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BEFORE THE

ILLINOIS COMMERCE COMMISSION

Central Illinois Light Company	)
d/b/a AmerenCILCO,	)
	)DOCKET NO.
Central Illinois Public Service	)06-0447
Company	)
d/b/a AmerenCIPS,	)
	)
Illinois Power Company	)
d/b/a AmerenIP	)
	)
Petition for Approval of Insurance	)
Services Agreements with Affiliated	)
Interest.	)

Tuesday, March 13, 2007  
Springfield, Illinois.

Met, pursuant to notice at 10:00 A.M.

BEFORE:

LARRY JONES, Administrative Law Judge

APPEARANCES:

EDWARD FITZHENRY, ESQ.  
 Ameren Services Company  
 1901 Chouteau Avenue  
 Post Office Box 66149, Mail Code 1310  
 St. Louis, Missouri 63166-6149

(Appearing on behalf of Ameren Illinois  
Utilities)

SULLIVAN REPORTING COMPANY, by  
 H. Lori Bernardy, Reporter  
 Ln. #084-004126

1 APPEARANCES CONTINUED:

2 JANIS Von QUALEN, ESQ.  
3 Illinois Commerce Commission  
4 Office of General Counsel  
5 527 East Capitol Avenue  
6 Springfield, Illinois 62701

7 (Appearing on behalf of the Staff of the  
8 Illinois Commerce Commission)

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I N D E X

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
GLENNON A. THEBEAU				
By Mr. Fitzhenry	20	62		
By Ms. Von Qualen		25		
By Judge Jones	66			
BURMA C. JONES				
By Ms. Von Qualen	71	85		
By Mr. Fitzhenry		75		87
THOMAS E. KENNEDY				
By Ms. Von Qualen	88	124		
By Mr. Fitzhenry		92		127

I N D E X

<u>EXHIBITS</u>	<u>MARKED</u>	<u>ADMITTED</u>
ICC Staff Exhibit 1.0		73
ICC Staff Exhibit 2.0(R)		91
ICC Staff Exhibit 3.0		75
ICC Staff Exhibit 4.0		91
ICC Staff Exhibit 5.0		124
Ameren Exhibit 1.0		24
Ameren Exhibit 1.1		24
Ameren Exhibit 2.0		132
Ameren Exhibit 2.1		132
Ameren Exhibit 3.0		24
Ameren Exhibit 4.0		24

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P R O C E E D I N G S

JUDGE JONES: Good morning. I call for hearing Docket Number 06-0447. This is titled in part Central Illinois Light Company d/b/a AmerenCILCO, et al. Petition for approval of Insurance Services Agreements with affiliated interests.

At this time, please enter your respective appearances, orally, for the record, first, on behalf of Petitioners, Ameren Companies.

MR. FITZHENRY: Yes, your Honor.

On behalf of the Ameren Illinois Utilities, my name is Edward Fitzhenry. My address is 1901 Chouteau Avenue, Post Office Box 66149, St. Louis, Missouri 63166-6149.

JUDGE JONES: All right, and your phone number?

MR. FITZHENRY: (314) 554-3533.

JUDGE JONES: Thank you.

Commission Staff?

MS. Von QUALEN: Janis Von Qualen on behalf of the Staff Witnesses of the Illinois Commerce Commission, 527 East Capitol Avenue, Springfield, Illinois 62701. My phone is (217) 785-3402.

1 JUDGE JONES: Thank you. Are there any other  
2 appearances?

3 (No audible response.)

4 JUDGE JONES: Let the record show there are  
5 not.

6 I believe Staff and the Ameren  
7 Utilities have discussed the order of witnesses to  
8 use today.

9 MR. FITZHENRY: That's correct.

10 JUDGE JONES: And how does that work?

11 MR. FITZHENRY: The Companies will first call  
12 Mr. Glenn Thebeau to the stand.

13 JUDGE JONES: Are you ready to do that?

14 MR. FITZHENRY: Yes, we are.

15 JUDGE JONES: All right, go ahead, please do  
16 so.

17 He can either sit at the end of the  
18 table or in the witness seat, it doesn't really  
19 matter. Just where he could be heard. So he can sit  
20 wherever.

21 MR. FITZHENRY: Well, actually, I prefer you to  
22 sit up there. I can see you better.

1           JUDGE JONES: Ameren brings you in as a  
2 witness.

3                               (Whereupon the Witness was sworn  
4 by the Administrative Law  
5 Judge.)

6           JUDGE JONES: Thank you. Please be seated.

7                               GLENNON A. THEBEAU,  
8 having been first duly sworn by the Administrative  
9 Law Judge, witnesseth and saith as follows:

10                              DIRECT EXAMINATION

11                              BY MR. FITZHENRY:

12           Q. Mr. Thebeau, would you state your full name  
13 and business address for the record?

14           A. Glennon Thebeau, 1901 Chouteau, St. Louis,  
15 Missouri 63166-6149.

16           Q. And on whose behalf are you testifying in  
17 this proceeding?

18           A. The Ameren Utilities.

19           Q. Okay. Mr. Thebeau, I show you and you have  
20 before you what's been identified for the record as  
21 the Direct Testimony of Glennon A. Thebeau,  
22 previously identified as Ameren Exhibit 1.0 which was

1 filed on e-Docket on June 14, 2006, and ask if that  
2 is your intended Direct Testimony for this  
3 proceeding?

4 A. Yes.

5 Q. And, Mr. Thebeau, does the testimony  
6 consist of fourteen pages of questions and answers?

7 A. Yes.

8 Q. Do you have any corrections or  
9 modifications to make to the testimony?

10 A. No.

11 Q. If I were to ask you the questions as set  
12 forth in Ameren Exhibit 1.0, would your answers be as  
13 set forth therein?

14 A. Yes.

15 Q. And does your testimony also -- strike  
16 that.

17 Are you also sponsoring Ameren  
18 Exhibit 1.1 which is the Insurance Services Agreement  
19 referred to in the Petition?

20 A. Yes.

21 Q. Now I show you or you have before you  
22 what's been marked for the record as Ameren Exhibit

1 3.0, titled Rebuttal Testimony of Glennon A. Thebeau,  
2 and ask if that's intended to be your Rebuttal  
3 Testimony to be submitted in this Docket?

4 A. Yes.

5 Q. And does your Rebuttal Testimony consist of  
6 twenty-one pages of questions and answers?

7 A. Yes.

8 Q. And do you have any corrections or  
9 modifications to make to your testimony?

10 A. No.

11 Q. If I were to ask you the questions set  
12 forth in Ameren Exhibit 3.0, would you give the same  
13 answers as set forth therein?

14 A. Yes.

15 Q. And just for the record, that was filed on  
16 e-Docket on November 28, 2006.

17 Mr. Thebeau, I also show you what's  
18 been marked previously as Ameren Exhibit 4.0 titled  
19 Surrebuttal of Glennon A. Thebeau, and ask if that's  
20 intended to be your Surrebuttal Testimony to be  
21 introduced into the record in this Docket?

22 A. Yes.

1 Q. Does this testimony consist of fourteen  
2 pages of questions and answers?

3 A. Yes.

4 Q. Do you have any corrections or  
5 modifications to make to your testimony?

6 A. No.

7 Q. And, again, if I were to ask you the  
8 questions set forth in this testimony, would you give  
9 the same answers today?

10 A. Yes.

11 Q. And, again, just for the record, that  
12 testimony was filed on February 16, 2007 on e-Docket?

13 A. Yes.

14 MR. FITZHENRY: Your Honor, I move for the  
15 admission of Ameren Exhibit 1.0, 1.1, Ameren  
16 Exhibit 3.0 and Ameren Exhibit 4.0 and tender  
17 Mr. Thebeau for cross-examination.

18 JUDGE JONES: Thank you.

19 Any objection?

20 MS. Von QUALEN: Staff has no objection.

21 JUDGE JONES: Let the record show those  
22 exhibits are admitted into the record.

1                   They are admitted as filed  
2 electronically on the dates just noted by  
3 Mr. Fitzhenry.

4                   With regard to 1.1, that will be  
5 filed electronically within the next seven days?

6           MR. FITZHENRY: Yes, your Honor.

7           JUDGE JONES: Does that work?

8           MR. FITZHENRY: Yes.

9           JUDGE JONES: The Exhibit is admitted subject  
10 to its being filed electronically in the same form  
11 previously provided.

12                   So, in conclusion, Ameren Exhibits  
13 1.0, 3.0 and 4.0 are admitted into the record as  
14 filed electronically and 1.1 is admitted subject to  
15 the conditions we just stated.

16                                   (WHEREUPON, Ameren Exhibit  
17                                   Numbers 1.0, 1.1, 3.0 and 4.0  
18                                   were admitted into the record.)

19           JUDGE JONES: The witness is tendered for  
20 cross-examination. It's my understanding Staff does  
21 have some questions for this witness; is that right?

22           MS. Von QUALEN: Yes.

1 JUDGE JONES: All right, you may proceed.

2 If anybody is having any trouble  
3 hearing anybody else, just speak up and we'll do  
4 something about it.

5 CROSS-EXAMINATION

6 BY MS. Von QUALEN:

7 Q. Good morning, Mr. Thebeau.

8 A. Good morning.

9 Q. My name is Jan Von Qualen, and I represent  
10 the Staff Witnesses in this case. I have a few  
11 questions for you.

12 My questions are not meant to be  
13 unclear or tricky. If you do not understand or do  
14 not hear them, just ask me to repeat them.

15 A. Okay.

16 Q. First, I would like to direct your  
17 attention to page 11 of your Direct Testimony.

18 A. (So complied with request.)

19 Q. And looking at lines 233 to 235, do you see  
20 where you state: After ERAC is able to operate for  
21 several years, we expect the benefits to be achieved  
22 and shared among the Ameren Companies, including the

1 Illinois utilities and their customers, could  
2 approach five million dollars annually.

3 A. Yes.

4 Q. When you say could approach, can that be  
5 read to mean that the five million dollars in  
6 benefits would be the upper limit?

7 A. Well, I think that's kind of the  
8 foreseeable upper limit based upon the business case  
9 that we had put together.

10 Obviously, depending on how market  
11 prices change or what happens in the insurance  
12 industry over the next number of years, but that  
13 number could go up or down.

14 But based upon our business case and  
15 the state of the market, at the time we put the  
16 business case together that seemed to be about the  
17 upper limit.

18 Q. Thank you. So is there some likelihood  
19 that the benefits could be less than five million  
20 dollars annually?

21 A. Yes.

22 Q. Is that five million dollar estimate based

1 upon all the Ameren Companies?

2 A. Yes.

3 Q. And you stated in your Rebuttal Testimony  
4 that the savings for replacement power insurance  
5 could approach two million dollars annually; is that  
6 correct?

7 A. Yes.

8 Q. Can you tell me what the current annual  
9 cost is for insurance for the Ameren Companies?

10 A. In total, it's right around 35 million  
11 dollars. And I should correct that, that doesn't  
12 include insurance we buy for construction projects,  
13 which is another five to seven million dollars.

14 So the 35 million is for the normal  
15 ongoing kind of expenses and then another five to  
16 seven for construction projects.

17 Q. Do you anticipate that any of that  
18 estimated five million dollars in benefits would come  
19 from the construction insurance you just mentioned?

20 A. No, the five million does not include any  
21 potential from the construction insurance. But there  
22 is definitely some potential there.

1 Q. Okay. Do you know approximately how much  
2 the Illinois utilities spend per year for insurance  
3 coverage?

4 A. The cost for the Illinois utilities are  
5 currently allocated from Ameren Services as we buy  
6 the insurance on a consolidated basis and they  
7 allocate costs back to the different companies.

8 And I think the Illinois Companies, as  
9 I recall, is right around a little over two million  
10 dollars a year, as I recall.

11 Q. Now included in the Ameren Companies are  
12 some generation Companies?

13 A. Yes.

14 Q. Do you know how many?

15 A. There are four Companies that own  
16 generation, I believe. Is that right?

17 MR. FITZHENRY: I can't --

18 THE WITNESS: I think there are four major  
19 Companies that own generation.

20 BY MS. Von QUALEN:

21 Q. And do you know if there's a separate one  
22 for nuclear generation?

1           A.    No, that's owned by Union Electric Company.

2           Q.    Do you know how much of the current annual  
3   cost for insurance for the Ameren Companies is  
4   allocated to the generation Companies?

