20 JUDGE WOODRUFF: Beginning with Noranda.

21 CROSS-EXAMINATION BY MR. CONRAD:

22 Q. Good morning, Mr. Glaeser.

23 A. Mr. Conrad.

24 Q. I also will be brief, I hope, because  
25 Mr. Lyons referred a couple of things to you, and you can

1 thank him later.

2 A. I will.

3 Q. One of them was a simple question of how  
4 many people were involved in the gas cost hedging program.

5 A. Okay. I have a gas generation function  
6 which actually has two groups within it. One's a reg and  
7 non-reg group, and in each of those groups there's what we  
8 call lead gas supply executive. That individual is  
9 responsible for hedging, gas supply procurement and so  
10 forth. So there's one and one, one reg, one non-reg.

11 Q. And that's your whole department?

12 A. No, that's not my whole department. That's  
13 just the gas generation function, I have several other  
14 functions beneath me.

15 Q. Tell me briefly about those so we can  
16 distinguish what's going on.

17 A. Okay. I have the gas supply function for  
18 Ameren's LDCs. We own and operate four LDCs, three in  
19 Illinois, one in Missouri. AmerenUE is an LDC. I also  
20 have the gas control center which monitors, controls our  
21 gas flows on both our LDCs and our gas generation pipeline  
22 lateral facilities. I also have the end user  
23 transportation function, which manages the gas supply  
24 resources of our large industrial and commercial  
25 transporters, and the gas generation function.

1 Q. Okay. So the gas control thing, that's  
2 like -- the analog there would be to a dispatcher on the  
3 electric side?

4 A. Very close.

5 Q. And the other question, I don't know if you  
6 were here a few moments ago when I was talking to  
7 Mr. Neff. Asked him what percentage of his salary was at  
8 risk on the incentive program. What percentage -- are you  
9 on the incentive program?

10 A. Yes, I am.

11 Q. What percentage of that salary is on that  
12 program?

13 A. As an officer of Ameren, I, like Mr. Neff,  
14 are at 35 percent of our base salary is at risk as an  
15 incentive, although those costs are not included in this  
16 rate case.

17 Q. Does that motivate you to --

18 A. Absolutely.

19 Q. -- be more effective?

20 A. Absolutely. Absolutely. It's at risk.

21 Q. Be more efficient?

22 A. Be more efficient, work harder, and strive  
23 for the key corporate goals and objectives we set up.

24 Q. Same way for the company?

25 A. Everything, operational excellence,

1 regulatory performance, save money, customer satisfaction,  
2 you name it.

3 MR. CONRAD: Thank you, sir.

4 JUDGE WOODRUFF: All right. For MIEC?

5 MS. VUYLSTEKE: No questions. Thank you.

6 JUDGE WOODRUFF: For the State?

7 MR. IVESON: No questions.

8 JUDGE WOODRUFF: Public Counsel?

9 MR. MILLS: No questions.

10 JUDGE WOODRUFF: For the Staff?

11 MR. DOTTHEIM: Just a couple of questions.

12 CROSS-EXAMINATION BY MR. DOTTHEIM:

13 Q. Good morning, Mr. Glaeser. Mr. Glaeser,  
14 I'd like to direct you to your direct testimony and to  
15 your Schedule SAG-E3.

16 A. SAG-E3.

17 Q. Yes.

18 A. Give me a moment. 2007 NYMEX actuals  
19 versus forwards?

20 Q. Yes. And does that schedule show the  
21 difference between forward and spot market prices for  
22 natural gas?

23 A. No, it does not.

24 Q. From your experience with natural gas, are  
25 forward prices less or more volatile than spot market

1 prices?

2 A. Well, I think you might be confusing two  
3 different things.

4 Q. All right.

5 A. The spot market and forwards -- spot  
6 market's the immediate cash market. That is basically  
7 today's cash market or the next day trading's cash market.  
8 That's what we usually refer to as a spot market.

9 The forwards are basically the futures,  
10 which include things like the NYMEX futures exchange,  
11 over-the-counter derivatives markets and so forth that are  
12 indications of future prices for natural gas that can't be  
13 entered into as a future position to hedge.

14 Q. Are you indicating, then, are you saying,  
15 then, that they can't be compared for purposes of  
16 volatility?

17 A. They can be, but they -- you have to  
18 recognize they're two different animals. Cash or spot  
19 market is immediate. Futures is long-term. Both have a  
20 significant volatility.

21 Q. Have you or anyone at AmerenUE done such a  
22 comparison?

23 A. I'm not sure what the rationale for such  
24 comparison would be.

25 Q. Well, if you would just answer my --

1           A.     No.

2           Q.     -- question.

3           MR. DOTTHEIM: Thank you, Mr. Glaeser.

4           JUDGE WOODRUFF: Come up for questions from

5 the Bench then. Commissioner Murray?

6           COMMISSIONER MURRAY: No questions.

7           JUDGE WOODRUFF: Commissioner Clayton?

8           COMMISSIONER CLAYTON: No questions today.

9           JUDGE WOODRUFF: Commissioner Gunn?

10          COMMISSIONER GUNN: No questions.

11          JUDGE WOODRUFF: Chairman Davis?

12          CHAIRMAN DAVIS: No questions.

13          JUDGE WOODRUFF: All right. No need to

14 recross. Any redirect?

15 REDIRECT EXAMINATION BY MS. TATRO:

16          Q.     Mr. Glaeser, Staff asked you about SAG-E3,

17 and they asked you whether or not it showed the difference

18 between forward and spot market prices. Do you remember

19 that question?

20          A.     Yes, I do.

21          Q.     What does that chart show?

22          A.     What this chart is showing is how the NYMEX

23 futures market changes significantly over time and in

24 itself is never a perfect indicator of future prices.

25 These are the different curves, which is a red, a blue and

1 a black one. The black one represents futures trading on  
2 January 3rd of 2006. The red one, the red curve indicates  
3 futures trading on January 3rd of 2005, and the blue is  
4 the actual contract settle. That's what the contract  
5 actually settled out at. What you see is how over time,  
6 even the NYMEX futures market cannot predict what those  
7 gas prices will ultimately be when things settle for that  
8 month.

9 MS. TATRO: I have nothing further. Thank  
10 you.

11 JUDGE WOODRUFF: Mr. Glaeser, you can step  
12 down. And the next witness is Mr. Irvin.

13 MS. TATRO: Mr. Irvin might not have  
14 realized this was going to go that quickly, but I imagine  
15 he is on his way over here. Here he is.

16 JUDGE WOODRUFF: Good morning, Mr. Irvin.

17 THE WITNESS: Good morning.

18 JUDGE WOODRUFF: If you'll raise your right  
19 hand, we'll swear you in.

20 (Witness sworn.)

21 JUDGE WOODRUFF: Thank you. You may  
22 inquire.

23 RANDALL J. IRVIN testified as follows:

24 DIRECT EXAMINATION BY MS. TATRO:

25 Q. Mr. -- well, can you state your name and

1 business address for the record?

2 A. Randall J. Irvin, 1901 Chouteau Avenue,  
3 St. Louis, Missouri.

4 Q. And can you state your business title,  
5 please?

6 A. Supervising engineer - fuel cycle  
7 management.

8 Q. And are you the same Randall Irvin who  
9 filed, prefiled direct testimony 49HC and NP in this case?

10 A. Yes.

11 Q. Do you have any corrections or additions to  
12 those questions or to the testimony?

13 A. No, I do not.

14 Q. And if I asked the questions that are  
15 contained within that testimony, would your answers be the  
16 same?

17 A. Yes, they would.

18 Q. Are your answers true and correct to the  
19 best of your knowledge?

20 A. Yes, they are.

21 MS. TATRO: I would offer Union Electric  
22 Exhibits 49HC and NP into the record.

23 JUDGE WOODRUFF: Exhibit 49 has been  
24 offered. Any objections to its receipt?

25 (No response.)

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

3 (UNION ELECTRIC'S EXHIBIT NO. 49HC WAS  
4 MARKED FOR IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

5 JUDGE WOODRUFF: And for cross-examination,  
6 we'll begin with Noranda.

7 MR. CONRAD: Mr. Irvin, you'll be pleased  
8 to know that Mr. Lyons did not refer anything to you.

9 THE WITNESS: Yes, sir.

10 MR. CONRAD: So we have no questions for  
11 you, sir.

12 JUDGE WOODRUFF: For MIEC?

13 MS. VUYLSTEKE: No questions.

14 JUDGE WOODRUFF: For the State?

15 MR. IVESON: No questions.

16 JUDGE WOODRUFF: For Public Counsel?

17 MR. MILLS: No questions.

18 JUDGE WOODRUFF: For Staff?

19 MR. DOTTHEIM: No questions.

20 JUDGE WOODRUFF: Any Commissioners have any  
21 questions?

22 CHAIRMAN DAVIS: No.

23 JUDGE WOODRUFF: No need for recross, and  
24 no need for redirect. And you can step down.

25 THE WITNESS: Okay.

1 JUDGE WOODRUFF: Thank you for coming  
2 today.

3 THE WITNESS: It's been a pleasure.

4 JUDGE WOODRUFF: The next witness then is  
5 Mr. Mertens. Good morning, Mr. Mertens.

6 THE WITNESS: Good morning.

7 JUDGE WOODRUFF: Please raise your right  
8 hand. I'll swear you in.

9 (Witness sworn.)

10 JUDGE WOODRUFF: Thank you. You may  
11 inquire.

12 PAUL MERTENS testified as follows:

13 DIRECT EXAMINATION BY MS. TATRO:

14 Q. Good morning. Can you state your name and  
15 business address for the Commission.

16 A. Paul Mertens, and my business address is  
17 1901 Chouteau, St. Louis, Missouri.

18 Q. And what's your business title, please?

19 A. Assistant manager of fuel planning.

20 Q. And are you the same Paul W. Mertens who  
21 filed direct testimony in this case?

22 A. Yes.

23 Q. Do you have any corrections or additions to  
24 your testimony?

25 A. No.

1           Q.       And if I were to ask the same questions  
2 that are contained within this prefiled testimony, would  
3 your answers be the same?

4           A.       Yes.

5           Q.       And are your answers true and complete to  
6 the best of your knowledge?

7           A.       Yes.

8           MS. TATRO: I offer Exhibit 50.

9           JUDGE WOODRUFF: Exhibit 50 has been  
10 offered. Any objections to its receipt?

11                   (No response.)

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

14                   (EXHIBIT NO. 50 WAS MARKED FOR  
15 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

16           MS. TATRO: Tender the witness.

17           JUDGE WOODRUFF: For cross-examination,  
18 beginning with Noranda?

19 CROSS-EXAMINATION BY MR. CONRAD:

20           Q.       Mr. Mertens, just to clarify for me, the  
21 purpose of your testimony is limited to the FAC filing  
22 requirements; is that correct?

23           A.       Yes, minimum filing requirements after I --  
24 just certain of the filing requirements.

25           MR. CONRAD: Thank you, sir. That's all I

1 have.

2 JUDGE WOODRUFF: MIEC?

3 MS. VUYLSTEKE: No questions.

4 JUDGE WOODRUFF: State?

5 MR. IVESON: No questions.

6 JUDGE WOODRUFF: Public Counsel?

7 MR. MILLS: No questions.

8 JUDGE WOODRUFF: Staff?

9 MR. DOTTHEIM: No questions.

10 JUDGE WOODRUFF: And do the Commissioners

11 have questions?

12 CHAIRMAN DAVIS: No questions.

13 JUDGE WOODRUFF: All right. No need for

14 recross. I guess there's really no need for redirect

15 either.

16 MS. TATRO: No.

17 JUDGE WOODRUFF: All right. Mr. Mertens,

18 you can step down.

19 THE WITNESS: Thank you.

20 JUDGE WOODRUFF: And that completes the

21 Union Electric witnesses. We move on to Mr. Brubaker.

22 MR. LOWERY: Your Honor, could we take a

23 ten-minute recess? It's moved along faster than I

24 expected, and I need to get a few materials in order to

25 proceed.

1 JUDGE WOODRUFF: We'll take a ten-minute  
2 recess. Come back at 11:30. We will have --

3 MR. LOWERY: Oh, I'm sorry. We were going  
4 out of order. I'm sorry.

5 MR. BYRNE: Mr. Birk can go ahead. And we  
6 may not even --

7 JUDGE WOODRUFF: I didn't have Mr. Birk on  
8 my list here. So, we'll bring up Mr. Birk.

9 Is Mr. O'Bryan going to testify again?

10 MR. BYRNE: No.

11 JUDGE WOODRUFF: Mr. Birk, I think you did  
12 testify earlier, did you not?

13 THE WITNESS: Yes, sir, I did.

14 JUDGE WOODRUFF: You are still under oath,  
15 then.

16 MARK BIRK testified as follows:

17 DIRECT EXAMINATION BY MR. BYRNE:

18 Q. Mr. Birk, could you please state your name  
19 and business address.

20 A. Mark Christopher Birk, 1901 Chouteau,  
21 St. Louis, Missouri.

22 Q. And Mr. Birk, I believe your testimony has  
23 already been admitted; is that correct?

24 A. That is correct.

25 MR. BYRNE: Your Honor, before we start, I

1 would like to mark an exhibit, and the purpose of the  
2 exhibit is the Chairman asked Mr. Birk last time he  
3 testified about how we -- how we would invest an extra  
4 \$3 million, and Mr. Birk said he would need some time to  
5 think about it. He put together a short piece on what he  
6 would do with that \$3 million, and I thought maybe if the  
7 Commission had any questions, it would be appropriate  
8 to --

9 JUDGE WOODRUFF: Did we reserve a number  
10 for this at this time?

11 MR. BYRNE: I don't remember.

12 JUDGE WOODRUFF: I've got a cryptic note  
13 here, reserve for later filing, No. 76, I'm not sure if  
14 this is the one. We'll leave that for something else.

15 MR. BYRNE: That might have been the --  
16 there was one we reserved for Mr. Zdellar, I think.

17 JUDGE WOODRUFF: Let's give this No. 78,  
18 then.

19 (EXHIBIT NO. 78 WAS MARKED FOR  
20 IDENTIFICATION BY THE REPORTER.)

21 MR. BYRNE: And, your Honor, I guess I  
22 would move for admission of Exhibit 78. Well, maybe I  
23 ought to identify what it is.

24 BY MR. BYRNE:

25 Q. Mr. Birk, can you identify what's been

1 marked as Exhibit 78?

2 A. Basically, it's an AmerenUE regulated  
3 generation perspective training overview.

4 Q. And is this in response to the question  
5 that the Chairman asked you when you previously appeared  
6 in this case?

7 A. Yes, it is.

8 MR. BYRNE: Okay. With that, I'd move for  
9 the admission of Exhibit 78 and tender Mr. Birk for  
10 cross-examination.

11 JUDGE WOODRUFF: Exhibit 78 has been  
12 offered. Are there any objections to its receipt?

13 MR. MILLS: Judge, I don't know that I have  
14 any objections, but I haven't had a chance to read it yet,  
15 so if we can hold off for a few minutes.

16 JUDGE WOODRUFF: We'll defer ruling on that  
17 while we go through the --

18 CHAIRMAN DAVIS: Has counsel for the unions  
19 seen this at all?

20 MR. BYRNE: I don't believe so.

21 THE WITNESS: They have not.

22 JUDGE WOODRUFF: All right. For  
23 cross-examination, then, beginning with Noranda?

24 MR. CONRAD: Mr. Birk, this is -- forgive  
25 me counsel, 78?

1 JUDGE WOODRUFF: Yes, 78.

2 MR. CONRAD: Has been offered but hasn't  
3 ruling occurred.

4 CROSS-EXAMINATION BY MR. CONRAD:

5 Q. This is what you would do with \$3 million?

6 A. This is -- this is what we would -- what  
7 the Chairman had asked is if we had an additional  
8 \$3 million, what would we do to enhance our training  
9 program, and this is in response to that.

10 Q. This is in Missouri?

11 A. Yes, sir.

12 Q. Not in Illinois?

13 A. That is correct. This is just associated  
14 with the AmerenUE regulated Missouri operations.

15 Q. I'm given to understand there's some things  
16 you can do with money in Illinois.

17 A. I'm not privy to that.

18 MR. CONRAD: Thank you. That's all.

19 JUDGE WOODRUFF: I'm sorry. Did you have  
20 anything else?

21 MR. CONRAD: No. I'm sorry. No, thank  
22 you.

23 JUDGE WOODRUFF: For MIEC?

24 MS. VUYLSTEKE: No questions.

25 JUDGE WOODRUFF: For the State?

1 MR. IVESON: No questions.

2 JUDGE WOODRUFF: Public Counsel?

3 MR. MILLS: No questions.

4 JUDGE WOODRUFF: For the Staff?

5 MR. DOTTHEIM: No questions.

6 JUDGE WOODRUFF: And do the Commissioners  
7 have any questions?

8 COMMISSIONER MURRAY: No questions.

9 JUDGE WOODRUFF: Chairman Davis?

10 QUESTIONS BY CHAIRMAN DAVIS:

11 Q. Mr. Birk, I'm trying to digest all this  
12 here. So this document that you provided to the  
13 Commission that's been marked as Exhibit No. 78, you've  
14 got roughly \$1 million for nine full-time staff positions.  
15 That's training supervisors and journeyman instructor  
16 assistants to facilitate increased daytime class schedule?

17 A. Yes, sir.

18 Q. Okay. And an additional increase of three  
19 training supervisors. You've got training aids of  
20 specific equipment, annual updates, purchase of advanced  
21 training aids, supplies, specific vendor training, you'll  
22 send them to school, certify the training supervisors, for  
23 all totaled a total expenditure list of 3.2 million?

24 A. Yes, sir.

25 Q. Okay. Now, there was no scientific method

1 of me picking the number \$3 million. That was a -- more  
2 or less a hypothetical medium. I mean, what -- what do  
3 you think is reasonable? What do you think is optimal?

4 A. Are you asking as far as a funding level?

5 Q. Uh-huh. Uh-huh.

6 A. Okay. Chairman, this was -- I believe the  
7 question was, if we were to be able to enhance our  
8 training, in other words, improve it over and above what  
9 we planned to do already, and when we went and looked at  
10 it, when you look at the five full-time training  
11 supervisors, what that's really for is a supervisor for  
12 each subject area to develop additional curriculum, in  
13 other words, go above where we're at now, looking toward  
14 the future, and develop additional curriculum on which to  
15 train our people.

16 If you're asking about the total amount, I  
17 believe that this is a total realistic amount. I really  
18 do. We've been through the numbers several times. I know  
19 you kind of pulled the 3 million out, but when we went  
20 back to the training organization and said, hey, give me  
21 an estimate of what you think it would take, I did not  
22 constrain them to any number. They came up -- it was  
23 close, so I left it at the 3.2. This is what they feel  
24 would take our training from where we believe it to be  
25 good to something we believe to be close to industry

1 leading, and that's what the additional money would buy.

2 Q. Any other -- any other comments on this?

3 A. I do believe, as we discussed before, that  
4 a key to us being the best utility we can be, which helps  
5 our customers the most, is to have well-trained,  
6 experienced people, and I do believe it is wise of the  
7 Commission to look at the future and look to say we should  
8 be developing -- we should be developing and training  
9 people. I do think this would put us in an excellent  
10 position for the future going forward.

11 Q. Okay. And can you refresh for my  
12 recollection what portion of your plant employees are  
13 expected to retire within the next five, ten years?

14 A. In the next ten years, I believe the number  
15 is close -- it's between 45 and 50 percent are expected.  
16 Our average age right now of our plant employees is around  
17 48 to 49 years old.

18 CHAIRMAN DAVIS: I don't believe I have any  
19 further questions, Judge.

20 JUDGE WOODRUFF: All right. Anyone wish to  
21 recross based on those questions?

22 (No response.)

23 JUDGE WOODRUFF: Any redirect?

24 MR. BYRNE: No, your Honor. Thank you.

25 CHAIRMAN DAVIS: All right. Mr. Birk, you

1 can step down.

2 THE WITNESS: Thank you.

3 JUDGE WOODRUFF: Now I believe we're ready  
4 for Mr. Brubaker.

5 MR. MILLS: And Judge, just so we don't  
6 leave something hanging, I don't have any objections to  
7 Exhibit 78.

8 JUDGE WOODRUFF: Oh, I'm sorry. Thank you  
9 for bringing that up again. Anyone else have any  
10 objection to 78?

11 (No response.)

12 JUDGE WOODRUFF: All right. Exhibit 78  
13 will be received into evidence.

14 (EXHIBIT NO. 78 WAS RECEIVED INTO  
15 EVIDENCE.)

16 CHAIRMAN DAVIS: Judge, I mean, the unions  
17 aren't here, but may I -- is that -- I mean, is this  
18 issue -- I don't know if it's a new issue or if it's an  
19 issue that is raised by the unions that will be briefed in  
20 the briefs. Do the parties have any comment on that?

21 JUDGE WOODRUFF: On the extra \$3 million?

22 CHAIRMAN DAVIS: Uh-huh.

23 JUDGE WOODRUFF: I'm assuming they can  
24 raise it in the briefs.

25 MR. DOTTHEIM: I would suspect it would be

1 raised in the briefs. Certainly we -- over lunch break an  
2 effort can be made to contact counsel for the unions.  
3 Maybe counsel for the company could send electronically to  
4 counsel for the unions the --

5 CHAIRMAN DAVIS: Well, right. Because just  
6 from their position statement, I always found their  
7 position was a little bit nebulous.

8 MR. BYRNE: We'd be happy to do that, your  
9 Honor, and make sure she gets it.

10 CHAIRMAN DAVIS: And Judge, I know I see  
11 Ms. Vuylsteke is poised and ready to go. Mr. Brubaker's  
12 looking fired up there. It's 11:33. I don't think we're  
13 probably going to have -- I think we should go ahead and  
14 keep going, but I think we are going to have to break for  
15 agenda before we get done.

16 JUDGE WOODRUFF: Yes. I will tell the  
17 parties that agenda's scheduled for 12 o'clock, and then  
18 there's a Universal Service Board meeting following that.  
19 So we will be breaking for lunch at 12, probably come back  
20 at 1:30. Yes, sir.

21 MR. LOWERY: Your Honor, can I inquire?  
22 You know, we have -- we had talked about deposition  
23 designations yesterday, and Staff has one, and we have  
24 several. And I think if we could handle that issue, it  
25 might influence how much cross-examination there might be.

1 JUDGE WOODRUFF: Before Mr. Brubaker?

2 MR. LOWERY: Yes. And so I was wondering  
3 if the Bench would be amenable to taking that issue up  
4 now?

5 JUDGE WOODRUFF: That would be fine. I  
6 noticed something came across EFIS just a few minutes ago.  
7 There's been amended offer of admissions from Kind and  
8 Dauphinaia as well. I haven't read those yet.

9 MR. LOWERY: That's correct, and I won't  
10 offer the ones with respect to Mr. Kind right now because  
11 Mr. Mills has not seen those amended designations. I  
12 would offer the ones for Mr. Brubaker and Mr. Dauphinaia.  
13 The ones that I filed for Mr. Dauphinaia this morning are  
14 the same ones that I showed Ms. Vuylsteke yesterday  
15 afternoon. Those have not changed, and I know she has  
16 been through those.

17 JUDGE WOODRUFF: Okay.

18 MR. LOWERY: We'd also like to go ahead and  
19 offer the deposition designations that we filed of Staff  
20 witnesses.

21 JUDGE WOODRUFF: Can you run down the list  
22 for me?

23 MR. LOWERY: I think I can. MIEC  
24 witnesses, Dauphinaia, which are amended designations  
25 filed today, Mr. Brubaker, then Staff witnesses Mantle,

1 Beck. If I look at the witness list, I can probably come  
2 up with one or two more. It seems like there's one or two  
3 more. Bear with me just a second, your Honor.

4 JUDGE WOODRUFF: I've got Mantle, Beck --

5 MR. LOWERY: Proctor.

6 JUDGE WOODRUFF: Right.

7 MR. LOWERY: And that might be all, your  
8 Honor. Take a quick look here. Yes, I believe those  
9 would be all. Again, I would not offer Mr. Kind's amended  
10 designations at this time.

11 JUDGE WOODRUFF: Does anyone have any  
12 objection to receiving those designations?

13 MR. DOTTHEIM: Yes. As I indicated  
14 yesterday, the only objection that the Staff would have to  
15 the deposition designations would be if they weren't  
16 totally in context. In reviewing the designation  
17 designations for Dr. Proctor's deposition, a number of the  
18 designations are not complete answers, and the Staff  
19 objects on that basis. I have penciled in what the Staff  
20 considers to be complete answers, and on that basis, so  
21 long as the complete response to the question asked by  
22 Mr. Lowery in each instance was admitted, the Staff would  
23 have no objection.

24 JUDGE WOODRUFF: Do you have any other --  
25 do you wish to make a counter designation? Is that --

1                   MR. DOTTHEIM: Yes. And I have a  
2 handwritten copy of that. I could have that typed up, but  
3 given the time and everything, I have nothing more than  
4 just a -- copies of penciled in.

5                   JUDGE WOODRUFF: And that's just for  
6 Dr. Proctor, not the others?

7                   MR. DOTTHEIM: No. But I did note  
8 yesterday that the designation for Ms. Mantle, one of them  
9 is only the question and not the answer, and I've  
10 discussed that with Mr. Byrne, and he is either going to  
11 ask Ms. Mantle that question and answer or handle it in  
12 that manner or indicate what is the -- the answer. The  
13 Staff has no objection. We've called that to the  
14 attention of the company.

15                   As far as Mr. Beck is concerned, the  
16 designations were refiled. There was an initial list of  
17 designations which the Staff considered not to be complete  
18 and objectionable, and I believe a section -- a second  
19 list of designations was filed which I believe the Staff  
20 does not find to be objectionable.

