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1 PROCEEDINGS

2 JUDGE ALBERS: By the authority vested in me by
3 the Illinois Commerce Commission, I now call Docket
4 Number 12-0293. This docket was initiated by Ameren
5 Illinois Company and concerns the update to its Rate
6 MAP-P formula rate filing.

7 May I have the appearances for the
8 record, please?

9 MR. TOMC: Your Honor, Matthew R. Tomc and Ed
10 Fitzhenry on behalf of the Ameren Illinois Company,
11 St. Louis, Missouri.

12 MS. LUCKEY: On behalf of the Staff of the
13 Illinois Commerce Commission, Jim Olivero, Michael
14 Lannon and Nicole Luckey.

15 MR. KENNEDY: On behalf of the Company, Mark
16 Whitt, Albert Sturtevant, Christopher Kennedy,
17 Rebecca Segal, Whitt Sturtevant, L.L.P.

18 MS. LUSSON: On behalf of the People of the
19 State of Illinois, Karen Lussion, Tim O'Brien and
20 Susan Satter, 100 West Randolph, 11th Floor, Chicago,
21 Illinois 60601.

22 JUDGE ALBERS: Any others wishing to enter an

1 appearance?

2 (No response.)

3 Let the record show no response.

4 All right. Any preliminary matters
5 today?

6 (No response.)

7 I believe we did discuss late
8 yesterday afternoon the confidentiality of a couple
9 of exhibits. I think you were going to check with
10 your client about that.

11 MR. KENNEDY: Yes, and we need a little bit
12 more time. Hopefully, we will -- I think we are
13 planning to have a response to that by the end of the
14 day today.

15 JUDGE ALBERS: That's fine.

16 MS. LUSSON: Your Honors, I am going to be
17 leaving mid-day -- not mid-day, but mid-afternoon, so
18 I was hoping that the Company -- if not, that's fine.
19 Mr. O'Brien will be here. But since I raised the
20 objection, I was hoping I would be able to address it
21 before I left.

22 MR. KENNEDY: Yeah, we are just checking with

1 the vendor right now about confidentiality
2 agreements, and I just haven't had a chance to -- the
3 client just hasn't had a chance to check with the
4 vendor yet. So we are hoping we will know today, but
5 I will let you know what happens.

6 JUDGE ALBERS: Do you think by lunch time you
7 can let us know?

8 MR. KENNEDY: Yeah, we can let you know by
9 lunch if we have an answer by then.

10 JUDGE ALBERS: And then we can just put
11 something in writing later. We can just do it by
12 writing, I suppose. So give you an opportunity to
13 express yourself.

14 MR. KENNEDY: Oh, sure. Absolutely.

15 JUDGE ALBERS: All right. Any other
16 preliminary matters then this morning?

17 MS. LUCKEY: Your Honor, with respect to
18 Staff's cross for Ryan Martin, Staff and the Company
19 have come to an agreement regarding putting a couple
20 of documents into the record in lieu of crossing
21 Mr. Martin for an extended period of time. So we
22 would like to put these documents in as a group cross

1 exhibit, if we could, because there are a number of
2 them. Would that be fine?

3 JUDGE ALBERS: Yeah, we will take any
4 objections as they come up, but generally I am okay
5 with the idea. When Mr. Martin takes the stand, we
6 can address that.

7 MS. LUCKEY: Great.

8 JUDGE ALBERS: Anything else?

9 (No response.)

10 Why don't we get to our witnesses
11 then. We have seven on the stand today, so those in
12 the room want to stand and raise their right hand?

13 Okay. Two is better than none.

14 (Whereupon the witnesses were
15 duly sworn by Judge Albers.)

16 JUDGE ALBERS: Thank you. Mr. Kennedy, Mr.
17 Tomc, call your first witness.

18 MR. TOMC: Yes, Your Honor. On behalf of the
19 Ameren Illinois Company I would call Mr. Ryan J.
20 Martin to the witness stand.

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RYAN JAMES MARTIN

called as a witness on behalf of Ameren Illinois
Company, having been first duly sworn, was examined
and testified as follows:

DIRECT EXAMINATION

BY MR. TOMC:

Q. Good morning, Mr. Martin.

A. Good morning.

Q. Please state your name and address for the
record.

A. My name is Ryan James Martin. My address
is One Ameren Plaza, 1901 Chouteau Avenue, St. Louis,
Missouri 63103.

Q. By whom are you employed?

A. I am employed by Ameren Services Company.

Q. And what is your title?

A. I am the Assistant Treasurer and Manager of
Corporate Finance.

Q. Thank you. Do you have your testimony in
front of you this morning?

A. I do.

Q. Mr. Martin, are you the same Ryan J. Martin

1 that caused to be filed certain pieces of testimony
2 and supporting exhibits on behalf of the Ameren
3 Illinois Company in this proceeding?

4 A. I am.

5 Q. Did you cause to be filed Ameren Exhibit
6 2.0 being the direct testimony of Ryan J. Martin on
7 or about 4/20/2012?

8 A. Yes.

9 Q. With respect to your rebuttal testimony,
10 are you the same Ryan J. Martin that caused to be
11 filed Ameren Exhibit 12.0 being your rebuttal
12 testimony as well as the supporting Exhibits 12.1 and
13 12.2?

14 A. Yes.

15 Q. Now I would call your attention to your
16 surrebuttal testimony. Are you the same Ryan J.
17 Martin that caused to be filed Ameren Exhibit 21.0,
18 that being your surrebuttal filed on or about
19 September 5, 2012?

20 A. Yes.

21 Q. Is your testimony that you have caused to
22 be filed that we have identified here today, is it

1 true and accurate to the best of your knowledge,
2 information and belief?

3 A. It is.

4 Q. And if I asked you the same questions
5 today, would your answers remain the same?

6 A. They would.

7 MR. TOMC: Your Honor, with that, I would move
8 for the admission of Mr. Martin's testimony and
9 supporting exhibits and tender him for cross
10 examination.

11 JUDGE ALBERS: All right. We will address the
12 admissibility following cross examination.

13 Ms. Luckey, you seem ready to say
14 something.

15 MS. LUCKEY: I am ready. Staff would like to
16 move into evidence a couple of documents which we
17 would like to label as Staff Group Cross Exhibit, I
18 suppose, 1 since it is a group exhibit.

19 JUDGE ALBERS: Why don't we just keep it at --

20 JUDGE YODER: Five.

21 JUDGE ALBERS: Yeah, so we don't get confused.

22 MS. LUCKEY: And that consists of pages 89

1 through 96 of Ameren Corporation's SEC Form 10-K
2 Annual Report for December 31, 2011; page 38 of
3 Ameren Corp's March 2012 investor meeting
4 presentation; the Company's response to Staff DR RMP
5 1.02 Attachment 1 which is the Moody's credit opinion
6 on Ameren Energy; the Company's DR response to RMP
7 1.05 Attachment 7 which is Standard & Poor's update
8 for Ameren; the Company's response to RMP 4.01; the
9 Company's response to RMP 5.02; and the Company's
10 response to RMP 5.03.

11 If you could bear with us, it will
12 take a second to get that prepared.

13 (Pause.)

14 (Whereupon Staff Group Cross
15 Exhibit 5 was marked for
16 purposes of identification as of
17 this date.)

18 And the second document or the third
19 document actually was somewhat voluminous so Staff is
20 still making a copy of that, but we don't have any
21 questions for the witness on that document.

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CROSS EXAMINATION

BY MS. LUCKEY:

Q. Mr. Martin, I only have a few questions for you and I do have the relevant documents I will be asking you about here. Do you have a copy?

A. I do.

Q. Regarding Ameren Corporations March 2012 investor meeting presentation, would you agree that Moody's Investor Service upgraded the senior debt rating of Ameren Illinois Company to A3 during June of 2012?

A. Yes.

Q. Regarding the Company's response to RMP 1.05 Attachments 5 through 7 which is the large document.

A. Okay.

Q. That presentation was provided by AIC to all the credit rating agencies, is that correct?

A. Yes. I mean, it was an Ameren Corp consolidated presentation, yes. It included assets.

Q. And were they all identical?

1 A. Besides the front cover that indicated the
2 audience, they are identical.

3 Q. Regarding the Standard & Poor's March 19,
4 2012, rating report on Ameren Energy Generating
5 Company, does S&P assign Ameren Generating Company a
6 business profile risk of Fair?