5           A.    I'm speaking strictly from memory here.  I  
6   think it is -- you know, I really can't give you a  
7   good estimate.  It's probably in the 40 percent range  
8   would be my best guess, but I don't have the numbers  
9   in front of me.

10          Q.    And would you know about how much of the  
11   current annual cost for insurance is allocated to UE?

12          A.    Slightly under 50 percent for all the  
13   generation and the T & D business.

14          Q.    Would you know what the division would be  
15   between the generation and the T & D business?

16          A.    Again, I'm just speaking from memory here  
17   because Union Electric owns the nuclear plant.  They  
18   have a pretty high percentage of the generation costs  
19   applied to them.

20                        So it's probably -- I'd say it's  
21   around 50 percent of the total or maybe 60 percent of  
22   the total comes from the generation business of Union

1 Electric.

2 Q. Have you estimated what amount of the five  
3 million dollars in estimated benefits would be  
4 expected to go to the Illinois utilities?

5 A. It would be a percentage of the total that  
6 we spend. So, again, when we buy the consolidated  
7 policy for all the Companies, we expect that we would  
8 be able to reduce that cost by - as we mentioned -  
9 approximately two million dollars in the coming year  
10 and more than that hopefully going forward.

11 So if we said that the Illinois  
12 Companies get a total of about -- let's say you get  
13 around 10 percent, they would end up with  
14 approximately \$500,000 of that.

15 That's again, doing the math off the  
16 top of my head.

17 Q. Now, Mr. Thebeau, I have a couple of  
18 questions and they're kind of based on the response  
19 that you provided to Staff Data Request BCJ 1.02.

20 MR. FITZHENRY: You want him to refer to it?

21 MS. Von QUALEN: I just thought he might want  
22 to have it in front of him.

1 MR. FITZHENRY: Okay, thank you.

2 BY MS. Von QUALEN:

3 Q. Is it correct that ERAC will have only two  
4 employees?

5 A. Well, we will have two employees, but also  
6 there will be a -- as a clarification, there will be  
7 a service company who we've hired who will actually  
8 run the day-to-day business. So the two employees  
9 will really just serve as officers for our Company.

10 Q. And they will be working part-time?

11 A. Yes.

12 Q. Those employees are you and Charles A.  
13 Mannix?

14 A. Yes.

15 Q. M-A-N-N-I-X?

16 A. Yes.

17 Q. You will be the President of ERAC?

18 A. Yes.

19 Q. Both you and Mr. Mannix also work for  
20 Ameren Services, correct?

21 A. Yes.

22 Q. You are the Manager of Risk Management?

1 A. Yes.

2 Q. And that's for ERAC or for Ameren Services?

3 A. For Ameren Services.

4 Q. Mr. Mannix will be the Secretary and  
5 Treasurer of ERAC?

6 A. Yes.

7 Q. And he is the Manager of income tax at  
8 Ameren Services?

9 A. Yes.

10 Q. Now, as far as your answers about what you  
11 will be doing at ERAC, are you currently both  
12 fulfilling those positions right now?

13 A. Yes.

14 Q. Could you explain to me where you and  
15 Mr. Mannix are on the Ameren Services organizational  
16 chart?

17 A. I report to the Treasurer who reports to  
18 the CFO.

19 And Charles Mannix reports to the Vice  
20 President of Tax who reports to the CFO.

21 Q. Would you say that you're both about at the  
22 same level of management at Ameren Services?

1 A. Yes.

2 Q. But from what you said, is it correct that  
3 neither of you reports to the other?

4 A. No. Neither of us reports to the other.

5 Q. Now, at ERAC, will you have supervisory  
6 authority over Mr. Mannix?

7 A. Yes.

8 Q. Mr. Thebeau, would you agree with me that  
9 insurance coverage and prices are arrived at through  
10 negotiation?

11 A. Yes.

12 Q. Will Ameren Services negotiate with ERAC  
13 regarding coverage and prices?

14 A. Yes.

15 Q. Who will have the authority to negotiate  
16 for Ameren Services?

17 A. We have an insurance operations group who  
18 typically handle the day-to-day insurance purchases.  
19 And that insurance operations group reports to me.

20 Q. Is there one particular person in that  
21 insurance operations group who will negotiate for  
22 Ameren Services?

1 A. Yes. His name is Mark Blair.

2 Q. Mark Blair?

3 A. Uh-huh.

4 Q. And he reports to you?

5 A. Yes.

6 Q. Who will have the authority to negotiate  
7 for ERAC?

8 A. That will be a combination of the officers  
9 of ERAC, the service provider who really handles the  
10 issuance of the policies. And their reliance is upon  
11 actuarial data.

12 Q. Whose is the service provider?

13 A. AON Management Services. It's A-O-N  
14 Management Services.

15 JUDGE JONES: Thank you.

16 BY MS. Von QUALEN:

17 Q. Who at ERAC will write the insurance  
18 policies?

19 A. AON Management Services is charged with  
20 writing policies.

21 Q. Do you have any supervisory authority for  
22 over AON Management Services?

1 A. Yes.

2 Q. Who at ERAC will determine the premiums for  
3 the policies?

4 A. Again, that will be AON Management Services  
5 relying upon actuarial data from actuaries that they  
6 hired.

7 Or actually that ERAC has hired.

8 Q. Will there be any discretion as to what the  
9 premiums for the policies will be?

10 A. Well, I think there's always some  
11 discretion.

12 Again, as you mentioned it's typically  
13 negotiated. But, generally, the minimum premium will  
14 be based upon the actuarial data. That will be the  
15 lowest price that can be charged.

16 Q. And who will have the discretion?

17 A. On the pricing?

18 Q. Yes.

19 A. Again, that will be the ERAC officers in  
20 discussion with the AON Management.

21 Q. I'm sorry, I didn't catch that.

22 A. It will be the ERAC officers, myself,

1 Charles Mannix and the AON Managers.

2 Q. Okay. Who at Ameren Services will  
3 determine what insurance coverage is needed?

4 A. That's a little bit involved. There's a  
5 discussion that goes on every year as we go into the  
6 cycle of determining what the coverages are going to  
7 be.

8 It's a discussion that's generally  
9 held between Mr. Blair, myself, Jerry Birdsong who's  
10 the Treasurer, and Warner Baxter, who's the CFO.

11 Q. It's a mutual decision between the four of  
12 you?

13 A. Mutual -- actually, Warner obviously  
14 carries more weight. But we make recommendations and  
15 have discussions with him.

16 Q. Who at Ameren Services will negotiate with  
17 commercial insurers for the insurance coverage?

18 A. That's typically Mr. Blair.

19 Q. And he reports to you?

20 A. He reports to me.

21 Q. Who at Ameren Services will make a  
22 determination whether to purchase insurance from a

1 commercial insurer or ERAC?

2 A. That will be really the same process that I  
3 just talked about. That will be a discussion and  
4 mutual agreement among Mr. Blair, myself,  
5 Mr. Birdsong and Mr. Baxter.

6 So, that will be part of the normal  
7 discussion about the insurance that we will use, the  
8 limits that we will have, the coverages that we will  
9 have.

10 Q. Did you say who the CFO is?

11 A. Mr. Warner Baxter.

12 Q. Now, I'm looking at your Rebuttal Testimony  
13 at page five.

14 A. Okay, I have it.

15 Q. Lines 107 to 111. The testimony states  
16 that utilities are judged to be attractive as targets  
17 by terrorism experts?

18 A. Yes.

19 Q. Are you aware or do you know if the  
20 terrorism experts make any distinction between the  
21 risk for the utilities with generation as opposed to  
22 transmission distribution utilities?

1           A.    Well, we have had studies done by terrorism  
2 experts to try and assess our risk.  And there's  
3 risks from both.

4                    I don't know that the studies  
5 indicated if one or the other was greater.  I don't  
6 recall that they did.  It's just really an assessment  
7 of the risk of terrorism from both transmission  
8 distribution systems and the generating facilities.

9           Q.    Is there any distinction between nuclear  
10 power plants as opposed to distribution utilities?

11           A.    There is.  But when we talk about this  
12 particular set of terrorism risks, it does not  
13 include the nuclear plant.

14                    The nuclear plants have had their own  
15 terrorism studies done in conjunction with Homeland  
16 Security and the State Departments and that type of  
17 thing.

18                    So this assessment really only talks  
19 about the nonnuclear portion of the business.

20           Q.    But I think we've already determined that  
21 the costs for insuring the generation plants and the  
22 nuclear generation plants is much higher than

1 insuring transmission and distributing?

2 A. Well, when we were talking about that, we  
3 were not talking about terrorism, we were talking  
4 about the property coverage.

5 So from a terrorism perspective,  
6 there's a separate policy for the nuclear plant. So  
7 this discussion is only of the terrorism policies  
8 that we buy to cover everything else.

9 Q. Okay. Thank you for that clarification.

10 You reference ERAC's access to the  
11 no-cost Federal reinsurance protection?

12 A. Yes.

13 Q. Is it your understanding that commercial  
14 insurers do not have access to this no-cost Federal  
15 insurance protection?

16 A. No, I think they do have access to it.

17 Q. Is the no-cost Federal reinsurance  
18 protection you referred to available to the Terrorist  
19 Risk Insurance Act of 2002, if you know?

20 A. I believe it's the Act of 2005.

21 Q. Okay. Do you know if there's a expiration  
22 date for that Act or for the coverage available

1 through that Act?

2 A. Yes. It expires on 12-31-2007.

3 Q. How would the expiration of that coverage  
4 affect ERAC's ability to be, quote, "Much more  
5 competitive than commercial insurers for the same  
6 coverage," as you discuss at lines 109 to 111.

7 A. Well, I think that the Federal backstop is  
8 a very strong tool. But we've also had some  
9 actuarial studies done around the value of the risk  
10 of terrorism attack. And we can compare that to the  
11 premium that the commercial insurers charge us, and  
12 so we know that the premiums are very high.

13 And then the second part of that is  
14 that in the commercial market you cannot get coverage  
15 for biological hazards which, again, going back to  
16 some of the studies where we've dealt with the  
17 terrorism experts is, you know, it's kind of a  
18 primary tool.

19 And so from the perspective on how  
20 competitive it would be in general, it would still  
21 have those two advantages, and the premiums would be  
22 lower and coverage would be better even without the

1 Federal backstop.

2 The Federal backstop just really  
3 allows us to have much more coverage.

4 Q. But would that coverage also be available  
5 through commercial insurers?

6 A. No, because of the exclusions. We can't  
7 get the biological, chemical coverage through  
8 commercial insurers.

9 Q. Now, looking at your Rebuttal Testimony on  
10 page ten, and I'm looking at lines 222 to 224 where  
11 you state:

12 Any transactions with ERAC by the  
13 Ameren Illinois utilities will be subject to prudent  
14 review by the ICC as agreed to in Staff's  
15 recommendations.

16 Do you see that?

17 A. Yes.

18 Q. Could you direct me to the recommendation  
19 that you are referring to there?

20 A. Okay. That was in -- it was in Ms. Burma  
21 Jones' testimony. Let's see -- I think that was in  
22 her testimony, which I don't think I have a copy of

1 that with me.

2 MS. Von QUALEN: May I approach the witness?

3 MR. FITZHENRY: Yes.

4 JUDGE JONES: Go ahead.

5 (WHEREUPON a document was  
6 tendered to the witness.)

7 BY MS. Von QUALEN:

8 Q. I'm showing you a copy of Miss Jones'  
9 testimony, and I'm opening up to page nine because I  
10 suspect that it came from there, but I'm not sure.