21                   JUDGE WOODRUFF: Okay.

22                   MR. BYRNE: Your Honor, with regard to  
23 Ms. Mantle, Mr. Dottheim is correct. We stopped the  
24 designation. We had a question but not the answer, and  
25 it's on page 67 of her deposition. The question begins at

1 line 17 and it says, do you think AmerenUE has been  
2 managing its costs prudently and effectively, its fuel  
3 costs, question mark. And then we left off the answer,  
4 which is, from what I've seen, yes. So I guess I'd -- if  
5 I could verbally amend it?

6 JUDGE WOODRUFF: Yeah, that would be fine.  
7 All right. As far as Dr. Proctor, then, I'll just defer  
8 ruling on that until Staff has a chance to do its counter  
9 designations. He won't be up until later.

10 MR. LOWERY: That makes sense, your Honor.

11 JUDGE WOODRUFF: We can get that taken care  
12 of. For the other designations, does anyone have any  
13 objection to them?

14 MR. MILLS: Just briefly, Judge. I haven't  
15 seen what's been designated for Mr. Kind, but if they're  
16 what I anticipate, then I will have objections.

17 JUDGE WOODRUFF: We'll deal with Mr. Kind  
18 later, then.

19 MR. CONRAD: I don't know if this is  
20 leading to an objection or not, because obviously  
21 Mr. Brubaker is not our witness, but the question has  
22 always puzzled me a little bit in these types of  
23 proceedings where you're dealing with an expert witness  
24 who is not an employee but is simply an independent  
25 contractor that is hired for the purpose of providing

1 technical resource and testimony for a particular entity  
2 in a particular rate case, and I guess I would inquire  
3 perhaps of counsel --

4 JUDGE WOODRUFF: Somebody want to answer  
5 that?

6 MR. CONRAD: Well, perhaps counsel can  
7 articulate the purpose of this, because I understood from  
8 an earlier motion that these were to be admissions, and  
9 they would need to be admissions against some party's  
10 interest. I'm not sure that Mr. Brubaker's -- I'm not  
11 confident how he's paid or how his organization is set up,  
12 but I don't think he's an employee of any of the MIEC  
13 companies. So since we use Mr. Brubaker occasionally also  
14 for clients that I have, I'm more than a little curious as  
15 to how this plays out.

16 JUDGE WOODRUFF: Mr. Lowery, do you want to  
17 respond to that?

18 MR. LOWERY: Sure, your Honor. I think, as  
19 the Commission knows, I think the Commission can take  
20 notice of this fact given the extensive participation of  
21 MIEC in many proceedings before the Commission. MIEC is  
22 an unincorporated association. It doesn't have any  
23 employees. It doesn't have any representatives. In fact,  
24 its only representatives before this Commission are always  
25 Mr. Brubaker and other members of his firm.

1                   Mr. Brubaker's testimony, for example,  
2 indicates -- either identifies the witnesses presenting  
3 testimony on behalf of MIEC, briefly describes the subject  
4 areas, and then Mr. Brubaker says, my testimony will serve  
5 to present an overall summary of our positions, and I  
6 think the context is pretty clear those are MIEC's  
7 positions.

8                   There's another interesting data point that  
9 I think may make sense here. During my deposition of  
10 Mr. Dauphinaia, I asked Mr. Dauphinaia some questions to  
11 which Ms. Vuylsteke objected on attorney/client privilege  
12 grounds. Now, if the Brubaker consultants are independent  
13 experts just giving their opinions separate and apart from  
14 Missouri Industrial Energy Consumers' positions, then  
15 there certainly couldn't be an attorney/client privilege  
16 between Ms. Vuylsteke and the Brubaker persons.

17                   The logical extension of the argument  
18 that's being made here is that these amorphous  
19 unincorporated associations can show up in a case, advance  
20 positions and take positions on behalf of those, and  
21 nobody can be called to answer for whether or not those  
22 positions are being taken on behalf of that particular  
23 entity.

24                   And I think the context, the objection and  
25 so on makes it pretty clear that these folks are

1 authorized to speak and take positions and advance and  
2 advocate positions on behalf of MIEC. And the law is  
3 pretty clear that vicarious admissions are just as much  
4 admissions as admissions directly by the party themselves.  
5 So I believe these are admissions of a party opponent  
6 because these folks are authorized agents on behalf of  
7 MIEC.

8 MS. VUYLSTEKE: Your Honor, first of all,  
9 I'd like to respond to Mr. Lowery's comments in this  
10 regard. First of all, the assertion has never been that  
11 attorney/client privilege applies because of a  
12 relationship of attorney/client privilege between myself  
13 and Mr. Brubaker's firm. It's only because incidentally  
14 client confidences could be raised in the course of  
15 certain questions that were asked in the deposition. So I  
16 think that that's a disagreement about the  
17 characterization of my objection about attorney/client  
18 privilege.

19 And that's a little bit of a side issue  
20 because I think this is very important issue for the  
21 Commission to address in general, which is the use of  
22 depositions in these cases.

23 Mr. Brubaker's and Mr. Dauphinaia's  
24 testimony and the testimony of many of the other witnesses  
25 for which designations are sought are expert witnesses.

1 Expert witnesses are not agents of a party. The reason  
2 that expert witnesses are used is that they are charged  
3 with the duty of giving an expert opinion, and it is not  
4 the opinion of a party. It is an independent opinion, and  
5 it's credible to the extent to which the opinion can be  
6 used to find the truth of the matter for the Commission to  
7 rely on as evidence.

8 I think that in general if the Commission  
9 uses depositions, to some extent they are in lieu of the  
10 testimony of the witness. Mr. Brubaker is here. He is  
11 available for any questions that Mr. Lowery or anyone else  
12 wants to ask. The Commission also is -- can ask questions  
13 of Mr. Brubaker. The Commission cannot do so during a  
14 deposition.

15 The demeanor of Mr. Brubaker and all the  
16 other witnesses, their ability to answer in their own way  
17 in front of all the other parties is essential to the  
18 strength of the process that we have here. And I think  
19 the Commission should use depositions where necessary,  
20 where a witness might be unavailable, where they're being  
21 used for purposes that would otherwise be admissible under  
22 the evidence.

23 I think that the rules of evidence clearly  
24 apply here, and this is a matter within your discretion,  
25 Judge, and the Commission's discretion of whether to allow

1 this, and I think that you should exercise your discretion  
2 here to say that only where, you know, the witness is  
3 available to testify live in front of the Commission, it  
4 serves the process best to do it this way.

5                   And we do have cases where appellant  
6 courts, including the Third Circuit have ruled on this  
7 very issue of whether an expert witness is considered a  
8 party to the case and whether or not their deposition can  
9 be used as an admission. And our position here would  
10 certainly be that it's not an admission. I think if you  
11 look at the designations that Mr. Lowery's provided,  
12 there's -- I wouldn't characterize them as admissions in  
13 any event because all they are is elaborations of the  
14 witness' opinion.

15                   I would also add that I think that the use  
16 of depositions in a -- I won't say an uncontrolled way,  
17 but using depositions too often and for too many purposes  
18 is not good for the process. It's difficult for all of  
19 the parties, especially interveners, to appear at all  
20 these depositions. Some are scheduled in St. Louis, some  
21 in Jefferson City. Intervenors don't always have all the  
22 resources of the utility.

23                   So I think it's important for the  
24 depositions to be used in a targeted and limited way and  
25 not an unnecessary way. Otherwise parties are

1    disadvantaged.  So those are the reasons I would urge you  
2    to use your discretion not to admit the designations for  
3    Mr. Brubaker and Mr. Dauphinaia.

4                   MR. LOWERY:  Your Honor, I would like to  
5    have an opportunity to respond to that.

6                   JUDGE WOODRUFF:  Go right ahead.

7                   MR. LOWERY:  There's a couple -- there are  
8    a lot of things said there.  Let's first start with Rule  
9    5707(a) and then we'll go back to the issue of whether  
10   these are admissions or not.  Rule 5707(a) is absolutely  
11   clear and the case law is clear that the availability of  
12   the deponent or the witness is completely irrelevant as  
13   long as -- as long as the rule otherwise applies.

14                   Ms. Vuylsteke now says, well, it wasn't  
15    really -- I wasn't really making an attorney/client  
16    privilege objection, I was saying client confidence could  
17    have been revealed.  If Mr. Brubaker and Mr. Dauphinaia  
18    are independent experts and they are being included in  
19    those conversations, then the privilege has been waived  
20    anyway.  And there's no showing at all that there's even  
21    any MIEC representatives present in any of these meetings  
22    that Ms. Vuylsteke is talking about.

23                   The only people that appear on behalf of  
24    MIEC are Mr. Brubaker and Mr. Dauphinaia and Mr. Gorman  
25    and others.  There is no other representative, and they

1 advance positions of MIEC. Therefore, given that they  
2 can't both claim attorney/client privilege and claim that  
3 these folks can be involved in privileged communications,  
4 which if they're independent experts they can't be, and at  
5 the same time hide behind the fact that they're supposed  
6 independent expert witnesses, and so given that, these are  
7 admissions.

8                   The case law in Missouri also holds that  
9 the admissions of a party opponent, they don't have to be,  
10 quote, against interests. Those are declarations against  
11 interest, which would apply to non-party admissions, but  
12 when you have a party or a vicarious admission of a party,  
13 those admissions are admissible.

14                   And this idea that -- given that Chapter  
15 536 is clear and the Commission's rules are clear, the  
16 Commission proceedings are bound by the Missouri Rules of  
17 Civil Procedure just as much as proceedings in court are.  
18 And we have a right to take all the depositions we want,  
19 to notice them on seven days, which we did properly, and  
20 to use them for any purpose within the Rules of Civil  
21 Procedure.

22                   And I don't believe -- this isn't a matter  
23 of discretion if the -- if, in fact, the material is  
24 otherwise admissible. And I believe these are admissions  
25 for the reasons I've given and, therefore, they should be

1 used.

2                   This idea that we shouldn't follow the  
3 rules I don't think is -- I heard the Commission  
4 themselves say that it may not be quite a real court but  
5 you like to act like one, and perhaps I've seen -- heard  
6 your Honor say that a few times, and the rules I think are  
7 pretty clear on this.

8                   MS. VUYLSTEKE: Your Honor, I would say  
9 that I completely agree with Mr. Lowery that the  
10 Commission is bound by the rules of evidence and that it  
11 is bound by the Rules of Civil Procedure and should apply  
12 those rules, and I think what we're disagreeing about is  
13 what the rules and the law say.

14                   I don't know -- the arguments that  
15 Mr. Lowery's making about attorney/client privilege, I  
16 don't think that those arguments are really relevant to  
17 this question of whether the deposition should be admitted  
18 or whether Mr. Brubaker's a party to the case.

19                   Those arguments about privilege and  
20 attorney/client privilege were made in the context of  
21 depositions where the Commission wasn't even here to hear  
22 the arguments. It was about billing records and things  
23 that the Commission hasn't heard. If we want to have an  
24 argument about that separately, that's fine. But I don't  
25 think it's pertinent to the question before you about the

1 admissibility of the deposition.

2                   And I do think that it's an important  
3 question for the future, because most of the people you  
4 hear from are experts, and I think that it's important for  
5 the Commission to hear their live testimony where they are  
6 available. It's very important to the integrity of the  
7 process.

8                   MR. LOWERY: Your Honor, I must interject.  
9 One, the question that I asked that was objected to on  
10 attorney/client privilege had nothing to do with billing  
11 records. The question was, to Mr. Brubaker, nobody except  
12 folks within your firm. As a followup, did you seek any  
13 outside information or counsel about the validity of your  
14 opinions or basis of your opinions? Answer: No.

15                   Then Ms. Vuylsteke interposed an  
16 attorney/client privilege objection, suggesting that if --  
17 that his conversations with her would have been  
18 privileged. He can't -- he can't both be a client and an  
19 independent --

20                   JUDGE WOODRUFF: I think I've heard enough  
21 about the attorney/client privilege.

22                   CHAIRMAN DAVIS: Judge, can I inquire  
23 momentarily?

24                   JUDGE WOODRUFF: Go right ahead.

25                   CHAIRMAN DAVIS: If we have a statute,

1 Section 386.410, subsection 1, that says, all hearings  
2 before the Commission or a Commissioner shall be governed  
3 by rules to be adopted and prescribed by the Commission,  
4 period. And in all investigations, inquiries or hearings  
5 the Commission or Commissioner shall not be bound by the  
6 technical rules of evidence.

7 JUDGE WOODRUFF: Well, I think --

8 MR. MILLS: Can I get in on this?

9 JUDGE WOODRUFF: Jump in.

10 MR. MILLS: And this is really getting  
11 ahead of the game because I haven't seen what's been  
12 designated for my witness Ryan Kind. But with respect to  
13 whether or not these can be -- anything can be considered  
14 as an admission of a party opponent, there's a -- and I  
15 don't have my copy of the Rules of Civil Procedure in  
16 front of me, but there is a specific rule in 5707 that  
17 requires that a -- that a party seeking a deposition  
18 that's going to be considered an admission require that  
19 the party that they're deposing provide a person who can  
20 give admissions. That wasn't done in this case. They  
21 said we want to talk to Ryan Kind, who's an expert witness  
22 in this case, and they deposed him on that basis.

23 Had they asked for someone who can speak on  
24 behalf of the party, the Office of Public Counsel, and  
25 give admissions on behalf of the party, pursuant to the

1 Supreme Court rules, we would have done so. That didn't  
2 happen here. They deposed my expert. Perfectly willing  
3 to do that. Expert witnesses are deposed all the time.  
4 It's a very appropriate proceeding and it's done here, but  
5 they don't constitute admissions of a party opponent  
6 unless they are taken pursuant to the rule that provides  
7 for how you request a deposition of somebody who is a  
8 party opponent or who can speak for a party opponent.

9                   And with respect to a couple of other  
10 things that Mr. Lowery alleged, I think there are  
11 significant differences between declarations against  
12 interests and admissions against interests of a party  
13 opponent and vicarious admissions as well as spontaneous  
14 declarations, and they're all different. Not all of them  
15 are exempt from the rule that requires that the -- that  
16 the deponent not be available; in some cases that, for  
17 example, a declaration against interest is different from  
18 an admission of a party opponent. Declaration of -- a  
19 declaration is not admissible if the deponent is  
20 available. Admissions of a party opponent may be  
21 admissible if the deponent is available, but they're  
22 different.

23                   And I think we need to go through carefully  
24 and figure out whether or not these really qualify as  
25 declarations against interest -- I mean admissions against

1 interest of a party opponent. And certainly in the case  
2 of Mr. Kind, they're not, because he was not deposed as  
3 such. And I haven't -- until I see the actual  
4 designations, I want to argue designation by designation  
5 whether they constitute admissions at all, even if you get  
6 past the point that they didn't depose a party opponent.

7                   With respect to whether or not they can be  
8 admissions, I think that's relevant to the question that  
9 you're addressing here with Mr. Brubaker, and I wanted to  
10 bring out that Supreme Court Rule, I think it's 5703(b)(4)  
11 off the top of my head, but I don't -- as I said, I didn't  
12 think we were getting here so I didn't bring my Supreme  
13 Court Rules down with me.

14                   JUDGE WOODRUFF: We'll address it again  
15 with Mr. Kind. For the moment, you certainly all raised  
16 interesting issues as to how the Commission is going to  
17 deal with depositions in this case and in the future. I'm  
18 certainly not going to try to make a ruling today to set  
19 policy in the future. In fact, this may be something that  
20 the Commission wants to address in their rulemaking to  
21 give parties clear guidance on exactly how we're going to  
22 deal with depositions. As the Chairman indicated, the  
23 Commission has the authority in the statute to set its own  
24 rules and policies.

25                   For the moment, for this case, I'm going to

1 exercise the Commission's discretion to admit those  
2 deposition segments that have been identified.

3 MR. MILLS: And Judge, is that -- that's  
4 not with respect to Mr. Kind yet?

5 JUDGE WOODRUFF: I'll hear additional  
6 arguments on Mr. Kind.

7 MR. DOTTHEIM: And Judge, that wasn't in  
8 regards to, I assume --

9 JUDGE WOODRUFF: Dr. Proctor?

10 MR. DOTTHEIM: -- Dr. Proctor?

11 JUDGE WOODRUFF: Again, we'll hear more  
12 about Dr. Proctor after you've had a chance to make your  
13 counter designations.

14 MR. LOWERY: Your Honor, just for clarity  
15 of the record, then, the deposition designations that have  
16 been filed for Mr. Dauphinaia, Mr. Brubaker and  
17 Ms. Mantle, Mr. Beck have been thereby admitted into the  
18 record; is that correct?

19 JUDGE WOODRUFF: That's correct.

20 MS. VUYLSTEKE: Your Honor, before you -- I  
21 know you've admitted them into the record, but I did want  
22 to make a few comments also about Mr. Dauphinaia's and  
23 Mr. Brubaker's deposition designations.

24 JUDGE WOODRUFF: Go ahead.

25 MS. VUYLSTEKE: Since you determined to let

1 Mr. Brubaker's deposition designations in, I did want to  
2 add some additional or counter designations to put context  
3 around the areas Mr. Lowery's identified, and I actually  
4 have the pages. I can introduce them into the record now  
5 or I can wait and do that later, whatever your preference  
6 is.

7 MR. LOWERY: You Honor, I don't have  
8 objection to the offering of those, but I think in  
9 fairness I need an opportunity to see whether I would have  
10 an objection. I don't necessarily think that I would, but  
11 I have not seen those.

12 JUDGE WOODRUFF: Okay. Well, it's time for  
13 lunch now anyway.

14 MS. VUYLSTEKE: Can we take up the issue of  
15 Mr. Dauphinaia after lunch? We have determined that our  
16 preference is to strike any testimony that AmerenUE thinks  
17 is relevant to the FAC issues, and we don't think that  
18 Mr. Dauphinaia's testimony is, but to the extent that  
19 AmerenUE feels that it is, we would be glad to strike that  
20 if need be.

21 JUDGE WOODRUFF: Let's take that up when  
22 it's Mr. Dauphinaia's turn, and I understand he's not  
23 actually here, is that right?

24 MS. VUYLSTEKE: Correct. You know, the  
25 reason that we're willing to do that is simply in order to

1 make it easier to move forward, and then I think the  
2 deposition designations that pertain to FAC, since he's  
3 not an FAC witness and never was intended to be one,  
4 there's certainly no relevance to bringing forward a bunch  
5 of deposition designations with respect to Mr. Dauphinaia.

6 MR. LOWERY: Your Honor, just for clarity,  
7 the deposition designations have been admitted of  
8 Mr. Dauphinaia that we filed. The Bench has already  
9 ruled. I don't really care whether Ms. Vuylsteke wants to  
10 offer Mr. Dauphinaia's prefiled testimony or not. That's  
11 her -- that's her prerogative.

12 MS. VUYLSTEKE: Well, the relevance of the  
13 deposition designations depends on what Mr. Dauphinaia's  
14 testimony is. If he's not testifying on FAC, I'm not  
15 sure --

16 JUDGE WOODRUFF: We'll deal with that this  
17 afternoon, then.

18 Mr. Chairman?

19 CHAIRMAN DAVIS: Judge, can I inquire on an  
20 unrelated matter, which I -- Mr. Coffman was here  
21 yesterday, and I just assumed that he would be back, and  
22 since I don't know that he would be back, maybe I can  
23 inquire and this will prompt a response, and that is, if  
24 the Commission issues its Order in this case on or about  
25 March 1st, I mean, would -- I'm a little unclear as to

1 how -- would there be time to get this, Mr. Coffman's  
2 pilot program going for this year? Would it be the  
3 expectation -- or for '09, or would it -- the expectation  
4 would be for the pilot in '10?

5 MR. LOWERY: I'm going to do what I tell my  
6 witnesses when they don't know the answer to the question,  
7 I'm going to say I don't know.

8 CHAIRMAN DAVIS: Maybe inquiring I can --

9 MR. CONRAD: Nor do I, but I will -- I  
10 would testify to you that Mr. Coffman has left a box which  
11 has some contents in it, which would seem to suggest --

12 CHAIRMAN DAVIS: That he will return?

13 MR. CONRAD: -- that he may return.

14 CHAIRMAN DAVIS: That he will return.

15 Okay. All right. Then I'll try to prompt that out of  
16 Mr. Coffman when he returns. Thank you.

17 JUDGE WOODRUFF: All right. Let's break  
18 for lunch. We'll come back at 1:30.

19 (A BREAK WAS TAKEN.)

20 JUDGE WOODRUFF: Let's come to order,  
21 please. We're back from lunch, and I notice that, as  
22 predicted, Mr. Coffman has returned. Mr. Chairman, did  
23 you have some questions you wanted to ask Mr. Coffman?  
24 Mr. Coffman, why don't you come up to the podium?

25 CHAIRMAN DAVIS: Mr. Coffman, I have since

1 received a copy of Exhibit 853, 852 and 853. With regard  
2 to your pilot program, let's say we get -- hypothetically  
3 speaking, if the Commission finds in your favor, can we  
4 order a pilot -- I mean, let's say we issue an Order with  
5 an effective date of March 1st. Does that give us time  
6 for the '09 cooling season or would it be a two-year  
7 program effective in '10, '11? How are the mechanics of  
8 that supposed to work?

9 MR. COFFMAN: I don't know why we couldn't  
10 gear up in two or three months and do it in the summer of  
11 2009. We have had several discussions over the past year  
12 about how a credit might be placed on the bill. I  
13 wouldn't anticipate serious technical issues.

14 There are some issues that probably should  
15 be worked out collaboratively, including where the  
16 participants are going to be drawn from. We've suggested  
17 a couple different areas, but we're not set on any  
18 particular part of the territory. I think it might be  
19 instructive to try it in an urban area and a rural area  
20 and have maybe two different CAP agencies, but there would  
21 need to be time to work out a CAP agency who's willing to  
22 do it and choose the areas.

23 But again, AARP is not picky necessarily  
24 about where to do it, and with the set number of  
25 participants and set amount of money, I don't think that

1 there's too much difficulty, just the, I guess the survey  
2 and the location and some protocol for about how the  
3 mechanics would work, but we have worked it out.

4                   So I don't think that between March and  
5 May, I don't know why the final details could not be  
6 worked out collaboratively to implement it this first  
7 summer, summer of -- summer of 2009, summer of 2010.

8                   CHAIRMAN DAVIS: Okay. And are there --  
9 are there any other procedural technical hurdles that need  
10 to be addressed that we may not be aware of?

11                   MR. COFFMAN: Well, I'm not aware of --

12                   CHAIRMAN DAVIS: That you are aware of?

13                   MR. COFFMAN: -- issues I'm not aware of.  
14 And Ameren may very likely have some objections or  
15 concerns.

16                   CHAIRMAN DAVIS: Have they raised the same  
17 issue with you that I believe they have raised with regard  
18 to certain issues that DNR has, that you can't force us to  
19 pay for a program we don't agree to? Are they making that  
20 argument against you as well or just DNR?

21                   MR. COFFMAN: I've not seen that in  
22 testimony, but I wouldn't be surprised if that comes up in  
23 briefs. I don't know.

24                   MS. TATRO: I believe the proposal is to  
25 run those costs through rates.

1                   MR. COFFMAN: Yes. Our proposal does not  
2 involve any shareholder contribution other than perhaps  
3 what is already being done as far as outreach. And so --  
4 and that was our intent, not to get into those issues and  
5 propose a program that did not necessarily raise --

6                   CHAIRMAN DAVIS: If the Commission were to  
7 choose to adopt a pilot program, we would need some sort  
8 of collaborative group?

9                   MR. COFFMAN: There would be a few issues  
10 that would --

11                  CHAIRMAN DAVIS: And if Ameren disagrees  
12 with you that this thing could be up and ready to run for  
13 the summer of 2009, they would either need to say now or  
14 in their briefs, correct?

15                  MR. COFFMAN: I suppose, yeah, we could  
16 take a month to try to work out those issues, and then we  
17 would have a month or so to bring in contested issues if  
18 necessary.

19                  CHAIRMAN DAVIS: Anybody else have anything  
20 to add there?

21                  MS. TATRO: I'd like to address your  
22 question, if I may.

23                  CHAIRMAN DAVIS: Sure.

24                  MS. TATRO: Clearly if this Commission  
25 orders AmerenUE to implement the pilot program this

1 summer, we'll make every best effort to do exactly that.  
2 We do have concerns. Two or three months is not a lot of  
3 time when you're coming down to designing a program.

4 I spoke with Mr. Mark over the lunch hour  
5 about the specific issue to figure out what his thoughts  
6 were on it, and, frankly, the biggest concern that we have  
7 is when we've tried to work with collaborative with AARP  
8 in the past, they walked when the collaborative decided  
9 not to take their approach.

10 So if the parties work in good faith, and  
11 my parties pledge that they will, we can try to come up  
12 with something for this summer. Now, obviously, anything  
13 that you rush runs a risk of not being the best program  
14 that it could be. So if it were delayed to next summer,  
15 it would, I think, have a better chance of being a better  
16 program, but we can put something together for this  
17 summer.

18 CHAIRMAN DAVIS: Thank you, Ms. Tatro.

19 JUDGE WOODRUFF: Stay there, Mr. Coffman,  
20 for a minute. I want to address the issues of the  
21 exhibits that were filed in EFIS a couple days ago. I  
22 assume everyone's had a chance to see those, 852 and 853.  
23 I'm assuming you want to offer them at this point?

24 MR. COFFMAN: Certainly. Yes.

25 JUDGE WOODRUFF: I'll ask at this point if

1 anybody has any objection? If you want more time, I'll  
2 allow you more time.

3 MS. TATRO: We've reviewed them. We have  
4 no objection.

5 JUDGE WOODRUFF: Anyone else, objection or  
6 request more time?

7 (No response.)

8 JUDGE WOODRUFF: Okay. 852 and 853 will be  
9 admitted into evidence.

10 (EXHIBIT NOS. 852 AND 853 WERE RECEIVED  
11 INTO EVIDENCE.)