7 A. Yes.

8 Q. Does S&P assign Ameren Generating Company a
9 financial risk profile of Aggressive?

10 A. Yes.

11 MS. LUCKEY: Staff has no further questions.

12 JUDGE ALBERS: All right. And I guess did you
13 formally move for the admission of your cross
14 exhibits?

15 MS. LUCKEY: If I didn't, I would do that.
16 Staff would formally move for the admission of Staff
17 Group Cross Exhibit 5.

18 JUDGE ALBERS: Is there any objection to Group
19 Cross Exhibit 5?

20 MR. TOMC: No, Your Honor.

21 JUDGE ALBERS: Hearing no objection, then Staff
22 Group Cross Exhibit 5 is admitted.

1 (Whereupon Staff Group Cross
2 Exhibit 5 was admitted into
3 evidence.)

4 JUDGE ALBERS: All right. Are there any
5 questions from the AG?

6 MS. LUSSON: No, Your Honor.

7 JUDGE ALBERS: All right. And I see CUB had
8 reserved time. I don't see anyone in the room from
9 CUB. So do you know anything about that?

10 (No response.)

11 All right. Well, I suppose you lucked
12 out this morning. Any objection then to Mr. Martin's
13 exhibits?

14 (No response.)

15 Hearing none, then Ameren Exhibits
16 2.0, 12.0 through 12.2 and 21.0 are admitted.

17 (Whereupon Ameren Exhibits 2.0,
18 12.0, 12.1, 12.2 and 21.0 were
19 admitted into evidence.)

20 JUDGE ALBERS: Thank you, Mr. Martin.

21 (Witness excused.)

22 Stafford is next. While they are

1 setting up there, could you tell us what the DRs in
2 this are?

3 Off the record, Carla.

4 (Whereupon there was then had an
5 off-the-record discussion.)

6 JUDGE ALBERS: Mr. Stafford, you were sworn
7 previously?

8 THE WITNESS: (Nodded head.)

9 JUDGE ALBERS: Okay. Mr. Whitt or Mr. Kennedy,
10 what's your pleasure?

11 MR. WHITT: Just one moment, Your Honor. We
12 have a number of revised exhibits, and I am just
13 circling those to make sure we have captured them
14 all.

15 (Pause.)

16 RONALD D. STAFFORD
17 called as a witness on behalf of Ameren Illinois
18 Company, having been first duly sworn, was examined
19 and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. WHITT:

22 Q. Good morning, Mr. Stafford. Could you

1 please introduce yourself to the Commission.

2 A. Yes. My name is Ronald D. Stafford,
3 Manager of Regulatory Accounting for Ameren Illinois
4 Company. My business address is 1901 Chouteau
5 Avenue, St. Louis, Missouri.

6 Q. Mr. Stafford, do you have before you a
7 document that has been marked as Ameren Exhibit 1.0?

8 A. Yes, I do.

9 Q. And what is that document?

10 A. That is my direct testimony filed in this
11 proceeding.

12 Q. Did you include certain exhibits with your
13 direct testimony?

14 A. Yes, I did.

15 Q. And would those be Ameren Exhibits 1.1
16 through 1.16, 11.0 -- oh, strike that.

17 A. Yes, my direct testimony includes Exhibits
18 1.1 through 1.6 along with the testimony 1.0.

19 Q. Do you have any corrections to make to
20 Ameren Exhibit 1.0 or the accompanying Exhibits 1.1
21 through 1.6?

22 A. No, I do not.

1 Q. If I were to ask you the same questions
2 that appear in Ameren Exhibit 1.0 today, would your
3 answers be the same?

4 A. Yes.

5 Q. Do you also have in front of you, Mr.
6 Stafford, a document marked as Ameren Exhibit 11.0
7 Revised?

8 A. Yes, I do.

9 Q. What is that document?

10 A. That is my revised rebuttal testimony filed
11 in this proceeding.

12 Q. Did you also prepare Ameren Exhibits 11.1
13 through 11.4?

14 A. Yes, I did.

15 Q. And were those submitted with your revised
16 rebuttal testimony?

17 A. They were submitted with the original
18 rebuttal and have not changed.

19 Q. Okay. Did your revised rebuttal testimony
20 also include Ameren Exhibit 11.5?

21 A. Yes.

22 Q. If I were to ask you the same questions in

1 Ameren Exhibit 11.0 today, would your answers be the
2 same?

3 A. 11.0R, yes.

4 Q. And I forgot to ask whether you have any
5 corrections to make to Exhibit 11.0 Revised.

6 A. No, I do not.

7 Q. Do you also have in front of you a document
8 marked Ameren Exhibit 19.0 Revised?

9 A. Yes, that is my surrebuttal testimony in
10 this proceeding.

11 Q. And does your surrebuttal testimony include
12 Ameren Exhibits 19.1 through 19.5?

13 A. Yes.

14 Q. If I were to ask you the same questions in
15 Ameren Exhibit 19.0 today, would your answers be the
16 same?

17 A. 19.0R, yes.

18 MR. WHITT: With that, Your Honor, we would
19 move for the admission of the previously identified
20 exhibits subject to cross examination.

21 JUDGE ALBERS: All right. After any questions
22 we will rule on the admissibility.

1 MR. OLIVERO: Thank you, Your Honor.

2 Mr. Stafford, my name is Jim Olivero.

3 I represent the Staff witnesses.

4 THE WITNESS: Good morning.

5 MR. OLIVERO: I guess the first order of
6 business is the parties, Ameren and the Staff, had
7 agreed to the admission of RMP 4.01 and the response
8 by Mr. Stafford as Staff Cross Exhibit Number 6,
9 which I would --

10 JUDGE ALBERS: What was the DR number on that
11 again, please?

12 MR. OLIVERO: RMP 4.01.

13 (Whereupon Staff Cross Exhibit 6
14 was marked for purposes of
15 identification as of this date.)

16 And then in addition to that, I just
17 have a few questions for Mr. Stafford.

18 CROSS EXAMINATION

19 BY MR. OLIVERO:

20 Q. Mr. Stafford, first of all, I would like to
21 refer you to your Ameren Exhibit 11.0R, page 16,
22 lines 323 through 324.

1 A. I have that.

2 Q. Okay. It indicates, starting on line 323,
3 you testified, "It should be noted that, although
4 accrued vacation is expensed or capitalized on AIC's
5 financials before payments are made, these costs are
6 not included in rates until after they are paid.
7 Therefore, these costs do not represent a source of
8 non-investor supplied funds." Is that correct?

9 A. Correct.

10 Q. So that I understand, when you are saying
11 vacation is earned, the Company records the accrued
12 vacation pay as a credit to a liability account for
13 the accrual and records a debit to either the payroll
14 expense or capitalized payroll as an offset, is that
15 correct?

16 A. Correct.

17 Q. And is it correct that the Company recorded
18 accrued vacation pay in 2011?

19 A. The Company recorded accrued vacation pay
20 expense and capitalized a portion of that in 2011,
21 that is correct.

22 Q. So they recorded a credit to accrued

1 vacation pay and a debit to payroll expense and/or
2 capital or plant -- or the plant account?

3 A. That's correct.

4 Q. And did the Company in its formula rate
5 filing make an adjustment to remove that vacation
6 accrual from the payroll expense?

7 A. No.

8 Q. Now I am going to show you what I have -- I
9 am going to show you what I have marked as Staff
10 Cross Exhibit Number 7 which is your response to a
11 data request TEE 2.06.

12 (Whereupon Staff Cross Exhibit 7
13 was marked for purposes of
14 identification as of this date.)

15 Have you had a chance to look at that?

16 A. Yes, I have.

17 Q. And you were asked, "Please identify the
18 account or accounts debited when an entry is recorded
19 to accrued vacation pay and where it is reflected in
20 the formula rate schedule/apps," correct?

21 A. Correct.

22 Q. And you responded, "Accrued vacation pay is
224

1 recorded in Account 920 and reflected in the aging
2 expense in the formula rate schedule FRC-1, line 1,"
3 correct?

4 A. I did.

5 MR. OLIVERO: We have nothing further -- we
6 have nothing further and would move, I guess, to
7 admit Staff Cross Exhibit 7 as well.

8 JUDGE ALBERS: Okay. So you do want to mark it
9 as Staff Cross Exhibit 7?

10 MR. OLIVERO: Okay, maybe I gave you the one --

11 JUDGE YODER: You did provide copies to the
12 court reporter?

13 MR. YODER: I did.

14 JUDGE ALBERS: You are good.

15 MR. OLIVERO: There was one that I hadn't
16 marked on there.

17 JUDGE ALBERS: I am good. All right. Any
18 objection then to Staff Cross Exhibit 6 and Exhibit
19 7?

20 MR. WHITT: No objection.

21 JUDGE ALBERS: Hearing none, then those are
22 admitted.

1 (Whereupon Staff Cross Exhibits
2 6 and 7 were admitted into
3 evidence.)