11 MR. FITZHENRY: Are you sure it's his Rebuttal?

12 MS. Von QUALEN: Yes.

13 THE WITNESS: I believe that's true. That's  
14 what the statement is based upon.

15 BY MS. Von QUALEN:

16 Q. You were referring to page nine at lines --  
17 9 to 10, 182 to 188.

18 A. Yes.

19 Q. Thank you. Do you recall that  
20 in Dr. Kennedy's testimony he requested that the  
21 Company explain what Staff divisions would perform  
22 the necessary analysis for a prudent review?

1 A. Yes.

2 Q. And looking at your Surrebuttal Testimony  
3 at page 8, lines 165 to 168.

4 A. Oops, I'm sorry. I went to the wrong one.

5 Is that the line that begins: I  
6 assume Staff did its due diligence?

7 Q. Yes.

8 A. Yes.

9 Q. You referenced Staff's review of insurance  
10 premiums and coverage in utility rate cases; is that  
11 correct?

12 A. Yes.

13 Q. Am I correct that you or Ameren has  
14 suggested that a more extensive review would be  
15 appropriate if the transactions with the affiliate  
16 ERAC were allowed?

17 A. Well, I'm not sure that we're suggesting  
18 that a more extensive review would be appropriate.

19 But we're suggesting that if Staff  
20 wants to make a more extensive review, we'll  
21 certainly make the information available to them.

22 Q. Okay. Would it be your position then that

1 if when Ameren files a report, would a comparison of  
2 the costs of insurance coverage obtained from ERAC to  
3 the cost of insurance coverage available from  
4 commercial providers it is submitting itself to a  
5 prudent review of those expenditures?

6 A. I think that pending what our Legal and  
7 Regulatory Staff would answer on that question, my  
8 position would be that I'm certainly willing to share  
9 the information to whatever extent is required for  
10 the Staff to be comfortable for a prudence review.

11 I don't understand all the legal  
12 technicalities, what is and isn't available. I can  
13 only tell you what we would be willing to make  
14 available.

15 Q. I don't know if you're going to have an  
16 answer to this or not, but I'm going to ask it:

17 Do you know if it's contemplated that  
18 there would be a docketed proceeding?

19 A. I don't understand the question.

20 Q. The question is -- and I still don't know  
21 even if you understand the question you'll have an  
22 answer, but the question is:

1                   Are you thinking about a proceeding  
2     like we're having right now where there would  
3     actually be a docketed proceeding? There would be  
4     witnesses, there would be a hearing, and the  
5     Commission would have an Order.

6                   Do you have an opinion about that?

7           A.     Considering the prudency review?

8           Q.     Yes.

9           A.     I can't answer that.

10          Q.     For that prudency review as you  
11     contemplated it, would part of the review be for the  
12     Commission to review whether it was prudent for  
13     Ameren Illinois utilities to purchase insurance  
14     coverage which is not available from commercial  
15     insurers?

16          A.     Yes.

17          Q.     And do you have an opinion as to what Staff  
18     divisions would be qualified to perform an analysis  
19     for that review?

20          A.     No, I don't.

21          Q.     Do you have an opinion as to whether the  
22     Commission would review whether the coverage --

1 whether the price for the coverage was reasonable?

2 A. Yes, I think that they would.

3 Q. Do you have an opinion as to what Staff  
4 divisions would be qualified to perform an analysis  
5 of that?

6 A. I don't know which Staff divisions would  
7 have. My only comment would be is I think that  
8 anyone who has an audit background and audit  
9 experience would be able to make that assessment.

10 Q. And going back to my previous question  
11 about the review of whether or not it was prudent to  
12 purchase insurance coverage which is not available  
13 through commercial insurers, what type of background  
14 would you suggest would be necessary for that review?

15 A. Well, I'm not sure that there's a  
16 particular background that's required because it's  
17 really a business decision at that point.

18 When we have those discussions, we  
19 talk to our senior business leadership about what is  
20 the prudent coverage, what's the prudent limit, that  
21 type of thing.

22 So I think the discussion and the

1 analysis is a business case analysis. It's not  
2 necessarily a more technical insurance based  
3 analysis.

4 Q. Then, would you agree with me that there  
5 would be a lot of discretion involved in that  
6 decision?

7 A. Well, I think anytime you purchase  
8 insurance, it's a discretionary purchase.

9 Q. Thank you. Going back again to what the  
10 Commission would look at in a prudent review, would  
11 you think that the Commission would review the  
12 negotiation process?

13 A. I would think so.

14 Q. And what qualifications would be necessary  
15 for an individual from Staff or for Staff to make a  
16 review of that?

17 A. Again, I think since we will have records  
18 of the negotiation process comparing prices,  
19 coverages, those types of things, that anyone who has  
20 an audit background will understand and would be able  
21 to do that.

22 Q. Okay. Now you said that you'll have

1 records about the negotiation process?

2 A. Yes.

3 Q. Could you explain to me what records there  
4 will be?

5 A. Well, generally, when we purchase  
6 insurance, you know, we are looking at what coverages  
7 are available and what the deductibles are, what the  
8 exclusions are.

9 So in other words, it's basically a  
10 comparison of the coverage. And then that includes  
11 all of those things and sometimes other things  
12 depending on what language is in the insurance  
13 contract.

14 So it would be a comparison of those  
15 products with the prices that go along with those  
16 products.

17 Q. Would you expect that in your opinion would  
18 the Commission have the ability to have a prudent  
19 review over the pursuit and settlement of claims for  
20 ERAC?

21 A. Yes.

22 Q. How would that be accomplished?

1           A.    Well, we have a claims process.  We have a  
2   third-party claims administer.  This is an existing  
3   process; this is not something new that has happened  
4   because of the advent of ERAC.

5                    The third-party claims administrator  
6   basically files the claims with the appropriate  
7   insurance companies to collect on those claims.

8           Q.    So it would be reviewing that person's  
9   files?

10          A.    The third-party claims administrator has  
11   all the records on all the claims.

12          Q.    And when you say third-party claims  
13   administrator, can I safely assume that is someone  
14   outside of Ameren Services or ERAC?

15          A.    Yes.

16          Q.    Looking at page 18 of your Rebuttal  
17   Testimony at lines 400 to 401?

18          A.    (So complied with request.)

19          JUDGE JONES:  I'm sorry what was that cite  
20   again?

21          MS. Von QUALEN:  Page 18, lines 400 to 401.

22          THE WITNESS:  Yes.

1 BY MS. Von QUALEN:

2 Q. There you cite Dr. Kennedy's statement that  
3 of the nine ERAC cooperate officers, eight are  
4 employees of Ameren Services. Do you see that?

5 A. Yes.

6 Q. Do you agree with that statement?

7 A. I would have to -- I mean, they are all  
8 employees of Ameren. I'm not sure if they're all  
9 employees of Ameren Services.

10 I'd have to go back and check how the  
11 different reporting structures go. But they're all  
12 employees of Ameren.

13 Q. Now, looking at your Surrebuttal Testimony  
14 at page two, lines 41 to 46?

15 A. Yes.

16 Q. You indicate that Ameren Illinois utilities  
17 are willing to share with Staff the documentation  
18 they intend to rely upon when the decision is made to  
19 enter into an insurance contract with ERAC?

20 A. Yes.

21 Q. How will that information be shared with  
22 Staff?

1           A.   Well, it could be done either in the report  
2 we talked about on an annual basis or on a Data  
3 Request basis.

4                   I think it would really be up to the  
5 Staff to determine how they want to obtain that  
6 information.

7           Q.   Okay.  You go on to state:

8                   They are not asking for pre-approval  
9 and agree that such a preview cannot be used in any  
10 prudency review.  Do you see that?

11          A.   Yes.

12          Q.   By that, do you mean that the preview  
13 cannot be used to argue that Staff should have  
14 objected to the purchase when it was given the  
15 preview?

16          A.   Yes.  I'm sorry, was there more?

17          Q.   I'll ask a follow-up.

18                   And, therefore, you're not saying that  
19 Staff would be prohibited from later objecting to the  
20 purchase at the time of the prudence review based  
21 upon the preview?

22          A.   I am not saying that.

1 Q. Thank you.

2 Looking at page three, lines 49 to 56,  
3 you reference that the Ameren Companies are willing  
4 to have the Commission define a specific period of  
5 time - you suggest three years - during which they  
6 can enter contracts with ERAC.

7 After which the Ameren Companies would  
8 file a comprehensive report with the Commission and  
9 its Staff which will explain the benefits realized in  
10 terms of coverage, premiums, and any other related  
11 information.

12 Do you see that?

13 A. Yes.

14 Q. And then you say the Commission and Staff  
15 can conduct an investigation and upon conclusion  
16 decide whether the utilities can continue to engage  
17 in transactions with ERAC.

18 Similar to my question before, are you  
19 contemplating a docketed proceeding or a litigated  
20 proceeding like we're having now or do you have an  
21 opinion about that?

22 A. I don't have an opinion about that. I

1 think that would be something that we would have to  
2 have some discussions with our Legal and Regulatory  
3 folks and Staff and see.

4 Q. And would you say that the same issues  
5 would be reviewed there that we talked about earlier  
6 this morning?

7 In other words purchasing, coverage  
8 which is not available from commercial insurers, the  
9 reasonableness of the price of the coverage, the  
10 negotiations and the pursuant in settlement of  
11 claims?

12 A. All those things, plus I think that we  
13 would document any cost savings that had occurred  
14 during the three-year period.

15 MS. Von QUALEN: Can I have just a minute or  
16 two to talk to Staff?

17 MR. FITZHENRY: No objection.

18 JUDGE JONES: Go ahead.

19 (Discussion off the record.)

20 MS. Von QUALEN: I have another question.

21 BY MS. Von QUALEN:

22 Q. Going back to your Rebuttal Testimony where

1 you talk -- page seven -- where you talk about the  
2 savings for replacement power insurance, lines 137 to  
3 139: You said that the savings could approach two  
4 million dollars annually?

5 A. Yes.

6 Q. Do you know how much the premium is on that  
7 currently?

8 A. That the two million dollars would apply  
9 to?

10 Q. Yes.

11 MR. FITZHENRY: Could I interject at this  
12 moment:

13 Would that be considered proprietary  
14 information, Mr. Thebeau?

15 THE WITNESS: It would be. I mean --

16 MR. FITZHENRY: Your Honor, could we go in  
17 camera for the purposes of allowing Mr. Thebeau to  
18 supply this proprietary information for the record?

19 JUDGE JONES: What's your thought on that?

20 MS. Von QUALEN: That's fine with me.

21 JUDGE JONES: Is that your last question?

22 MS. Von QUALEN: I anticipate that is my last

1 question.

2

(WHEREUPON the following

3

proceedings were had in camera.)

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1 (WHEREUPON the proceedings are  
2 returning to the public domain.)

3 JUDGE JONES: Let the record show that there  
4 was an in camera series of questions and answers this  
5 morning that is treated as part of the in camera  
6 portion of this proceeding and will be kept  
7 segregated from the public transcript of the  
8 proceeding.

9 And the in camera portion of the  
10 proceeding transcript will need to in some manner  
11 identify the witness who was being questioned as well  
12 as the question and the date.

13 And your Cross is complete; is that  
14 correct?

15 MS. Von QUALEN: Yes.

16 JUDGE JONES: Do you have any Redirect?

17 MR. FITZHENRY: Could I have about five  
18 minutes, your Honor, to contemplate Redirect?

19 JUDGE JONES: At this time, we hereby take a  
20 five-minute break or recess.

21

22 (WHEREUPON, a short recess was

1 taken.)

2 JUDGE JONES: Back on the record. Is there any  
3 Redirect for Mr. Thebeau?

4 MR. FITZHENRY: We do have some brief Redirect.  
5 Thank you, your Honor.

6 REDIRECT EXAMINATION

7 BY MR. FITZHENRY:

8 Q. Mr. Thebeau, do you recall a series of  
9 questions from Miss Von Qualen that addressed your  
10 position at Ameren Services as a Manager and your  
11 position at ERAC as President of that Company?

12 Do you recall generally those  
13 questions?

14 A. Yes.

15 Q. Now as part of your role as Manager for  
16 Ameren Services is to provide -- strike that.

17 Is part of your role at Ameren  
18 Services as a Manger is to procure insurance for the  
19 Ameren Illinois utilities?