12 MR. COFFMAN: Thank you.

13 JUDGE WOODRUFF: Thank you. All right.  
14 Before we went to lunch, we were about to start hearing  
15 testimony from Mr. Brubaker. Do you want to go ahead and  
16 take the stand?

17 MR. MILLS: Judge, do you want to have  
18 further discussion about the use of depositions when we  
19 get ready for Mr. Kind or do you want to do that sooner?

20 JUDGE WOODRUFF: Let's wait for Mr. Kind.  
21 All right. Mr. Brubaker, I believe you testified earlier  
22 in this case also?

23 THE WITNESS: Yes, I did.

24 JUDGE WOODRUFF: All right. You're still  
25 under oath. You may inquire.

1 MAURICE BRUBAKER testified as follows:

2 DIRECT EXAMINATION BY MS. VUYLSTEKE:

3 Q. Mr. Brubaker, did you prepare and cause to  
4 be filed in this case the direct, two pieces of direct  
5 testimony and surrebuttal testimony relating to fuel  
6 adjustment issues?

7 A. Yes.

8 Q. And if I were to ask you the questions that  
9 are set forth in that testimony today, would your answers  
10 be the same?

11 A. Yes.

12 MS. VUYLSTEKE: At this point, then, I'd  
13 like to request admission of Exhibits, I believe, 606, 607  
14 and 609.

15 JUDGE WOODRUFF: Okay. 606, 607 and 609  
16 have been offered. Are there any objections to their  
17 receipt?

18 (No response.)

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

21 (EXHIBIT NOS. 606, 607 AND 609 WERE  
22 RECEIVED INTO EVIDENCE.)

23 MS. VUYLSTEKE: Then I'll tender the  
24 witness for cross-examination.

25 JUDGE WOODRUFF: For cross we begin with

1 Noranda.

2 MR. CONRAD: No questions.

3 JUDGE WOODRUFF: For the State?

4 MR. IVESON: Thank you.

5 CROSS-EXAMINATION BY MR. IVESON:

6 Q. Good afternoon, Mr. Brubaker.

7 A. Good afternoon.

8 Q. Just a few questions. Do you have your  
9 direct testimony part 2, fuel adjustment clause, filed  
10 September 11th in front of you?

11 A. I do.

12 Q. If you would refer to your Schedule  
13 MEB-FAC-1.

14 A. I have it.

15 Q. And if you would look at the fourth column  
16 on that schedule, and let's go down to line 7. The after  
17 tax impact at line 7 is \$88 million; is that correct?

18 A. Yes.

19 Q. And if the FAC proposal presented by the  
20 company were to be adopted, how much of that \$88 million  
21 would flow through to ratepayers?

22 A. 95 percent of it.

23 Q. And in a dollar figure, can you tell me how  
24 much that would be?

25 A. \$274 million.

1           Q.       I'm going to ask you to think about that  
2 answer again because 95 percent of 88 million I don't  
3 think would be --

4           A.       I'm sorry. I thought 288 and grabbed --  
5 thank you. \$84 million.

6           Q.       And so the company would be responsible for  
7 \$4 million?

8           A.       Correct.

9           Q.       And so is this -- is it too simplistic,  
10 then, to say that if there was an 80 percent change in  
11 base fuel costs, that \$8 million would stay with the  
12 company?

13          A.       It's linear, so that would be approximately  
14 correct.

15          Q.       And then if you would turn to your  
16 Schedule MEB-FAC-2, and looking at your columns 6 and 7 --  
17 let's just focus on 7. First of all, at the top of that  
18 column it says, the impact of retaining 20 percent of a  
19 35 percent change in base fuel cost. So is the assumption  
20 there that the 80/20 proposal that you've put forward  
21 would be adopted?

22          A.       It wasn't explicitly that. It's just the  
23 80/20 change --

24          Q.       It assumes a 20 percent share would stay  
25 with the company?

1           A.       Correct.  And in this case it never reaches  
2 the cap.

3           Q.       And this is based on a 35 percent change in  
4 fuel costs?

5           A.       Yes.

6           Q.       Okay.  Going down to line 3.

7           A.       I just need to go back on that and say it  
8 does hit the cap at the 5 percent shown on column 7, on  
9 line 3, 5 percent of earnings would be 50 basis points.  
10 So that is capped.  The others, I didn't apply any cap for  
11 the other utilities.

12          Q.       Okay.

13          A.       So if your question was directed toward UE,  
14 it does include the capping feature.

15          Q.       And how much would that be without the cap?

16          A.       In this case, it's actually the same.

17          Q.       Okay.  So at a 20 percent sharing for  
18 Ameren and a 35 percent change in the fuel cost, earnings  
19 per share as -- as a percent of earnings per share, that  
20 would be a 5 percent effect on Ameren?

21          A.       Correct.

22          Q.       Again, perhaps this is too simplistic, but  
23 if it were a 5 percent sharing proposal, would that mean  
24 it was one and a quarter percent impact?

25          A.       Roughly, correct.

1 Q. And then looking at Empire District, if  
2 that was a 5 percent sharing proposal, that would be 5 and  
3 a quarter percent impact?

4 A. Yes, roughly one-fourth of the number  
5 shown.

6 Q. And then just to complete the loop for the  
7 Aquila L&P, that would be 5 and a half percent impact,  
8 correct?

9 A. Correct.

10 Q. And it would be a 4 percent impact for  
11 Aquila MPS, correct?

12 A. Correct.

13 MR. IVESON: I have nothing further, your  
14 Honor.

15 JUDGE WOODRUFF: All right. Then for  
16 Staff? Excuse me. Public Counsel?

17 MR. MILLS: No questions.

18 JUDGE WOODRUFF: Staff?

19 MR. DOTTHEIM: No questions.

20 JUDGE WOODRUFF: All right. For Ameren?

21 CROSS-EXAMINATION BY MR. LOWERY:

22 Q. Good afternoon, Mr. Brubaker.

23 A. Good afternoon.

24 Q. If the Commission were to approve a fuel  
25 adjustment clause in this case, you support the company's

1 design of the FAC in terms of netting the off-system sales  
2 through the fuel adjustment clause, correct?

3 A. I do.

4 Q. And you support that design because of the  
5 difficulty of determining off-system sales related costs,  
6 including MISO costs, if you were to exclude those  
7 off-system sales, correct?

8 A. Correct.

9 Q. Mr. Brubaker, you agree, do you not, that  
10 there's a lot of uncertainty around what the level of net  
11 fuel costs would be from year to year?

12 A. I think I would agree with that.

13 Q. And you also agree that total fuel costs,  
14 AmerenUE's total fuel cost, meaning fuel and purchased  
15 power, versus UE's net fuel costs, that those are two  
16 vastly different numbers, correct?

17 A. Well, the net fuel cost includes  
18 consideration of the total fuel cost as well as the  
19 revenues from off-system sales, so there is -- they're not  
20 totally separate.

21 Q. Well, let me ask it this way. UE's fuel  
22 and purchased power costs, if we ignore off-system sales,  
23 are something north of \$700 million on a normalized basis;  
24 is that right?

25 A. Correct.

1 Q. And off-system sales are something north of  
2 \$400 million on a normalized basis, right?

3 A. That's correct.

4 Q. And the way you calculate net fuel cost is  
5 you subtract that 400 million plus from that 7 or  
6 800 million to get the net fuel cost number, right?

7 A. With some other adjustments, but basically  
8 correct.

9 Q. That's basically -- ignoring some other  
10 adjustments for some other components, that's basically  
11 correct, right?

12 A. Yes.

13 Q. So fuel and purchased power, ignoring the  
14 off-system sales, is a 700-plus million dollar number, but  
15 the net fuel cost number is, say, a \$300 million plus  
16 number, right?

17 A. In that ballpark, yes.

18 Q. Now, for Empire and Aquila, their fuel cost  
19 and their net fuel cost would be essentially the same  
20 number, right, the way we were just talking about them for  
21 Ameren?

22 A. They would be pretty close, yes.

23 Q. Because they don't really have much in the  
24 way of off-system sales, correct?

25 A. Correct.

1 Q. Now, whether or not AmerenUE's net fuel  
2 costs move up or down substantially depends on the power  
3 markets, correct?

4 A. I mean, that's one of the drivers for it,  
5 certainly.

6 Q. And a majority of the megawatt hours sold  
7 by UE off-system are sold into the spot power markets,  
8 aren't they?

9 A. As of now at least the majority are sold  
10 into the spot market.

11 Q. You don't have any information to suggest  
12 that's going to be different tomorrow, do you?

13 A. No.

14 Q. And that means UE's earnings are exposed to  
15 the uncertainty of the power markets, aren't they?

16 A. Ameren's revenues from off-system sales are  
17 exposed to the power markets. What happens in the rest of  
18 the company, I don't know if there's --

19 Q. Well, Mr. Brubaker, you recall I took your  
20 deposition. Let me first get an answer to my question.  
21 You either know or you don't know. The answer is yes, no  
22 or I don't know. Are UE's earnings exposed to uncertainty  
23 of the power markets because UE sells a majority of its  
24 off-system sales into the spot power markets? Are its  
25 earnings exposed or not?

1           A.       That's an element of exposure.  It's not  
2 the only thing that drives earnings.

3           Q.       You recall I took your deposition --

4           A.       Yes.

5           Q.       -- Mr. Brubaker?

6           A.       Yes.

7           Q.       Do you have a copy of your deposition?

8           A.       I do.

9           Q.       Would you turn to page 63, please.

10          A.       I have it.

11          Q.       Would you take a look at line 17, please.

12          A.       Yes.

13          Q.       Actually, take a look at line 14.  I want  
14 to ask you if I asked you the following questions, that  
15 you gave the following questions:

16                    Question:  A majority of the megawatt hours  
17 that UE sells off-system are sold in the spot market; is  
18 that right?

19                    Answer:  Correct.

20                    Question:  So UE's earnings, I should have  
21 said have, but have -- I said has though.  So UE's  
22 earnings has a lot of exposure to the power markets, don't  
23 they?

24                    Answer:  There certainly is exposure, yes.

25                    You did -- did I read questions and answers

1 correctly?

2 A. You did.

3 Q. And given that UE typically has about  
4 10 million megawatt hours of power to sell off-system,  
5 just a \$10 million movement in around-the-clock power  
6 prices would move UE's revenues \$100 million, wouldn't it?

7 A. Did you mean to say \$10 million movement in  
8 the prices?

9 Q. A \$10 movement in around-the-clock power  
10 prices would move UE's revenues \$100 million, correct?

11 A. The revenues from off-system sales, yes.

12 Q. UE has no control over the spot market for  
13 coal, does it?

14 A. I don't believe it does.

15 Q. In fact, in the past several years UE's  
16 coal costs have increased despite UE's efforts to manage  
17 them; wouldn't you agree?

18 A. They have.

19 Q. And the same thing has been true for coal  
20 transportation, correct?

21 A. They have increased as well.

22 Q. And you agree that the company makes  
23 considerable effort to manage those costs, don't they?

24 A. I believe that they do.

25 Q. UE has no control over the spot market for

1 power either, correct?

2 A. Correct.

3 Q. And power markets are volatile and  
4 uncertain, aren't they?

5 A. That's been the experience.

6 Q. And UE has no control over the markets for  
7 natural gas, correct?

8 A. Correct.

9 Q. And there is a lot of uncertainty around  
10 AmerenUE's net fuel costs from year to year, isn't there?

11 A. There is.

12 Q. And UE's fuel costs could go up, they could  
13 go up while off-system revenues stay the same, correct?

14 A. I think that's possible. May not always be  
15 the relationship, but that's one of the possibilities.

16 Q. Was the answer to my question yes?

17 A. I think it's yes with the qualification  
18 that I gave you.

19 Q. And UE's fuel costs could go up while  
20 off-system revenues could go down, correct?

21 A. They could.

22 Q. And outages in the region can have a big  
23 impact on energy prices; would you agree?

24 A. Yes.

25 Q. Weather can have an impact on energy

1 prices, right?

2 A. In the short run, yes.

3 Q. In a given 12-month period?

4 A. Yes.

5 Q. And varying levels of system congestion can  
6 impact energy prices, correct?

7 A. They impact the prices, yes.

8 Q. And Union Electric can't control energy  
9 prices and can't control outages in the regions and can't  
10 control system congestion, can it?

11 A. I don't believe it can, but that doesn't  
12 mean it can't do some hedging against some of those  
13 uncertainties.

14 Q. Was the answer to my question yes?

15 A. With the qualification that I expressed.

16 Q. And one of the reasons that there can be a  
17 disconnect between UE's fuel costs and off-system sales is  
18 that UE hedges part of its fuel, correct?

19 A. Yes.

20 Q. And the time of an increase in those hedged  
21 fuel costs may not coincide with an increase in energy  
22 prices; isn't that right?

23 A. That is correct.

24 Q. UE could have a new coal contract come on  
25 or a new coal transportation contract come on and power

1 markets are flat or even declining; isn't that right?

2 A. True.

3 Q. Mr. Brubaker, you initially had indicated  
4 in your direct testimony regarding the fuel adjustment  
5 clause in this case that you had an objection to the  
6 inclusion of certain few costs in the FAC, right?

7 A. I did.

8 Q. And you studied the costs more closely and  
9 you've looked at offsetting revenues and those components  
10 and you've decided that you don't have a problem with the  
11 costs that UE -- costs and revenues that UE has proposed  
12 to include in the FAC being included in the FAC; is that  
13 right?

14 A. That's correct. After looking at those  
15 factors that you mentioned, I decided that, from a  
16 practical point of view, the clause was operating, it was  
17 structured acceptably with respect to those items.

18 Q. So the only change you're recommending at  
19 all with regard to the proposal that UE has made, I  
20 understand you're not supporting or opposing the proposal,  
21 but the only change you're recommending is about the  
22 sharing fraction, correct?

23 A. That's accurate.

24 Q. You're aware of the coal pool in which UE  
25 participates, correct?

1           A.       Yes.

2           Q.       And that is where UE and its merchant  
3 generating affiliates in Illinois pay the same price for  
4 coal, right?

5           A.       I understand now that it's for the coal  
6 itself. It does not include the transportation.

7           Q.       Fair enough. When you proposed the 80/20  
8 sharing, you did not explicitly consider that incentive,  
9 correct?

10          A.       I think I said I was aware of it. I didn't  
11 specifically, you know, sit down and make a factor for it,  
12 but I was aware that that was in place.

13          Q.       You also agree that the fact that UE will  
14 have to come back to this Commission at least every four  
15 years to essentially re-up its fuel adjustment clause  
16 gives UE some incentive to continue to do a good job or  
17 else the Commission might very well punish UE for making  
18 changes that are detrimental to its net fuel cost? You  
19 agree with that, right?

20          A.       Yes. I would think that would be --

21          Q.       I think you've answered my question,  
22 Mr. Brubaker.

23                   And you agree that heat rate or efficiency  
24 testing requirements in the Commission's FAC rules give  
25 the company an incentive to properly manage and operate

1 its power plants even with a fuel adjustment clause? You  
2 agree with that, correct?

3 A. It is a positive incentive.

4 Q. Mr. Brubaker, in your direct testimonies  
5 that you filed in both the Empire case and this case, you  
6 used the same phraseology when you called a 95/5 percent  
7 sharing fraction, quote, extremely limited, end quote,  
8 correct?

9 A. I'll accept that.

10 Q. You recall telling me that in your  
11 deposition?

12 A. If I said it in my deposition, if I  
13 recalled that characterization at the time, I'm not going  
14 to argue about it.

15 Q. And apparently the Commission disagreed  
16 with you, correct, in that case, in the Empire case?

17 A. The Commission adopted 95/5, so I assume  
18 they didn't agree with what I said.

19 Q. Now, Mr. Brubaker, in the Empire case, and  
20 I think, in fact, in the last Ameren rate case, you  
21 referred to a fuel adjustment clause by Rocky Mountain  
22 Power in Wyoming as an example of sharing mechanisms  
23 similar to what you had proposed in the Empire case. Do  
24 you recall that?

25 A. I do.

1 Q. Mr. Brubaker, Rocky Mountain Power is a  
2 subsidiary of Pacific Corp; is that right?

3 A. Yes.

4 Q. Do you know whether Pacific Corp is a  
5 coal-intensive utility?

6 A. I'm not sure exactly where it falls on the  
7 spectrum. It's not as -- I don't believe it's as  
8 coal-intensive as Ameren. It's more coal-intensive than  
9 Aquila.

10 Q. Do you have any reason to dispute the  
11 information in Mr. Lyons' Schedule MJL-E6 which indicates  
12 that it gets 66 percent of its energy from coal?

13 A. I would not dispute that.

14 Q. And AmerenUE gets what, a little over  
15 70 percent?

16 A. Yes.

17 Q. So they're pretty similar in that respect,  
18 right?

19 A. In a broad sense.

20 Q. And the sharing mechanism that you referred  
21 to for Rocky Mountain Power, that was the -- that was part  
22 of a Stipulation & Agreement, correct?

23 A. It was.

24 Q. And when I took your deposition, you  
25 indicated that you don't know what kind of other

1 compromises were involved in that settlement, do you?

2 A. I believe I agreed that that was true.

3 Q. And you stated that you were aware of the  
4 fact that the Rocky Mountain Power fuel adjustment clause  
5 uses a forward-looking test year as the base for the fuel  
6 adjustment clause, correct?

7 A. Yes.

8 Q. And under Missouri's fuel adjustment  
9 clause, we couldn't do that, could we? Under our rules,  
10 we can't do that, correct?

11 A. I believe that's correct, yes.

12 Q. So for Rocky Mountain Power, if their fuel  
13 costs are known or forecast to rise, which is also the  
14 case for UE, the base amount around which the sharing  
15 would occur for Rocky Mountain Power would also rise and  
16 be able to reflect that increase, couldn't it?

17 A. I'm sorry. Would you mind repeating that?

18 Q. I'll try to do a better job asking it. For  
19 Rocky Mountain Power where they're using forecasted  
20 information to set the base level for fuel costs around  
21 which the sharing will occur, are you with me so far?

22 A. Yes.

23 Q. For them, which we couldn't do for UE, the  
24 base amount around which the sharing would occur is going  
25 to take into account the increasing trend in their fuel

1 costs, and the sharing's going to occur around a higher  
2 base than if you're looking at historical fuel costs where  
3 the historical period had lower fuel cost; isn't that  
4 right?

5 A. That would be true in an upward sloping  
6 cost condition.

7 Q. Which was the premise of my question. You  
8 understood that, correct?

9 A. That's what I was -- I was not sure that  
10 that was part of the premise.

11 Q. But if we are in a -- if we are in a rising  
12 fuel cost environment, that would be true, correct?

13 A. Yes. Correct.

14 Q. So all else being equal, this means that  
15 deviations from the base are likely to be smaller when  
16 we're using forecasted fuel to set the base and we're in a  
17 rising fuel cost environment than if we're using historic  
18 cost to set the base in that rising cost environment,  
19 correct?

20 A. If you had the same sharing percentages,  
21 that would be true.

22 Q. You don't disagree that coal costs are  
23 generally going up for UE, do you?

24 A. No.

25 Q. And that coal transportation's also been

1 going up?

2 A. They have been going up.

3 Q. And that coal transportation's a very  
4 substantial part of the delivered cost of coal for UE?

5 A. Correct.

6 Q. And if we assume that net fuel costs are  
7 rising and that we're using a baseline of net fuel costs  
8 set on historic cost, then any sharing mechanism is going  
9 to result in the utility foregoing a part of the increase  
10 in the net fuel cost, isn't it, with those assumptions?

11 A. If you're in -- if you are increasing cost  
12 situation and you can't do anything to offset it, that  
13 would be the case, in that time period.

14 Q. And this is different from other utilities  
15 like Rocky Mountain Power where sharing is relative to a  
16 forward-looking baseline, right?

17 A. I'm not seeing the difference. There might  
18 be difference in magnitude, but there wouldn't necessarily  
19 be a difference in direction.

20 Q. Difference in magnitude, though, isn't  
21 there?

22 A. There could be. Fuel costs going down,  
23 it's the opposite, of course.

24 Q. In which event, under UE's proposal,  
25 95 percent of the net fuel cost decrease will flow through

1 to customers, right?

2 A. That's right.

3 Q. Under your proposal, only 80 percent will  
4 flow through?

5 A. Right.

6 MR. LOWERY: I have no further questions.  
7 Thank you, Mr. Brubaker.

8 JUDGE WOODRUFF: We'll come up for  
9 questions from the Bench. Commissioner Gunn?

10 COMMISSIONER GUNN: I don't have any  
11 questions. Thank you.

12 JUDGE WOODRUFF: Chairman Davis?

13 QUESTIONS BY CHAIRMAN DAVIS:

14 Q. Good morning, Mr. Brubaker. Good  
15 afternoon, Mr. Brubaker. I'm sorry.

16 A. Good afternoon, Chairman.

17 Q. It's all kind of melding here together.  
18 Hypothetically speaking, let's say we adopt your 80/20  
19 sharing proposal. Fuel costs go up \$100 million. The  
20 customers are on the hook for 80 million, and the  
21 shareholders are on the hook for 20 million; is that a  
22 fair statement?

23 A. Let me answer you this way: 20 million of  
24 the costs would not be recovered.

25 Q. Yes.

1           A.       The shareholders would see that net of  
2 income taxes, which would be 12 and a half million  
3 dollars.

4           Q.       Yes.

5           A.       That's accurate, yes.

6           Q.       All right. 12 and a half million. Would  
7 you have a recommendation about where the company can  
8 reduce its expenses to come up with that 12 and a half  
9 million?

10          A.       It may be able to -- I'll premise my  
11 response by saying I haven't done a study, but things that  
12 they could do would be to find ways to improve their  
13 procurement process, to find ways to improve their  
14 maintenance, to improve their off-system sales practices  
15 so as to acquire -- or to make sales at higher price  
16 levels than previously. Those would be factors that would  
17 go into that to tell you -- to determine where they would  
18 come out at the end of the day.

19          Q.       I mean, how can they -- how can they sell  
20 electricity for more money? I mean -- I mean, isn't that  
21 sort of contrary to what the MISO market does?

22          A.       It would be if you're strictly dealing in  
23 MISO spot, but they do also transact on a bilateral basis  
24 through some individual contracts with other entities  
25 which are not necessarily tied to the MISO price.

1           Q.       Is there anything that Ameren's doing right  
2 now that you think they could do better to control their  
3 transportation costs or any of their other costs?

4           A.       I have to premise my answer again, I don't  
5 know, sir. I have not done the detailed study. My point  
6 is to provide the incentives.

7           Q.       All right. Have you reviewed Staff's  
8 testimony in this case?

9           A.       Yes.

10          Q.       Did they identify anything in the area of  
11 transportation or power sales that you're aware of?

12          A.       Nothing comes to mind. That doesn't mean  
13 that there's not something there that I missed or had  
14 forgotten.

15          Q.       Now, Mr. Brubaker, would you agree there's  
16 more than one way for a Commission to do fuel adjustment?

17          A.       Yes.

18          Q.       Okay. If we gave Ameren a choice of either  
19 fuel adjustment or retaining all of their net off-system  
20 sales earnings, which would be worse for consumers and  
21 why?

22          A.       The choice is between a fuel adjustment in  
23 the form that they have proposed it or no fuel adjustment  
24 but they get to retain --

25          Q.       There would be a fuel adjustment, it could

1 be your 80/20, be your fuel adjustment, or retaining all  
2 of their net off-system sales earnings. That means none  
3 of it would be built into rates. Which would be worse and  
4 why?

5 A. If you truly mean none of it's built into  
6 base rates, it would be horrible for customers who paid  
7 for the plants. If you mean differences from the test  
8 year amounts would not be flowed through the fuel clause,  
9 I wasn't sure.

10 Q. No. I mean all of it.

11 A. All of it?

12 Q. I mean all of it.

13 A. All 400-some million dollars?

14 Q. Uh-huh. All of it.

15 A. That would be far worse for customers.

16 Q. So that's not a good model, is it?

17 A. Whether you have a fuel adjustment clause  
18 or not, I don't think that's a good model.

19 Q. Okay. So if that proposal were in front of  
20 this Commission, you'd urge us to reject it?

21 A. Yes, whether you had a fuel clause or not.

22 Q. Would you feel better if the State of  
23 Missouri passed a law to prohibit that sort of conduct?

24 A. To be honest, it had never occurred to me  
25 that anybody would even think of doing that. I don't know

1 that I feel uncomfortable the way the statutes currently  
2 are.

3 Q. What if I told you that there was a member  
4 of MIEC with a similar business model whereby they would  
5 charge Missouri customers a higher price than they would  
6 charge their international customers a lower price, and  
7 thus Missouri customers were in effect subsidizing that  
8 company's international sales, would that change your  
9 opinion as regard to anything?

10 A. I couldn't answer that question without  
11 understanding what was, you know, what was behind the  
12 pricing model. I would say that, as far as I know, all  
13 MIEC companies operate in at least a somewhat  
14 unregulated -- price unregulated competitive market. So  
15 what they do in the market, I think customers have some  
16 choice as to whether to buy or not.

17 Q. Do you think they have a choice when the  
18 company has a patent?

19 A. I just can't meaningfully respond to those  
20 questions without understanding more of what the product  
21 is, what the options are and why.

22 Q. Let's say we have a product and it's called  
23 Roundup Ready Soybeans, okay, and you sell that product  
24 here in the state of Missouri, and because you have patent  
25 protection on it, you're the only game in town if you want

1 to spray Roundup on your crop. So you have the Roundup  
2 Ready Soybeans.

3 So you're selling it here in Missouri for  
4 one price, and let's say you're selling it in Brazil, a  
5 country that doesn't have patent protection, at a lower  
6 price because that's what the market will bear. But in  
7 effect, do you think that the Missouri customers are  
8 subsidizing the Brazilian customers?

9 MS. VUYLSTEKE: At this point I would like  
10 to object to the questioning from the Chairman, which I do  
11 so very reluctantly, but there is simply no relevance or  
12 comparison between any company that's not price regulated.  
13 Monsanto is not price regulated. I assume you're  
14 referring to Monsanto.