4 JUDGE ALBERS: All right. Does the AG have
5 questions?

6 MS. LUSSON: Yes. Yes, I do.

7 CROSS EXAMINATION

8 BY MS. LUSSON:

9 Q. Good morning, Mr. Stafford.

10 A. Good morning.

11 Q. First I want to ask you a few questions
12 about late payment revenues. If you could turn to
13 page 24 of your surrebuttal testimony, please, line
14 501?

15 A. I have that.

16 Q. That paragraph there, at line 502 you
17 criticize Mr. Brosch for recognizing an accounting
18 for all late payment revenues "given that AIC is not
19 establishing new rates for all tariffs but only
20 electric delivery service tariffs." Do you see that?

21 A. Yes, I see that.

22 Q. Would you agree that Rider PER and other

1 Ameren tariffs that you reference in your testimony
2 and the revenues they recover are not at issue in
3 this proceeding?

4 A. That is correct.

5 Q. If you turn to page 27 of your surrebuttal,
6 line 569, there you reference changes to Rider
7 Purchased Electric Recovery, Rider PER?

8 A. I see that.

9 Q. Has Ameren taken any action before the
10 Commission through regulatory filings or other
11 submissions to seek review and correction of any
12 alleged revenue short falls in Rider PER or other
13 tariffs that you mention in your testimony?

14 A. I believe I answered that question and
15 indicated that -- either in data requests or in my
16 testimony I indicated the Company has not yet done
17 such a filing to make any corrections to Rider PER to
18 address either short falls and cost recovery or to
19 address late payment revenue. Certainly, the Company
20 intends to do that.

21 Q. Could you turn to page 28 of your
22 surrebuttal? There you reference at line 589 the

1 same types of costs that you claim created a Rider
2 PER shortfall in Docket 12-0001. Those reference
3 production retiree costs. Do you see that there?

4 A. Yes.

5 Q. Would you agree that the Commission, when
6 approving the disallowance of production retiree
7 costs that you reference, did not specifically direct
8 Ameren to draw back part of the disallowance through
9 the retention of a majority of late payments revenues
10 in that Order?

11 A. Are you referring to a particular Order or
12 in general?

13 Q. In general.

14 A. The adjustment was focused for production
15 retirees based on whether those costs are properly
16 recovered in delivery service rates. I wouldn't
17 characterize them as a disallowance per se, but
18 rather the fact that those costs are a component of
19 the Company's expense, and capitalized costs are not
20 properly recovered in delivery service rates.

21 Q. And have you -- are you aware of any
22 direction from the Commission that disallowance of

1 production retiree costs should be recovered through
2 a late payment revenue adjustment?

3 A. I am not sure I understand the question.
4 Could you repeat it or rephrase it?

5 Q. Sure. Are you aware of any Commission
6 Order or direction in other dockets wherein that the
7 Commission has directed that disallowances for
8 production retiree costs should be offset through
9 adjustments made by Ameren in late payment revenues?

10 A. I am not aware of any Orders that speak to
11 recovering production retiree costs through other
12 mechanisms. The focus, again, is on delivery service
13 rates properly to include only delivery service
14 costs. Similarly late payment revenues, in prior
15 Orders only the delivery service portion has been
16 included in delivery service rates.

17 Q. Turning to page 28 of your surrebuttal
18 testimony, line 590, you reference the accumulated
19 deferred income taxes related to power supply
20 uncollectibles. Are the accumulated deferred income
21 taxes related to power supply uncollectibles the same
22 types of costs that you mention contributed to a

1 Rider PER shortfall in Docket 12-0001?

2 A. Yes. I referenced that as a shortfall
3 component in both dockets.

4 Q. If you could turn to page 32 of your
5 surrebuttal testimony, I would like to ask you some
6 questions regarding your proposed amortization of the
7 tax rate change. First, you would agree with me that
8 Staff, CUB and the AG/AARP witnesses have all
9 recommended that Ameren not apply its one-fifth
10 amortization treatment to the state tax rate change
11 impact on deferred income taxes?

12 A. Could you give me the location where you
13 are reading from?

14 Q. That's just a general question. Would you
15 agree that Staff, CUB and AG/AARP witnesses have all
16 recommended that Ameren not apply its proposed
17 one-fifth amortization treatment to the state tax
18 rate change impact on deferred income taxes?

19 A. That's correct.

20 Q. At line 680 of your surrebuttal you say
21 that there are two key components of the tax change,
22 the first component that isn't quantified, and a

1 separate and distinct tax rate change component that
2 you say exceeds 3.7 million. Do you see that?

3 A. Yes.

4 Q. If you separate the two components and then
5 only consider the second component, that by itself is
6 more than 3.7 million, is that how you meet the
7 deferral threshold under the Act as the Company has
8 proposed?

9 A. I separated the two components because
10 16-108.5(c)(4)(F) says that specifically that you
11 have to consider each charge or credit separately,
12 and I will just specifically address tax rate changes
13 as one of those components. So the first step was to
14 separate the two calculations. The change from 7.3
15 to 9.5 is one calculation. That additional charge is
16 1.8 million. And then I separately calculated the
17 fact that the tax rate change was not permanent. It
18 was graduated, and resulted in an anomaly or
19 phenomenon, as myself and others use that term in
20 this proceeding, calculated out as greater than 3.7.

21 So I separated the two. One is
22 greater than 3.7. The other is not. So I propose to

1 defer only the deferred tax credit.

2 Q. Okay. I would like to take a closer look
3 at that argument. If you could turn to page 36 of
4 your rebuttal, lines 760 through 762.

5 Is the first impact of the state tax
6 rate change the increase in state and federal income
7 tax expense of \$1,813,717 you reference in your
8 rebuttal there at line 762?

9 A. Yes.

10 Q. And is the second impact of the state tax
11 rate change the "net reduction of 4.137 million to
12 deferred income tax provisions" that you reference at
13 line 794 through 801?

14 A. Yes.

15 Q. Would either of these changes have occurred
16 if the legislature had not changed the state income
17 tax rate?

18 A. No.

19 Q. Okay. If you could turn to your
20 surrebuttal testimony, page 18, lines 383 through 391
21 on the next page, here you address the question there
22 of whether on a present value basis over the whole

1 life of the investment tax credit ratepayers would
2 have been much better off with Option 1, Rate Base
3 Reduction, than they are with Option 2, Ratable
4 Amortization. Do you see that?

5 A. Yes. I responded to Mr. Effron's claims
6 there.

7 Q. And then you state at 386 through lines
8 388, "Mr. Effron has not supported his claims with
9 any evidence that one method is preferred over the
10 other method on a present value basis, nor has
11 Mr. Effron supported his claim that AIC choose one
12 method over the other based on benefits to
13 shareholders." Do you see that?

14 A. Yes.

15 Q. Did the Company propound any data requests
16 to Mr. Effron regarding this statement, that present
17 value basis over the whole life of the ITC,
18 ratepayers would have been better off with Option 1,
19 Rate Base Reduction, than they are with Option 2,
20 Ratable Amortization?

21 A. I don't recall any DRs with that respect.
22 I am not absolutely sure.

1 Q. And did you conduct any analysis of whether
2 ratepayers would have been better or worse off with
3 Option 1, Rate Base Reduction, than they are with
4 Option 2, Ratable Amortization, over the whole life
5 of the ITCs?

6 A. No. As I have indicated in my testimony,
7 my focus has been on the 2011 formal rate proceeding
8 and the impact for that calendar year or rate year.

9 Q. Referring to page 21 of your surrebuttal
10 testimony, please, line 454, with regard to the Metro
11 assets transferred to CIPS, you state that, "Net
12 deferred taxes as of the date of the purchase on
13 CIPS' books is zero." Do you see that?

14 A. Yes.

15 Q. Isn't it correct that prior to the date of
16 purchase there was a net credit balance of
17 accumulated deferred income taxes on the assets that
18 were transferred to CIPS?

19 A. I believe so.

20 Q. Can you turn to page 17 of your surrebuttal
21 testimony? At lines 351 through 353 you state that
22 you agree with Mr. Effron that changes in accumulated

1 deferred income taxes are related to 2012 plant
2 additions. However, as I understand your testimony,
3 you indicate actual changes to the ADIT balance could
4 be materially different from estimated changes. Do
5 you see that?

6 A. Yes.

7 Q. Isn't it also true that the actual plant
8 additions could be materially different from
9 estimated plant additions?