20 A. Indirectly. The person who procures the  
21 insurance works for me.

22 Q. And as President of ERAC, is it going to be

1 part of your role to procure insurance -- to sell  
2 insurance to the Ameren Illinois Utilities?

3 A. Yes.

4 Q. How is it that you're able to reconcile  
5 holding those two different positions and being able  
6 to work for Ameren Services and ERAC in an unbiased  
7 manner it was relates to procuring or selling  
8 insurance to Ameren Illinois Utilities?

9 A. As I discussed in testimony in Rebuttal,  
10 there's really -- there's only two things. A,  
11 there's a lack of incentive.

12 The decision to move ahead was -- to  
13 cap an insurance company was made and initiated and  
14 in its very inception was there as a tool to help us  
15 to address some issues with the commercial markets  
16 around price, around coverage.

17 So it was never discussed with our  
18 management, with our Board that this would be a  
19 profit center or that that would be a way of  
20 controlling costs.

21 So there's no incentive for those of  
22 us who are involved to create any profit, either

1 personally or for Ameren.

2                   And then, secondly, as I discussed in  
3 testimony in Rebuttal, also, there's just a very  
4 broad system of controls, a very broad budgeting  
5 process, reporting processes, budgetary review  
6 processes that make being able to provide any benefit  
7 to the insurance company or to the unregulated  
8 businesses by somehow harming the utilities.

9                   It would be a very difficult task to  
10 pull off. There would have to be many, many people  
11 involved to do it. Because, again, going over a lot  
12 of the details that were in my testimony in Rebuttal,  
13 that there would be many layers within several  
14 different organizations and the controls are well  
15 established constraints.

16                   In addition to that, there's third  
17 party reviews by external auditors, there's reviews  
18 by the internal auditors to document compliance, to  
19 fulfill the requirements for the annual audit.

20                   As we mentioned, there are reviews by  
21 the IRS to make sure the transactions are at arms  
22 length. And there's also the -- even on the ERAC

1 side, there are reviews by the Vermont regulators.

2 There's an annual review by the  
3 actuaries, and then we'd also have to have our  
4 third-party claims administrators in on this game as  
5 it were.

6 So, I think that, you know, in  
7 general, there's no incentive and the controls are  
8 just -- overwhelmingly prevent that type of thing  
9 from happening.

10 Q. Okay, thank you. Now, Miss Von Qualen also  
11 asked you a number of questions about what the Staff  
12 role might be. And in answering those questions, you  
13 suggested that somebody with an auditors background  
14 or expertise might be able to assist the Staff in its  
15 evaluation of the transactions and the purchases in  
16 question.

17 Why is it that you believe an auditors  
18 background or an expert's would be sufficient?

19 A. Well, that was my judgment and my opinion  
20 based upon my background. I was the Manager of  
21 Ameren's Internal Audit Department for fifteen years.

22 And having managed audits and

1 supervised many audits over many different subject  
2 matters over the years, that was the basis for that  
3 conclusion.

4 MR. FITZHENRY: Thank you. That's all the  
5 questions I have for Mr. Thebeau on Redirect.

6 JUDGE JONES: Any Recross?

7 MS. Von QUALEN: No, thank you, Judge.

8 JUDGE JONES: Mr. Thebeau, just a couple of  
9 quick questions for you.

10 EXAMINATION

11 BY JUDGE JONES:

12 JUDGE JONES: And the first of these could also  
13 be answered by Mr. Fitzhenry if that's deemed to be  
14 the appropriate way to respond.

15 With respect to the agreement that is  
16 before the Commission in this proceeding, is approval  
17 for that agreement being sought in any other  
18 jurisdiction?

19 THE WITNESS: To my understanding, it's not  
20 required in Missouri.

21 JUDGE JONES: How about anywhere else?

22 THE WITNESS: Those are the only two states

1 right now where we contemplate doing business.  
2 Ameren does own some property in Iowa, but we've been  
3 advised that there's no Commission review  
4 requirement.

5 JUDGE JONES: You mentioned states, is approval  
6 being sought from any other body other than states?

7 THE WITNESS: We are having discussions with  
8 the Missouri Department of Insurance regarding ERAC's  
9 admittance as a foreign insurer in the state of  
10 Missouri.

11 JUDGE JONES: What's the status of that?

12 THE WITNESS: Ummm, we are still in  
13 discussions. There are a number of details we still  
14 need to work out. And there's also a captive  
15 insurance law being proposed in Missouri that would  
16 eliminate the necessity or really our desire to be  
17 able to register as a foreign insurer in Missouri.

18 And the benefit of being a foreign  
19 insurer in Missouri is it gives us a little better  
20 tax rate on our premium taxes.

21 JUDGE JONES: Why is the company deemed to be a  
22 foreign insurer in Missouri?

1 THE WITNESS: We would not be domiciled in  
2 Missouri. We would be domiciled in Vermont.

3 JUDGE JONES: Is approval of or other  
4 authorization being sought at the Federal level in  
5 any regard?

6 THE WITNESS: No.

7 JUDGE JONES: Lastly, you were asked a request  
8 regarding a few lines of testimony. In your Direct  
9 Testimony, page 11, line 233 -- on page 11, line 234,  
10 do you see reference to the term Ameren Companies?

11 THE WITNESS: Yes.

12 JUDGE JONES: What Companies are included in  
13 the term Ameren Companies as you use it in that  
14 statement?

15 THE WITNESS: Ameren has several large  
16 operating utilities, and we also have a number of  
17 smaller companies that operate a variety of  
18 businesses, on much less scale than utilities.

19 And we contemplate that that includes  
20 all those companies for various coverages. We're not  
21 currently providing for them, but we may in the  
22 future.

1           JUDGE JONES:  You mentioned Ameren Companies,  
2  what does that include?

3           THE WITNESS:  I can't think of all of the  
4  companies.

5           JUDGE JONES:  I'm sorry, let me ask that  
6  differently:

7                            You mentioned utilities --

8           THE WITNESS:  Okay.

9           JUDGE JONES:  -- (continuing) within the Ameren  
10  Companies.  What Companies would be included within  
11  that subcategory?

12           THE WITNESS:  That would be AmerenCILCO,  
13  AmerenCIPS, AmerenIP, and AmerenUE.

14           JUDGE JONES:  When you say AmerenUE, that  
15  includes what?

16           THE WITNESS:  That includes both the  
17  distribution and generating business.

18           JUDGE JONES:  Operating where?

19           THE WITNESS:  In Missouri.

20           JUDGE JONES:  What other types of companies are  
21  included under Ameren Companies?

22           THE WITNESS:  We have several generating

1 companies that operate in Illinois. We have a  
2 services company, Ameren Services. We have a fuels  
3 company. We have several smaller ventures that do  
4 things like operate some barge operations and things  
5 like that.

6 JUDGE JONES: Okay. That's all the questions I  
7 have, unless someone else has a follow-up from my  
8 questions.

9 Does anybody have anything like that?

10 (No audible response.)

11 JUDGE JONES: Nobody does, so you're finished.  
12 Thank you.

13 (WHEREUPON, the Witness was  
14 excused.)

15 JUDGE JONES: Looks like we'll proceed next  
16 with Staff Witnesses unless there's something that  
17 needs to be done ahead of that.

18 So the first Staff Witness is who?

19 MS. Von QUALEN: Burma Jones.

20

21

22

(Whereupon the Witness was sworn

1 by the Administrative Law  
2 Judge.)

3 JUDGE JONES: Thank you, please be seated.

4 BURMA C. JONES,  
5 having been first duly sworn by the Administrative  
6 Law Judge, witnesseth and saith as follows:

7 DIRECT EXAMINATION

8 BY MS. Von QUALEN:

9 Q. Good morning. Will you please state your  
10 name for the record?

11 A. Burma C. Jones.

12 Q. Who is your employer and what is your  
13 business address?

14 A. I'm an Accountant in the Accounting  
15 Department in the Financial Analysis Division of the  
16 Illinois Commerce Commission, 527 East Capitol  
17 Avenue, Springfield, Illinois 62701.

18 Q. Ms. Jones, did you prepare testimony for  
19 submittal in this proceeding?

20 A. I did.

21 Q. Do you have before you a copy of the  
22 document which has been marked as ICC Staff

1 Exhibit 1.0 Direct Testimony of Burma C. Jones?

2 A. Yes.

3 Q. Did you prepare that testimony for  
4 submittal in this proceeding?

5 A. Yes.

6 Q. Do you have any changes or additions to the  
7 testimony?

8 A. No.

9 Q. Do you also have -- oh, I'm sorry.

10 Is the information contained in ICC  
11 Staff Exhibit 1.0 true and correct to the best of  
12 your knowledge?

13 A. Yes.

14 Q. If I were to ask you the questions  
15 contained in the Exhibit 1.0 today, would your  
16 answers be the same?

17 A. Yes, they would.

18 MS. Von QUALEN: Judge, at this time I move for  
19 admission into evidence of ICC Staff Exhibit 1.0, the  
20 Direct Testimony of Burma C. Jones which was filed on  
21 e-Docket on October 24, 2006.

22 JUDGE JONES: Any objection?

1 MR. FITZHENRY: None.

2 JUDGE JONES: Let the record show that that  
3 motion is granted, accordingly the Direct Testimony  
4 of Burma C. Jones, ICC Staff Exhibit 1.0 is admitted  
5 into the evidentiary record as it appears on e-Docket  
6 with a filing date of October 24, 2006.

7 MS. Von QUALEN: Thank you.

8 (WHEREUPON, ICC Staff Exhibit  
9 Number 1.0 was admitted into the  
10 record.)

11 MS. Von QUALEN: She is available for  
12 cross-examination.

13 MR. FITZHENRY: Did you do the Rebuttal?

14 BY MS. Von QUALEN:

15 MS. Von QUALEN:

16 Q. Miss Jones, do you also have before you a  
17 copy of ICC Staff Exhibit 3.0, Rebuttal Testimony of  
18 Burma C. Jones?

19 A. I do.

20 Q. Did you also prepare that for submission in  
21 this proceeding?

22 A. Yes.

1 Q. Do you have any additions or changes to ICC  
2 Staff Exhibit 3.0?

3 A. No.

4 Q. Is the information contained within ICC  
5 Staff Exhibit 3.0 true and correct to the best of  
6 your knowledge?

7 A. Yes.

8 Q. And if I were to ask you the questions  
9 contained there today would your answers be the same?

10 A. Yes.

11 MS. Von QUALEN: Judge, I move for admission  
12 into evidence ICC Staff Exhibit 3.0 the Rebuttal  
13 Testimony of Burma C. Jones which was filed on  
14 e-Docket January 31, 2007.

15 JUDGE JONES: Any objection?

16 MR. FITZHENRY: No objection.

17 JUDGE JONES: That motion is granted  
18 accordingly the Rebuttal Testimony of Ms. Burma C.  
19 Jones, ICC Staff Exhibit 3.0 is admitted into the  
20 evidentiary record as filed electronically on January  
21 31, 2007.

22 (WHEREUPON, ICC Staff Exhibit



1 a requirement that in the event there's an amendment  
2 to the insurance services agreement that you suggest  
3 that it be filed with the Illinois Commerce  
4 Commission for approval, correct?

5 A. Correct.

6 Q. Now why did you make such a recommendation?

7 A. Well, so that the Commerce Commission would  
8 be aware should the Company decide to make any  
9 changes.

10 Q. You think it's important that the  
11 Commission be able to oversee amendments to the  
12 insurance services agreement?

13 A. Yes.

14 Q. Now you also indicated in your testimony  
15 that, again, assuming or hoping that the Commission  
16 approves this proposal, that from 30 days of the  
17 Order that the insurance services agreement be filed  
18 with both the Commission and the Manager of  
19 Accounting, correct?

20 A. I believe it says an executed copy.

21 Q. Okay. Now is there some benefit to  
22 Commission or Staff having in hand an executed

1 agreement of this sort?

2 A. Well, an executed copy provides proof that  
3 it is -- in fact -- exists.

4 Q. Stated differently, it's also proof that  
5 this the agreement in hand that the Parties are bound  
6 to, would that be correct?