15 JUDGE WOODRUFF: All right. Your objection  
16 is noted. I'll overrule.

17 BY CHAIRMAN DAVIS:

18 Q. Let me just ask one more question. We can  
19 finish this up. So Mr. Brubaker, to conclude, you're not  
20 here to be the pot calling the kettle black, are you?

21 A. Well, I hope not. I hope I'm here to try  
22 to be helpful in constructing a reasonable and practical  
23 solution. And if I may be permitted the liberty, I know  
24 nothing about the product pricing practices of my clients,  
25 nor have they ever retained me for such advice.

1 I am aware that we have a system of laws  
2 with patent protections and other kinds of things that are  
3 designed to encourage innovation. How that plays out, I'm  
4 not an expert in those areas.

5 CHAIRMAN DAVIS: Fair enough, Mr. Brubaker.  
6 Thank you.

7 THE WITNESS: Thank you.

8 JUDGE WOODRUFF: Anyone wish to recross  
9 based on those questions? Any redirect?

10 REDIRECT EXAMINATION BY MS. VUYLSTEKE:

11 Q. Mr. Brubaker, is AmerenUE a monopoly?

12 MR. LOWERY: Objection, beyond the scope of  
13 cross.

14 MS. VUYLSTEKE: It's within, I think, the  
15 Commissioner's questions.

16 JUDGE WOODRUFF: I'll overrule the  
17 objection.

18 THE WITNESS: In their Missouri regulated  
19 retail service territory, they are a monopoly insofar as  
20 people wishing to purchase electricity rather than make it  
21 themselves.

22 BY MS. VUYLSTEKE:

23 Q. Okay. Could you explain, Mr. Brubaker, why  
24 you believe that AmerenUE's proposal for a 95/5 sharing  
25 doesn't provide a meaningful incentive?

1           A.       Yes.

2                   MR. LOWERY:  Objection.  Calls for a  
3 narrative.

4                   JUDGE WOODRUFF:  I'll sustain that.  It  
5 does call for a narrative response.

6 BY MS. VUYLSTEKE:

7           Q.       Does AmerenUE's proposal for a 95/5 sharing  
8 provide a meaningful incentive for AmerenUE in your view?  
9 I don't understand why -- I guess I don't understand the  
10 objection.

11                   MR. LOWERY:  That question was leading.

12 BY MS. VUYLSTEKE:

13           Q.       In your view, what incentive is required  
14 for AmerenUE to provide to have an incentive?

15           A.       I believe a meaningful incentive would be  
16 the 80/20 sharing proposal I've made with the limitation  
17 of 50 basis points or 5 percent of earnings impact on an  
18 annual basis.

19           Q.       You were asked about how Empire and Aquila  
20 were decided, those two cases, how they were decided by  
21 the Commission and the sharing mechanisms that were  
22 approved in those cases.  How are Empire and Aquila  
23 different than AmerenUE?

24           A.       Well, they're much different, as laid out  
25 on my Schedule MEB-FAC-2.  Fuel costs are approximately

1 three to four times the percentage of common equity for  
2 those utilities as it is for AmerenUE. So a 95/5 clause  
3 for those utilities at, for example, any given percentage  
4 change in net fuel cost is going to have about three to  
5 four times as much impact as it would on AmerenUE where  
6 the fuel prices are lower in relation to the amount of  
7 common equity.

8 Q. In the Empire and Aquila orders, did the  
9 Commission give reasons for its decisions on the 95/5  
10 sharing?

11 A. It did not.

12 MS. VUYLSTEKE: I have no further  
13 questions.

14 JUDGE WOODRUFF: All right. Mr. Brubaker,  
15 you can step down.

16 THE WITNESS: Thank you, sir.

17 JUDGE WOODRUFF: Next on my list is  
18 Mr. Dauphinaia, and what are we going to do with  
19 Mr. Dauphinaia?

20 MR. LOWERY: I don't have any compulsion to  
21 call Mr. Dauphinaia to the stand. The deposition  
22 designations have been admitted, so I don't think we need  
23 to do anything with Mr. Dauphinaia, I guess is my opinion.

24 MS. VUYLSTEKE: The reason that we had  
25 suggested the possibility of striking portions of his

1 testimony was only because we thought Ameren might have  
2 had some questions, and it would have resolved that  
3 problem if we would have stricken his testimony. I don't  
4 think that's an issue now. I don't know that we need to  
5 do anything.

6 JUDGE WOODRUFF: Okay. Is his testimony in  
7 the record at this point? Has it been admitted?

8 MR. LOWERY: Your Honor, without revealing  
9 the content of settlement discussions, I think that that  
10 may be -- well, I think it has been resolved via the  
11 off-system sales stipulation. I think everybody has  
12 either agreed to or agreed not to object to. So I think  
13 all of the testimony of the off-system sales witnesses is  
14 going to be admitted en masse as a result of the  
15 stipulation.

16 JUDGE WOODRUFF: Any disagreement with  
17 that?

18 MS. VUYLSTEKE: I'm sorry. I was  
19 consulting with Mr. Brubaker, but I believe that --

20 JUDGE WOODRUFF: Mr. Lowery indicated that  
21 all that testimony would be coming in en masse as part of  
22 the settlement of the off-system sale issue.

23 MS. VUYLSTEKE: Yes. That's correct.

24 MR. LOWERY: Which we hope to get filed  
25 this afternoon.

1 MS. VUYLSTEKE: And this is not exactly on  
2 the subject of Mr. Dauphinaia's testimony, but I had had  
3 some counter designations for Mr. Brubaker to expand a  
4 little bit the deposition designations that AmerenUE had,  
5 and if Ameren's still looking at those, that's fine, but I  
6 did want to remind the Bench that we still have that  
7 issue.

8 MR. LOWERY: If Ms. Vuylsteke wants to file  
9 some counter designations, she can. I am going to have  
10 objections to some of those.

11 JUDGE WOODRUFF: Okay.

12 MS. VUYLSTEKE: I'll do that later on  
13 today.

14 JUDGE WOODRUFF: That will be fine.  
15 Skipping over Mr. Dauphinaia, then we're to Mr. Johnstone.

16 MR. CONRAD: And Judge, if I might have a  
17 moment to consult with counsel for UE?

18 JUDGE WOODRUFF: Go right ahead.

19 MR. CONRAD: Judge, over the lunch hour --  
20 we can call Mr. Johnstone if we need to, and he is sitting  
21 here, but over the lunch hour, several of the parties have  
22 been having a back and forth about actually some of these  
23 issues. I think they -- I think it's fair to say, without  
24 going into it, that they concern more the specifics of  
25 what I think Mr. Dottheim was talking about early on in

1 this segment of the proceeding as being rate design, some  
2 of the technical things on that.

3                   Mr. Johnstone could take the stand with  
4 respect to the generic issues if that would be your  
5 pleasure at this point. I was just visiting, however,  
6 with counsel for the company, and he and I both think it  
7 might be useful if, by leave of your Honor, if we could  
8 have a few minutes maybe off the record to see where that  
9 would go while parties are still in that mode of thinking.  
10 But that's up to you.

11                   JUDGE WOODRUFF: All right. Just maybe  
12 about a 15-minute break, would that be --

13                   MR. CONRAD: He was suggesting a half hour,  
14 but that's your call.

15                   MR. LOWERY: Only because there's some  
16 other technical folks that we have to get in on this  
17 discussion a little bit.

18                   JUDGE WOODRUFF: We'll go ahead and take a  
19 half-hour break then. We'll come back at 2:45.

20                   (A BREAK WAS TAKEN.)

21                   JUDGE WOODRUFF: Let's come to order,  
22 please. We're back from our slightly extended break.  
23 What can the parties report?

24                   MR. CONRAD: Well, I think as Steve -- or  
25 as counsel for Staff indicated, and hopefully this can be

1 confirmed by others, I think the discussions have been  
2 productive and will doubtless eliminate days if not weeks  
3 of scathing and withering cross on two or three issues  
4 that were pertinent to the rate design stuff.

5                   And I'll -- at that point I'll just let  
6 others speak, but then we can go back and I think  
7 Mr. Lowery has something on the off-system sales  
8 stipulation that we probably want to put on record before  
9 your Honor and try to clean those things up in the sense  
10 of housekeeping and then we can forge on.

11                   JUDGE WOODRUFF: Very good. Mr. Lowery?

12                   MR. LOWERY: Your Honor, it's -- well, I  
13 know for a fact that we have agreement on the off-system  
14 sales stipulation. I intend to go back in just a few  
15 minutes and sign it. It's going to be signed by Staff,  
16 Office of the Public Counsel, the company and MIEC, and  
17 not opposed by any other party. And so I'll get that  
18 filed this afternoon.

19                   On the fuel adjustment clause rate design  
20 issue, a lot of progress was made in that last 35 minutes.  
21 The Office of the Public Counsel is still looking at the  
22 details of that, so they haven't said yes or no, but they  
23 are still looking at it.

24                   So we don't have a deal per se. I'm  
25 cautiously optimistic that we will, however. And so I



1 note, then, are we ready to get started? Mr. Byrne, is  
2 there something you want to add?

3 MR. BYRNE: Mr. Johnstone is the next  
4 witness, and part of our discussion involves his  
5 testimony, and we had agreed that his -- part of his  
6 testimony is some performance standards that he recommends  
7 for our fuel adjustment clause. We have agreed that's --  
8 to conduct cross-examination in the rate design portion of  
9 the FAC proceeding on that because we have some -- we're  
10 discussing some things about that.

11 So as I understand it, correct me if I'm  
12 wrong, Mr. Conrad, but Mr. Johnstone would be  
13 cross-examined now on his -- on his recommendation  
14 regarding the sharing, and then at the end or whenever the  
15 rate design people come up, which would presumably be  
16 tomorrow, on his performance standards part of his  
17 testimony. Is that correct, Mr. Conrad?

18 MR. CONRAD: Yes. I believe, Judge, that's  
19 consistent with the discussions. And as you know,  
20 Mr. Johnstone has been -- has been on the stand once  
21 already. We probably do need to reoffer his testimony.  
22 It's my recollection that Mr. Fischer, who was in the  
23 company chair at that point, had indicated that he asked  
24 for that ruling to be deferred. That's up, of course, now  
25 to counsel for the company.

1                   But that's consistent, his description is  
2 consistent with our discussions outside. So if that's  
3 agreeable to your Honor, we'd put him on now and cover  
4 that.

5                   JUDGE WOODRUFF: That's fine. In looking  
6 at my records, I show all his testimony is already  
7 received. If there was a request for a deferral, I didn't  
8 make a note of it.

9                   MR. CONRAD: I'm not going to quarrel with  
10 your Honor about that. It was my recollection that  
11 Mr. Fischer had asked that that be deferred, that he had  
12 something about it. So if that's been overtaken by  
13 events, that's fine. So we --

14                   JUDGE WOODRUFF: Does the company have a  
15 different recollection?

16                   MR. BYRNE: I don't recall it at all, but  
17 we don't want it to be deferred. I don't think we have  
18 any objection to Mr. Johnstone's testimony.

19                   JUDGE WOODRUFF: If it's not already been  
20 admitted or if it was deferred at any point, it is  
21 admitted at this point, and that was 753, 574, 755 and  
22 756.

23                   MR. CONRAD: That's correct.

24                   JUDGE WOODRUFF: Did anyone wish to  
25 cross-examine Mr. Johnstone on the overview-type issues

1 for the FAC? If not, we won't call him to the stand  
2 because I don't have any questions.

3 We'll just move on, then.

4 MR. CONRAD: Very well.

5 JUDGE WOODRUFF: And I believe the next  
6 witness then would be Mr. Cohen. Mr. Cohen, please raise  
7 your right hand. This is the first time you've testified  
8 in this case?

9 THE WITNESS: Yes.

10 (Witness sworn.)

11 JUDGE WOODRUFF: Thank you.

12 MARTIN R. COHEN testified as follows:

13 DIRECT EXAMINATION BY MR. IVESON:

14 Q. Please state your name and business  
15 address.

16 A. My name is Martin R. Cohen, and my address  
17 is 2633 West Sunny Side Avenue, Chicago, Illinois.

18 Q. Are you the same Martin R. Cohen who caused  
19 to be filed in this cause direct testimony and surrebuttal  
20 testimony?

21 A. Yes.

22 Q. And did you also cause to be filed  
23 corrected direct testimony?

24 A. Yes.

25 Q. What was the correction that was made in

1 that corrected direct testimony?

2 A. On page 20 of my direct testimony,  
3 beginning at the end of line 1, a sentence beginning any,  
4 and ending on line 3 with the word requires, that sentence  
5 was deleted.

6 Q. Do you have any other corrections to make  
7 today?

8 A. No.

9 Q. If I were to ask you the same questions  
10 that you answered in the surrebuttal and direct testimony,  
11 would you give the same answers?

12 A. Yes, I would.

13 Q. And do you believe those answers to be true  
14 and accurate to the best of your knowledge?

15 A. Yes.

16 MR. IVESON: I would offer Exhibit 500NP  
17 and HC and Exhibit 501NP and HC.

18 JUDGE WOODRUFF: All right. Exhibits 500  
19 and 501 have been offered. Are there any objections to  
20 their receipt?

21 (No response.)

22 JUDGE WOODRUFF: Hearing none, they will be  
23 received.

24 (EXHIBIT NOS. 500NP, 500HC, 501NP AND 501HC  
25 WERE RECEIVED INTO EVIDENCE.)

1                   MR. IVESON: I tender Mr. Cohen for  
2 cross-examination.

3                   JUDGE WOODRUFF: For cross, we begin with  
4 the Staff.

5                   MR. DOTTHEIM: No questions.

6                   JUDGE WOODRUFF: Public Counsel?

7                   MR. MILLS: No questions.

8                   JUDGE WOODRUFF: Noranda?

9                   MR. CONRAD: No questions, your Honor.

10                  JUDGE WOODRUFF: Then Ameren?

11                  MS. TATRO: Thank you.

12 CROSS-EXAMINATION BY MS. TATRO:

13                  Q.        Good afternoon, Mr. Cohen.

14                  A.        Good afternoon.

15                  Q.        Mr. Cohen, you're not an economist or a  
16 lawyer, right?

17                  A.        Correct.

18                  Q.        You have a bachelor's degree in English  
19 literature?

20                  A.        Correct.

21                  Q.        And you don't have a graduate degree,  
22 correct?

23                  A.        Correct.

24                  Q.        You've been offering consulting services  
25 since last year?

1 A. No. Since this year.

2 Q. Okay. And before that, you worked for the  
3 current Governor of Illinois?

4 A. Yes.

5 Q. And before that, you were chair of the  
6 Illinois Commerce Commission for several weeks?

7 A. Briefly, yes.

8 Q. But that appointment wasn't confirmed  
9 because of fears that you wouldn't balance utility  
10 interests with customers' interests or that somehow you  
11 wouldn't be impartial, right?

12 A. That was the ostensible reason.

13 Q. Okay. Now, your expert witness experience  
14 includes this case, two recent cases in Illinois, and  
15 maybe a telecom case several years ago, correct?

16 A. Many years ago, yes.

17 Q. And the two recent cases in Illinois on  
18 which you testified, those were both on rider issues,  
19 correct?

20 A. They both had rider issues as part of them,  
21 yes.

22 Q. In fact, you testified in opposition to  
23 those riders?

24 A. That's correct.

25 Q. And the party you testified on behalf of in

1 both of those cases was CUB?

2 A. Yes.

3 JUDGE WOODRUFF: What was that?

4 MS. TATRO: CUB.

5 JUDGE WOODRUFF: You might want to define  
6 that.

7 MS. TATRO: Next question.

8 JUDGE WOODRUFF: Okay.

9 BY MS. TATRO:

10 Q. Can you tell the Commissioners what CUB is?  
11 What does it stand for?

12 A. Citizens Utility Board.

13 Q. So they're basically the equivalent of OPC  
14 here in Missouri?

15 A. Yes. They're the statutory consumer  
16 representative.

17 Q. Okay. So outside of this current case,  
18 you've only testified in three cases, they were all before  
19 the ICC, and all of them were on behalf of CUB?

20 A. Yes.

21 Q. So, Mr. Cohen, the majority of your utility  
22 experience or experience with utilities is from your time  
23 at CUB in Illinois; would you agree?

24 A. I would agree.

25 Q. And during that time you didn't act as

1 their counsel, such as Mr. Mills does here for OPC?

2 A. Right.

3 Q. You didn't act as one of CUB's expert  
4 witnesses?

5 A. I did not.

6 Q. Instead, you had experts that worked for  
7 you, and those experts offered testimony on behalf of CUB,  
8 correct?

9 A. Yes, we had in-house and outside experts.

10 Q. And just to make sure that I'm clear, CUB's  
11 an advocate for residential and small commercial  
12 customers, not for the utility, not for industrial  
13 customers?

14 A. That's right.

15 Q. Mr. Cohen, have you ever reviewed a natural  
16 gas contract?

17 A. No.

18 Q. Have you ever reviewed a coal contract --

19 A. I've seen --

20 Q. -- for the purchase of coal?

21 A. I've seen contracts. I have not studied  
22 them.

23 Q. Have you ever reviewed a purchased power  
24 contract?

25 A. I've seen them. I've not studied them.

1 Q. Okay. In your direct testimony, on about  
2 page 9, one of the reasons you object to an FAC is because  
3 adding that line to a customer's bill could cause customer  
4 confusion?

5 A. Yes.

6 Q. You're aware that Empire and Aquila are two  
7 utilities in Missouri that have an FAC?

8 A. Yes, I am.

9 Q. Did you investigate whether customers of  
10 Empire or Aquila were confused by their bill?

11 A. Did I investigate it? Did I talk to their  
12 customers, something like that? No, I did not.

13 Q. Okay. Well, presuming for a moment that  
14 there is confusion, you -- you admit that customer  
15 confusion alone is not a sufficient reason to reject  
16 AmerenUE's FAC request? You agree?

17 A. Yes.

18 Q. Now, you're familiar with the Commission's  
19 three-prong test for an FAC, right?

20 A. Yes.

21 Q. And you would agree that if AmerenUE met  
22 that three-prong test, then you would not oppose an FAC  
23 for it, correct?

24 A. Yes.

25 Q. Okay. Would you also agree there is not

1 one formulaic test for these three prongs and that each of  
2 them is a subjective assessment to be made by the  
3 Commission?

4 A. Yes.

5 Q. Is it true that you've not done any type of  
6 financial analysis to support your opposition of an FAC?

7 A. I've not done any quantitative analysis.

8 Q. And you didn't do any financial analysis to  
9 determine if an FAC is necessary for UE to have an  
10 opportunity to earn its fair rate of return, correct?

11 A. I didn't do a quantitative analysis, that's  
12 correct.

13 Q. Is a quantitative analysis the same thing  
14 as a financial analysis?

15 A. I'm assuming the context of your question,  
16 it is.

17 Q. Okay. And you didn't do any type of  
18 analysis to see how an FAC might impact AmerenUE's credit  
19 rating, did you?

20 A. No.

21 Q. Are you familiar with the acronym PGA?

22 A. Yes.

23 Q. What's that stand for?

24 A. Purchased gas adjustment.

25 Q. Have PGAs been around for a while?

1           A.     Yes.

2           Q.     Are there many utilities that have PGAs?

3           A.     I'm aware of many utilities with PGAs.

4           Q.     And essentially a PGA is a gas LDC's

5     ability to flow through the cost of gas that it used to

6     serve its customers, right?

7           A.     The prudently incurred costs, yes.

8           Q.     Do you oppose PGAs?

9           A.     As a matter of what?  Do I oppose all PGAs?

10    No.

11          Q.     Now, if AmerenUE's granted an FAC, you

12    propose an 80/20 sharing mechanism, right?

13          A.     Yes.

14          Q.     Do you know of any utility with an FAC

15    mechanism that requires an 80/20 sharing mechanism?

16          A.     No.

17          Q.     You also propose an alternative of an

18    asymmetrical sharing mechanism, correct?

19          A.     Yes.

20          Q.     Do you know of any utility that has an

21    asymmetrical sharing mechanism in their FAC?

22          A.     No.

23          Q.     Do you know how many utilities have an FAC

24    in the U.S.?

25          A.     I do not.

1 Q. Okay. In your direct and also in your  
2 surrebuttal you discuss AmerenUE's hedging programs. Are  
3 you familiar with hedging?

4 A. I'm familiar with it.

5 Q. Have you ever been involved in hedging  
6 efforts?

7 A. No.

8 Q. Can you explain how a collar works?

9 A. A collar, I can explain generally, would be  
10 a -- a set amount above and below a target, and the price  
11 would -- could fluctuate between a high and a low.

12 Q. Okay. But it sets the high and the low?

13 A. Yes.

14 Q. Now, assume for me that a utility wanted to  
15 fix its natural gas price at \$5 for summer of 2009. Okay?  
16 And also assume for me that natural gas, my scenario, is  
17 trading at \$10 for the summer of '09. Can a utility cost  
18 effectively hedge its supply for summer of '09 at \$5?

19 A. The price is \$10?

20 Q. Uh-huh.

21 A. And they want to buy it for \$5?

22 Q. Yeah.

23 A. That would be hard to do.

24 Q. Right. So the utility would have to  
25 choose -- if they hedge, they'd have to lock it in at \$10

1 or not hedge at that time, right, their only options at  
2 that point?

3 A. If the price is \$10 and you're buying it  
4 today and that's what you need, then that's the price you  
5 would pay. The scenario, of course, may be more  
6 complicated than that.

7 Q. But hedging is not a magic bullet that  
8 allows the utility to reduce the price to whatever it  
9 desires, is it?

10 A. Correct.

11 Q. And hedging is constrained by the actual  
12 prices experienced in the futures market, right?

13 A. Hedging is constrained by a number of  
14 things. That would be one. There are different ways in  
15 which one can hedge using both physical and financial  
16 instruments, and it's as constrained as those instruments  
17 are.

18 Q. Okay. Did you review AmerenUE's coal  
19 contracts before making your recommendation in this case?

20 A. No.

21 Q. So do you know if any of them have price  
22 escalators built into them?

23 A. My understanding is that they do.

24 Q. And did you know that three days ago when I  
25 deposed you?

1           A.       My understanding has been that they do.

2           Q.       Okay. Did you know that three days ago

3 when I deposed you?

4           A.       I believe I knew that.

5           Q.       Do you have your deposition in front of

6 you?

7           A.       I do.

8           Q.       Can you turn to page 27.

9           A.       Page 27?

10          Q.       Yes, please.

11          A.       I'm on page 27.

12          Q.       Starting on line 19, it says, question:

13 How many of AmerenUE's coal contracts have price

14 escalation provisions in them?

15                    Answer: I don't know.

16                    Question: Do you know how many

17 transportation contracts have escalators in them?

18                    Answer: I don't know.

19                    Right?

20          A.       Those are my answers, yes. That was a

21 different question than the one you just asked.

22          Q.       Okay. Did you review AmerenUE's hedging

23 policies before making your recommendation in this case?

24          A.       Not in detail.

25          Q.       Not in detail. What did you review?

1 A. I looked at the testimony in the case.

2 Q. Does AmerenUE have a hedging policy where  
3 it sets out the parameters of how and when it chooses to  
4 hedge?

5 A. I believe so.

6 Q. But you did not review that document?

7 A. Not in detail, no. There was an exhibit, I  
8 believe, attached to testimony may have included some of  
9 that information.

10 Q. But you did no independent research of your  
11 own?

12 A. That's correct.

13 Q. Okay. Are you familiar with an  
14 organization called EPRI?

15 A. The Electric Power Research Institute.

16 Q. What does EPRI do?

17 A. They -- on behalf of the industry, they do  
18 research.

19 Q. They conduct research and development on  
20 technology or operational issues on behalf of electric  
21 utilities?

22 A. That's my understanding.

23 Q. Is it fair to state they're relied upon by  
24 utilities and maybe even commissions in providing  
25 information and new technology?

1           A.       I don't know enough about who relies on  
2 them to say that.

3           Q.       Okay.

4                   MS. TATRO: May I approach?

5                   JUDGE WOODRUFF: You may.

6 BY MS. TATRO:

7           Q.       And I want to turn -- on page 4 of your  
8 surrebuttal.

9           A.       Yes.

10                   JUDGE WOODRUFF: Do you want to mark this  
11 as an exhibit?

12                   MS. TATRO: Please.

13                   JUDGE WOODRUFF: This will be No. 79.

14                   (EXHIBIT NO. 79 WAS MARKED FOR  
15 IDENTIFICATION BY THE REPORTER.)

16 BY MS. TATRO:

17           Q.       Can you read the highlighted portion,  
18 please?

19           A.       Do you want me to read it out loud?

20           Q.       Can you read the highlighted portion out  
21 loud? Thank you.

22           A.       Volatility is a measure of the uncertainty  
23 in a future commodity price at a particular time and can  
24 be estimated from the prices of traded options or from  
25 model fits to spot or forward prices -- price changes over

1 time.

2 Q. Okay. On page 4, line 17 of your  
3 surrebuttal, you say that volatility is separate from  
4 uncertainty, right?

5 A. Yes.

6 Q. Do you base that on any textbook?

7 A. I can't cite a textbook.

8 Q. Can you cite an authoritative source? Do  
9 you cite an authoritative source in your testimony?

10 A. I do not.

11 MS. TATRO: Move for the admission --

12 JUDGE WOODRUFF: 79.

13 MS. TATRO: I think it was 79.

14 JUDGE WOODRUFF: 79 has been offered. Any  
15 objection to its receipt?

16 MR. IVESON: I think there's a lack of  
17 foundation, your Honor. He hasn't indicated that he's  
18 ever seen this, has any idea what this document is or ever  
19 received it. It's just a document counsel produced.

20 MS. TATRO: He recognized what EPRI is and  
21 what they do. I think the document's produced by them. I  
22 can ask him some questions indicating that it's from EPRI.