10 A. I think anything is possible. The
11 calculation of ADIT is more suspect in that respect
12 because objective additions are based upon specific
13 defined project activity and ADIT, the change ADIT,
14 considers not only the change in projected additions
15 but also the change in existing -- ADIT on existing
16 plant that's already on the Company's books.

17 Q. And have you done any sort of specific
18 analysis to determine which has more material
19 difference, estimated ADIT balances or estimated
20 plant additions?

21 A. Well, I looked at changes in ADIT in past
22 rate proceedings and also I have looked at the

1 evidence submitted in 12-0001 by Staff and
2 Intervenors. As I indicated in testimony, the
3 estimate range for ADIT was 108 million to 173
4 million. That's a very significant percent change
5 just related to ADIT.

6 I am not -- I haven't seen nor am
7 aware of a CIPS scenario where one-year projected
8 plant additions could vary by that much. So I have
9 to believe the ADIT is more suspect. That is pretty
10 much the extent of my analysis, other than the fact
11 that I know that the existing plant additions would
12 be in their early years, tax depreciation is greater
13 than book. In the later years, book depreciation is
14 greater than tax. So in the later years of a life
15 asset or group of assets, the impact on ADIT is
16 actually negative during this period of time. That
17 obviously does not happen with respect to additions.
18 We are talking only about an increase. We are not
19 talking about the fact there can be an increase or a
20 decrease.

21 Q. If you could turn to page 15 of your
22 surrebuttal testimony, at lines 307 through 309 you

1 state that Mr. Effron continues to believe that AIC's
2 liability is a continuous liability that does not
3 reverse via payment by AIC to employees each year as
4 they take their earned vacation. Are you familiar
5 with Mr. Effron's statement in his direct testimony
6 wherein he stated the liability for vacation pay
7 represents vacation pay accrued in excess of what has
8 actually been paid and that the vacation pay is in
9 effect disbursed in a year following which the
10 liability for earned vacation is accrued as the
11 employees use their vacation time. Do you recall
12 Mr. Effron testifying to that?

13 A. Vaguely.

14 Q. How does that differ from what you describe
15 in your surrebuttal testimony? Isn't that the same?

16 A. I am not sure I fully understand what Mr.
17 Effron said in his testimony. I can only speak to
18 how it works for AIC. The liability is accrued based
19 upon one year and is fully reversed as individuals
20 take their vacation. So the liability in a
21 particular year fully goes down to zero the following
22 year and is replaced by an entirely new liability for

1 that specific year's payroll and it is not
2 continuous. It reverses. It resets to zero over the
3 course of a year.

4 Q. So is it your testimony that there is no
5 reserve?

6 A. There is no reserve. There is no source of
7 funds coming from customers for that liability. The
8 reserved -- the accrued vacation liability is based
9 upon a defined calendar year period of time for a
10 payroll expense and capitalized payroll, and that
11 specific liability fully reverses the following year
12 and is replaced by an entirely new liability related
13 to that next year's accrued vacation pay that
14 employees earn through their work on behalf of the
15 Company.

16 MS. LUSSON: Thank you, Mr. Stafford. No
17 further questions.

18 JUDGE ALBERS: CUB had reserved some time, but
19 there is no one here from CUB.

20 JUDGE YODER: I will try and ask a question
21 about this vacation pay.

1 BY JUDGE YODER:

2 Q. When you say it goes to zero, at least I
3 think that's what you said, is that correct?

4 A. That's correct.

5 Q. So do Ameren employees, they can't carry
6 vacation over? Is that part of the process there?
7 Or if they use up the previous year's vacation in the
8 next year, how does that -- does that have any impact
9 on it?

10 A. There is a provision that they can carry
11 over up to two weeks except in special circumstances
12 where they are working on a project and just cannot
13 -- again, an exception from their supervisor that's
14 rare. Some employees, of course, carry over two
15 weeks, some don't. Some may not carry over any.

16 The way the liability works is that,
17 that following year when an employee starts to take
18 vacation, you know, the vacation from a liability
19 perspective, from an accounting perspective, that is
20 the first vacation they are taking. And the way that
21 is captured is that if their salary or wage changes,
22 you have the liability based upon the salary or wage

1 that they are earning. And so when the reliability
2 is reversing, if they had a two-week carry over and
3 reverse vacation, they take that following year
4 reverses. So there is some carry over potential and
5 then that fully reverses at the first vacation the
6 following year and it reverses in advance of any of
7 that vacation pay being included in rates, even under
8 formal rate structure, from a cash flow standpoint.

9 JUDGE ALBERS: Did you have any redirect?

10 MR. WHITT: Your Honor, if we could take just a
11 few moments to confer.

12 (Whereupon the hearing was in a
13 short recess.)

14 JUDGE ALBERS: Back on the record. Do we have
15 any redirect?

16 MR. WHITT: Well, we do, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. WHITT:

19 Q. Mr. Stafford, could you please refer to
20 Staff Cross Exhibit 7?

21 A. I have that.

22 Q. And you were asked a question, and as

1 reflected in the exhibit that's DR TEE 2.06, about a
2 debit entry recorded to accrued vacation pay. Are
3 there other accounting entries associated with the
4 debit entry that's referenced in your response?

5 A. Yes. In addition to the debit, of course,
6 the credit is to the reliability account 242, and
7 also I did want to clarify because I answered a prior
8 question on this that, you know, we indicated the
9 debit is 920 here. In reality, the debit can go to a
10 labor expense account or a capitalized labor account.
11 The debit may not only go to Account 920.

12 Q. And so the record is clear, and I want to
13 make sure we have answered the question from the
14 bench, you discussed in cross examination the fact
15 that the vacation accrual fully reverses and goes to
16 zero. And the question simply is, if the accrual
17 goes down to zero, why is it that a liability
18 continues to appear in the Company's books and
19 records for accrued vacation?

20 A. The liability goes to zero because I am
21 referring to the liability for a particular year of
22 payroll. So, for example, in 2012, the calendar year

1 2012, the liability that was recorded for 2010
2 payroll was accrued in 2011. And then by 2012, at
3 the end of 2011 it is substantially more fully
4 reversed. There may be a little bit of carryover for
5 what I mentioned earlier; then that fully reverses
6 early in 2012. So the liability for 2010 fully
7 reverses by early 2012 or at the end of 2011. So the
8 liability that is still retained on the books is
9 related to an entirely different year. That year is
10 2011. By the time we get to 2012, we are accruing --
11 individuals are earning vacation in 2011. So when
12 you see a liability on the books in 2012, that
13 liability is for a totally different year. It is for
14 the year 2011, and the liability from 2010 would have
15 fully reversed and went to zero.

16 Q. So, and you have mentioned a couple of
17 years there. Just so we are clear, what does the
18 liability on the 2011 FERC Form 1 represent?

19 A. The liability in 2011 FERC Form 1
20 represents the liability that the Company has to pay
21 individuals vacation that they have earned in 2011.

22 Q. And any cash associated with that liability

1 would be paid when?

2 A. The payment to employees for their earned
3 vacation would be taken the following year when they
4 take their vacation.

5 Q. Okay. And when an employee takes their
6 vacation, is there an actual payment from some
7 vacation reserve fund that is disbursed to an
8 employee so that they can then go on vacation and use
9 that money? Is that how it works?

10 A. No. They are getting payment in the normal
11 course of business as their -- on their payroll
12 check. They are getting payment with their payroll
13 expense for that period of time. It is not coming
14 from any other source of funds. It is just paid out
15 by the Company at that point in time.

16 Q. Could accrued vacation then be viewed as
17 the portion of employee compensation that employee
18 earns when they are not in the office but instead
19 they are on vacation? Is that basically what it is?

20 A. Could you repeat that again or have it
21 read? Could you read back the question?

22 (Whereupon the requested portion
243

1 of the record was read back by
2 the Reporter.)

3 A. Well, accrued vacation would be the portion
4 that the employee earns for performing work on behalf
5 of the Company to the benefit of the Company's
6 customers over the course of the year under the
7 Company's vacation policy.

8 Q. If an employee, a hypothetical employee,
9 earned \$50,000 per year, would the amount of
10 compensation, cash compensation, that that employee
11 receives be dependent on how much vacation they took
12 that year?

13 A. No.

14 MR. WHITT: No further questions.

15 JUDGE ALBERS: Any recross?

16 MS. LUSSON: No.

17 MR. OLIVERO: Oh. None, Your Honor, I am
18 sorry.

19 JUDGE ALBERS: Any objection then to any of the
20 aforementioned exhibits of Mr. Stafford?

21 (No response.)