7 A. Yes.

8 Q. Now, you also at pages two and three of  
9 your Rebuttal Testimony recommend utilities should  
10 provide the Commission with a report that contains, I  
11 know, the comparison of the cost of insurance  
12 coverage obtained from ERAC to the cost of insurance  
13 coverage made available to providers; is that right?

14 A. Yes.

15 Q. And, again, what was the reason behind this  
16 particular recommendation that you're making?

17 A. Well, assuming that the -- should the  
18 Commission approve this insurance services agreement,  
19 this would be a starting place to provide information  
20 for review for the Staff and the Commission to  
21 review.

22 Q. So assuming again the transaction with ERAC

1 is approved and this report is provided to the  
2 Commission Staff, I take it then that Staff would  
3 review the report, correct?

4 A. Yes.

5 Q. And is it possible that Staff could  
6 follow-up with Data Request questions for the  
7 Companies pertaining to contents of that report?

8 A. Yes.

9 Q. And that does in fact happen from time to  
10 time when the utilities provide the Commission Staff  
11 with reports that there's some follow-up Data  
12 Requests and information being sought?

13 A. Yes.

14 Q. Now, let's look at lines 43 and 44 of your  
15 Rebuttal. And I'm not sure I understood the totality  
16 of the sentence there. If you look at page two at  
17 the bottom, there's a sentence that comes to a  
18 completion.

19 And then begins, indicates if  
20 affiliates of the Illinois utilities receive  
21 comparable insurance coverage at lower rates than did  
22 the Illinois utilities. Do you see that?

1 A. Yes.

2 Q. Okay. So when we talk about indicate if,  
3 we're talking about the report should provide the  
4 information that's the subject matter of this  
5 particular sentence?

6 A. Repeat the question, please.

7 Q. I'm just trying to understand, are you  
8 suggesting here that the report should also provide  
9 the information that is the subject matter of this  
10 sentence?

11 A. Yes.

12 Q. And again for further clarification as it  
13 relates to this sentence, you're talking about the  
14 policies between ERAC and the utilities' affiliates?

15 A. Correct.

16 Q. Now, again, speaking to this particular  
17 report, in the event that Staff was not satisfied  
18 with the report or the information and the data  
19 request answers provided by the utilities, is it  
20 possible that Staff could file its own report with  
21 the Commission?

22 A. Repeat the question again, please

1           Q.    Again, focusing on this particular report,  
2           again, it's provided to the Commission Staff, the  
3           Staff reads the report.  There are questions asked,  
4           documents asked for.  The information has not been  
5           provided.  Staff is still not satisfied with the  
6           report for whatever reason.

7                        Is it possible that the Staff would  
8           make its feelings known about the report to the  
9           Commission?

10           A.    If Staff were unhappy with the report for  
11           whatever reason.

12           Q.    Is it possible in that situation that the  
13           Staff could recommend the Commission initiate an  
14           investigation of sorts?

15           A.    Yes.

16           Q.    And is it -- in fact, those sorts of things  
17           have happened in the past where the Staff hasn't been  
18           satisfied with the utilities action and has called  
19           upon the Commission to conduct an investigation?

20           A.    I have no personal experience with that.

21           Q.    Okay.  Are you aware that Staff has ever  
22           asked the Commission to conduct an investigation of

1 the utilities actions or behavior for whatever  
2 reason?

3 A. Yes.

4 Q. Yes, you are aware?

5 A. Ummm, yes.

6 Q. Now, again, one of your other  
7 recommendations is that the Commission Staff has  
8 access to books, accounts and records of the Illinois  
9 utilities as well as the books and records of ERAC as  
10 to any transaction which might involve utilities; is  
11 that right?

12 A. Yes.

13 Q. Again, like the other questions I asked  
14 you, Miss Jones, what is the purpose behind this  
15 particular recommendation?

16 A. It gives us an opportunity to verify that  
17 the information provided in the report is accurate.

18 Q. As you sit here today, do you have an idea  
19 as to who at Staff might be reviewing this particular  
20 information, the books and records of both the  
21 utilities and ERAC's as it relates to these  
22 transactions that are contemplated?

1           A.    It would be someone from the Accounting  
2 Department or the Financial Analysis Division.

3           Q.    Are there auditors included within that  
4 particular division?

5           A.    We're CPAs.

6           Q.    Is that better than auditors?

7           A.    Some Staff have audit experience, yes.

8           Q.    Okay.  Now again, you and I have been  
9 around a long time, and I recall several times where  
10 Staff asked for -- where maybe not you so much --  
11 never mind.  I'll apologize off the record.  Let me  
12 rephrase that terrible question.

13                         It's not unusual for the Staff to ask  
14 of a utility for books and records and information of  
15 that kind generally speaking, correct?

16           A.    Usual or unusual.

17           Q.    It happens from time to time, does it not?

18           A.    Oh, yeah.

19           Q.    And the Staff looks at the information, it  
20 doesn't just sit on the shelf and collect dust, does  
21 it?

22           A.    No.

1           Q.    Another one of your recommendations,  
2   Miss Jones, was that the utilities provide a copy of  
3   the independent audit as well as a report on the  
4   evaluation of the internal controls as required by  
5   Vermont law; do you recall that testimony?

6           A.    Yes.

7           Q.    And I take it from your prior answer that  
8   Staff would review this audit?

9           A.    Yes.

10          Q.    And Staff would review the report regarding  
11   these internal controls?

12          A.    Yes.

13          Q.    And, again, as we talked about previously,  
14   Staff would be free to ask additional questions and  
15   seek additional information from the utilities?

16          A.    Yes.

17          Q.    And, again, as we've talked about before,  
18   again, if Staff is not satisfied with any of that  
19   information for whatever reason, it's certainly free  
20   to let the Commission know, is it not?

21          A.    Yes.

22          Q.    Now, the information that you have

1 suggested that the utilities provide or that ERAC  
2 provide that we've been talking about here this  
3 morning, do you believe that information is helpful  
4 to you and Staff in terms of it's role in regulating  
5 utilities?

6 A. Repeat the question, please.

7 Q. In speaking to the information and data  
8 that would be provided to the Commission Staff if the  
9 Commission approves the proposal at hand, do you  
10 believe this information and documentation and  
11 whatever else that might be provided, the reports and  
12 so forth, would be helpful to the Commission and to  
13 the Staff in its role in regulating utilities?

14 A. The more information is always more helpful  
15 than less information.

16 Q. Okay. And I think another one of your  
17 recommendations is that Staff is asking for the  
18 opinion letter for ERAC's annual independent audit  
19 and a copy of the internal controls.

20 And, again, like the other questions I  
21 asked you: Does Staff see a role or benefit in  
22 having this information?

1           A.    Yes.

2           MR. FITZHENRY:  Thanks.  That's all the  
3 questions I have.

4           JUDGE JONES:  Thank you.

5                         Any Redirect?

6           MS. Von QUALEN:  Could I have a couple of  
7 minutes?  Five or less?

8           JUDGE JONES:  Yes, you suggest five, we'll take  
9 a five-minute recess.

10                                 (Whereupon a short recess was  
11                                 taken.)

12           JUDGE JONES:  Back on the record.

13           Miss Von Qualen, any Redirect?

14           MS. Von QUALEN:  Yes, I have a couple  
15 questions.

16                                 REDIRECT EXAMINATION

17                                 BY MS. Von QUALEN:

18           Q.  Miss Jones, does the accounting Staff  
19 perform audits here at the Commission?

20           A.  No, we perform reviews of the Company's  
21 information.

22           Q.  What is the distinction between audit and

1 review?

2 A. When we perform a review, we're relying on  
3 our professional judgment. We're not doing it in  
4 conformance of any guidelines established by the  
5 AICPA.

6 Q. Thank you. Now, Mr. Fitzhenry asked you a  
7 couple of questions about your testimony on the top  
8 of page three, where it says indicate if affiliates  
9 of the Illinois utilities receive comparable  
10 insurance coverage at lower rates than do the  
11 Illinois utilities. Do you remember that?

12 A. Yes.

13 Q. Is what you're asking for there limited to  
14 coverage from ERAC or does it also include coverage  
15 from commercial insurers?

16 A. It also includes coverage from commercial  
17 insurers.

18 Q. Thank you.

19 MS. Von QUALEN: That's all the questions I  
20 have.

21 JUDGE JONES: Any Recross?

22 MR. FITZHENRY: Just a brief follow-up.

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RECROSS EXAMINATION

BY MR. FITZHENRY:

Q. You mentioned previously, Miss Jones, that there are members of the Commission Staff that are certified public accounts, is that correct?

A. (Nodded head up and down.)

JUDGE JONES: You need to answer verbally.

THE WITNESS: Yes.

BY MR. FITZHENRY:

Q. And as such, are they capable of performing audits?

A. Ummm, yes.

Q. Thank you.

MR. FITZHENRY: That's all I have.

JUDGE JONES: Any Re-Redirect?

MS. Von QUALEN: No.

JUDGE JONES: Miss Jones, just one question, the AICPA stands for what?

THE WITNESS: American Institute of Certified Public Accountants.

JUDGE JONES: Thank you.

Does Staff have another witness to

1 present?

2 MS. Von QUALEN: Yes, I'd like to call  
3 Dr. Kennedy.

4 JUDGE JONES: All right. Please raise your  
5 right hand to be sworn in.

6 (Whereupon the Witness was sworn  
7 by the Administrative Law  
8 Judge.)

9 JUDGE JONES: Thank you. Please be seated.

10 THOMAS E. KENNEDY,  
11 having been first duly sworn by the Administrative  
12 Law Judge, witnesseth and saith as follows:

13 DIRECT EXAMINATION

14 BY MS. Von QUALEN:

15 Q. Good morning, Dr. Kennedy?

16 A. Good morning.

17 Q. Please state your full name for the record.

18 A. Thomas E. Kennedy.

19 Q. Who is your employer and what is your  
20 business address?

21 A. Illinois Commerce Commission, 527 East  
22 Capitol, Springfield, Illinois 62701.

1 Q. What is your position at the Commission?

2 A. I'm Manager of the Policy Program which is  
3 part of the Energy Division at the Commission.

4 Q. Dr. Kennedy, did you prepare written  
5 exhibits for submittal in this proceeding?

6 A. Yes, I did.

7 Q. Do you have before you a document which has  
8 been marked as ICC Staff Exhibit 2.0(R), the Revised  
9 Direct Testimony of Dr. Thomas E. Kennedy which is in  
10 both redacted and un-redacted form?

11 A. Yes.

12 Q. Did you prepare that for this proceeding?

13 A. Yes.

14 Q. Do you have any additions or corrections to  
15 make to ICC Staff Exhibit 2.0(R)?

16 A. No.

17 Q. Is the information contained in ICC Staff  
18 Exhibit 2.0(R) true and correct to the best of your  
19 knowledge?

20 A. Yes.

21 Q. If I were to ask you the questions  
22 contained in ICC Staff Exhibit 2.0(R) today, would

1 your answers be the same?

2 A. Yes.

3 Q. Do you also have before you a document  
4 that's been identified as ICC Staff Exhibit 4.0, the  
5 Rebuttal Testimony of Dr. Thomas E. Kennedy?

6 A. Yes.

7 Q. Did you prepare that exhibit for submission  
8 in this proceeding?

9 A. Yes.

10 Q. Do you have any additions or changes to  
11 make to ICC Staff Exhibit 4.0?

12 A. No.

13 Q. Is the information contained in ICC Staff  
14 Exhibit 4.0 true and correct to the best of your  
15 knowledge?

16 A. Yes.

17 Q. If I were to ask you the same questions  
18 today, would your answers be the same?

19 A. Yes.

20 MS. Von QUALEN: Judge, at this time I move for  
21 admission into evidence of ICC Staff Exhibit 2.0(R),  
22 the Revised Direct Testimony of Dr. Thomas E.

1 Kennedy, which was filed on e-Docket on January 25,  
2 2007 in redacted and un-redacted form.

3 And also the admission of ICC Staff  
4 Exhibit 4.0 the Rebuttal Testimony of Dr. Thomas E.  
5 Kennedy which was filed on e-Docket on January 31,  
6 2007.