23 JUDGE WOODRUFF: Go ahead.

24 MS. TATRO: Thank you.

25 BY MS. TATRO:

1 Q. Can you tell me what this document is,  
2 Mr. Cohen?

3 A. Well, it says in the upper-left corner  
4 EPRI - Powering Progress.

5 Q. And what's it titled?

6 A. Technical brief.

7 Q. From the Power Delivery Group?

8 A. Power Delivery Group.

9 Q. And on the last page it identifies that  
10 it's authored by EPRI, the Electric Power Research  
11 Institute?

12 A. That's correct.

13 JUDGE WOODRUFF: And your purpose in  
14 offering this?

15 MS. TATRO: Well, it's a definition of  
16 volatility which he argues that he does not include  
17 uncertainty.

18 JUDGE WOODRUFF: And this is offered to  
19 indicate that the industry standard is otherwise?

20 MS. TATRO: Yes. Sorry. I was unclear  
21 what you were asking.

22 JUDGE WOODRUFF: I'm going to overrule the  
23 objection. Exhibit 79 is admitted.

24 (EXHIBIT NO. 79 WAS RECEIVED INTO  
25 EVIDENCE.)

1 MS. TATRO: I have no further questions,  
2 your Honor.

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

5 COMMISSIONER MURRAY: No questions.

6 JUDGE WOODRUFF: Chairman Davis?

7 QUESTIONS BY CHAIRMAN DAVIS:

8 Q. Good afternoon, Mr. Cohen.

9 A. Good afternoon.

10 Q. I have very few questions related to your  
11 testimony here. I would beg your counsel's indulgence  
12 just so I can ask you a couple of questions. You were --  
13 you were at CUB for approximately 15 years?

14 A. 20-plus years.

15 Q. Okay. And were you in Illinois when the  
16 Illinois Legislature passed its restructuring law?

17 A. Yes, I was.

18 Q. Did you participate in the drafting of that  
19 law?

20 A. I did.

21 Q. And do you have an opinion as to how well  
22 or how poorly that the law has worked?

23 A. I believe the law has generally worked well  
24 in many ways. Of course, I also would have to say that  
25 even after almost 12 years, we don't know yet because some

1 of the effects are still going to unfold over really many  
2 decades.

3 I would say, and I appreciate having the  
4 opportunity to say, that I think when it comes to the  
5 incentives that were put in that law, it did work well,  
6 and we saw dramatic improvement in the operation of power  
7 plants when the incentive -- having the cost plus  
8 environment. We had utilities with powerful incentives to  
9 improve their operations because they could retain the  
10 additional earnings from improved efficiency.

11 And what we saw was particularly the  
12 generation fleet became across the board almost  
13 universally dramatically better operated and more  
14 efficient. That enabled the utilities to actually improve  
15 their earnings during a period of ten years when rates  
16 were reduced by 20 percent for residential customers and  
17 then frozen for that entire period.

18 So certainly from the point of view of the  
19 residential customers that I represented, there was a  
20 decade long period of lower rates, which we are now out  
21 of. But it's an evolving situation in Illinois for  
22 customers, and I really think it is still too early to  
23 tell the true success of that long-term experiment.

24 Q. So you wouldn't recommend putting the  
25 wheels back on the cart in Illinois? You think this is

1 the path that Illinois needs to continue down?

2 A. I think the experiment is under way and we  
3 have to see it through. We have a new power agency in  
4 Illinois, which is a client of mine, I would have to say  
5 for the record, and it will be preparing and has already  
6 begun to prepare procurement plans for the utilities to  
7 purchase on behalf of customers. Default customers will  
8 be served by procurement plans which are being developed  
9 by this new state agency.

10 That's another step in the restructuring  
11 which wasn't envisioned back in the '90s when we started  
12 down the path. But I would say in answer to your question  
13 that I don't think the egg can ever be unscrambled.

14 Q. So you just don't think there's any way to  
15 un-- unscramble the egg; is that right?

16 A. Not except over a period of many decades,  
17 should the situation warrant it, but we -- we have  
18 unregulated companies who own all the power plants, well,  
19 virtually all the power plants in Illinois, and they -- it  
20 would be almost impossible to bring them back under the  
21 regulatory umbrella. So we have a very different  
22 situation in Illinois than in Missouri.

23 Q. Okay. Let me ask you this, then. There  
24 are some people in the Missouri General Assembly that are  
25 enamored with the concept of deregulation here in

1 Missouri. It's working really well for the phone  
2 companies. Why don't we do it for the electric companies,  
3 too? What would you say to that?

4 A. Be careful.

5 Q. Be very careful?

6 A. Yes. I think the situation in Illinois in  
7 1996 was quite different than Missouri's situation today.  
8 We could talk a long time about that. But Illinois was  
9 the most nuclear-intensive state in the country with  
10 probably the worst operated nuclear fleet, and the  
11 customers were paying a lot for that. And I wouldn't  
12 comment on the quality of the operation of your fleet of  
13 plants in the general --

14 Q. I think we only have two nuclear plants.

15 A. Right. And you have many other plants,  
16 however, of course. And my conclusion from the experience  
17 in Illinois is that incentives work, but you have to be  
18 real careful that you don't create a situation that can be  
19 exploited.

20 Q. Have you looked at the operation of the  
21 wholesale market at MISO?

22 A. Not in depth, no.

23 Q. Okay. If there's -- if there was anything  
24 you could do, if you could go back to 1996 and change  
25 things about the bill, is there anything that you'd do

1 differently?

2           A.       Wow. I expect there would be a lot, with  
3 the benefit of 20/20 hindsight, that I and others would do  
4 differently. I can mention a few off the top of my head.  
5 I think that retail competition for residential customers  
6 has proven to be a failure, and that was at the  
7 centerpiece of what was touted as the great competitive  
8 future. There is no retail competition even now in  
9 Illinois for small volume customers because in a commodity  
10 market the margins to be made are simply not enough to  
11 motivate marketers to spend the money it takes to acquire  
12 customers and serve them.

13                   And those customers I believe can best be  
14 served through wholesale acquisition as a default,  
15 aggregation, and that's what the new power agency in  
16 Illinois is beginning to do. But we would have been a lot  
17 better off had we not tried to go down the road of retail  
18 competition for the smallest volume customers. That's one  
19 thing I would change. We could have a long conversation,  
20 perhaps we will, about other things.

21           Q.       I'm just curious, because we've never had  
22 the opportunity to talk before, and this is all, you know,  
23 very fascinating as someone who deals with MISO and has to  
24 deal with the market.

25                   Have you looked at fuel adjustment

1 mechanisms from any other states?

2 A. Not in any detail, no.

3 Q. Okay. Conceptually, is there any other  
4 state out there that you're aware of that you think has a  
5 better way of doing it or a worse way of doing it?

6 A. No. We -- my view is that we need to  
7 retain as much as possible the incentives inherent in  
8 traditional rate of return regulation in designing a fuel  
9 clause mechanism. I'm not aware that that's being done  
10 effectively.

11 There have been proposals that are out  
12 there, the dead band proposal where you have different --  
13 sharing mechanism that changes depending on the conditions  
14 and the amount. That may have some merit, but I didn't  
15 look at it, didn't recommend it in this case. There are  
16 other possible ways you could do it, but as you know, in  
17 this case I'm recommending 80/20, if you see fit to --

18 Q. If we see --

19 A. -- propose an FAC.

20 Q. Your first recommendation is don't do it at  
21 all?

22 A. That's correct.

23 Q. Because that's a powerful incentive?

24 A. That's correct, and that's the basis for my  
25 recommendation not to do it. I don't think it's

1 necessary. That's my judgment based on what I've seen in  
2 this case.

3 Q. And are you familiar -- and obviously, you  
4 know, the Staff here at the Missouri Public Service  
5 Commission reminds me at every opportunity that we had  
6 fuel adjustment in this state up until 1979, and then when  
7 it went away, miraculously the electric utilities in this  
8 state grew much more efficient. Think that's a pretty  
9 solid assumption?

10 A. That's exactly what I've seen in Illinois,  
11 when fuel adjustment clauses were eliminated and we saw  
12 powerful improvement in the efficiency of the companies,  
13 to their benefit, as well as customers.

14 Q. And I don't know if you saw this in  
15 Illinois, but did you -- did you ever get the impression  
16 that the electric utilities that were relying on gas,  
17 which obviously your state's a lot heavier nuclear, so you  
18 may not have that much, but that the actual hedging  
19 practices of the electric utilities that were purchasing  
20 gas in your state were much more sophisticated than those  
21 of the gas LDCs that were just buying gas and passing it  
22 through with a PGA?

23 A. I believe that's true, yes.

24 CHAIRMAN DAVIS: All right. Well,  
25 Mr. Cohen, thank you. I appreciate your testimony here

1 today, and have a good visit to Jefferson City.

2 THE WITNESS: Thank you, Chairman.

3 JUDGE WOODRUFF: Anyone wish to recross  
4 based on those questions from the Bench? For Noranda?

5 MR. CONRAD: Yes, just briefly.

6 RE-CROSS-EXAMINATION BY MR. CONRAD:

7 Q. Chairman Davis asked you several questions,  
8 Mr. Cohen, about your experiences in Illinois, and one of  
9 the terms that you used that I hadn't heard in this  
10 context before was cost plus. Do you recall -- do you  
11 recall making that comment?

12 A. Yes.

13 Q. Would you explain, please, what that means  
14 to you?

15 A. I used it in a rather offhand way, but cost  
16 plus is one way to describe the regulatory system in which  
17 the regulated entity is assured recovery of their costs  
18 plus something on top. That would, I guess, be the rate  
19 of return on investment in this case. So it does describe  
20 its original rate formula, but it's usually used in a  
21 disparaging way to indicate that the -- the implication is  
22 that one would try to inflate the apparent costs while  
23 perhaps reducing the actual ones.

24 Q. With that definition in mind, and trying to  
25 avoid any pejorative aspects, I think you also mentioned

1 in response to Chair Davis, one of Chair Davis' questions  
2 that there had been powerful improvement. I think that  
3 was the phrase that I captured, and you talked about  
4 Illinois being heavily on nuclear.

5 A. Yes.

6 Q. Now, help me understand when you say  
7 powerful improvement, that -- that's a little bit fuzzy.  
8 Can you put some boundary conditions around that for all  
9 of us?

10 A. I could give you some statistics if you  
11 wished regarding the nuclear fleet.

12 Q. That might be helpful.

13 A. The --

14 Q. The Chairman is correct. I think we have  
15 one nuclear plant actually physically in this state and  
16 one that serves into it, which is Wolf Creek near  
17 Burlington, Kansas. In that context I guess we're not as  
18 nuclear rich as Illinois was, right?

19 A. Correct.

20 Q. Go ahead with your statistics.

21 A. Well, it was my observation, and I believe  
22 I have the numbers pretty close to correct, I wouldn't  
23 swear that these are absolutely on target, that the  
24 Commonwealth Edison nuclear fleet in 1996, '95-'96 had a  
25 capacity factor overall with its 12 units of about

1 47 percent. Within two years after being deregulated,  
2 they operated at more than twice that, almost 95 percent,  
3 I believe, by turn of the decade.

4                   And there was another plant owned by  
5 Illinois Power Company that was not even operating for  
6 several years, and it became a plant that operated and  
7 operates efficiently. I do attribute that partially at  
8 least to the change in the regulatory climate.

9                   The coal plants also improved their  
10 efficiencies. I don't have statistics to give you, but  
11 across the board they became more efficient. And the  
12 generators did very well, and the customers did pretty  
13 well, too.

14                Q.       Now, could you contrast that with  
15 experience that you saw with respect to coal-fired  
16 generation?

17                A.       I don't have statistics to bring you on the  
18 coal-fired generation. It was my observation that the  
19 coal plants also became more efficient, that there was  
20 more investment in them, that the heat rates improved,  
21 that they were operated, you know, in a less costly way  
22 and with greater availability and output.

23                   There were many factors you can attribute  
24 that to, number of different things. New ownership  
25 certainly may have been part of it.

1 Q. Just so I'm clear, you used the term  
2 capacity factor.

3 A. Yes.

4 Q. Help me --

5 A. Availability.

6 Q. Availability?

7 A. Yes. That is the average percentage of  
8 time which the plants were operating and available was  
9 less than half the time for the fleet on average,  
10 including some plants that had been shut down for extended  
11 periods.

12 Q. Do you have any observations about why that  
13 occurred?

14 A. It's true that at the same time as the  
15 nuclear fleet in Illinois improved under deregulation its  
16 capacity factor and overall operation, there was a general  
17 improvement in the industry across the country. So I  
18 wouldn't attribute all of the improvement to the change in  
19 the regulatory structure by any means. It's hard to  
20 separate out the different factors that cause the  
21 improvement.

22 But I think the incentive was, as I said  
23 before, powerful. Utilities had essentially fixed rates.  
24 Well, we restructured so they had -- they no longer had an  
25 ability to charge customers more, and every nickel that

1 they could achieve in new efficiencies was a nickel that  
2 they would keep, and they wouldn't just keep it between  
3 rate cases, they would keep it.

4                   So it was quite a powerful set of  
5 incentives for improved operation. My observation is that  
6 it -- those incentives had a lot to do with the increased  
7 efficiencies that we saw.

8           Q.       Now, I don't remember the timing of this,  
9 so it may not have been an Ameren subsidiary, but do you  
10 recall something called UE Illinois?

11           A.       Yes.

12           Q.       It's my recollection that as part of this  
13 improvement process on incentives, that they were  
14 primarily coal fired at that point, were they not?

15           A.       That's my recollection as well.

16           Q.       And do you recall where their rates lined  
17 up at that point?

18           A.       My recollection is that UE's rates in  
19 Illinois were relatively low.

20           Q.       Did they have a fuel adjustment at that  
21 point in time?

22           A.       My recollection is that they did.

23           Q.       Generally --

24           A.       And it was eliminated.

25           Q.       I'm sorry?

1           A.       My recollection is that it was eliminated.  
2     The 1997 law in Illinois allowed any company that still  
3     had a fuel adjustment clause to eliminate it and lock in  
4     rates, and every utility at the time, every sizeable  
5     utility in the state chose to end their fuel adjustment  
6     charge and lock in fuel costs at a level that was  
7     prescribed in the law. They did so, as did all the  
8     others.

9                   MR. CONRAD: Looking at my notes,  
10    Mr. Cohen, from Chairman Davis' questions, that's all I  
11    have. Thank you, Judge.

12                   JUDGE WOODRUFF: Any other recross? For  
13    Ameren?

14                   MS. TATRO: I do.

15    RE CROSS-EXAMINATION BY MS. TATRO:

16           Q.       Mr. Cohen, the Chair talked to you about  
17    Illinois deregulation, and Mr. Conrad followed up on that.  
18    Can you tell me as part of that legislation how long  
19    utility rates were frozen?

20           A.       There was an extension of the freeze.  
21    Initially rates were reduced -- rates were reduced in two  
22    steps. I believe it was a 15 percent rate cut followed by  
23    a 5 percent rate case, both of which had the denominator  
24    of the original amount, so it was a total of 20 percent  
25    for residential customers of Com Ed and Illinois Power at

1 the time, not all companies. CIPS, UE, I think they had  
2 merged at that point. Forgive me if I don't remember  
3 every detail of this.

4 Q. Certainly.

5 A. But there were lesser rate reductions for  
6 the smaller companies, but the two largest had 20 percent  
7 rate cut for residential. Other customer classes had  
8 rates locked in. Those rates were frozen initially, I  
9 think 'til --

10 Q. It was a period of several years, was it  
11 not?

12 A. It was a period, I believe, of seven years,  
13 six or seven years. It was followed by a new law that  
14 extended this so-called transition period and refroze the  
15 rates for an additional two-year period, I think that was  
16 2004 and 2005, after which they became a procurement  
17 regime that was --

18 Q. Okay.

19 A. -- put in place.

20 Q. So when you had your discussions with  
21 Chairman Davis and you talk about the FAC being eliminated  
22 and there was powerful improvements in efficiency, you're  
23 not arguing all of that efficiency was driven by the FAC  
24 being eliminated, are you?

25 A. I'm not. You're right.

1           Q.       So the fact that rates were reduced various  
2 amounts for different utilities and then frozen for almost  
3 a decade probably was a powerful incentive as well; would  
4 you agree?

5           A.       Frozen rates were certainly a very power  
6 incentive for efficiency.

7           Q.       And when that happened, do you know if the  
8 utilities in Illinois were under-recovering -- were unable  
9 to recover their cost of service?

10          A.       I'm not aware that any of the utilities had  
11 an under-recovery. In fact, there was a provision in the  
12 law in '97 that should they under-recover by a particular  
13 amount, which was tied to a Treasury Bill rate plus some  
14 percentages, I can't remember the details, but there was a  
15 floor, and if they were to fail to earn a rate of return  
16 above the floor, they were free to come in and seek rate  
17 relief. No companies did so.

18          Q.       And when the utilities did come back in  
19 after the rate freeze was over, did they not receive an  
20 increase in rates?

21          A.       Well, the utilities after it was all over  
22 were no longer vertically integrated. They had spun off  
23 or sold off all their generation. So they did receive  
24 rate hikes, but --

25          Q.       And that rate hike was for the delivery

1 portion, correct?

2 A. That's correct.

3 Q. Okay. Now, you talked about Commonwealth  
4 Edison and the improvement in the capacity factor from  
5 47 percent to twice that. Do you remember that  
6 discussion?

7 A. Yes.

8 Q. Do you know what availability or capacity  
9 factor or whatever you want to use that Callaway, which is  
10 AmerenUE's plant, operates at?

11 A. I don't.

12 Q. If I told you it was 99 percent in the last  
13 cycle, would you accept that for this conversation?

14 A. I would.

15 Q. Do you see a lot of room for improvement?

16 A. Not in availability.

17 Q. Not when it's already at 99 percent?

18 A. That's right.

19 MS. TATRO: Thank you, sir.

20 JUDGE WOODRUFF: All right. Redirect?

21 MR. IVESON: Just a few, your Honor.

22 REDIRECT EXAMINATION BY MR. IVESON:

23 Q. Do you remember when Ms. Tatro was  
24 originally asking you questions she referred you to your  
25 testimony regarding customer confusion on the bill?

1           A.     Yes.

2           Q.     And what did you base that testimony on?

3           A.     I have observed and spoken with consumers  
4 for more than two decades, and it's been my observation  
5 that they are easily confused by charges on bills which  
6 are not explained and which simply appear as a new line  
7 item.

8                     It's been my experience that most people  
9 interpret that to be a government imposed tax or a charge  
10 not associated with provision of service by the utility  
11 company, and it is objectionable from the customer's point  
12 of view if even for the wrong reason.

13          Q.     And then also do you remember when  
14 Ms. Tatro was asking you about whether you were aware of  
15 other jurisdictions that had an 80/20 split?

16          A.     Yes.

17          Q.     Why did you select the 810/20 split as the  
18 alternative, assuming a FAC was proposed or approved?

19          A.     I think 80/20 is -- provides sufficient  
20 incentive for the company to operate efficiently in  
21 between rate cases because they have enough skin in the  
22 game to motivate them. There is no perfect number.  
23 There's no way to actually measure what is the right  
24 number. That's a judgment call for the Commission to  
25 make.

1                   But in my view, the 5 percent that the  
2 company proposes to be its share is not enough, and I  
3 think in my testimony I gave an example. The numbers are  
4 proprietary. But what's at risk for the company is far  
5 too small a percentage of its overall revenues and  
6 earnings under that framework. Right now the company  
7 bears 100 percent of the risk.

8                   MS. TATRO: Your Honor, I'm going to  
9 interject, I apologize, and object. This has gone beyond  
10 the line of questioning. I asked if any other state had  
11 an 80/20, and he's going back through his testimony about  
12 why he proposed a 80/20. The only commonality is 80/20.

13                   JUDGE WOODRUFF: I'm going to overrule the  
14 objection.

15 BY MR. IVESON:

16                   Q. You may continue, if you have more. If you  
17 don't, that's all right as well.

18                   A. I was going somewhere important here, but I  
19 lost my train, so I'll stop there.

20                   MR. IVESON: All right. I have nothing  
21 further, your Honor.

22                   JUDGE WOODRUFF: Mr. Cohen, you can step  
23 down.

24                   THE WITNESS: Thank you.

25                   JUDGE WOODRUFF: Next witness is Ms. Mantle

1 for the Staff. Good afternoon. I believe you testified  
2 also.

3 THE WITNESS: No. This is the first time  
4 in this case.

5 (Witness sworn.)

6 JUDGE WOODRUFF: Thank you.

7 LENA MANTLE testified as follows:

8 DIRECT EXAMINATION BY MR. DOTTHEIM:

9 Q. Would you state -- please state your name  
10 for the record.

11 A. My name is Lena M. Mantle.

12 Q. And would you please state your business  
13 address.

14 A. Business address is P.O. Box 360, Jefferson  
15 City, Missouri 65102.

16 Q. And would you please state the nature of  
17 your employment.

18 A. I'm employed by the Missouri Public Service  
19 Commission Staff as manager of the energy department.

20 Q. Do you have with you a copy of what has  
21 been designated as Exhibit No. 200HC, the Staff cost of  
22 service report filed in this proceeding?

23 A. Yes, I do.

24 Q. Do you also have with you a copy of what  
25 has been designated as Exhibit No. 224HC, your surrebuttal

1 testimony in this proceeding?

2 A. Yes, I do.

3 Q. And in Exhibit No. 200HC, there's also an  
4 Exhibit No. 200NP, a public version, is there not?

5 A. There is.

6 Q. In Exhibit No. 200HC, you are responsible,  
7 are you not, for the section on the fuel adjustment clause  
8 starting at page 59 of the report?

9 A. Yes, I am.

10 Q. And that section continues to page 65?

11 A. Yes.

12 Q. And also in the Staff cost of service  
13 report, there's also an affidavit of yours, is there not?

14 A. Yes, there is.

15 Q. And also in the back of the report, it's  
16 designated pages 23 to 26, there's a document which  
17 identifies your education and your work experience, does  
18 it not?

19 A. Yes.

20 Q. At this time, do you have any corrections  
21 or changes to make to your section on fuel adjustment  
22 clause in the cost of service Staff report?

23 A. Yes. On page 61, I have re-- corrected the  
24 table in my surrebuttal testimony, so we'll direct people  
25 to that. I'm not going to repeat that. But in the

1 paragraph directly underneath that table in the second  
2 sentence that states, in fact, the Staff's current  
3 AmerenUE rate case fuel run estimates that approximately  
4 5 percent of AmerenUE's system -- net system inputs  
5 requirements are met with fuel and spot purchased power.

6 That should read, the Staff's current  
7 AmerenUE rate case fuel run estimates that less than 2  
8 percent of AmerenUE's net system input requirements are  
9 met with natural gas generation and spot purchased power.

10 Q. And for clarity, would you just go over  
11 that one more time. Would you just state that again.

12 A. The sentence should read, in fact, the  
13 Staff's current AmerenUE rate case fuel run estimates that  
14 less than 2 percent of AmerenUE's net system input  
15 requirements are met with natural gas generation and spot  
16 purchased power.

17 Q. Do you have any other corrections to make  
18 to your -- to the Staff report, Exhibit No. 200HC or NP?

19 A. The footnote on page 60 was also corrected  
20 in my surrebuttal testimony. That would be all the  
21 corrections.

22 Q. If I could refer you to page 64, the second  
23 paragraph, fourth line, the sentence that starts on that  
24 fourth line, I just noticed myself, is the word "if"  
25 missing between the words "even it"?

1 A. I'm sorry. Which -- the second paragraph?

2 Q. Fourth line.

3 A. That starts with the word earnings?

4 Q. Yes.

5 A. You're correct, that should read, its fuel  
6 costs would be recovered even if it does not reach the  
7 off-system sales margin.

8 Q. Referring you to Exhibit No. 224, your  
9 surrebuttal testimony, do you have any corrections to  
10 make? And there's an HC and an NP version, are there not?

11 A. Yes. I have no corrections.

12 Q. If I were to ask you the questions that are  
13 contained in Exhibit No. 224HC and NP today, would your  
14 answers be the same?

15 A. Yes.

16 Q. And the section on the fuel adjustment  
17 clause that's contained in Exhibit No. 200HC and NP, as  
18 you've corrected them and as they're corrected in Exhibit  
19 No. 224HC and NP, they are true and correct to the best of  
20 your knowledge and belief?

21 A. Yes.

22 Q. And Exhibit No. 224HC and NP, the  
23 information there is true and correct to the best of your  
24 knowledge and belief?

25 A. Yes.

1                   MR. DOTTHEIM: At this time I'd like to  
2 offer -- I don't think I've previously or there's  
3 previously been given to the court reporter copies of  
4 Exhibit 224HC. I'm not certain that we've actually -- the  
5 Staff has given to the court reporter Exhibit No. 200HC or  
6 NP.

7                   JUDGE WOODRUFF: Let's go ahead and do that  
8 now. 200HC and NP and 224 have been offered. Are there  
9 any objections to their receipt?

10                   (No response.)

11                   JUDGE WOODRUFF: Hearing none, they will be  
12 received into evidence.

13                   (EXHIBIT NO. 200HC AND NP AND 224 WERE  
14 MARKED FOR IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

15                   MR. DOTTHEIM: And at this time I'd like to  
16 tender Ms. Mantle for cross-examination.

17                   JUDGE WOODRUFF: And for cross, we begin  
18 with Public Counsel.

19                   MR. MILLS: No questions.

20                   JUDGE WOODRUFF: For the State?

21                   MR. IVESON: No questions, your Honor.

22                   JUDGE WOODRUFF: For Noranda?

23                   MR. CONRAD: Just a couple. Thanks.

24 CROSS-EXAMINATION BY MR. CONRAD:

25                   Q.       Good afternoon, Ms. Mantle.

1           A.       Good afternoon.

2           Q.       We'll try to be quick if you'll help me a  
3 little bit.  Forgive me, but I got a little bit lost on  
4 the surrebuttal testimony, and on page 2, the table there  
5 LMM-1, that is a corrected table?