22 Hearing none, then they are admitted.

1 (Whereupon Ameren Exhibits 1.0,
2 1.1, 1.2, 1.3, 1.4, 1.5, 1.6,
3 11.0R, 11.1, 11.2, 11.3, 11.4,
4 19.0R, 19.1, 19.2, 19.3, 19.4,
5 and 19.5 were admitted into
6 evidence.)

7 JUDGE ALBERS: Thank you, Mr. Stafford.

8 (Witness excused.)

9 The next witness is Ms. Chang?

10 MR. LANNON: Yes, Your Honor. Staff would call
11 Ms. Karen Chang to the stand.

12 MR. FITZHENRY: And Ed Fitzhenry.

13 MR. LANNON: No, we are not calling you.

14 JUDGE ALBERS: Would you please raise your
15 right hand?

16 (Whereupon the witness was duly
17 sworn by Judge Albers.)

18 JUDGE YODER: Go off the record for a minute.

19 (Whereupon there was then had an
20 off-the-record discussion.)

21 JUDGE YODER: Let's take about a five-minute
22 break.

1 (Whereupon the hearing was in a
2 short recess.)

3 JUDGE YODER: Back on the record.

4 Ms. Chang, you are still sworn and
5 under oath.

6 Mr. Lannon?

7 MR. LANNON: Thank you, Your Honor.

8 KAREN CHANG

9 called as a witness on behalf of Staff of the
10 Illinois Commerce Commission, having been first duly
11 sworn, was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. LANNON:

14 Q. Could you please state your full name for
15 the record, spelling your last name.

16 A. My last name is Chang, C-H-A-N-G. First
17 name is Karen, and my middle initial is Y.

18 Q. And who is your employer?

19 A. I am employed by Illinois Commerce
20 Commission.

21 Q. And what's your business address?

22 A. My business address is 527 East Capitol

1 Avenue, Springfield, Illinois 62701.

2 Q. And what's your position at the Illinois
3 Commerce Commission?

4 A. My official title is a Rate Analyst, but I
5 am working at Financial Analyst Division. We are
6 known as accountants.

7 Q. Now, you prepared some prefilled testimony,
8 including attachments and schedules, did you not?

9 A. Yes, I did.

10 Q. And there were a number of corrections. I
11 think it would be best if we just go to the final
12 corrected version.

13 A. That's a good idea.

14 Q. That would be -- well, do you have before
15 you a document marked as Staff Exhibit 3.0R which
16 includes a revision to your original 3.0 and a
17 corrected Attachment A? Do you have that before you?

18 A. Yes, I do.

19 Q. Okay. And do you have before you a
20 document marked as Staff Exhibit 8.0R-C which
21 includes a corrected revised rebuttal testimony and
22 then a corrected Attachment A?

1 A. Yes, I do.

2 Q. Okay. Do you have any corrections to make
3 to Staff Exhibit 3.0R or Staff Exhibit 8.0R-C?

4 A. No, I don't.

5 Q. And is the information contained in those
6 two exhibits true and correct to the best of your
7 knowledge?

8 A. Yes, they are.

9 Q. And if I were to ask you the same questions
10 as set forth in those exhibits today, would your
11 responses be the same?

12 A. Yes, it is.

13 MR. LANNON: Your Honor, I would move for
14 admission into evidence Staff Exhibit 3.0R, and Staff
15 Exhibit 8.0R-C pending any cross examination.

16 JUDGE YODER: Is Staff going to move for
17 Schedules 3.01 through 3.04?

18 MR. LANNON: Yes, Your Honor.

19 JUDGE YODER: I think were not filed with the
20 revised direct; filed with the original direct, is
21 that correct?

22 MR. LANNON: Yes. Schedules 3.01 through 3.04,

1 and 3.04 has confidential and public versions and
2 there is also Attachments A and B to 3.0R. For Staff
3 Exhibit 8.0R-C there are Schedules 8.01, 8.02 -- let
4 me back up again, Your Honor.

5 Going back to Staff Exhibit 3.0R,
6 Attachments A and B, we filed a corrected Attachment
7 A subsequent to the filing of the revised direct
8 testimony. So it would be Schedules 3.01 through
9 3.04, 3.04 being confidential and public versions,
10 Attachments A and B, and for A there is a corrected
11 Attachment A. And for Staff Exhibit 8.0R-C there is
12 corrected revised rebuttal testimony and attached to
13 that are Schedules 8.01, 8.02 and 8.04 and an
14 Attachment A. There is no 8.03.

15 JUDGE YODER: Okay. And I assume you tender
16 Ms. Chang and Ameren has reserved cross for
17 Ms. Chang?

18 MR. FITZHENRY: Yes, I have.

19 CROSS EXAMINATION

20 BY MR. FITZHENRY:

21 Q. Good morning, Ms. Chang. My name is Ed
22 Fitzhenry and I am here on behalf of the Company.

1 Now, reading your testimonies it
2 appears you have made an adjustment to the Company's
3 request for charitable contributions based on your
4 review of Section 9-227 of the Public Utilities Act?

5 A. Yes, that's right.

6 Q. Now, again looking at page 7 and page 8 of
7 your direct testimony where you cite to Section
8 9-227, you would agree with me there is nothing in
9 that statute that refers to Section 501(c)(3) of the
10 IRS code, correct?

11 A. Yes, that's right.

12 Q. In fact, there was no mention to any
13 portion or any section of the IRS code?

14 MR. LANNON: Your Honor, I just want to
15 interject one thing. Ms. Chang is free to answer
16 these questions, but I want it noted that she is not
17 a lawyer. She is answering in her -- she is giving
18 her opinion.

19 JUDGE YODER: All right. With that notation --

20 MR. FITZHENRY: Right.

21 A. Repeat your question again.

22 Q. Yes. There is nothing in Section 9-227

1 that refers to any section or portion of the IRS
2 code, correct?

3 A. That's right.

4 Q. In fact, there is nothing in the section,
5 the statute 9-227, that refers to any other
6 extraneous materials upon which one could rely in
7 interpreting the statute, correct?

8 A. Correct.

9 Q. Now, if you look at page -- I am just going
10 to talk first about your direct testimony. Looking
11 at page 8 of your direct testimony, lines 187 through
12 191, I will let you get there.

13 A. Lines again?

14 Q. Yes, 187 through 191.

15 A. Yes.

16 Q. And in that sentence you make reference to
17 Ameren's policy regarding charitable giving, correct?

18 A. Are you talking about my direct testimony?

19 Q. Yes, ma'am.

20 A. And you are talking about which page?

21 Q. Page 8, lines 187 through 191.

22 A. Okay.

1 Q. And the question is, in that testimony you
2 make reference to Ameren's policy for charitable
3 contributions, do you not?

4 A. Beginning on line 193 I talk about Ameren's
5 policy.

6 Q. Okay. Well, I will read the sentence to be
7 sure that we are talking about the same portion of
8 your testimony regardless of what line it is on,
9 okay. "For a donation to be considered a charitable
10 contribution, the donation should be made to an
11 organization that is a Section 501(c)(3) tax exempt
12 organization which is consistent with Ameren's policy
13 regarding charitable giving."

14 A. Right.

15 Q. Okay. And you did review Ameren's policy
16 regarding charitable contributions, did you not?

17 A. Yes, I did.

18 Q. And am I correct that the policy does not
19 require contributions only be made to Section
20 501(c)(3) organizations, correct?

21 A. As my testimony said, that the Company's
22 policy has stated such a preference.

1 Q. Correct.

2 A. Yes.

3 Q. But it is not exclusively -- strike that.

4 The policy doesn't make exclusive
5 contributions to 501(c)(3) organizations as the only
6 organizations to which a contribution can be made?

7 A. Of course. That is -- I perceive that's a
8 reason the policy also says that not all
9 contributions is recoverable, if you read in that
10 attachment which I included in this direct testimony,
11 the policy itself.

12 Q. And you are an accountant, correct?

13 A. Pardon me?

14 Q. Are you an accountant?

15 A. Yes, I have been an accountant for many of
16 years.

17 Q. Are you familiar with corporate tax
18 returns?

19 A. Yes, I am.

20 Q. And would you agree with me that
21 corporations can include charitable contributions as
22 a tax deductible item as an operating expense?

1 A. Of course.

2 Q. Now, I want to ask you, if the Ameren
3 policy had not made reference to Section 501(c)(3),
4 would you make the same recommendations that you are
5 making today concerning the disallowance of the
6 charitable contributions that you have identified in
7 your testimonies?