7 JUDGE JONES: Any objection?

8 MR. FITZHENRY: No objection.

9 JUDGE JONES: Let the record show that motion  
10 is granted accordingly, ICC Staff Exhibit 2.0(R) in  
11 redacted and un-redacted versions is admitted into  
12 the evidentiary record as filed electronically on  
13 January 25, 2007.

14 Also the Rebuttal Testimony of  
15 Dr. Kennedy, ICC Staff Exhibit 4.0 is admitted into  
16 the evidentiary record as filed electronically on  
17 e-Docket on January 31, 2007.

18 (WHEREUPON, ICC Staff Exhibit  
19 Numbers 2.0(R) redacted and  
20 un-redacted and 4.0 were  
21 admitted into the record.)

22 JUDGE JONES: And the witness is tendered for

1 cross; is that right?

2 MS. Von QUALEN: Yes.

3 CROSS-EXAMINATION

4 BY MR. FITZHENRY:

5 Q. Good morning, Dr. Kennedy.

6 A. Good morning.

7 Q. How are you today?

8 A. I'm just fine.

9 Q. Okay. You haven't testified since 1999?

10 A. I guess not. Back then you were working  
11 for the consumers.

12 Q. All right, well let's get started.

13 Generally speaking in the context of  
14 the regulated utility industry, you're not opposed to  
15 all affiliate transactions with the utilities, are  
16 you?

17 A. Not necessarily.

18 Q. In fact, you believe there could be some  
19 safeguards or protections put in place that will  
20 serve to mitigate against affiliate abuse, do you  
21 not?

22 A. They may reduce the incentive. I don't

1 think they necessarily eliminate it. And I don't  
2 think believe that they are one hundred percent  
3 effective.

4 Q. But it is true, is it not, that you have  
5 previously given testimony in a proceeding before the  
6 Commission where you were in favor of affiliate  
7 transaction subject to certain modifications that you  
8 recommended?

9 A. Can you give me a case so I can understand  
10 what you're referring to?

11 Q. Yes. I'm referring to Northern Illinois  
12 Gas Company case, Docket 91-0239. And if it will  
13 help refresh your memory I have a copy of that Order.

14 A. I'm not sure that was an affiliate.

15 Q. Would you like to review the Order?

16 A. Sure.

17 MR. FITZHENRY: May I approach the witness?

18 JUDGE JONES: Okay.

19 (WHEREUPON a document was  
20 tendered to the witness.)

21 THE WITNESS: Can you point to me something  
22 specific here.

1 MR. FITZHENRY: Page seven.

2 BY MR. FITZHENRY:

3 Q. Is this an outline of your testimony and  
4 recommendations that you're making?

5 MS. Von QUALEN: Could I have a copy of that?

6 MR. FITZHENRY: Sure. I'm sorry.

7 (WHEREUPON a document was  
8 tendered to the Court and to  
9 Counsel.)

10 JUDGE JONES: That's an Order you're asking him  
11 to look at; is that correct?

12 MR. FITZHENRY: Yes.

13 JUDGE JONES: What's the date on it?

14 MR. FITZHENRY: February 20, 1992.

15 JUDGE JONES: Thank you.

16 (WHEREUPON, the Court, Counsel  
17 and the witness review the  
18 document.)

19 THE WITNESS: It's clearly been a while, but --

20 MR. FITZHENRY: Well, here let me do this here:

21

22 BY MR. FITZHENRY:

1 Q. You were the Dr. Thomas Kennedy that's  
2 referenced in the Order, and you do recall having  
3 given testimony in that Docket?

4 A. I'm not aware of any other Dr. Thomas  
5 Kennedy who has testified on behalf of Commission  
6 Staff.

7 I'm not sure whether this is an  
8 affiliate transaction or not, though.

9 MR. FITZHENRY: We can move on. I'll continue  
10 with a different line of cross, okay.

11 BY MR. FITZHENRY:

12 Q. Now in your Rebuttal Testimony at page  
13 four, you comment on ERAC providing insurance  
14 services to AmerenUE and note that AmerenUE had not  
15 received approval of these transactions from the  
16 Missouri Public Service Commission, correct?

17 A. That's my Rebuttal Testimony?

18 Q. Yes, page four. Look at lines 73 to 77.

19 A. Yes.

20 Q. You go on to conclude: The Missouri Public  
21 Service Commission has not determined these  
22 transactions are in the public interest, correct?

1 A. Yes.

2 Q. Did you have occasion to discuss Missouri  
3 Public Service Commission protocol for this  
4 particular matter with Mr. Greg Meyer?

5 A. Yes, I did.

6 Q. Do you have understanding or an awareness  
7 of the affiliate rules in Missouri?

8 A. I have a -- I discuss the issue with them,  
9 yes.

10 Q. Would you agree that affiliate transactions  
11 are permitted in Missouri where the services or goods  
12 being provided by the affiliate to the utility are  
13 the lower costs in market?

14 A. That's my understanding.

15 Q. Now, this is set forth in both your direct  
16 and Rebuttal testimonies, you have a grand concern  
17 for the potential for affiliate abuse, correct?

18 A. Absolutely.

19 Q. You've been with Commission Staff for over  
20 twenty-three years?

21 A. Yes.

22 Q. Are you aware of one instance where the

1 Commission or Staff found affiliate abuse involving  
2 AmerenCIPS?

3 A. No.

4 Q. Same question with regard to AmerenIP?

5 A. No.

6 Q. And that would be true even prior to  
7 Ameren's acquisitions of those two utilities?

8 That is, you're not aware of affiliate  
9 abuse being claimed by the Commission Staff or by the  
10 Commission?

11 A. No.

12 Q. Let's bounce back to your Direct Testimony,  
13 lines 123, 124?

14 A. (So complied with request.)

15 Q. Lines 123, 124, are you there?

16 A. Yes.

17 Q. It reads there: To the intent found  
18 prudent Illinois utilities could recover the cost of  
19 this insurance as an expense in a rate case.

20 Do you see that?

21 A. Yes.

22 Q. Now is it true that to the extent found

1 prudent an Illinois utility could recover the cost of  
2 any insurance as an expense in a rate case, correct?

3 A. That's true.

4 Q. And stated differently, again, let's not --  
5 strike that.

6 Stated differently but not talking  
7 about the situation involving ERAC, just where the  
8 utilities procure insurance coverage, and utilities  
9 in a rate case seeking to recover that insurance  
10 premium. Again, a utility can't recover insurance or  
11 premiums deemed or found to be imprudent, correct?

12 A. Yes.

13 Q. And it's true, is it not, that the utility  
14 has the burden of proof in demonstrating to the  
15 Commission that the cost for that insurance premium  
16 is prudent, right?

17 MS. Von QUALEN: I will object to the extent  
18 that that calls for a legal conclusion.

19 MR. FITZHENRY: It's not intended to. It's  
20 based on Dr. Kennedy's vast knowledge of regulatory  
21 affairs.

22 JUDGE JONES: Objection overruled.

1                   The witness has opened the door by his  
2 earlier testimony that is the subject of this line of  
3 questioning where he uses the term prudent or found  
4 prudent.

5           THE WITNESS: They have a burden of proof. But  
6 on the other hand, the standard that the Commission  
7 must use, it's my understanding based on Commission  
8 Orders and general experience, is that there's a  
9 reasonable man standard, and that the Commission and  
10 Staff is not supposed to put its judgment -- simply  
11 put its judgment in place of the Company's judgment.

12                   If a reasonable man might have come to  
13 that conclusion, then that's not necessarily --  
14 that's not going to be viewed to be imprudent.

15                   So, there is in my view a kind of a  
16 zone of reasonableness. And that zone of  
17 reasonableness could be exploited by affiliates to  
18 cause prices to be higher to the customers than they  
19 otherwise need to be.

20 BY MR. FITZHENRY:

21           Q. Let me go back again. I think in that  
22 answer you answered yes, the utility has the burden

1 of proof as you understand it, correct?

2 A. Yes.

3 Q. Now did I understand your answer to also be  
4 that the Staff is not supposed to when it reviews the  
5 Company's case employ the reasonable man standard in  
6 judging whether or not the utility has met its burden  
7 of proof?

8 A. Absolutely not. I said exactly the  
9 opposite. It is supposed to.

10 Q. All right.

11 A. It is a reasonable man standard, but that  
12 reasonable man --

13 Q. Thank you. That answers the question.

14 JUDGE JONES: Let him finish his answer. And  
15 if you feel it goes beyond the question, you can move  
16 to strike it.

17 THE WITNESS: I said that they do need to use a  
18 reasonable man standard, and that that standard  
19 creates a range of possible decisions by the utility  
20 that the Commission isn't in the position or the  
21 Staff has following that standard can overturn.

22 BY MR. FITZHENRY:

1           Q.    If that's true, then the utilities should  
2 recover every expense it seeks in a rate case?

3           A.    Well, there's reasonable and unreasonable.  
4 If it goes beyond what a reasonable man would do,  
5 beyond that range, then it is at risk.

6           Q.    So the Staff is free in a rate case to  
7 introduce what it believes to be reasonable and to  
8 take issue with utility's cover of a particular  
9 expense item, correct?

10          A.    Yes.  It can challenge that expense item.  
11 But it doesn't -- if it's -- there would be nothing  
12 to prevent in my view if there's a range of possible  
13 prices, as long as you're within that range and do  
14 not exploit that range to an affiliate's benefit.

15          Q.    Well, let's go with a hypothetical then:  
16 Let's say the range is \$10 to \$20?

17          A.    Okay.

18          Q.    Ten dollars, eleven dollars, twelve  
19 dollars, thirteen dollars, and fourteen and so forth,  
20 all the way up to twenty.  The utility comes in and  
21 says we should recover twenty?

22                         Can the Staff come in and say no, they

1 should recover nine?

2 A. According to your hypothetical, that would  
3 be below a range of reasonableness. And the  
4 utilities, if one was within that range as you are.

5 Q. Is Staff free to take the issue with the  
6 utilities' range of reasonableness?

7 A. Yes, it is.

8 Q. Now it's true, is it not, that there's a  
9 risk of any cost being disallowed in a rate case.  
10 There is some risk, correct?

11 A. Yes.

12 Q. In his Direct Testimony, Mr. Thebeau  
13 described a competitive bidding process that would  
14 involve ERAC and other commercial insurance carriers.  
15 Do you recall that discussion?

16 A. In his Direct Testimony?

17 Q. Yes.

18 A. Yes.

19 Q. Would you agree a competitive bid process  
20 is one means by which to obtain a low price or a  
21 reasonable price for service or goods?

22 A. That's one approach.

1 Q. At page ten of your Direct Testimony --

2 A. Okay.

3 Q. -- (continuing) there beginning at lines  
4 208 through 210, you address Mr. Thebeau's claims  
5 regarding the anticipated annual savings in the  
6 amount of five million dollars; do you see that?

7 A. Yes.

8 Q. Have you attempted to perform any kind of  
9 quantitative analysis to assess whether or not his  
10 estimate is correct or incorrect?

11 A. Not as it addresses the five million  
12 dollars directly. But based on his testimony today,  
13 I did a back of the envelope analysis and said that  
14 if --

15 MR. FITZHENRY: Your Honor -- well, I'll let  
16 him finish. Go on.

17 THE WITNESS: -- (continuing) I tried to get a  
18 feel for how much might be associated with the  
19 Illinois utilities.

20 And to do that I took his statement  
21 that two million dollars of the cost of the insurance  
22 now is allocated to the Illinois utilities out of the

1 total of thirty-five.

2 And if you take that percentage of  
3 total utilities you can get an estimate of what the  
4 savings might have been for the Illinois utilities  
5 and that comes out to be substantially less than five  
6 million dollars.

7 Q. Are you finished?

8 A. Sure.

9 MR. FITZHENRY: Your Honor, I move to strike  
10 virtually everything after where Dr. Kennedy  
11 acknowledges that he's not done a quantitative  
12 analysis.