6           A.       Yes.

7           Q.       And that one has the right numbers?

8           A.       Yes.  The only changes were in the Empire  
9 numbers, I believe.  Yes.  The changes were in the dollar  
10 percentages for the Empire rate case, ER-2008-0093.

11          Q.       Somewhere I had in my mind that Empire was  
12 about -- at one point in time had been as much as  
13 67 percent gas fueled.  Is that consistent with your  
14 recollection?  You've been working this area for a long  
15 time.

16          A.       Yes, I have.

17          Q.       Does that number stick in your mind, too?  
18 Maybe I'm combining the natural gas purchased power and  
19 purchased power spot to get to that number.

20          A.       I really don't have that number in mind.

21          Q.       And I notice that Empire has a little bit  
22 of hydro.  Is that that Grand River Dam authority thing?

23          A.       It's a dam down on the Taney Como River.  I  
24 believe they call it Osage Beach.

25          Q.       What -- what conclusion could you -- could

1 you draw from Table LMM-1 other than -- I mean, is there  
2 anything particularly obvious that should jump out at you?

3 A. The natural gas and purchased -- spot  
4 purchased power percentages of Aquila and Empire are very  
5 much different from that of AmerenUE. AmerenUE gets most  
6 of their energy and pays most of their fuel cost dollars  
7 out for coal and nuclear generation. That was the purpose  
8 of that table. And this would be run -- our Staff fuel  
9 model runs to meet net system input only.

10 Q. All right. Turn with me, please, still  
11 stay in surrebuttal, page 5, and there's an answer that  
12 begins on line 8, and I've seen several witnesses today  
13 talk about controlling the price of something that's in a  
14 market, that they can't control the market.

15 A. I would agree with that.

16 Q. What is it that you're then suggesting that  
17 they can control?

18 A. I'm suggesting that they do have some  
19 influence in negotiating power and purchasing the cost of  
20 coal due to the sheer amount of coal that they purchase.

21 Q. Would you agree with me that to some extent  
22 the control might not be on a short spot basis but rather  
23 than on a longer term basis in the selection of the  
24 components used for generation; another way of saying it  
25 might be the generation mix?

1           A.       That definitely influences that, the fact  
2 that they have so much coal, base load coal generation.

3           Q.       So that's something, admittedly not in a  
4 short term, but over a longer period of time is something  
5 they could control?

6           A.       Right.

7           Q.       Lastly, if I'm understanding where Staff is  
8 right now, your position, your Staff position is in  
9 opposition to the adoption of an FAC, right?

10          A.       That is correct.

11          Q.       Have you made any evaluation of an FAC that  
12 has been proposed in preparation of an evaluation if the  
13 Commission decided to approve one?

14          A.       We do have some recommendations for an FAC.  
15 James Watkins made those recommendations.

16          Q.       And the structure of that would be  
17 something that we would deal with under the heading of  
18 rate design --

19          A.       Yes.

20          Q.       -- for the FAC, right?

21                    Were you here for any of the cross-examine  
22 for Professor Morin?

23          A.       I think so, but I really don't remember.

24          Q.       Been a while.

25          A.       It has.

1           Q.       If -- well, if the bond rating agencies  
2 indicated by Professor Morin are not likely to distinguish  
3 between various percentages of pass through from 80, 90,  
4 50, 100 percent, 95 percent or something like that, would  
5 you agree with me that that would --

6                   MR. DOTTHEIM: I'm going to -- I'm going to  
7 object. Ms. Mantle has not filed any testimony on rate of  
8 return.

9                   MS. TATRO: She also testified she doesn't  
10 remember.

11                  JUDGE WOODRUFF: I don't think the question  
12 had anything to do with rate of return. Mr. Conrad, I'll  
13 let you make a response to that.

14                  MR. CONRAD: Well, maybe if I could be  
15 permitted to continue the question --

16                  JUDGE WOODRUFF: I think that would be  
17 helpful.

18                  MR. CONRAD: -- the purpose of it might be  
19 apparent.

20 BY MR. CONRAD:

21           Q.       The question, then, if I might continue,  
22 would that seem to place some level of discretion in the  
23 hands of the Commission?

24           A.       Can you start that question over since it  
25 got interrupted in the middle?

1           Q.       Yes.  According to Professor Morin, if bond  
2 rating agencies don't make a hairline distinction between  
3 the percentages 80, 90, 95 or 100 percent pass through,  
4 would you agree with me that the result of that leaves  
5 some discretion in the hands of the Commission?

6                   MR. BYRNE:  I'm going to object because I  
7 think it improperly characterizes Dr. Morin's testimony.  
8 The question assumes facts not in evidence.

9                   MR. CONRAD:  Do you want to go to the  
10 record?

11                   JUDGE WOODRUFF:  I'm going to overrule the  
12 objection anyway.  You can answer the question.

13                   THE WITNESS:  Speaking for myself, I would  
14 say yes.  I don't know what the Staff -- that wasn't  
15 brought up in a Staff conversation, so I don't know  
16 necessarily I can respond for the Staff.

17 BY MR. CONRAD:

18           Q.       In Staff conversations, do you have votes,  
19 agenda sessions of your own?

20           A.       No.

21           Q.       Okay.  If there was a -- you mentioned --  
22 strike that.

23                   You mentioned that you had done some at  
24 least initial review of how Staff might address the  
25 question of the rate design.  I don't want to get into the

1 specifics of that. That's for another day. But if the  
2 Commission were to approve a FAC, do you know if Staff has  
3 a recommendation as to a percentage pass through?

4 A. No, we do not.

5 Q. Just no position on that at all?

6 A. No position.

7 Q. Now, Ms. Mantle, it is my recollection that  
8 here just within the last 48 or 72 hours Staff filed a  
9 report with the Commission -- and I'm sorry, I don't  
10 remember the case number, you might remember -- that  
11 concerned its review of I believe it was the first period  
12 of the what was Aquila, now it's the GMO thing, on their  
13 fuel adjustment.

14 A. We filed that Monday, or December 1st. I'm  
15 sorry. It was a week ago.

16 Q. So it's been longer than I had specified,  
17 but it's still relatively recent?

18 A. I'm assuming that's the report you're  
19 talking about.

20 Q. And that was an initial level of a prudence  
21 review of that accumulation period?

22 A. Yes.

23 Q. Would it be a fair summary of at least a  
24 part of that that's it's hard to review it for prudence?

25 A. Yes.

1 Q. Are you aware if you came to a conclusion  
2 in that report?

3 A. We came to the conclusion that we could not  
4 find any improvements.

5 Q. While finding that it was kind of hard to  
6 do?

7 A. Yes.

8 MR. CONRAD: I believe that's all. Thank  
9 you.

10 JUDGE WOODRUFF: Any cross for MIEC?

11 MS. VUYLSTEKE: No questions.

12 JUDGE WOODRUFF: Ameren?

13 MR. BYRNE: Thank you, yes.

14 CROSS-EXAMINATION BY MR. BYRNE:

15 Q. Good afternoon.

16 A. Good afternoon.

17 Q. Ms. Mantle, can you please tell me what  
18 your position is at the Commission?

19 A. I'm manager of the energy department.

20 Q. Okay. And what does your current job  
21 entail?

22 A. I am the manager of five sections within  
23 the Commission, having to do with gas and electric, all  
24 gas and electric cases that come in to the Commission.

25 Q. Do you have a copy of the Staff report with

1 you up on the stand?

2 A. Exhibit 200, was it?

3 Q. I don't remember.

4 A. The Staff cost of service report?

5 Q. Yes.

6 A. Yes.

7 Q. And do you have your surrebuttal testimony?

8 A. Yes.

9 Q. And do you have a copy of the deposition

10 that I took of you?

11 A. Yes.

12 Q. Good. That might be helpful. Now, my  
13 understanding is that you are the Staff's primary policy  
14 witness testifying on the fuel adjustment clause issue; is  
15 that fair to say?

16 A. Yes.

17 Q. And I guess Dr. Proctor and Mr. Watkins are  
18 also testifying, but their -- I guess my understanding is  
19 that Dr. Proctor is limited to discussing volatility in  
20 his testimony, you know, he's sort of the companion to  
21 Ajay Arora on the company's side on discussing volatility  
22 analysis; is that correct?

23 A. He reviewed Ajay's testimony and responded  
24 to it, yes.

25 Q. And Mr. Watkins' testimony is limited to

1 talking about the rate design and the tariff provisions if  
2 a fuel adjustment clause is approved?

3 A. He also makes recommendations about  
4 additional reporting requirements and some costs that  
5 should -- should not be in the fuel adjustment clause.

6 Q. Okay. Now, my understanding is that you --  
7 your -- I know you've worked at the Commission for a  
8 while, but only recently have you been involved in sort of  
9 fuel-related issues; is that fair to say?

10 Let me try another way. Hasn't most of  
11 your career been spent in the electric area looking at  
12 load shapes and weather normalization and IRP-type issues?

13 A. Well, I became supervisor of the  
14 engineering analysis group, I believe it was in the year  
15 2000, and at that time I had responsibility -- one of the  
16 responsibilities of that group is the fuel model. I would  
17 also say that as part of the weather normalization,  
18 because it impacted fuel and went hand in hand, I spent a  
19 lot of time with the engineers that were running that  
20 model to understand the impact of what I was doing, the  
21 weather normalization. So more intimately, probably since  
22 year 2000, but before that, I had some familiarity.

23 Q. With regard to weather normalization and  
24 how fuel would relate to that?

25 A. And how dispatch and so forth would relate

1 to that, yes.

2 Q. My understanding from your deposition,  
3 though, is that you haven't reviewed coal or natural gas  
4 contracts or nuclear fuel contracts for any electric  
5 utility; is that correct?

6 A. That's correct.

7 Q. And you've not -- also not reviewed any  
8 off-system sales contracts for electric utilities; is that  
9 true?

10 A. That's true.

11 Q. And I assume you've never participated in  
12 negotiating any of those kinds of contracts?

13 A. I have been participating in the review of  
14 RFPs that would be sent out for responses regarding  
15 purchased power contracts.

16 Q. Okay. For purchased power?

17 A. Yes.

18 Q. As opposed to -- how about off-system  
19 sales, anything on off-system sales contracts?

20 A. No.

21 Q. How about fuel hedging contracts, have you  
22 ever reviewed any fuel hedging contracts?

23 A. No.

24 Q. And in terms of AmerenUE's contracts,  
25 again, and this is based on your deposition, my

1 understanding is, first of all, since you haven't reviewed  
2 any at all, I assume you haven't reviewed any AmerenUE  
3 contracts, right?

4 A. That's correct.

5 Q. And you didn't know, for example, how  
6 many -- you know, whether AmerenUE's coal contracts had  
7 price escalation provisions in them when I deposed you; is  
8 that correct?

9 A. That's correct, not other than what I'd  
10 heard AmerenUE employees tell me.

11 Q. And you didn't know whether our coal  
12 transportation contracts had any price escalators in them;  
13 is that correct?

14 A. That's correct.

15 Q. And you didn't know what portion of  
16 delivered coal costs for AmerenUE consisted of  
17 transportation costs; is that correct?

18 A. That's correct.

19 Q. And what was the date of the deposition?

20 A. October 31st, 2008.

21 Q. So that would have been after your  
22 surrebuttal testimony was filed, correct?

23 A. After the surrebuttal testimony was filed?

24 Q. Yes.

25 A. No. Surrebuttal was filed November 5th,

1 2008.

2 Q. My understanding is that the standard that  
3 the Commission uses or has used in reviewing fuel  
4 adjustment clauses consists of several different parts; is  
5 that correct?

6 A. The three standards that they set out in  
7 both the Aquila and Empire Orders, yes.

8 Q. And don't they also like at Senate Bill 179  
9 when they decide whether they're going to approve a fuel  
10 adjustment clause?

11 A. I would assume that they do. I don't know  
12 for sure what all they look at.

13 Q. Well, isn't there a standard in Senate Bill  
14 179 that says a fuel adjustment clause should be  
15 reasonably designed to provide the utility with a  
16 sufficient opportunity to earn a fair return on equity?

17 A. I believe that's in here, but I would like  
18 to check.

19 Q. Sure. Take a second.

20 A. Can you tell me what section that's from,  
21 or do you know?

22 Q. I don't have the section, but if you have  
23 Senate Bill 179, you can maybe find it.

24 A. Okay. What was the statement again?

25 Q. Reasonably designed to provide a utility

1 with a sufficient opportunity to earn a fair return on  
2 equity.

3 A. Oh, yes, there it is. Yes, Section 4.

4 Q. Okay. And so would it be fair to say that  
5 if a fuel adjustment clause is not required for AmerenUE  
6 to have a sufficient opportunity to earn a fair return on  
7 equity, we shouldn't get one?

8 A. Can you restate that question again?

9 Q. Yes. Would it be fair to say that if a  
10 fuel adjustment clause is not required for AmerenUE to  
11 have a sufficient opportunity to earn a fair return on  
12 equity, we shouldn't get one? Is that fair to say?

13 A. Yes.

14 Q. And conversely, at least under this  
15 standard, if a fuel adjustment clause is necessary for the  
16 company to earn a fair return on equity, we should get  
17 one, at least under this standard?

18 A. Looking at this alone, yes.

19 Q. And I understand there's three other  
20 standards, and we'll get to those, but under this  
21 standard, that would be when you'd get one?

22 A. If you look just at Section 4, subsection  
23 1.

24 Q. Okay. And then my understanding, the  
25 Commission's developed three other standards that it's

1 applied to fuel adjustment clauses. I think you mentioned  
2 those before, right?

3 A. Yes.

4 Q. Okay. And I think those standards were  
5 enumerated in all the cases that it's addressed fuel  
6 adjustment clauses, which is AmerenUE's previous rate case  
7 and the Empire case and the Aquila case were warranted  
8 fuel adjustment clauses; is that correct?

9 A. I don't know if the wording's exactly the  
10 same in every one of them, but more or less, yes.

11 Q. And I think the three standards are in the  
12 Staff cost of service report on page 60. I'm hoping you  
13 can turn there.

14 A. Yes, sir, at the top of that page.

15 Q. First of all, before the enumerated  
16 standards, it talks about cost or revenue changes. Do you  
17 see that?

18 A. Yes.

19 Q. In other words, these three standards apply  
20 to cost and revenue changes; is that correct?

21 A. The sentence -- or the part of the  
22 sentence, the Commission concluded that a cost or revenue  
23 change should be tracked and recovered through an FAC only  
24 if the cost or revenue change is.

25 Q. Okay. So I'm just trying to clarify that

1 they're talking about costs and revenues, costs or  
2 revenues in that sentence, and it's the change in them as  
3 opposed to the absolute amount of them that's at issue; is  
4 that fair to say?

5 A. That's fair to say.

6 Q. And I think during your deposition you said  
7 that the costs that they're talking about are fuel costs,  
8 or at least it would include fuel costs; is that correct?

9 A. Yes.

10 Q. And revenues that they're talking about  
11 there would at least include off-system sales revenues  
12 like those that AmerenUE gets, is that -- do you agree  
13 with that?

14 A. Yes.

15 Q. Okay. And the first standard says that it  
16 should be recovered through a fuel adjustment clause, the  
17 changing costs or revenues, if it is, No. 1, substantial  
18 enough to have a material impact upon revenue requirements  
19 and the financial performance of the business between rate  
20 cases. Did I read that right?

21 A. Yes.

22 Q. And my understanding is that your testimony  
23 is, and this is again from your deposition, is that the  
24 changes in AmerenUE's costs and revenues do not meet that  
25 standard; is that correct? I can give you a cite to the

1 deposition if you want it.

2 A. That's correct.

3 Q. Okay. Do you know how much AmerenUE's  
4 delivered coal costs are each year?

5 A. I know I've looked at that number.

6 Q. Would you agree they're -- that on a  
7 normalized basis it's over \$600 million a year?

8 A. That sounds right.

9 Q. Okay. And would you agree with me that  
10 even when 100 percent of those costs are hedged, they can  
11 still fluctuate, the total cost can fluctuate based on  
12 changes in the burn rate over or under the amount of burn  
13 rate projected?

14 A. Yes.

15 Q. And that could change based on weather and  
16 the weather's impact on AmerenUE's loads; would you agree  
17 with that?

18 A. It would be based off changes in load, yes.

19 Q. And can't AmerenUE's 100 percent hedged  
20 fuel costs change based on changes in diesel fuel costs?

21 A. Yes.

22 Q. Okay. And wouldn't even a small change in  
23 a cost as great as in excess of \$600 million be  
24 substantial in your view?

25 A. Say that -- could you ask that again?

1           Q.       Sure.  Wouldn't even a small change in an  
2 amount so great as in excess of \$600 million a year,  
3 wouldn't even a small change in that amount be significant  
4 in your view?

5           A.       If it's say less than 1 percent, I mean,  
6 1 percent of \$600 million is \$6 million.  That's a lot of  
7 money by itself, but as a part of your total fuel cost,  
8 that's not a big difference.

9           Q.       Do you know what AmerenUE uses diesel fuel  
10 for?

11          A.       I would assume for part of its plants to  
12 get the generators -- as part of getting the generators  
13 going, but then also to deliver fuel.

14          Q.       And how would they deliver fuel?  How would  
15 they deliver fuel using diesel?  I mean, how would they  
16 deliver coal using diesel fuel?

17          A.       With the trucks.

18          Q.       Do you know what AmerenUE's total fuel and  
19 purchased power costs are for this rate case?

20          A.       I've seen the off-system sales agreement,  
21 and I'm trying to remember what exactly it said.  I think  
22 it was 750 million.

23          Q.       Okay.

24          A.       That would include fuel for off-system  
25 sales.

1 Q. Okay. Look at your deposition, if you  
2 wouldn't mind, on page 37. It's not there. Let me just  
3 ask you, then. My understanding is that you haven't done  
4 any analysis of the magnitude of the potential change in  
5 fuel costs from year to year for AmerenUE; is that  
6 correct?

7 A. That's correct.

8 Q. So I guess you really don't know exactly  
9 how much our fuel costs can change from year to year?

10 A. Nobody knows exactly how much it's going to  
11 change.

12 Q. Do you know how much in off-system sales  
13 revenue AmerenUE earns each year?

14 A. I believe that varies.

15 Q. Do you know how much is built into this  
16 rate case on a normalized basis? Well, would you accept  
17 that it's in excess of \$400 million a year?

18 A. That sounds right.

19 Q. And doesn't the amount of off-system sales  
20 revenues vary depending on the price of power in the  
21 marketplace?

22 A. And the availability of generation of  
23 AmerenUE.

24 Q. And I believe you agreed in your deposition  
25 that off-system sales revenues are volatile for AmerenUE.

1 Would you agree with that?

2 A. Yes.

3 Q. And wouldn't even a small change, a small  
4 percentage change in 450, 400, \$450 million a year in  
5 off-system sales revenues have a significant impact on  
6 AmerenUE's finances?

7 A. I'm not for sure what you're referring to  
8 as a small change.

9 Q. Okay.

10 A. If it's \$10,000, no, but --

11 Q. Okay. I understand. And let me ask you  
12 this. Even when our fuel costs are fully hedged, isn't it  
13 true that they can go up due to escalation clauses in  
14 contracts?

15 A. Yes.

16 Q. And wouldn't those locked-in escalations be  
17 changes in costs?

18 A. Yes.

19 Q. And do you know how much AmerenUE's coal  
20 costs escalate from year to year?

21 A. I would imagine it's different for  
22 different contracts. You've got quite a few different  
23 contracts.

24 Q. Did you analyze that or look at that?

25 A. No.

1 Q. So I assume you're not going to know if I  
2 pick different years how much it changed from 2007 to 2008  
3 to 2009, you wouldn't know any of that, right?

4 A. I've seen your testimony on that amount. I  
5 don't have any reason to not believe that.

6 Q. Do you know how much coal transportation  
7 costs increase from year to year?

8 A. No.

9 Q. You didn't look at that?

10 A. No.

11 Q. Are you aware that the Commission found  
12 that AmerenUE met standard No. 1 in the last rate case?

13 A. I don't remember that, but I'll accept --

14 Q. Well, no. Just --

15 A. I don't remember that, no.

16 Q. Okay. You didn't look, I guess?

17 A. I haven't read that Order lately.

18 Q. Let's look at the second standard that the  
19 Commission has to apply, and again I'm page 60 of the  
20 Staff report, and that standard says, changes in costs  
21 have to be beyond the control of management where utility  
22 management has little influence over experienced revenue  
23 or cost levels; is that right?

24 A. That's right.

25 Q. And now, my understanding is -- well, would

1 you agree that most of AmerenUE's coal comes out of Powder  
2 River Basin in Wyoming?

3 A. Yes.

4 Q. The vast majority of it?

5 A. Yes.

6 Q. And I think you agreed in your deposition  
7 that AmerenUE has -- and maybe even today, that AmerenUE  
8 has no ability to control changes in the price of coal  
9 coming out the Powder River Basin?

10 A. Yes, that's correct.

11 Q. Would you agree that those prices are  
12 controlled by national and international market forces?

13 A. They have influence on them, yes.

14 Q. Like even demand from China and India  
15 affects Powder River Basin coal prices, doesn't it?

16 A. Yes. It's my understanding that we're  
17 shipping a lot to China and India.

18 Q. And would you also agree that AmerenUE does  
19 not have any ability to control rail prices?

20 A. That's true.

21 Q. Or diesel fuel costs?

22 A. It has no way to control them, is that what  
23 you're asking?

24 Q. Yes. You agree?

25 A. Yes.

1 Q. How about the price of uranium? We can't  
2 control the price of uranium, can we?

3 A. I don't think so.

4 Q. Or uranium processing costs?

5 A. No.

6 Q. And again, would it be fair to say  
7 international market forces control those costs, those  
8 prices?

9 A. They control.

10 Q. And the same for natural gas, I assume you  
11 don't believe we can control the price of natural gas?

12 A. No.

13 Q. And would it be fair to say -- or the cost  
14 of transportation on the interstate gas pipelines, we  
15 can't control those prices, can we?

16 A. No.

17 Q. Would it be fair to say that we are a price  
18 taker in all those markets?

19 A. You're a price taker, but you do have some  
20 influence over what kind of costs you get.

21 Q. And would it be fair to say we are subject  
22 to market forces in all those markets?

23 A. Yes.

24 Q. And you just said, and I think you said in  
25 your deposition that we have some influence --

1 A. Yes.

2 Q. -- over the cost we pay in those markets;  
3 is that correct?

4 A. I believe that, yes.

5 Q. Have you done any study to measure the  
6 degree of influence that AmerenUE has?

7 A. I take my conclusion off of a PowerPoint  
8 presentation that we received through a DR, and then also  
9 testimony that's been filed by one of your witnesses I  
10 believe also said that you had buying power when it comes  
11 to amount of coal you purchase.

12 Q. But you haven't measured the degree of that  
13 influence --

14 A. No.

15 Q. -- compared to other influences?

16 A. No, I have not.

17 Q. Standard 3 says that the change in costs or  
18 revenues must be volatile in amount, causing significant  
19 swings in income and cash flows if not tracked. Did I  
20 read that correctly?

21 A. Yes.

22 Q. And my understanding is you don't -- you  
23 don't believe that AmerenUE meets that standard either; is  
24 that correct?

25 A. That's correct.

1 Q. But my understanding again is that you  
2 concede that off-system sales revenues are volatile; isn't  
3 that right?

4 A. Off-system sales revenues, yes.

5 Q. And you have also agreed that natural gas  
6 prices are volatile; isn't that correct?

7 A. That they don't cause significant swings.

8 Q. But they're volatile, right?

9 A. Yes.

10 Q. Okay. And diesel fuel costs are volatile,  
11 correct?

12 A. Yes.

13 Q. Okay. Do you know how much of AmerenUE's  
14 cost of delivered coal is comprised of diesel fuel costs?

15 A. No, I do not.

16 Q. Do you know how much of our diesel fuel  
17 costs we hedge?

18 A. I do believe I've got a DR with that number  
19 in it, so I have looked at that. Do you want that number  
20 or do you just want to know if I'm aware of?

21 Q. Knowing you're aware of it is enough.

22 A. Okay.

23 Q. How about the unhedged portion of coal,  
24 would you agree that coal costs that are not hedged are  
25 volatile?

1           A.       Since you're 100 percent hedged for 2009  
2 and just about at that point for 2010, we're looking at  
3 2011. Yeah, if you want to --

4           Q.       Would the coal --

5           A.       The spot purchase -- the spot prices for  
6 coal in 2011 at this point in time, the forward prices,  
7 yeah, those are volatile.

8           Q.       And to the extent, for example, in 2008 or  
9 2009 that our burn changes and we have to go out in the  
10 market, you would agree that the spot market for coal is  
11 volatile; is that correct?

12          A.       That would be a very small percentage of  
13 what you earned.

14          Q.       Sure.

15          A.       But yes.

16          Q.       And I think -- take a look at page 45 of  
17 your deposition.

18          A.       Okay.

19          Q.       And on -- I'm asking you -- well, it really  
20 starts at the bottom of page 44, how much costs have to go  
21 up or down in order to be volatile? And first I asked, if  
22 they go up or down by 20 percent during the course of a  
23 year, would you consider that volatile? You said yes.  
24 How about 15 percent? You said yes. How about  
25 10 percent? Here you're getting into a gray area.

1                   I guess just reading that two pages, my  
2 understanding is your testimony is that somewhere around  
3 10 percent change you agree an item would be volatile, and  
4 then in between 10 percent and 5 percent change it would  
5 be in the gray area, and then below 5 percent it would not  
6 be volatile; is that correct?

7           A.       For just a general description, I mean,  
8 yeah.

9           Q.       Okay. And I guess, you know, you would  
10 agree that average annual energy prices, you've admitted  
11 those are volatile, so I assume you would agree that those  
12 can move greater than that limit in the course of a year?