8 A. If you don't mind me explaining a little
9 further how I actually have to rely on the 501(c)(3),
10 is that when I begin this first time this rate base
11 evaluation, I look at the law, consider donations.
12 The first step as a second language English speaker,
13 I look to the definition of donation, okay. And the
14 donation is defined as something like one-sided
15 contract which means that you give without charge.
16 So, therefore, I took in big consideration of the
17 rules under 501(c)(3) which is donation is not a
18 donation when one gets benefit, okay. So, and that's
19 how I expand my analyses in this topic.

20 Q. Okay. We will get to that eventually. My
21 question was, though, if the Ameren policy had not
22 made a reference to Section 501(c)(3) as a preferred

1 identification of an organization to make a
2 contribution, would your recommendations have
3 changed?

4 A. Again, I have to apologize. You asked
5 earlier being accountant. I have been accountant for
6 a long time, and as far as contribution goes, I am so
7 stuck with the fact that the IRS instructions does
8 not, does not suggest that contributions made with
9 expected benefit should be considered contributions.
10 I am just stuck on that issue. And that is ingrained
11 so deep that it is difficult for me to change my
12 position in that.

13 Q. Well, let's talk about Section 501(c)(3),
14 and do you have a copy of that with you?

15 A. I didn't bring it, but I will try my best.

16 Q. Well, in your data request responses you
17 made reference to Publication 526, and you stated
18 that you reviewed that publication in preparing your
19 testimony, correct?

20 A. 501(c)6?

21 Q. Publication 526?

22 A. Oh, yes.

1 Q. You did review this?

2 A. Yes, I did.

3 MR. FITZHENRY: I am just going to go ahead and
4 make this AIC Cross Examination Exhibit --

5 MR. LANNON: And, counsel, just so the record
6 is clear, this is a Department of Treasury IRS
7 publication, correct?

8 BY MR. FITZHENRY: Correct, and I believe
9 Ms. Chang has identified that she is familiar with
10 the document.

11 Q. Now, if I understood your earlier answers,
12 you used words like you were stuck on and you were
13 ingrained with the idea that a contribution to be
14 recoverable must be consistent with Section
15 501(c)(3)?

16 A. Yes.

17 Q. Okay. Now, do you have -- well, in fact,
18 why don't you look at your testimony at page -- your
19 direct testimony, 7 and 8, pages 7 and 8, and there
20 you outline Section 9-227?

21 A. Okay.

22 Q. And we can agree, can we not, that the

1 donations that are identified, the nature of the
2 donations that are identified in this statute, relate
3 to the public welfare or charitable, scientific,
4 religious or educational purposes. Do you see that?

5 A. Yes.

6 Q. Okay. Now I would like you to turn to page
7 2 of AIC Cross Examination Exhibit 2. I would like
8 you to refer to this document.

9 A. Okay.

10 (Whereupon Ameren Cross Exhibit
11 2 was presented for purposes of
12 identification as of this date.)

13 Q. I would like you to turn to the second
14 page.

15 A. All right.

16 Q. I would like you to look under the section
17 entitled Types of Qualified Organizations.

18 A. Okay.

19 Q. All right. And you see a listing there on
20 the bottom of that page and at the top of the third
21 page of the different types of qualified
22 organizations under this section of the IRS code,

1 correct?

2 A. Yes.

3 Q. And would you agree with me that the
4 reference to a literary organization is not included
5 in Section 9-227?

6 A. No, it is not.

7 Q. And would you agree with me that an
8 organization that's focused on the prevent of cruelty
9 to children or animals is not listed in Section
10 9-227?

11 A. No, it is not.

12 Q. And if you turn to the next page, you will
13 see a listing of other organizations for which a
14 501(c)(3) organization is being --

15 A. Next page of what?

16 Q. The same document that you were looking at,
17 page 3.

18 MR. LANNON: That's AIC Cross Exhibit 2.

19 A. Okay.

20 Q. Do you see that?

21 A. Which part?

22 Q. We are still under the section titled Types

1 of Qualified Organizations that follows down the
2 first column on page 3 and --

3 A. Okay, yes.

4 Q. All right. So my question is, you can see
5 from reading that document there are a host of other
6 organizations that are listed as potential charitable
7 contributions under the IRS code that are not listed
8 under the statute, correct?

9 A. Yes.

10 Q. In fact, if you look at the bottom of the
11 first column, there is a reference to Utility Company
12 Emergency Energy Programs, and again I am talking
13 about the cross examination exhibit.

14 A. Yes.

15 Q. So if I understand what you have said
16 earlier and looking at your testimony, if a
17 contribution by the Company is made to any of these
18 organizations listed in this Publication 526, in your
19 opinion they would be recoverable?

20 A. Repeat that question again.

21 MR. FITZHENRY: Could you have the question
22 read back, please?

1 (Whereupon the requested portion
2 of the record was read back by
3 the Reporter.)

4 A. No.

5 Q. So the publication and the IRS code is not
6 controlling in terms of what's recoverable pursuant
7 to Section 9-227?

8 A. It is a part of my evaluation. It is a
9 filter, as I stated in my direct and my rebuttal
10 testimony.

11 Q. For this line of questioning I would like
12 you to turn to your rebuttal testimony. Do you have
13 your rebuttal testimony?

14 A. Yes, I do.

15 Q. Page 5, lines 66 through 69, give you a
16 chance to look at that.

17 A. Yes.

18 Q. So here again you are making reference to
19 your Schedule 8.02 that reflects disallowances
20 because you say the Company made donations that were
21 not to 501(c)(3) organizations and are not made for
22 charitable, scientific, religious or educational

1 purposes, correct?

2 A. That's what I said in this document, yes.

3 Q. So it is your opinion that both conditions
4 must be met in order for the Company to be able to
5 recover the donation?

6 A. Not necessarily.

7 MR. LANNON: Is that a question?

8 Q. It is a question.

9 A. Not necessarily.

10 Q. Well, can you tell me why you used the word
11 "and" referencing Section 501(c)(3), and then you
12 identified the other categories of charitable
13 contributions?

14 A. Okay. May I draw a picture with my words?

15 Q. Please.

16 A. Please, okay. In my evaluation of
17 recoverable charitable contributions, think of it
18 this way. First, I wanted to identify it is a
19 contribution. It is a donation which it is one given
20 without charge. Secondly, it is very helpful if this
21 organization is charitable organization as what is
22 referred to in 501(c)(3) documents. Thirdly, then if

1 all of those is good and done, I look into the area
2 that is according to the code.

3 Now, as I review this, some of the
4 things that may not be 501(c)(3), okay, but yet again
5 it is for the better benefit of the following
6 criteria that I went ahead and accept those as well.
7 So this is like a filter system that I use in my
8 humble mind.

9 Q. Okay. Well, there is other places in your
10 testimony where you say the donation has to meet
11 Section 501(c)(3) criteria and the statutory
12 requirements. So whenever you have said that in your
13 testimony -- I can point out the several times you
14 say that -- you don't mean that both conditions have
15 to be met, do you?

16 A. No, no. I hope I have painted a very
17 effective picture in your head of my evaluation
18 process. Now, it is a little subjective, but that's
19 based on my education and my professional
20 experiences.

21 Q. Before this case had you ever testified to
22 the proprietary of a company recovering these

1 charitable contributions?

2 A. No.

3 Q. Okay. I would like you to turn now,
4 sorry, back to your direct testimony, page 9. And
5 your question is listed on line 210 and follows
6 throughout the rest of the page, and there you are
7 highlighting an example of a donation made to the
8 town of Du Quoin and you say that, "This type of
9 donation is not a charitable contribution for the
10 public welfare because it does more to promote
11 business interests than charity." Do you see that?

12 A. Yes.

13 Q. Now, in a data request response you had
14 provided a definition of public welfare, and I will
15 read that to you so you can remember it.

16 A. Sure. It is a lack of definition, a lack
17 -- well, dictionary, if I remember correctly.

18 Q. That which legally aids or promotes
19 well-being or is for the benefit of the public as a
20 whole.

21 A. Okay.

22 Q. All right?

1 MR. LANNON: Excuse me, can we clarify what
2 dictionary you went to?

3 MR. FITZHENRY: Well, she did not go to a
4 dictionary. I don't think she said that. She had a
5 definition, and then she also identified other
6 dictionary definitions to support her definition.

7 Q. Do I remember that correctly?

8 A. No. As a matter of fact, this is AIC DR
9 1.3, I remembered.

10 Excuse me, can I go to my room and get
11 my DR? I am sorry.

12 JUDGE YODER: Well, wait for a second.

13 MR. FITZHENRY: Give me one second here.

14 MR. LANNON: Could we go off the record for a
15 minute?

16 JUDGE YODER: Sure.

17 (Whereupon there was then had an
18 off-the-record discussion.)