13 Certainly, I point to the inherent  
14 prejudice to the Ameren Illinois utilities by now  
15 being faced with a record that is based on a back of  
16 the envelope calculation done by Dr. Kennedy an hour  
17 ago.

18 Certainly, if the Staff felt compelled  
19 to do so, they could have, number one, submitted a  
20 Data Request around the five million dollar estimate,  
21 they could have filed in their Rebuttal testimony or  
22 anything related to that. But they've not done that.

1                   And here today we're hearing this for  
2 the first time and it's really prejudicial for the  
3 Companies.

4           JUDGE JONES:   Any response?

5           MS. Von QUALEN:  It does not appear to me to be  
6 prejudicial to the company to have the record reflect  
7 Dr. Kennedy's analysis of what the cost would be.  
8 That is part of what would be in a record.

9                   And I do not believe the company would  
10 be prejudiced by its coming in today.  Dr. Kennedy is  
11 right there to be crossed.

12           JUDGE JONES:  Ms. Reporter, could you read the  
13 question back and then -- well, first read the  
14 question back, please.

15                                   (Whereupon the requested portion  
16                                   of the record was read back by  
17                                   the Reporter.)

18           JUDGE JONES:  Okay, thank you.

19                   The question goes to whether or not he  
20 has attempted to do that.  I think at least for me  
21 the test when measuring a response that's being  
22 objected to is whether it attempts to answer the

1 question that was asked or a different question.

2 The rest of Dr. Kennedy's answer  
3 actually answers a different question. It doesn't  
4 answer the question of whether he has done it. It  
5 answers a different question.

6 And what does it show? It clearly  
7 goes beyond the scope of the question. Whether it is  
8 an appropriate response to a follow-up question be it  
9 from Mr. Fitzhenry or Counsel from Staff, is really  
10 another matter and one I will not rule on unless the  
11 issue arises.

12 In any event, start reading the  
13 response and I will indicate about the point we'll be  
14 striking testimony from the case.

15 (Whereupon the requested portion  
16 of the record was read back by  
17 the Reporter.)

18 JUDGE JONES: Okay, thank you. Everything  
19 after that is stricken, not based on relevancy but  
20 based on the fact that it goes beyond the scope of  
21 the question.

22 MR. FITZHENRY: Thank you.

1                   May I continue?

2                   JUDGE JONES:    You may.

3                   BY MR. FITZHENRY:

4                   Q.    Later on in that answer, Dr. Kennedy,  
5                   you --

6                   JUDGE JONES:    I'm sorry, wait a minute.   Which  
7                   answer?

8                   MR. FITZHENRY:    In the answer on page ten.

9                   BY MR. FITZHENRY:

10                  Q.    On page ten of your testimony, lines 214  
11                  through 216, you note that while savings may be  
12                  possible, there's no requirement that ERAC savings  
13                  will be passed on to Ameren Illinois utilities,  
14                  particularly the Illinois utilities; do you see that?

15                  A.    Yes.

16                  Q.    Are you aware that ERAC has agreed to amend  
17                  its bylaws so that any excess, any profits will be  
18                  returned to the policyholders?

19                  A.    Yes, I am.    But I don't think that's a  
20                  constitutional requirement that the savings are  
21                  returned to the Illinois utilities.

22                  MR. FITZHENRY:    Judge, I'm going to move to

1 strike again everything after affirmative answer. I  
2 may have to revise my process, but that was a yes or  
3 no answer.

4 JUDGE JONES: Any response?

5 MS. Von QUALEN: I believe the witness should  
6 be able to answer the questions as fully as he  
7 wishes.

8 JUDGE JONES: Objection sustained. I've never  
9 been one to require expert witnesses to be limited to  
10 yes or no answers to most of the questions that are  
11 asked of them.

12 The two questions that have just been  
13 asked though were worded in a way that did not call  
14 for any further explanation such as what Dr. Kennedy  
15 was starting to provide.

16 That's really a different question.  
17 Dr. Kennedy answered a different question, one that  
18 was related to the first question, but that's really  
19 not the test.

20 So for that kind of testimony is to  
21 get into the record, over an objection, it's going to  
22 have to be in response to a question that asks for

1 that type of answer.

2 So having said that, as indicated the  
3 Motion to Strike is granted.

4 MR. FITZHENRY: Thank you.

5 BY MR. FITZHENRY:

6 Q. I ask you to turn to page 12 of your  
7 testimony. And there the answer begins on lines 246  
8 to 254.

9 You address the 50 million dollars of  
10 coverage of transmission and distribution lines that  
11 may be available through ERAC as posited by  
12 Mr. Thebeau, correct?

13 A. Yeah.

14 Q. And assuming that the proposal on the table  
15 is approved by the Commission, similar to a prior  
16 question, there's no guarantee, is there, that the  
17 utilities will be able to recover the costs of those  
18 premiums and rates associated with that coverage?

19 A. There's no absolute guarantee.

20 Q. Thank you. Looking at page 13 of your  
21 testimony, please. Again, the answer begins on 273  
22 to 280.

1                   You address there - I'm speaking  
2           generally - that the length between ERAC and Ameren  
3           Services may give ERAC an informational advantage  
4           such that commercial insurers may shy away on bidding  
5           on coverage?

6           A.    Yes.

7           Q.    Is it correct, if you know, that ERAC has  
8           been in existence now for several months?  Is that  
9           your understanding?

10          A.    Yes.

11          Q.    Do you have any factual basis for your  
12          claim that commercial insurers are backing away from  
13          offering coverage to Ameren Corporation or its  
14          subsidiaries?

15          A.    Not specifically.

16          Q.    Okay.  In reviewing one of your Data  
17          Requests, Dr. Kennedy, when we asked what documents  
18          you relied upon, the Commission relied upon, you  
19          referred to your testimonies as providing that  
20          information, correct?

21          A.    Yes.

22          Q.    So I take it then you did not review Part

1 450 of the Commission's Rules in preparing your  
2 testimony in this Docket?

3 Part 452, I'm sorry.

4 JUDGE JONES: What are you referring to  
5 exactly?

6 MR. FITZHENRY: Yes, Title 83.

7 JUDGE JONES: Give us the full citation to that  
8 Rule.

9 MR. FITZHENRY: It's Part 452, Standards of  
10 Conduct and Functional Separation. It's part of  
11 Title 83.

12 THE WITNESS: I did not specifically review  
13 that section.

14 BY MR. FITZHENRY:

15 Q. And I take it you did not review Part 550  
16 Nondiscrimination in Affiliate Transactions For Gas  
17 Utilities, did you?

18 A. Not specifically, but I'm aware of both of  
19 those Rules.

20 Q. Right. But my question is:

21 When you wrote your testimony, did you  
22 rely upon or take into account specifically any of

1 the provisions in Part 452 or Part 550?

2 A. Not specifically.

3 Q. Dr. Kennedy, moving to a different line of  
4 questioning you do -- in a couple different places,  
5 in both your testimonies, you suggest the Commission  
6 should follow its decision in the Mid-American case,  
7 correct?

8 A. I reference that. Could you cite me to  
9 something specific where I said I should follow --

10 Q. I believe it's in Rebuttal, but give me a  
11 moment here. Yes, for example, on page 17, there at  
12 lines 356 to 358.

13 A. Give me a second.

14 Q. Sure.

15 A. 357 to 358?

16 Q. Of your Rebuttal Testimony, correct. I can  
17 read the language to you, if it would help.

18 A. I'd just as soon read to myself, thank you.

19 Okay, and your question again is?

20 Q. Did you mean for the Commission to follow  
21 the policy decision it made in the Mid-American case  
22 for this particular case, do you not?

1           A.    By that decision, I would -- I meant that  
2    it would deny -- it expressed the concern about these  
3    affiliate transactions and denied the request.  
4    That's what I was referring to.

5           Q.    Are you familiar at all with the  
6    Mid-American record?

7           A.    Yes, I'm somewhat familiar with it, yeah.

8           Q.    Are you more familiar with the Mid-American  
9    Order as compared to the record?

10          A.    I looked at the Order.

11          Q.    Were you a witness in that proceeding?

12          A.    No, I was not.

13          Q.    If you know, it would be fair to say that  
14    in the Mid-American case, the utility had not  
15    proposed a pilot period of three years or any period  
16    of time as is being suggested here by the Ameren  
17    Utilities.

18          A.    I don't believe they initially proposed  
19    that, but I think maybe they did. I don't know.

20          Q.    You don't know?

21          A.    I don't know.

22                         In any event, I do not believe they

1 had -- I do not recall that they had that provision.

2 Q. Do you recall whether Mid-American ever  
3 offered to return excess underwriting profits back to  
4 policyholders as is being proposed in this Docket?

5 A. I do not recall that they did that.

6 Q. Let me ask you a series of questions here:

7 Did you as, part of your preparation  
8 in filing testimony in this pleading, review any  
9 Vermont Law, Rules or Regulations related to captive  
10 insurance companies?

11 A. I'm sorry?

12 Q. Did you conduct a review of any Vermont  
13 Law, Rules or Regulations as it relates to captive  
14 insurance companies?

15 A. I did not look at the statutes.

16 Q. Did you look at any applicable Rules or  
17 Regulations from Vermont?

18 A. No.

19 Q. Now you recall generally speaking that  
20 Mr. Thebeau identified what he believed to be a  
21 number of protocols and controls in place that would  
22 serve to mitigate the concern regarding affiliate

1 abuse? Do you recall that testimony, generally?

2 A. Yes.

3 Q. And, in fact, you responded to some degree  
4 to his positions, have you not?

5 A. Yes.

6 Q. And Mr. Thebeau identified certain  
7 budgetary controls and other internal reviews. Did  
8 you happen to be able to review any of those  
9 budgetary controls or internal reviews?

10 A. I don't think there's any more that was  
11 provided other than his statement that they were  
12 going to have these reviews. And I don't know how he  
13 would review that statement.

14 Q. We'll go on. Did you review the Corporate  
15 Compliance Policy commissioned by --

16 JUDGE JONES: Can you give us some citations?  
17 I mean, you have the advantage of prepared testimony.

18 MR. FITZHENRY: Citations to Mr. Thebeau's  
19 testimony?

20 JUDGE JONES: Correct. Or whoever's testimony  
21 that you're referring to.

22 MR. FITZHENRY: Okay.

1           JUDGE JONES: One of the tradeoff sometimes in  
2           having advanced, prepared testimony is getting  
3           citations that are being made to references in that  
4           testimony.

5           MR. FITZHENRY: Sure.

6                        I'm referring to Mr. Thebeau's  
7           Rebuttal Testimony, beginning at page eight and  
8           continues through page 11.

9                        And then for the benefit of the  
10          record, if one were to look at Mr. Thebeau's  
11          Surrebuttal Testimony on pages 13 and 14, again, a  
12          number of these controls and protocols are briefly  
13          identified.

14          JUDGE JONES: Well, I'm just really asking for  
15          which ones you're referring to in your questions and  
16          if that's the ones you're referring to your  
17          questions, then --

18          MR. FITZHENRY: Yes, I'll be more specific.

19          JUDGE JONES: Thank you.

20          BY MR. FITZHENRY:

21                 Q. All right, for example, on page nine of  
22          Mr. Thebeau's testimony, he identifies an extensive,

1 internal audit program.

2                   Again, did you have an opportunity to  
3 review any aspects of that internal audit program?

4           A. No, I didn't.

5           Q. And later on page ten, he refers to a  
6 corporate compliance policy which - I want to check  
7 one thing that I believe was provided in response to  
8 a Staff Data Request - did you review that corporate  
9 compliance policy in preparing your testimony?

10          A. I'm not sure. I remember seeing something  
11 that was in the original Petition by a corporate  
12 officer that was purported to require them to file  
13 claims; is that what you're referring to?

14          Q. No. But I'm going to go on.

15                   I've got to find a page citation. I'm  
16 not sure I can find it right now.

17                   I think you will recall there was  
18 testimony by you in response to Mr. Thebeau's  
19 position regarding the ability of the Ameren  
20 utilities to access coverage for biological events  
21 and terrorism, as well as for customer record  
22 retention.



1 identify the cite at this moment in time?