13          A.       Are you talking about market prices for  
14 electricity?

15          Q.       Market prices for electricity.

16          A.       They can be volatile, yes.

17          Q.       And the same with market prices for gas,  
18 right?

19          A.       Yes.

20          Q.       Were you here this morning when Mr. Arora  
21 testified that the Department of Energy's forecast for  
22 natural gas for 2009 as of January 2008 were over  
23 20 percent higher than the forecast for gas for 2009 as of  
24 December 2008? In other words, their forecast moved  
25 20 percent higher between January 2008 and December 2008.

1 A. I was here when he testified, yes.

2 Q. Do you remember that testimony?

3 A. Yes.

4 Q. So my question is, would you expect that  
5 given that the forecasting uncertainty for natural gas for  
6 2009 has been in excess of 20 percent, that the  
7 forecasting uncertainty for power prices is in that same  
8 general range?

9 A. I can't say that unless I have looked at it  
10 and did a study to say. I don't know if those are  
11 correlated to that great extent.

12 Q. Okay. And also looking at your deposition,  
13 and I'm on page 47, I asked you about significant swings  
14 in income for AmerenUE, because that's part of the  
15 standard, and I think -- let me see if I can find it  
16 exactly. I think you said on page 47 that swings about  
17 5 to \$10 million per year would start to be significant.  
18 Is that correct? Is that a fair statement of your  
19 testimony?

20 A. Yes, that's what I said.

21 Q. Although I think you also agreed there are  
22 a lot of issues less than \$5 million per year in rate  
23 cases that people bring before the Commission all the  
24 time; is that fair to say?

25 A. Sure.

1 Q. Okay. So they must think they're at least  
2 significant enough to bring them before the Commission.

3 Let me ask you this: How did the Staff  
4 come to decide to oppose AmerenUE's proposed fuel  
5 adjustment clause in this case? How was that decision  
6 made?

7 A. We received your filing, your direct  
8 testimony. We had a staff meeting that included myself,  
9 Steve Rackers, division directors. Steve Dottheim was  
10 most likely there, as well as Nathan Williams. There  
11 could have been other staff there, most likely Dan Beck,  
12 and we discussed what the Staff's position should be  
13 regarding an FAC.

14 Q. And who was the ultimate decision-maker  
15 that decided that the Staff should oppose AmerenUE's  
16 proposed fuel adjustment clause? Was it you?

17 A. It's hard -- I think it was kind of a  
18 consensus. I don't know -- I mean, I can't -- we didn't  
19 take a vote and nobody said, okay, I don't care what the  
20 rest of you think, this is the way it's going to be. I  
21 mean --

22 Q. I mean, would it be fair to say no one --  
23 no one individual made a decision, it was just a consensus  
24 that was arrived at by discussion?

25 A. It was arrived at through discussion, yes.

1 Q. And who were the division directors that  
2 were there?

3 A. It would have been Bob Schallenberg and  
4 Natelle Dietrich.

5 Q. And I assume you agree with the decision to  
6 oppose, you agreed at the time to oppose?

7 A. Yeah, or I wouldn't be testifying for it.

8 Q. You still agree with that decision to  
9 oppose it?

10 A. Yes.

11 Q. Let me ask you this: We've had some  
12 testimony over the past couple of weeks that the United  
13 States and the world are suffering through a financial  
14 crisis, there's a credit crisis. There's been a lot of  
15 testimony about that. And first of all, do you agree that  
16 that's going on?

17 A. Yes.

18 Q. And are you aware that Noranda reconsidered  
19 its opposition to AmerenUE's fuel adjustment clause at  
20 least in part as a result of that continuing financial  
21 crisis?

22 A. Yes.

23 Q. And did you ever consider changing your  
24 recommendation due to the impact of that financial crisis?

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

1 Q. Okay. In your opinion, is the existence of  
2 that financial crisis and tight credit markets relevant to  
3 the Commission's consideration of whether to grant  
4 AmerenUE a fuel adjustment clause?

5 A. I'm not a witness on financial matters,  
6 credit markets and so forth, but I -- that's one of the  
7 things that the Commission can take into account when it  
8 makes its decision.

9 Q. Okay. But you aren't -- that's not your  
10 area, so you're not taking that into account when you make  
11 your recommendation; is that fair to say?

12 A. That's fair to say.

13 Q. Okay. In your deposition again on page 68  
14 near the bottom, line 24, I asked you, beginning on line  
15 24, if you had done any analysis to show whether AmerenUE  
16 needs a fuel adjustment clause to have a reasonable  
17 opportunity to recover our cost of service. And this  
18 might have been one of the -- this might have slightly  
19 changed this answer in your corrections. Do you have your  
20 correction sheet there?

21 A. I wrote the correction in my -- I believe I  
22 have the correction written in.

23 Q. Okay. What's your correction to the  
24 answer?

25 A. Typically I leave that for the return

1 analyst, rate of return analyst.

2 Q. Okay. Who's the rate of return analyst in  
3 this case?

4 A. In this case, it would be Steven Hill.

5 Q. Okay. And do you think -- well, scratch  
6 that.

7 Similarly, I believe this is also on  
8 page 69, line 13, I asked you if you did an analysis. I  
9 guess on line 6 I'm asking, did you analyze whether not  
10 having a fuel adjustment clause would adversely affect  
11 AmerenUE's credit rating? And again, my understanding is  
12 you yourself did not do such an analysis?

13 A. Your question was, does that matter? It  
14 wasn't did I do the analysis or -- I answered the question  
15 of whether or not it mattered.

16 Q. And what did you -- you said it does  
17 matter. I'm sorry. Down on 11, then I asked you if you  
18 did that kind of analysis. I think you said that would be  
19 correct, you did not do that kind of analysis. Is that  
20 true?

21 A. That's true.

22 Q. Okay. And again, is that the kind of thing  
23 that you would expect the rate of return person to  
24 consider?

25 A. Yes.

1 Q. And so I assume that also means you  
2 yourself don't really know how AmerenUE's credit rating  
3 would be affected if we get or don't get a fuel adjustment  
4 clause?

5 A. I don't even want to hazard a guess.

6 Q. Okay. Or I would also assume similarly you  
7 wouldn't know how AmerenUE's cost of debt would be  
8 affected by failure to get a fuel adjustment clause?

9 A. No, I do not.

10 Q. Did you look at any credit agency reports  
11 in developing your recommendation?

12 A. Did I look at any?

13 Q. Did you?

14 A. No, I did not.

15 Q. Do you think it's an important  
16 consideration for the Commission to consider how credit  
17 rating agencies would view having a fuel adjustment clause  
18 or not having one in terms of the interest rate AmerenUE  
19 can get?

20 A. Sure.

21 Q. Okay. Are you aware that the lack of an  
22 FAC has been cited repeatedly by credit rating agencies in  
23 analyzing AmerenUE?

24 A. I have seen that in some in the past.

25 Q. Okay. And again, similarly, on page 70,

1 line 22, I asked you, I said, I assume you didn't do any  
2 analysis that shows whether or not having an FAC will  
3 impair our access to credit? And you said, that's  
4 correct. Did I read that right?

5 A. I said I did not do that analysis.

6 Q. Any analysis along those lines would have  
7 been done again by somebody concerned with the cost of  
8 capital, in this case Steven Hill, correct?

9 A. Yes.

10 Q. Now, who considered those issues when the  
11 Staff made its decision -- at the time the Staff made its  
12 decision to oppose AmerenUE's fuel adjustment clause? Was  
13 Mr. Hill in those discussions?

14 A. No, he was not, but Bob Schallenberg was in  
15 the discussions.

16 Q. So to the extent consideration was given to  
17 AmerenUE's financial condition, credit rating, access to  
18 capital, interest rates, that would have been  
19 Mr. Schallenberg's area?

20 A. And there could have been someone from our  
21 financial analysis department in the meeting, too. I just  
22 don't recall.

23 Q. Did Mr. Schallenberg or anyone from the  
24 financial analysis department discuss their analysis of  
25 those issues with you at the time the Staff made its

1 decision to oppose AmerenUE's fuel adjustment clause?

2 A. I can't say. I don't remember.

3 Q. Did any of them provide you with any  
4 written analysis that analyzed those issues?

5 A. No.

6 Q. Did any of them -- did Mr. Schallenberg  
7 file any testimony in this case addressing those issues?

8 A. No, he did not.

9 Q. On page 72 of your deposition, line 12, I  
10 asked you if not having a fuel -- well, on line 8 the  
11 question is, if not having a fuel adjustment clause put  
12 AmerenUE out of the mainstream of other integrated  
13 electric utilities, is that a -- is that a consideration  
14 that matters to you? And you said, no, it does not matter  
15 to me.

16 A. That's correct.

17 Q. Is that correct? And I assume it still  
18 doesn't matter to you?

19 A. No.

20 Q. Okay. Fair enough. And you also said that  
21 you didn't even look at whether electric utilities in  
22 other states have FACs; is that correct? And I'm on line  
23 17 on page 72.

24 A. That's correct.

25 Q. And you still haven't looked, I guess?

1 A. No, I haven't.

2 Q. Okay. So it wouldn't matter to you if  
3 AmerenUE was the only electric utility in the country  
4 without a fuel adjustment clause? That wouldn't matter?

5 A. No.

6 Q. Fair enough. If investors upon whom  
7 AmerenUE depends for access to capital care about that,  
8 shouldn't the Staff also care about that?

9 A. It's the Staff's role to balance both the  
10 ratepayers and the shareholders, so in that balancing,  
11 yes.

12 Q. Let me ask you this: In the Empire  
13 decision, and I can show this to you if you'd like to see  
14 it, but maybe you'll remember it.

15 A. I think I have a copy of that Order, if  
16 that's what you're going to refer to.

17 Q. I think it's on page 34. The Commission  
18 said, and I hope I'm quoting it accurately, quote -- well,  
19 the last sentence in the first full paragraph says,  
20 mainstream of regulation recognizes that it is impossible  
21 for a utility to earn its allowed return on equity in a  
22 rising cost environment without a fuel adjustment clause.  
23 Do you agree with that statement?

24 A. I don't have any reason not to.

25 Q. Okay. Do you think we're in a rising cost

1 environment?

2 A. Yes.

3 Q. Okay. In another place in the Empire  
4 Order, and I think this is on page 35 -- okay. It's the  
5 first sentence in the first full paragraph. It says,  
6 there are circumstances when the use of a fuel adjustment  
7 clause may be appropriate to preserve the financial health  
8 of the utility, and no one, including ratepayers, benefits  
9 when a utility becomes financially unhealthy. Do you  
10 agree with that statement?

11 A. Yes.

12 Q. In your deposition, beginning at page 73,  
13 and it runs for a series pages, so maybe I can tell you  
14 about what I'm about to ask you about, but you can read it  
15 if you'd like to as well. I asked you a series of  
16 questions about how AmerenUE could recover its fuel costs  
17 without a fuel adjustment clause. Why don't you take a  
18 couple minutes and look at 73, 74, 75, see if you remember  
19 that line of questioning.

20 Do you remember it?

21 A. Yes.

22 Q. And I think, paraphrasing, I think I said  
23 assume that we had locked in fuel costs that are  
24 increasing significantly on January 1 of each year. That  
25 was an assumption I asked you to make; is that correct?

1 A. Yes.

2 Q. Just out of curiosity, do you know if that  
3 assumption is true for AmerenUE at this time?

4 A. I believe quite a few of your coal  
5 contracts do have increases on January 1st, is what I've  
6 been told.

7 Q. Okay. And then I said, assume that the  
8 company's other costs were also increasing overall. I  
9 guess some might go up or down, but I said assume that  
10 they are increasing overall, so that they would not offset  
11 the fuel costs, right?

12 A. Yes.

13 Q. And do you have an opinion about whether  
14 that's the actual situation for AmerenUE or not?

15 A. I think we've got more -- some prices going  
16 down now that weren't when we did this deposition, the  
17 price of gasoline.

18 Q. Sure.

19 A. Even, you know, the --

20 Q. Do you know whether our net costs -- I know  
21 certainly --

22 A. There are some that are going down, some  
23 costs that are going down, but yeah, probably the  
24 majority -- I mean, net would be going up, but I don't  
25 know that for sure. I don't have anything to base that on

1 other than all my bills seem to be going up, too.

2 Q. Yeah. And we have asked for a rate  
3 increase in this case, and so -- okay. I understand,  
4 though, you don't know for sure.

5 And I guess I was asking you, you know,  
6 isn't it true, based on those assumptions, that we won't  
7 be able to recover our full cost of service? And in  
8 particular I was saying if you file a rate case under the  
9 traditional rate case method and we want to reflect those  
10 January 1 fuel cost increases in those rates, it will be  
11 months later, May or June of that next year before those  
12 rates can take effect; isn't that correct?

13 A. That's the way it's always been.

14 Q. Okay.

15 A. Or, I mean, since I've been at the  
16 Commission, I should say. I wouldn't say always been.

17 Q. Not before 1913 probably?

18 A. Well, I would -- I hesitate because I do  
19 remember being told about a time period when some  
20 forecasted fuel prices were used. That's my --

21 Q. The way it works now?

22 A. The way it works now.

23 Q. The way it works now, we've got to wait  
24 until May or June to get the cost increases from  
25 January 1, right?

1 A. Yes.

2 Q. And isn't that, in fact, exactly what  
3 happened in our last rate case? When we filed -- there's  
4 been some testimony about this, but we filed, if you  
5 recall, in July of 2006; isn't that correct?

6 A. I believe that's right.

7 Q. And then we had a bunch of fuel and  
8 transportation cost increases on January 1, 2007; isn't  
9 that right?

10 A. I believe we extended that date period to  
11 include January 1st.

12 Q. But it was kind of a stretch to include it,  
13 right?

14 A. That was at the very end of what we could  
15 do as an update period, yes.

16 Q. Okay. And then rates -- when did rates go  
17 into effect that reflected those costs? Do you remember?  
18 I think it was June of 2007.

19 A. It was either the end of May or beginning  
20 of June. The 11 months would have been up then.

21 Q. And so for the period in between January 1  
22 when the fuel costs increased and June of 2007 when the  
23 new rates took effect, we weren't recovering those coal  
24 cost increases; isn't that true?

25 A. Not through increased rates, that's

1 correct.

2 Q. And then my understanding is on -- on  
3 January 1, 2008, there was also a significant increase in  
4 coal and coal transportation costs, delivered coal cost.  
5 Is that your understanding?

6 A. Yes.

7 Q. And I guess the rates that will reflect  
8 those costs are the rates from this case; isn't that true?

9 A. That is true.

10 Q. And the rates -- assuming the full 11-month  
11 suspension period takes place, which it probably will,  
12 don't you think?

13 A. It's likely to.

14 Q. Okay. Then the rates would change in March  
15 of 2009, right?

16 A. Yes.

17 Q. So the first time that the fuel cost  
18 increases from January 1, 2008 will be reflected in rates  
19 is March of 2009, correct?

20 A. Early March 2009.

21 Q. Yeah. And then there's another coal and  
22 coal transportation cost increase on January 1, 2009;  
23 isn't that correct?

24 A. That's my understanding.

25 Q. And it's pretty significant, like all of

1 them that take effect on January 1, isn't it?

2 A. I'm not for sure the amount. It is there.  
3 I don't know the significant. I would assume, yes, it is.

4 Q. You didn't really look at the amount of the  
5 coal cost increases?

6 A. I've seen them. I just don't remember them  
7 at the moment.

8 Q. Surely you must remember they're  
9 significant, though? They're tens of millions of dollars,  
10 aren't they?

11 A. Tens of millions, yes.

12 Q. And so when will rates reflecting the cost  
13 increases on January 1, 2009, when will those rates take  
14 effect?

15 A. Either when you get a fuel adjustment  
16 clause or you file another case to request those  
17 increases.

18 Q. Okay. Isn't it true that under the  
19 existing arrangement, that that has to be the way it  
20 works, we're always months and months -- even in the best  
21 scenario, we're always months and months behind in  
22 reflecting changes in coal costs and coal transportation  
23 costs in rates?

24 A. Yes, and you're months and months behind in  
25 any of the decreases being reflected in rates also.

1 Q. Okay. And I assume that -- well, strike  
2 that.

3 Let me ask you something else you talked  
4 about in your deposition. And I'm on page 75, and you  
5 alluded to this a couple of minutes ago, and line 18 --  
6 it's a long question, but in your answer starting on line  
7 18 you talk about in the 1980s sometimes forecasted fuel  
8 prices were used; is that correct?

9 A. That's correct.

10 Q. But doesn't the Commission now set rates  
11 based on an historic test year at least now?

12 A. That's what it's always had before it, so  
13 yes, that's what it's done.

14 Q. Okay. Let me ask you this: Why didn't  
15 Staff -- if you think this is a potential solution to our  
16 problem of under-recovery, why didn't Staff propose the  
17 use of forecasted fuel costs in this case?

18 A. I don't know.

19 Q. Did you consider it?

20 A. I know there was some discussion when you  
21 guys came in prior to filing the case about the  
22 January 1st, 2009 increase, and we realized that it was a  
23 concern and talked to you guys about delaying your rate  
24 case so you could get it. I don't -- I don't remember  
25 exactly what we discussed then, but I believe after that

1 we had internally subsequent conversations about in the  
2 past there being forecasted fuel.

3 Q. Well, did you participate in the  
4 roundtables where the fuel adjustment clause rules were  
5 developed?

6 A. Yes.

7 Q. My recollection from those roundtables was  
8 the Staff strongly supported using historic costs in the  
9 fuel adjustment clause. Isn't that correct?

10 A. That's correct.

11 Q. So why did you so strongly support using  
12 historic costs in the fuel adjustment clause if now you're  
13 saying we could use forecasted costs?

14 A. For fuel adjustment clause, we have to do  
15 prudence review, and prudence is hard enough -- or  
16 imprudence is hard enough to show, and when you're trying  
17 to show prudence or imprudence of a forecasted fuel cost,  
18 that makes the job measurably harder, and I do believe  
19 that's one of the main -- the main reason was to help with  
20 that prudence evaluation, those prudence audits that Staff  
21 would have to do at least every 18 months.

22 Q. Don't other states use forecasted fuel  
23 costs in their fuel adjustment clauses?

24 A. I believe they do.

25 Q. Okay. Let me ask you this: Let's assume

1 that we don't get a fuel adjustment clause in this case.

2 A. Okay.

3 Q. Will the Staff support the use of  
4 forecasted fuel costs in our next rate case?

5 A. I can't say what the Staff would or would  
6 not do. I know we'd be glad to talk it over with you.

7 Q. Do you think other parties, Public Counsel,  
8 AARP, do you think the other parties would support  
9 forecasted fuel costs?

10 MR. MILLS: I object. It calls for  
11 speculation.

12 JUDGE WOODRUFF: Sustained.

13 MR. BYRNE: I'll withdraw the question.  
14 You're right, Mr. Mills, it's pure speculation what you  
15 might do in the future.

16 JUDGE WOODRUFF: Mr. Byrne, I'm going to  
17 interrupt you. We've been going about two hours. We're  
18 do for a break. I would like to finish at least with  
19 Ms. Mantle tonight. But we'll take a ten-minute break.  
20 We'll come back at 5:05.

21 (A BREAK WAS TAKEN.)

22 JUDGE WOODRUFF: We're back from break.  
23 Mr. Byrne, you can continue your cross.

24 MR. BYRNE: Thank you, your Honor.

25 CROSS-EXAMINATION BY MR. BYRNE:

1           Q.       Ms. Mantle, we were talking about  
2 forecasted fuel costs, I think, when we broke?

3           A.       Yes.

4           Q.       And let me ask you this on a new topic.  If  
5 the Commission permits AmerenUE to have a fuel adjustment  
6 clause, my understanding from your deposition is that your  
7 testimony is that the Staff will be able to administer it;  
8 is that correct?

9           A.       Yes.

10          Q.       And you are managing to administer the fuel  
11 adjustment clauses of Aquila and Empire?

12          A.       Yes.

13          Q.       Taking a look at your surrebuttal testimony  
14 for a minute, on page 5, you are talking about how the  
15 company is likely to file a rate -- go ahead and get it.

16          A.       Thank you.  Okay.

17          Q.       You're talking about how we can file  
18 another rate case.  I'm not exactly finding what I want,  
19 but somewhere in your surrebuttal you talk about the  
20 likelihood of filing a rate case because we've got the  
21 Sioux environmental -- Sioux plant environmental upgrades  
22 that we were scheduled to complete by the end of 2009.  Do  
23 you remember that testimony?

24          A.       Yes.

25          Q.       And how important was the fact that we were

1 likely to come in for a rate case to recover those Sioux  
2 upgrades in your decision to oppose the FAC?

3 A. It was an important part of our decision.  
4 Looking at the analysis that Ajay did and seeing that --  
5 what it showed and the problems that Dr. Proctor found  
6 with it and the fact that you would be back in within a  
7 short period of time so we could see what -- more of  
8 what's happening in the markets, especially with MISO  
9 prices, as we get more data we'll be able to estimate  
10 better what correlations are and what may happen.

11 Every bit of data that we can get towards  
12 that end would give us more information to help us to  
13 measure some of these things that you've been talking  
14 about.

15 Q. Were you in the hearing room when Mr. Voss  
16 was talking, and I think Mr. Birk also testified about the  
17 potential for delaying that Sioux environmental project?

18 A. I wasn't in the hearing room. I was  
19 listening upstairs on my computer.

20 Q. And so let me ask you this: If AmerenUE  
21 defers its Sioux project, environmental upgrades, do you  
22 have any reason to think that AmerenUE would come in for a  
23 rate case in 2009?

24 A. You've got Taum Sauk coming back online,  
25 too. I believe there will be some cost above what the

1 insurance will cost. I don't know if that will be enough  
2 to bring you in or not, but that's another capital  
3 expenditure that you're putting out currently. So I can't  
4 see that you'll be out for a long period of time.

5 Q. Okay. So you're -- the fact that we're  
6 considering delaying the Taum Sauk environmental upgrade  
7 or if it even got delayed wouldn't change your  
8 recommendation about an FAC; is that correct?

9 A. You said the Taum Sauk. You mean the  
10 Sioux, I'm assuming?

11 Q. Yes.

12 A. That's right.

13 Q. Okay. Do you think it is a good policy for  
14 the Commission to base its decisions on the uncertain  
15 possibility that another rate case might be filed in the  
16 future?

17 A. Well, the way you've been talking about how  
18 everything's going up in cost, I wouldn't say it's very  
19 uncertain if costs are continuing to rise as you discuss.

20 Q. Let me ask you this: If anything,  
21 shouldn't the Commission make decisions that will minimize  
22 the number of rate cases rather than make a decision that  
23 will -- that's premised on AmerenUE immediately coming  
24 back in for another rate increase?

25 A. Well, I do know that in, I believe it was

1 the Empire Order, the Commission said -- or excuse me. It  
2 was the Ameren Order -- that rising costs were not a  
3 reason in itself for an FAC, that utilities could come in  
4 for rate cases to collect those rising costs. So we based  
5 some of our decision off that statement in the  
6 Commission's Order.

7 Q. Was that a consideration in the Aquila or  
8 Empire case when the Commission gave those utilities fuel  
9 adjustment clauses? Was the timing of the next rate case  
10 a consideration of the Commission in those cases?

11 A. I don't know.

12 Q. Did you look at those Orders?

13 A. Oh, you mean from the Commission Order?

14 Q. Yeah, from the Commission Order.

15 A. I don't remember that they were.

16 Q. Okay. But you did look at those Orders?

17 A. Yes.

18 Q. Okay. Do you know of any other commission  
19 that has ever denied an electric utility the opportunity  
20 to use a fuel adjustment clause because it might file  
21 another rate case in the future?

22 A. No.

23 Q. On page 5, I think it's line 16, you talk  
24 about something you just mentioned, which is if we wait  
25 for another rate case, there'll be more information

1 regarding markets, prices and hedging past 2010 than  
2 exists today. Do you see that?

3 A. The more information -- the way you read  
4 it, it sounded like more information past 2010. It's the  
5 hedging past 2010 that will be available. But yeah, that  
6 is what it says.

7 Q. What kind of information might become  
8 available that would lead you to conclude that a fuel  
9 adjustment clause might be appropriate for AmerenUE in the  
10 next rate case?

11 A. I don't know.

12 Q. Isn't it true that there's always more  
13 information available as you wait to a future date?

14 A. Sure.

15 Q. So you could always say that whenever  
16 AmerenUE asks for a fuel adjustment clause, you can always  
17 say wait another year and we'll have more information?

18 A. Probably the biggest area would be the MISO  
19 markets as they develop would give us more information,  
20 and that has so much to do with those volatile off-system  
21 sales that you're talking about.

22 Q. In the Staff report, you have a Schedule  
23 that shows the timing of different dates in our -- for our  
24 next rate case, and maybe if you could turn to that, I'd  
25 like to ask you some questions. I think it's on -- looks

1 like it's on page 62.

2 A. I will have to emphasize, that's not  
3 definite. That's just a possible timeline.

4 Q. Sure. But your possible timeline, well,  
5 you have AmerenUE files a rate case, question mark, and it  
6 looks like the line is maybe April, between end of April,  
7 beginning of May 2009?

8 A. Yes.

9 Q. Okay. And then the operation of law date  
10 you show is the end of March, beginning of April 2010,  
11 right? Rates go into effect, new rates go into effect?

12 A. Yes.

13 Q. And you have us capturing, I guess getting  
14 the Sioux plant in the cost of service, and it looks like  
15 the Sioux plant goes into service at the end of calendar  
16 year 2009?

17 A. That was just an estimation.

18 Q. I mean, does the Staff ever let anyone  
19 reach that far into the future to put a rate base item  
20 into rates?

21 A. I don't know. I was just trying to put in  
22 something that would be an example of how -- you know,  
23 yes, it could be later out than that, but it could be --  
24 that's about the earliest I think it could happen. I  
25 don't know that we've ever gone out that far to put things

1 in rates. You're right.