19 MR. FITZHENRY: Let's go ahead and continue.

20 (Pause.)

21 Okay. Let me show counsel first.

22 Sorry for the delay. May I approach the witness?

1 JUDGE YODER: Sure.

2 BY MR. FITZHENRY:

3 Q. Does this look familiar to you?

4 A. Yes.

5 Q. Okay. Give you a chance to look at that.

6 Now -- I am sorry, have you finished?

7 A. Would you like for me to read it?

8 Q. Sure.

9 A. Okay. The data request question is,
10 "Please define or describe Ms. Chang's definition or
11 understanding of public welfare as used in her
12 testimony at line 188, 213 and 241."

13 My response goes like this, "Ms. Chang
14 defines public welfare as that which legally aid or
15 promotes well-being or is for the benefit of the
16 public as a whole. Although Ms. Chang is not an
17 attorney, she agrees with Black's Law Dictionary
18 definition of public welfare as it's society's
19 well-being in matters of health, safety, order, and
20 morality, and its definition of general welfare as
21 the public health, peace, morals, and safety."

22 That was my response. And what was

1 your question again?

2 Q. The question was, as I remember the data
3 request response, you first gave your definition in
4 the first line of that DR response and then you
5 buttressed your understanding of that definition with
6 reference to Black's Law Dictionary.

7 A. If I remember, you said there was no
8 Black's Law definition when you asked me the
9 question, and I just want to prove that I remember
10 what I wrote.

11 Q. Yes, you did. Now, in your definition and
12 the definitions that you gave when we are talking
13 about Section 9-227 and when we talked about the
14 public as a whole, you don't mean that in order for a
15 contribution to be recoverable, the entire utility
16 service territory must benefit, do you?

17 A. Again, let's go define donation. I didn't
18 consider this donation because my testimonies, direct
19 and rebuttal, consistently trying to point out the
20 fact that the beneficiaries are not the public, those
21 ones I include.

22 Q. That wasn't my question. I will ask it

1 again, okay?

2 A. Okay.

3 Q. The statute refers to a phrase called
4 public welfare. You have given a definition of what
5 you understand public welfare to be. My question is,
6 in terms of what is recoverable under the statute --
7 I understand you are not a lawyer -- does it mean
8 that the only way the Company can recover a
9 contribution under the category of public welfare is
10 if the contribution is made -- the contribution is
11 made to benefit the entire utility service territory?

12 A. A contribution has to consider a
13 contribution equivalent to donation before that
14 portion of the rule be applied.

15 MR. FITZHENRY: Your Honor, I am going to ask
16 that the answer be -- or the question be answered as
17 I posed it and not what Ms. Chang decides to answer.

18 A. No. My answer is no.

19 Q. So the answer is that, no, that the
20 contribution can be recoverable even if it is not
21 made to benefit the entire utility service territory;
22 we agree with that, correct?

1 A. There is many portions -- please repeat
2 that again.

3 Q. Okay. You agree with me that the utility
4 can recover a charitable contribution if it is made
5 for the public welfare even if that donation doesn't
6 benefit the entire utility's service territory?

7 A. I agree.

8 Q. Now, please refer to page 9 of your direct
9 testimony, and I am looking at your testimony at
10 lines 211 through 214. Do you see that?

11 MR. LANNON: Just for the record, these line
12 numbers might be off one line from a version of hers.

13 Q. Have you had a chance to review that?

14 A. Yes.

15 Q. Okay. As I understand your testimony, you
16 say that many of the donations that you recommend be
17 -- I will start again.

18 Many of the donations that you
19 recommend be disallowed is because they are donations
20 to the community or economic development
21 organizations that provide a business networking
22 function or promote tourism.

1 Have I restated your testimony
2 correctly?

3 A. Yes, you did.

4 Q. So when you think about tourism, would you
5 agree that tourism can promote visitors to a
6 community?

7 A. You mean the visitors who doesn't pay rates
8 in this location?

9 Q. No, I am just talking about visitors to a
10 community that are attracted --

11 A. Okay, I got stuck on the visitor part. I
12 am sorry. Okay, so your question?

13 Q. Would you agree that tourism promotes
14 visitors coming to a community?

15 A. Yes.

16 Q. Would you agree that visitors, that when
17 they come to that community, spend money on hotels
18 and restaurants?

19 A. Yes.

20 Q. And they buy things?

21 A. Yes.

22 Q. And would you agree that visitors coming to

1 a community because of tourism that spend money in
2 that community benefit that community?

3 MR. LANNON: Your Honor, we will stipulate that
4 tourism helps economic development.

5 Q. Would you agree with that, Ms. Chang?

6 A. It helps economic development.

7 Q. And tourism also provides for additional
8 sales tax revenues?

9 A. That's -- yes, I do.

10 Q. Now, staying with your testimony at page 9,
11 if you would look at what I think is on line 217
12 through 219, you say, "This type of donation is not a
13 charitable contribution for the public welfare
14 because it does more to promote business interests
15 than charity." Do you see that?

16 A. Yes.

17 Q. So I am curious about your phrase "It did
18 does more to promote business interest than charity."
19 Are you suggesting that the donation or contribution
20 does in fact benefit charity to some amount?

21 A. That's are economic interests that this
22 type of organizations provides to, again, that it did

1 not agree the type of public welfare that I have
2 defined in your data request.

3 Q. Right. But in your testimony here you make
4 a comparison between business interests and charity.
5 So I am wondering whether or not you are suggesting
6 that the donation in some form or fashion is a
7 contribution to charity. These are your words I am
8 referring to, so perhaps you can look at them
9 closely.

10 A. In which part of it that you have question
11 of?

12 Q. The question again is, it appears that you
13 are acknowledging that there is some charity, some
14 charity element, some charity piece, associated with
15 the contribution that's being made.

16 A. I have not -- I do not see that when I look
17 at this sentence. It is not any part of this tourism
18 it has anything to do with any charity.

19 Q. Then why did you use the word "charity"?

20 A. It does more to promote business interests
21 than charity. So it is equivalent to it is not
22 charity.

1 Q. Okay. And similarly at line 222 you talk
2 about the contribution made to the economic
3 development of central Illinois and you say this
4 organization provides more benefit to local
5 businesses than the public welfare.

6 By your testimony are you suggesting
7 that there is some element of the public welfare that
8 is being benefitted as a result of the contribution?

9 A. Yes. My testimony is saying that this
10 benefits the most business including the company.
11 That's why I have included the attachments. This is
12 my understanding and this is how I wrote.

13 Q. Okay. So given your definition of public
14 welfare that we talked about earlier, it is your
15 opinion that there is no amount of the contribution
16 that serves or benefits the public welfare as a
17 result of this donation?

18 A. Based on my definition, my understanding,
19 and my response to your DR request, yes, this is my
20 thoughts that I wrote down.

21 Q. Now, in your testimony you had referred to
22 several prior Commission cases upon which you relied,

1 correct?

2 A. Yes, in this section of the testimony, yes.

3 Q. Okay. I am going to show you a portion of
4 the Commission's Order from Docket 11-0721, which
5 Order was entered in May of 2012, and I will ask you
6 some questions about that.

7 MR. LANNON: Your Honor, I am going to object
8 to the questions in how the Commission's Order in
9 11-0721 is not one that she has listed.

10 MR. FITZHENRY: That's right.

11 MR. LANNON: And the Order speaks for itself.
12 I don't see where we would get any benefit from this
13 witness's interpretation of an Order that she is
14 seeing for the first time right now.

15 MR. FITZHENRY: Well, The witness saw fit to
16 identify certain Commission Orders that she believed
17 bolstered her position. And, first, I haven't asked
18 the questions that I want to ask. I don't know, I
19 think that the objection is premature. I think Your
20 Honors can see with the questions whether or not they
21 are relevant or not when I ask them.

22 JUDGE YODER: I will probably agree with the

1 premature portion of your statement.

2 BY MR. FITZHENRY:

3 Q. Okay. Let me ask you, Ms. Chang, were you
4 aware at any time during this proceeding of the
5 Commission's Order in the ComEd case Docket 11-0721?

6 A. Yes.

7 Q. Is it correct, though, you never once
8 referenced it in any of your testimonies?

9 A. Correct.

10 Q. Did you review the Order at some point?

11 A. Yes.

12 Q. Let me ask you to turn to page 98. Do you
13 see that?

14 A. I am familiar with this section, yes.

15 Q. Okay. And you see in the second full
16 paragraph, in the second third sentence, it reads,
17 "The term 'public welfare' only means contributing to
18 the general good of the public." Did you see that?