2 JUDGE JONES: Ms. Reporter, could you read my  
3 comment back, please.

4 Well, to speed things up, if you're  
5 indicating that you cannot locate the cite, go ahead  
6 and proceed with the question. If there is a problem  
7 with that in the minds of a party or on my part, I'll  
8 let you know.

9 But otherwise, you've indicated the  
10 cite is not available to you, so go ahead and proceed  
11 with your question.

12 MR. FITZHENRY: Thank you. Thank you, I  
13 appreciate that, Judge.

14 BY MR. FITZHENRY:

15 Q. Again, in Mr. Thebeau's testimony, his  
16 discussion about the availability of terrorism  
17 coverage and coverage for customer record retention  
18 in the event those records were lost,

19 And you offered a response in terms of  
20 the cost to recover customer records and the like as  
21 being a good example of economic insurance.

22 Do you remember your testimony there?

1 Do you understand that question?

2 A. Do you want to give me my citation?

3 Q. Yes, I'll do that in one moment.

4 MR. FITZHENRY: Well, I'm not able to find  
5 that. Let me see if I can just finalize this Cross  
6 here.

7 That's it. Thank you.

8 JUDGE JONES: Let me just say that I'm not  
9 attempting to shorten your Cross here. If you want a  
10 few minutes to check out the locations to that  
11 testimony that you're referring to, I don't have any  
12 problem with that.

13 I'm not looking to surprise you with a  
14 request for references to the testimony, although the  
15 last one came from the witness, but if you want a  
16 couple minutes if there's some questions you'd like  
17 to get posed and you want to hunt down the citations,  
18 I don't have any problem with that.

19 MR. FITZHENRY: I just don't want to  
20 inconvenience the Parties and the Judge any further.  
21 But if I had a couple minutes, I think I could easily  
22 find those cites.

1           JUDGE JONES:  What we're going to do then --  
2   and other than that, is that pretty much where you're  
3   ready to finish?

4           MR. FITZHENRY:  Oh, yes.  I had five or six  
5   questions left.

6           JUDGE JONES:  All right, what we'll do is we'll  
7   take a five-minute recess and give Mr. Fitzhenry an  
8   opportunity to do that.

9           MR. FITZHENRY:  Thank you.

10          JUDGE JONES:  And then we'll return from that  
11   and finish the Cross.

12                        So we hereby recess for five minutes.

13                                (Whereupon a short recess was  
14                                taken.)

15          JUDGE JONES:  Back on the record.  It's my  
16   understanding Mr. Fitzhenry is ready to proceed with  
17   some additional questions after having had a short  
18   opportunity to look at the testimony to which it  
19   refers.

20                        Let me make sure that's the case:

21                        Are you ready to proceed with that?

22          MR. FITZHENRY:  I am, your Honor.  Again, thank

1 you and the Parties for allowing me time to find the  
2 correct citations. If I may proceed --

3 JUDGE JONES: Go ahead.

4 BY MR. FITZHENRY:

5 Q. Dr. Kennedy, please return to page eight of  
6 your Revised Un-redacted testimony beginning at line  
7 175 and it concludes at the top of page nine. You  
8 might want to look at that.

9 A. Okay.

10 Q. Are you aware of whether or not there is  
11 coverage for the loss of customer records through the  
12 reinsurance market?

13 A. No, I'm not.

14 Q. That shortens everything up.

15 MR. FITZHENRY: Okay, well that's all the  
16 questions I have.

17 JUDGE JONES: Thank you, Mr. Fitzhenry. Does  
18 Staff need some time?

19 MS. Von QUALEN: Yes, Staff -- could I have ten  
20 minutes, please?

21 MR. FITZHENRY: That's fine.

22 JUDGE JONES: All right, at this time we hereby

1 recess for ten minutes.

2 (Whereupon a short recess was  
3 taken.)

4 JUDGE JONES: Back on the record.

5 MS. Von QUALEN: Judge, I do have a couple of  
6 Redirect questions for Dr. Kennedy.

7 But before I ask the question, I'm  
8 going to move for admission into the record by  
9 Stipulation a Data Request response that Dr. Kennedy  
10 provided to Ameren in this case. It's the response  
11 to question four of their first set of Data Requests.

12 And I would like to file that  
13 electronically in redacted and un-redacted form as  
14 ICC Staff Redirect Exhibit 5.0.

15 JUDGE JONES: What's the exact DR number?

16 MS. Von QUALEN: That is number four.

17 JUDGE JONES: And that's the question and  
18 answer?

19 MS. Von QUALEN: Yes.

20 JUDGE JONES: Is that agreeable?

21 MR. FITZHENRY: It is, your Honor.

22 JUDGE JONES: Let the record show that leave is

1 given to Staff to make that filing. It will be known  
2 as ICC Staff Exhibit 5.0 consisting of a question and  
3 answer to Data Request Number Four, the first set of  
4 DRs.

5 (WHEREUPON, ICC Staff Exhibit  
6 Number 5 was admitted into the  
7 record.)

8 JUDGE JONES: Staff is given leave to make that  
9 filing within seven days in redacted and un-redacted  
10 form. It will be deemed part of the evidentiary  
11 record upon its filing.

12 Any questions about that?

13 (No audible response.)

14 JUDGE JONES: Do you also have some questions  
15 for the witness?

16 MS. Von QUALEN: Yes, I do.

17 REDIRECT EXAMINATION

18 BY MS. Von QUALEN:

19 Q. Dr. Kennedy, do you recall Mr. Fitzhenry  
20 asking you questions about whether you knew of  
21 instances or examples of CIPS or IP having affiliate  
22 transactions that had concerns with them?

1           A.    Yes.

2           Q.    Are you aware of any instances of affiliate  
3 abuse related to CILCO?

4           A.    Yes, I am.

5           Q.    Does the fact of not having examples of  
6 affiliate abuse by CIPS or IP change your concerns  
7 about affiliate abuse?

8           A.    No, it doesn't. My concern is the perverse  
9 incentives that affiliate relationships have and  
10 those known incentives versus the hope of possible  
11 gains.

12                        And a concern that it's not good  
13 policy to create a situation where you do in fact  
14 create these perverse incentives.

15                        So that we need to be very careful  
16 about setting up these affiliate transactions.

17           Q.    Is it necessary for there be a Commission  
18 Order or finding of affiliate abuse for you to have  
19 concerns about it?

20           A.    No, it is not. We have limited resources  
21 and finding these affiliated abuses and being able to  
22 point to particular abuses is a difficult process.

1                   In my data response I refer to the  
2                   situation of People's Gas where the Commission Staff  
3                   spent over four years investigating among other  
4                   things affiliate relationships.

5                   And we -- then the final result was a  
6                   settlement where the Commission did accept a hundred  
7                   million dollar settlement by People's Gas.

8                   The Commission in that Order for that  
9                   did specifically note the affiliate abuse, and that  
10                  is in the DR.

11                 Q.    Thank you.

12                   Mr. Fitzhenry asked you about whether  
13                   you had done a quantitative analysis about the  
14                   savings --

15                 A.    Yes.

16                 Q.    -- (continuing) that Mr. Thebeau talked  
17                   about?

18                 A.    Yes.

19                 Q.    What analysis did you do?

20                 A.    Basically, I prorated the five million  
21                   dollar savings that Mr. Thebeau put in his Direct  
22                   Testimony by the share of insurance premiums that

1 were allocated to the Illinois Companies.

2 And when you do that, it would come  
3 out to approximately \$300,000 as the possible savings  
4 to the Illinois Companies out of the five million  
5 that Mr. Thebeau claims for the Ameren Companies as a  
6 whole.

7 Q. You did that in reliance upon his answers  
8 that he gave today in cross-examination?

9 A. Yes. He gave information about the  
10 allocation of premiums to the Illinois Companies and  
11 about the total insurance costs to the Ameren  
12 Companies as a whole.

13 MS. Von QUALEN: I have no further questions.

14 JUDGE JONES: Thank you.

15 Any Recross?

16 MR. FITZHENRY: Yes, just briefly.

17 RECROSS EXAMINATION

18 BY MR. FITZHENRY:

19 Q. Dr. Kennedy, if you don't recall I  
20 understand: When you were listening to Mr. Thebeau's  
21 explanation about the savings, do you recall that he  
22 testified that two million dollars of the savings

1 was attributable to the property insurance coverage  
2 of 14 million dollars.

3 Do you remember him giving that  
4 testimony that they were tied together?

5 A. The two million dollars I was using was the  
6 two million dollars as the allocated insurance costs  
7 going to the Illinois utilities out of a total  
8 insurance cost of 35 million.

9 And then you take that share of the  
10 five million dollars of savings that he testified are  
11 possible to come up with a share of the Illinois  
12 utilities of approximately 300,000.

13 Q. Okay. Numerically though, it's not two  
14 million over 35 or two million over 14, you would  
15 agree the savings would be greater than you just  
16 testified to, would it not?

17 A. I don't believe that would be the  
18 appropriate way.

19 If you wanted to take that part out of  
20 it, I would think you would be taking 3 million  
21 dollars worth of savings.

22 You get 10 percent of three million

1 dollars worth of savings which would be two million  
2 dollars insurance costs versus 20 million for the  
3 Ameren Companies, excluding the property insurance  
4 savings, that would give them a 10 percent share, not  
5 five million if we take the two million out that  
6 would be 3 million.

7 So 10 percent of three million would  
8 also approximately be 300,000. So that doesn't  
9 really affect that metric.

10 Q. Either way, if I understood your answer to  
11 Miss Von Qualen's question, your premise for the  
12 \$300,000 savings comes from Mr. Thebeau's testimony  
13 today?

14 A. Yes.

15 Q. Thank you.

16 MR. FITZHENRY: That's all I have.

17 JUDGE JONES: Any Re-Redirect?

18 MS. Von QUALEN: No, thank you.

19 JUDGE JONES: All right, that concludes the  
20 questioning of Dr. Kennedy.

21 Thank you, Dr. Kennedy.

22 (WHEREUPON, the Witness was



1 evidentiary record as filed electronically on  
2 June 14, 2006, and as supported by an affidavit  
3 itself marked as Ameren Exhibit 2.1 and filed  
4 electronically yesterday on yesterday's date, both  
5 filings, the testimony 2.0 and the affidavit 2.1 are  
6 admitted into the record.

7 Is there anything else on that?

8 MR. FITZHENRY: No thank you.

9 (WHEREUPON, Ameren Exhibit  
10 Numbers 2.0 and 2.1 were  
11 admitted into the record.)

12 JUDGE JONES: At this time we, hereby go off  
13 the record briefly with regard to post-hearing  
14 scheduling. I don't recall offhand whether there has  
15 been any date agreed to.

16 MS. Von QUALEN: We don't have an agreed to  
17 date and I don't think we have an agreed to method  
18 yet.

19 MR. FITZHENRY: Yes.

20 JUDGE JONES: We're off the record.

21 (Discussion off the record.)

22 JUDGE JONES: Back on the record.

1           MR. FITZHENRY: Thank you. We have agreed to  
2 simultaneous direct or initial briefs for April 17th,  
3 and then simultaneous Reply Brief on May 7.

4           JUDGE JONES: Is that Staff's understanding  
5 also?

6           MS. Von QUALEN: Yes.

7           JUDGE JONES: All right, those dates are  
8 approved as a briefing schedule. That will be the  
9 dates on which they're filed electronically and  
10 served on each other electronically.

11                         Do Parties have any problem using a  
12 table of contents?

13           MR. FITZHENRY: No, that's fine.

14           JUDGE JONES: So we will include that. And  
15 please provide a copy of those to me in "Word"  
16 format.

17                         I think that's it then, if there's no  
18 other matters?

19   (No audible response.)

20           JUDGE JONES: Let the record show no response.  
21 At this time we will note that this hearing is  
22 concluded.

1                   Subject to the post-hearing scheduling  
2 just read into the record along with certain  
3 post-hearing exhibit filings for which leave has  
4 already been given, this matter is hereby marked  
5 heard and taken.

6                   Thank you, all.

7                                 (Which were all the proceedings  
8                                 had in this cause.)

9                                 HEARD AND TAKEN

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