2 Q. I mean, it would be more like July, we  
3 could for sure pick up a plant at the end of 2009 if we  
4 filed in July like we did last rate case for the fuel  
5 costs?

6 A. Yeah. You're right.

7 Q. I'd like to talk a little bit about the  
8 other utilities in Missouri and fuel adjustment clauses.  
9 We talked a little bit, Aquila and Empire both have fuel  
10 adjustment clauses, right?

11 A. That's correct.

12 Q. And Kansas City Power & Light Company does  
13 not have a fuel adjustment clause; is that right?

14 A. That's correct.

15 Q. And my understanding is that they -- as  
16 part of their regulatory plan, they gave up the right to  
17 ask for a fuel adjustment clause; is that true?

18 A. For as long as the regulatory plan is in  
19 effect.

20 Q. So they're really not eligible for a fuel  
21 adjustment clause at this point in time?

22 A. They've -- they've said they will not ask  
23 for one.

24 Q. Okay. They've agreed not to ask for one --

25 A. Yes.

1 Q. -- is that a fair way to say it?

2 A. That's a fair way to say it.

3 Q. And is it -- is it my understanding that  
4 you support fuel adjustment clauses for Aquila and Empire  
5 but don't for AmerenUE?

6 A. Yes.

7 Q. Okay. And is the main reason that you --  
8 for that difference is that Ameren gets -- AmerenUE gets  
9 its power, generates its power from the coal and nuclear  
10 generation primarily, whereas Aquila and Empire get their  
11 power from gas-fired generation and power purchases? Is  
12 that fair to say?

13 A. That's fair to say because coal, you've got  
14 the long contracts for supply of coal as compared to what  
15 you get for natural gas, and the availability of long-term  
16 bilateral agreements out there for purchased power is  
17 not -- it's not readily available.

18 Q. Let me ask you this: Is this reflected on  
19 your Schedule LM-1 that we talked about before?

20 A. What's reflected on Schedule LM-1 is the  
21 percentage of energy and dollars spent on each source of  
22 energy for the utilities to meet their net system input.

23 Q. Okay. And I think you talk on page 8 of  
24 your surrebuttal testimony that -- and maybe this is what  
25 you were just referring to in your answer -- that hedging

1 coal is very different from hedging gas because unlike  
2 long-term contracts for coal, long-term supply contracts  
3 for gas are not the norm. Is that -- am I at least  
4 paraphrasing correctly what your testimony is?

5 A. Yes.

6 Q. And how long are the coal contracts that  
7 you're talking about?

8 A. What I saw of your-all's coal contracts,  
9 they can run from three or four months, but the majority  
10 or them are three, four, five years.

11 Q. Okay. And what evidence do you have that  
12 contracts of that length are not the norm for the gas  
13 market?

14 A. I have never heard of a lot of -- you can  
15 get some gas contracts for that amount, for that long  
16 period of time, but because of the volatility of gas  
17 prices, I think suppliers are less likely to offer those  
18 kind of contracts.

19 Q. Have you ever seen any gas contracts?

20 A. I've not seen them. I have sat in on --  
21 when the gas utilities come in to talk to the Staff about  
22 their hedging practices, I have sat in on those  
23 discussions for I think just about every one of the gas  
24 utilities here in the state.

25 Q. Are you aware that AmerenUE layers in its

1 gas contracts over many years?

2 A. I believe they start about six years out.

3 Q. And how can they do that without having  
4 long-term contracts available?

5 A. They do have some six years out, but there  
6 aren't a very large percentage of what they do hedge out.  
7 They do have a ceiling, I believe, on how much they can  
8 hedge that far out.

9 Q. Is there any reason that gas producers  
10 wouldn't be willing to sell contracts for gas for six  
11 years or five years, whereas coal producers would? Is  
12 there any economic reason one would and one wouldn't?

13 A. The past market of both natural gas and  
14 coal lends itself to the wildly fluctuating natural gas  
15 prices. Suppliers would not want to tie up their supply  
16 at a low price if they think they may be able to get it at  
17 two or three times the price in the future. Whereas, coal  
18 is just emerge-- I mean, in the past, contracts would be  
19 for much longer than what they are now, and coal  
20 contracts, you know, you purchased from a mine and you got  
21 the coal for a long period of time.

22 Q. Now it's shorter?

23 A. Now it is shorter, yes, and they have  
24 escalation rates in them, where in the past they weren't  
25 as likely to.

1 Q. But you are aware of some gas contracts  
2 that last as long as six years?

3 A. There are some, yes.

4 Q. And isn't it possible to also fully hedge  
5 gas prices using financial instruments?

6 A. If you know what your natural gas usage is  
7 going to be.

8 Q. Isn't there a New York Mercantile Exchange  
9 that trades financial instruments related to gas?

10 A. Are you talking about the NYMEX?

11 Q. NYMEX, yes.

12 A. Yes.

13 Q. And aren't gas futures contracts available  
14 for purchase and sale on the NYMEX?

15 A. That's my understanding.

16 Q. And can't you buy gas options on that  
17 exchange?

18 A. That's my understanding.

19 Q. Can you buy puts and calls?

20 A. Yes.

21 Q. And collars?

22 A. Yes.

23 Q. Isn't it true that the NYMEX market for  
24 natural gas financial instruments is more developed than  
25 anything similar for coal?

1 A. Yes.

2 Q. Isn't it a more liquid market than anything  
3 similar for coal?

4 A. Yes.

5 Q. Can't it be used by anybody, including  
6 Empire and Aquila, to hedge their natural gas price  
7 exposure?

8 A. It's also used by speculators that are out  
9 there just trying to make money.

10 Q. What about purchased power, isn't it  
11 possible to hedge purchased power?

12 A. I believe it's your-all's testimony that  
13 you hedge about 30 percent. Are you talking about  
14 bilateral contracts or purchases on the off-system sales  
15 purchases?

16 Q. Well, I guess I'm talking about -- I'm  
17 not -- I'm talking about purchased power. I'm talking  
18 about the source of power for Aquila and Empire that's  
19 purchased power.

20 A. Okay. And what was the question again?

21 Q. The question is, isn't it possible to hedge  
22 purchased power? For example, can't you enter into a  
23 long-term contract at a fixed price for purchased power?

24 A. You can.

25 Q. Okay. And don't utilities actually do

1 that?

2 A. Not as much as they used to.

3 Q. Okay. But do you know if AmerenUE has any  
4 long-term fixed price purchased power contracts?

5 A. I believe you have one with Intergy or  
6 Arkansas Power -- it was Arkansas Power & Light when it  
7 started.

8 Q. And if you look at LM-1, it looks like --  
9 well, for both Aquila and Empire -- do you have LM-1 in  
10 front of you? I'll wait a second here.

11 A. Let me get the corrected version in my  
12 surrebuttal.

13 Q. It's on page 2 of your surrebuttal.

14 A. Yes.

15 Q. And it looks to me like they actually have  
16 sort of hedged -- Empire and Aquila have hedged a fairly  
17 significant amount of their purchased power by entering  
18 into contracts rather than purchasing it on the spot  
19 market; is that true?

20 A. They have -- they do get a considerable  
21 amount of their energy from purchased power agreements.

22 Q. Do you know how long the -- how long the  
23 terms of the agreements are that are covered under that  
24 purchased power contract column for Empire and Aquila?

25 A. I know some of the contract lengths, yes.

1 Q. I mean, is it possible that these contracts  
2 are as much as five years in length?

3 A. We would be getting to the end of some of  
4 these contracts, and I'm -- I don't know that I'm at  
5 liberty to say a whole lot about the contracts because it  
6 is a different utility.

7 Q. Okay.

8 A. But they are long-term contracts that were  
9 entered into --

10 Q. That's good enough.

11 A. -- several years ago.

12 Q. That's good enough. Long-term contracts is  
13 fine.

14 And I guess you -- well, don't tell me if  
15 this is confidential information, but do you know whether  
16 those contracts are at a fixed price or at a variable  
17 price?

18 A. There's some of both.

19 Q. On page 8 of your surrebuttal testimony,  
20 line 5, and this is what I was talking about a little bit  
21 before, it says, hedging coal is very different from  
22 hedging natural gas. Unlike long-terms contracts for  
23 coal, the long-term supply contracts for natural gas are  
24 not the norm. Well, I guess I asked you about that  
25 already.

1                   Well, but then I guess later on you say --  
2 on line 14 on page 8 you say, there is little incentive  
3 for the seller of a purchased power contract to price  
4 energy below what it can achieve in the market. Do you  
5 see that?

6           A.       Yes.

7           Q.       And are you implying that people who sell  
8 coal do have an incentive to price their coal sales below  
9 the market price?

10          A.       No. I'm implying that if you do have coal  
11 that you can sell, you're going to sell it closer to the  
12 market price than in the past where it would have been a  
13 cost plus type of contract.

14          Q.       But you're saying there's little -- there's  
15 little incentive for the seller of a purchased power  
16 contract to price energy below what it can achieve in the  
17 market. You're not contrasting that with a coal seller,  
18 are you?

19          A.       No.

20          Q.       Okay. And would you agree that Aquila's  
21 and Empire's purchased power deals are made in the same  
22 power markets that AmerenUE makes its off-system sales?

23          A.       Empire's, some of their purchased power  
24 agreements were made before the markets developed the way  
25 they are now.

1 Q. Okay.

2 A. Before the RTOs were developed and -- and  
3 so I can't really say if it's a majority or just exactly  
4 how many, how much of them, but some of them are for --  
5 formed before.

6 Q. To the extent they're making purchases now  
7 in the power markets, they're purchasing in the same power  
8 markets that we're selling our off-system sales, aren't  
9 they?

10 A. They're in the Southwest Power Pool versus  
11 you guys being in MISO.

12 Q. Okay. But to the extent that there's a  
13 national market for electric power, it's the same national  
14 market, although I understand it's a separate RTO?

15 A. Yes.

16 Q. And would it be fair to say to the extent  
17 that their purchased power costs are volatile, AmerenUE's  
18 off-system sales revenues are also equally volatile?

19 A. Yes.

20 Q. Okay. Now, a point of contention is that  
21 you didn't include off-system sales on Table LM-1, is  
22 that -- I mean, it's true that they're not included,  
23 right?

24 A. It's true that they're not included.

25 Q. Okay. And I think you said the reason you

1 didn't include it is you were looking -- just looking to  
2 have the fuel costs on Table LM-1; is that correct?

3 A. The fuel costs to meet native load, yes.

4 Q. Okay. But wouldn't you agree that one of  
5 the components of the proposed fuel adjustment clause and,  
6 in fact, your recommendation if there is a fuel adjustment  
7 clause would be including our off-system sales revenues;  
8 is that true?

9 A. That is a component of fuel adjustment  
10 clauses, could be, yes.

11 Q. Okay. So if you wanted to judge the  
12 magnitude of the costs and revenues and the volatility of  
13 the costs and revenues that would be in a fuel adjustment  
14 clause, you would include off-system sales revenues in  
15 this chart, right?

16 And I'm not saying that was your purpose,  
17 but if you did want to make this chart to show the  
18 volatility of the components of the fuel adjustment  
19 clause, you'd have to include off-system sales revenues?

20 A. Empire and Aquila are in a completely  
21 different position when it comes to making off-system  
22 sales than AmerenUE. I can't make that comparison.  
23 That's why I tried to narrow it down to what could be  
24 compared.

25 Q. But isn't off-system sales revenue the very

1 volatile component of our proposed fuel adjustment clause?

2 A. I would assume that's why we've always had  
3 disagreements in rate cases on how much the revenues  
4 should be from off-system sales. Without a fuel clause,  
5 there's always a lot of disagreement among the parties.

6 Q. Why is that?

7 A. Because it varies.

8 Q. And is it hard to predict?

9 A. Yes.

10 Q. And how much of a difference is there  
11 amongst all the parties typically in a rate case on the  
12 level of off-system sales revenues? Tens of millions of  
13 dollars?

14 A. Sure.

15 Q. On page 10 of your surrebuttal testimony,  
16 you say -- hopefully I can find it, but you say the  
17 Commission didn't mention regulatory lag in the Aquila and  
18 the Empire decisions granting a fuel adjustment clause?

19 A. I did a search and I couldn't find in the  
20 Empire case at all, and in the Aquila I found it, but it  
21 was only for an AAO request.

22 Q. Like a word search on the computer?

23 A. Yes.

24 Q. Or a term?

25 A. Versus me reading it looking for it, yes.

1           Q.       Sure. Sure. No. I understand. But even  
2 though the words regulatory lag weren't in those cases,  
3 are you implying that regulatory lag, the concept of  
4 regulatory lag wasn't a consideration for the Commission  
5 in granting a fuel adjustment clause to Empire and Aquila?

6           A.       I don't know what -- all I can base it off  
7 of is what the Commission said in its Order that said that  
8 rising costs in itself should not be a reason for an FAC,  
9 that the utility can come in for a rate case for that, and  
10 I believe that was an Ameren Order.

11          Q.       Here's a quote from the Aquila Order, and  
12 I'll show it to you if you want.

13          A.       I've got a copy of that, too.

14          Q.       Look on -- look on page 36.

15          A.       Okay.

16          Q.       In the second full paragraph it says, when  
17 a utility's fuel and purchased power costs are oscillating  
18 in that way, the time-consuming ratemaking process cannot  
19 possibly keep up with the swings. Isn't that -- isn't  
20 that regulatory lag, where the time-consuming process of a  
21 rate case can't keep up with swings in fuel costs? I  
22 mean, I know they don't use the words regulatory lag.

23          A.       I'm trying to figure out whether this is  
24 just referring to what the parties said in the case or if  
25 this is a statement the Commission is making. On page 35,

1 they talk about Ms. Brockway's criterion, Cary  
2 Featherstone's criterion, a third criterion. So I don't  
3 know if this is a statement the Commission is making or if  
4 it's a statement from a party's case.

5 Q. Okay. And so, I mean, what you're saying  
6 is -- I guess my real question is, even if they didn't use  
7 the word regulatory lag, is it your testimony that  
8 regulatory lag was not a consideration in the Commission's  
9 awarding a fuel adjustment clause to Aquila?

10 A. Past what's in the Order, I can't tell what  
11 was a part of the Commission's consideration.

12 Q. Okay. How about let's look at -- do you  
13 have the Empire Order with you?

14 A. Yes.

15 Q. Look on page 38 if you would. Are you  
16 there?

17 A. Yes.

18 Q. Okay. Look the bottom of that first full  
19 paragraph. It says, Staff estimated that between 2002 and  
20 2006 Empire's shareholders had to absorb approximately  
21 \$85.5 million of fuel and purchased power costs between  
22 rate cases.

23 A. Yes, I see that.

24 Q. Because of rising fuel costs, Empire's  
25 actual earned return on equity in 2006 was about

1 9 percent. In 2007 that dropped to only about 7 percent.

2 Isn't that regulatory lag?

3 A. I don't know if it's regulatory lag or just  
4 rising fuel costs.

5 Q. Well, how would you define regulatory lag?

6 A. Regulatory lag is the difference between  
7 when a cost is incurred and when it's put into rates.

8 MR. CONRAD: Your Honor, I really hate to  
9 prolong this, but is counsel referring to the Empire Order  
10 in the 0315 case?

11 MR. BYRNE: No, your Honor. I'm referring  
12 to the Empire Order in the case where the fuel adjustment  
13 clause was awarded,

14 MR. CONRAD: Which case is it?

15 MR. BYRNE: It would be Case No.

16 ER-2008-0093.

17 BY MR. BYRNE:

18 Q. Is that -- was that your understanding,  
19 Ms. Mantle?

20 A. Yes.

21 Q. And the Aquila case, I guess just to be  
22 clear, the Aquila case that I was referring to is Case  
23 No. ER-2007-0004. Was that your understanding,  
24 Ms. Mantle?

25 A. Yes.

1           Q.       Thanks.  On page 8 of your surrebuttal  
2 testimony, you talk about one difference between AmerenUE  
3 and Aquila and Empire is that neither Aquila nor Empire  
4 are even close to the size of UE and, therefore, they did  
5 not have the same resources available to manage their fuel  
6 costs as UE does.  Do you see that?  I'm on page 8 of your  
7 surrebuttal testimony.

8           A.       Yes.

9           Q.       And so I guess is the size of AmerenUE  
10 versus Aquila and Empire an important consideration in  
11 whether AmerenUE should be granted a fuel adjustment  
12 clause?

13          A.       It's an important distinction between the  
14 companies, yes.

15          Q.       But that's -- is it an important  
16 consideration in the decision as to whether a fuel  
17 adjustment clause should be awarded?

18          A.       Important?  It's a consideration to be  
19 included.  I don't --

20          Q.       Is it -- okay.  Is it -- let's start with  
21 is it a consideration in whether a fuel adjustment clause  
22 should be awarded?

23          A.       The resources available to hedge, to do  
24 fuel purchasing, the complexity of that I think should be  
25 considered.

1 Q. Do you believe that AmerenUE is more  
2 capable of managing its fuel costs than Aquila and Empire  
3 because it has more and better resources?

4 A. Well, now it's KCPL, so I don't know about  
5 Aquila. We'll have to wait and see. That company's  
6 changed a little bit. But Empire is a very small company,  
7 and I do believe that UE has more resources to do that  
8 than them.

9 Q. And do you think -- and would the same have  
10 been true of Aquila before they merged with KCPL or  
11 whatever they are now?

12 A. Yes.

13 Q. Do you think fuel adjustment clauses should  
14 only be granted to utilities that have limited capability  
15 to manage their fuel costs?

16 A. No.

17 Q. Do you think any -- do you know of any  
18 other state that applies that standard in determining  
19 whether to grant a fuel adjustment clause to the utility?

20 A. No.

21 Q. Has this Commission ever said that that's  
22 their policy in deciding whether to grant or deny a fuel  
23 adjustment clause?

24 A. No.

25 Q. Let me ask you this: Now that Aquila has

1 been acquired by Kansas City Power & Light, do you believe  
2 that their fuel adjustment clause should be taken away  
3 from them?

4 MR. MILLS: I object to the form of the  
5 question. Assumes facts not in evidence and perhaps not  
6 even true.

7 MR. BYRNE: Well, I'll rephrase the  
8 question, your Honor.

9 BY MR. BYRNE:

10 Q. Assuming Aquila is eventually merged or  
11 acquired by Kansas City Power & Light or its parent, at  
12 that point would you recommend that Aquila's fuel  
13 adjustment clause be taken away from it because now it has  
14 more ability to manage its fuel costs?

15 A. Solely based on that, no.

16 Q. Do you think other vertically integrated  
17 utilities that have fuel adjustment clauses are all  
18 smaller than AmerenUE?

19 A. I don't have anything to base that on.

20 Q. Or less able to manage their fuel costs?

21 A. I don't know.

22 MR. BYRNE: Thank you, Ms. Mantle. I don't  
23 have any other questions.

24 JUDGE WOODRUFF: Thank you. I don't have  
25 any questions from the Bench, so there's no need for

1 recross. Any redirect?

2 MR. DOTTHEIM: Just a few.

3 REDIRECT EXAMINATION BY MR. DOTTHEIM:

4 Q. Ms. Mantle, in cross from Mr. Byrne, I  
5 think you had indicated that you had reviewed RFPs for  
6 purchased power contracts for various utilities. Could  
7 you identify the utility companies for which you've  
8 reviewed RFPs for purchased power contracts?

9 A. I know I've reviewed them for Aquila, and I  
10 probably reviewed one for AmerenUE also at least. That's  
11 the best that I can remember right now.

12 Q. Okay. And Mr. Byrne in referring you to  
13 your surrebuttal testimony, your Table LM-1, the row, I  
14 think, purchased power contracts, in questioning regarding  
15 purchased power contracts of other utilities, I think you  
16 indicated that there are long-term purchased power  
17 contracts of other utilities that are coming to an end.

18 Do you know what is the present  
19 availability of long-term purchased power contracts in the  
20 present market?

21 A. It's my understanding from the resource  
22 planning meetings with these utilities that there is not a  
23 lot available for long-term purchased power contracts on  
24 the market right now, and nothing like the kind of  
25 contracts that these utilities have now.

1                   MR. DOTTHEIM: That's all the questions I  
2 have.

3                   JUDGE WOODRUFF: All right. Ms. Mantle,  
4 you can step down.

5                   Let's take a look now where we're at for  
6 the evening. As painful as it would be to go later  
7 tonight, I know it would be even more painful to have to  
8 go later tomorrow night. Looking at the chart here, we've  
9 got Dr. Proctor, Mr. Watkins and Mr. Kind yet on the  
10 overview of FAC. Can anybody give me any idea how long  
11 cross might take on them? Start with Ameren.

12                   MR. LOWERY: I don't think very long.

13                   JUDGE WOODRUFF: And by not very long, can  
14 you give me more details?

15                   MR. LOWERY: Well under an hour total, I  
16 would think.

17                   JUDGE WOODRUFF: Okay.

18                   MR. LOWERY: Maybe even less than -- the  
19 low end of that range.

20                   JUDGE WOODRUFF: Anybody else have cross  
21 for those people?

22                   MR. CONRAD: We don't intend to have  
23 anything for them.

24                   JUDGE WOODRUFF: What about the other  
25 witnesses that we'd be looking at for tomorrow on the

1 details of the FAC? I know you've got some settled on  
2 that.

3 MR. DOTTHEIM: Staff has very limited  
4 cross.

5 MR. LOWERY: Certainly if it settles, then  
6 not much at all, I would think.

7 JUDGE WOODRUFF: It's my understanding it's  
8 not all going to settle, but parts of it will or might?

9 MR. LOWERY: Well, Mr. Dottheim -- I'm not  
10 sure if it settled, what would be left, but Mr. Dottheim  
11 seemed to have some thought earlier that maybe there would  
12 still be something hanging out there that hasn't already  
13 been dealt with today. I honestly may be overlooking it,  
14 but I can't think what it is right now.

15 MR. DOTTHEIM: Well, maybe we need to  
16 confer, but if I am correct, my impression is what is left  
17 outstanding would not take very long.

18 JUDGE WOODRUFF: I'm kind of looking at a  
19 worst-case scenario here, too. If it doesn't settle, how  
20 long would we be looking at?

21 MR. MILLS: I think the general consensus  
22 is, even if doesn't settle, there he's not going to be a  
23 great deal of cross-examination in any event.

24 MR. CONRAD: I want to go on record as  
25 being opposed to things hanging out. So in that sense,

1 I'm in support of Mr. Dottheim's position. It might be  
2 useful, Judge, before you close out the record tonight, if  
3 we could go off the record maybe for five minutes and let  
4 counsel kind of see what we are rather than try to do this  
5 and extend the reporter's problems and her fingertips.

6 JUDGE WOODRUFF: Let's go ahead and do  
7 that. We'll take a five-minute break, and we'll come back  
8 at let's say ten 'til.

9 (A BREAK WAS TAKEN.)

10 JUDGE WOODRUFF: During our break, the  
11 attorneys had some discussions amongst themselves. Who  
12 wants to explain what happened? Mr. Dottheim?

13 MR. DOTTHEIM: Yes. The parties are still  
14 in discussion regarding -- regarding rate design. Even  
15 assuming that those discussions do not reach a successful  
16 conclusion, the thinking is that we should be able to  
17 conclude tomorrow on a timely basis without having to go  
18 further today.

19 JUDGE WOODRUFF: What do you mean by  
20 timely?

21 MR. DOTTHEIM: Certainly before five  
22 o'clock, and I think the thought is with time to spare.

23 JUDGE WOODRUFF: Okay. That sounds  
24 encouraging, then. Anybody else want to add anything on  
25 that?

1                   MR. DOTTHEIM: The other parties would  
2 indicate if they concur on that of if they have a  
3 different view.

4                   MR. CONRAD: I concur in that. The other  
5 thing we can probably clean up at least on our part is the  
6 off-system sales settlement nonunanimous stip has been  
7 filed. I believe I saw where she had filed it. And the  
8 very first page cites as though Noranda is a signatory  
9 thereto. We are not, however, as inspection of the  
10 signature page will reveal. That said, we do not oppose  
11 that settlement and do not request that a hearing be held.

12                   MR. LOWERY: That was my scrivener's error,  
13 your Honor. I changed it in one place but not the other.

14                   JUDGE WOODRUFF: All right, then. Anything  
15 else we need to take up this evening before we adjourn for  
16 tomorrow?

17                   MR. DOTTHEIM: And, Judge, you've indicated  
18 that the Commissioners will have questions tomorrow on  
19 the --

20                   JUDGE WOODRUFF: Yes.

21                   MR. DOTTHEIM: -- off-system sales  
22 Stipulation & Agreement?

23                   JUDGE WOODRUFF: And I'll try to discuss  
24 that with them first thing tomorrow morning and give you a  
25 time exactly when we'll be doing that.

1                   MR. DOTTHEIM: So we will start tomorrow  
2 morning at 8:30?

3                   JUDGE WOODRUFF: That's correct. We are  
4 adjourned until 8:30 tomorrow.

5                   WHEREUPON, the hearing of this case was  
6 recessed until December 12, 2008.

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C E R T I F I C A T E

STATE OF MISSOURI            )  
  ) ss.  
COUNTY OF COLE                )

I, Kellene K. Feddersen, Certified

Shorthand Reporter with the firm of Midwest Litigation  
Services, and Notary Public within and for the State of  
Missouri, do hereby certify that I was personally present  
at the proceedings had in the above-entitled cause at the  
time and place set forth in the caption sheet thereof;  
that I then and there took down in Stenotype the  
proceedings had; and that the foregoing is a full, true  
and correct transcript of such Stenotype notes so made at  
such time and place.

Given at my office in the City of  
Jefferson, County of Cole, State of Missouri.

\_\_\_\_\_  
Kellene K. Feddersen, RPR, CSR, CCR  
Notary Public (County of Cole)  
My commission expires March 28, 2009.