19 A. Yes.

20 Q. Is it your opinion that your definition of
21 public welfare is consistent with what you are
22 reading here in the Commission's Order?

1 A. It is talking about the public welfare. It
2 is an item under the section for donation. I never
3 said these items I included in here were qualified
4 for donation. So this in my mind is not the same
5 idea that I am trying to portray.

6 Q. So if I could understand what you just
7 said, your understanding of what public welfare means
8 under the statute is different than what you are
9 reading here?

10 A. No. What I am saying is that a
11 contribution has to be a donation or contribution,
12 the next step to consider whether it is in the
13 category of public welfare. From my testimony and
14 rebuttal testimony, again and again I don't look at
15 this as donations.

16 Q. I understand.

17 A. Because donations does not receive benefits
18 or expect to receive benefits.

19 Q. And later in the next sentence or two it
20 makes reference to organizations that promote the
21 arts and those that promote community and economic
22 development contribute to the general good of the

1 public. Do you have a general disagreement with that
2 sentence?

3 A. Oh, I love that one. I really do. As a
4 matter of fact, I just love it. I told my people it
5 is symphony and music. It is so good for public
6 welfare because we need that, you know. It is for
7 our moral -- for our mental health. It is just
8 wonderful. I love this decision and, you know, the
9 public is all about -- outside of me you all are
10 public, okay. The public welfare is everybody but
11 me. It doesn't mean just the poor people, but it
12 also means everyone, okay. So this is the center of
13 my focus.

14 Q. Good.

15 A. Donation is public welfare. Public is
16 everybody but me, okay. I voluntarily, one-sided
17 contract, voluntarily is lopsided. Voluntarily I
18 give. I am not expecting to receive any benefits.

19 Q. Okay. The eleven economic development --
20 strike that.

21 Your disallowance with regard to the
22 eleven economic development Chamber of Commerce

1 organizations was not made simply because they are
2 economic development in Chamber of Commerce
3 organizations, would that be a fair statement?

4 A. I suppose.

5 Q. So there are other reasons about those
6 organizations that caused you to recommend the
7 disallowance associated with those contributions?

8 A. The reason seems simple. These are not
9 donations because the Company receives benefits.

10 Q. Well, looking back at the Commission's
11 Order here, can you imagine a donation to a Chamber
12 of Commerce for which the Company would not receive a
13 benefit?

14 A. This is a different docket. I was not
15 invited to be a staff member to write testimony. I
16 write this testimony on this particular docket,
17 12-0293, based on my conviction. And you cannot
18 place my opinion side to side with this ComEd Order.
19 Because if everything is cookie cutter, then we would
20 not need different witnesses. So I don't know where
21 you are trying to lead us to.

22 Q. To the promised land.

1 MR. LANNON: Move to strike the promised land.

2 JUDGE YODER: You withdrawing that?

3 Q. Do you recall in a data request that you
4 recited several Commission decisions -- sorry?

5 JUDGE YODER: Do you withdraw the promised
6 land?

7 BY MR. FITZHENRY: Yes, I am sorry. I get
8 carried away with the euphoria I find myself in.

9 Q. Again, I am not trying to quarrel with you,
10 but you in a data request response or in your
11 testimony somewhere identified three or four other
12 Commission decisions that you believe supported your
13 decision on disallowance of economic development
14 contributions?

15 A. Yes.

16 Q. You were not a witness in any of those
17 dockets, were you?

18 A. Of course not.

19 Q. And, again, I am sorry if you answered
20 this; I apologize. And what was your rationale or
21 reasoning for not taking into account the
22 Commission's Order of three or four months ago in

1 your recommendations? Because you were not a witness
2 in that case?

3 MR. LANNON: Your Honor, I object to the form
4 of that question. It presumes something that I don't
5 think is in the record.

6 MR. FITZHENRY: I think she did say something
7 to the effect that she wasn't a witness and I just
8 wanted to confirm that that is the basis for her
9 reasoning.

10 MR. LANNON: I don't mind that question at all.

11 BY MR. FITZHENRY:

12 Q. Okay, you understand -- again, I think you
13 said in an earlier answer you did not take into
14 account the Commission's Order in Docket 11-0721
15 because you were not a witness in that docket; I
16 thought I heard you say that?

17 MR. LANNON: What I object to is the part that
18 states that she did not take into account this Order.
19 I believe she stated that she had reviewed it.

20 Q. All right. I will withdraw the question.

21 Did you review this Order as part of
22 your review of whether or not to recommend

1 disallowances in this case?

2 A. I look at this docket because it has some
3 type of similarity in this docket which I
4 participate.

5 Q. Okay.

6 A. And I look at it in a subjective manner and
7 I do not know the details of this contributions. But
8 I do agree with the public welfare that this Order is
9 mentioning that, again, we are talking about -- they
10 are talking about donations, and I don't see what
11 this has anything to do with my inclusion of Exhibit
12 3.0 and my disallowance. I do not see that
13 connection.

14 Q. Let me ask you to turn to page 12 of your
15 direct testimony and your question and answer on
16 lines 281 - 282, and you see there is reference to
17 various sponsorships, correct?

18 A. Yes.

19 Q. Which include among others Decatur
20 Celebration, Herrin Festa Italiana and the Maryville
21 Festival. Do you see that?

22 A. Yes.

1 Q. Is it your understanding that these
2 sponsorships -- strike that.

3 Is it your understanding that these
4 events are intended to promote tourism?

5 A. Are we in advertising?

6 Q. We are in advertising.

7 A. Okay. We are in advertising.

8 Q. Uh-huh.

9 A. So this is a great many events that
10 tourism -- did you say tourism?

11 Q. Yes, I did.

12 A. So we are related back to the donations?

13 Q. No. I am just asking if you think these
14 events are intended to promote tourism.

15 A. I never look at that way.

16 Q. Okay. Is it always the case that in any
17 kind of advertising, if the Company's name is
18 attached in some form or fashion, that it is
19 institutional advertising?

20 A. Names, I didn't mention any names here, who
21 provide rationale for disallowing institution.

22 Q. You say in lines 282 - 283, "Institutional

1 advertising primarily promotes the Ameren Company
2 name to the public." Do you see that?

3 A. Yes.

4 Q. And I think it is a simple question, is it
5 a fact that any time the Company's name is attached
6 to any form of advertising, that it is your opinion
7 that it is institutional advertising?

8 A. Yes.

9 Q. Okay. So the only way that the Company
10 could recover institutional advertising -- strike
11 that.

12 The only way the Company could recover
13 advertising costs would be if the Company's name was
14 not in any way associated with that advertising?

15 A. It is a predominarity. That's what I am
16 talking about.

17 Q. I don't understand. Can you elaborate?

18 A. If when you were talking about a name, if
19 you were talking about we are promoting Ameren and
20 then, you know, for example, if I go to the Chamber
21 of Commerce, okay, and I click on members or
22 utilities or there it goes, there is Ameren, okay --

1 and are we on advertising or are we on donations,
2 first? Let's get that clear.

3 Q. Advertising.

4 A. Advertising, okay. So to me that's
5 institutional. If you immediately see Ameren and you
6 click and you go to Ameren web page, you Ameren home
7 page, and that's pretty much we learn as a user. As
8 I click, I learn mostly nothing but Ameren, right?

9 Q. Okay.

10 A. So I learn about that institution. So if
11 that's what you mean, I hope that's what I --

12 Q. I think so. But just to be sure that we
13 are on the same page, simply because the Ameren name
14 is associated with advertising doesn't mean the cost
15 associated with that advertising is disallowed; you
16 have to look further into the advertising?

17 A. Right, right, right. The context, you
18 know, like safety, like don't play around a broken
19 wire, yes.

20 Q. Right. And you would agree that any time
21 the Ameren name or logo is used, regardless of the
22 purpose of the advertising, it brings about some

1 amount of name recognition?

2 MR. LANNON: I am going to object to the form
3 of that question. It is -- there is no question
4 there. He is stating she would agree with what
5 follows.

6 MR. FITZHENRY: Yeah, it's a leading question.

7 MR. LANNON: I don't know how she answers
8 something that is not a question.

9 JUDGE YODER: Could you rephrase, restate the
10 question?

11 BY MR. FITZHENRY:

12 Q. Isn't it the case that whenever the
13 Company's name is used or its logo is used on any
14 form of advertising, regardless of the purpose of the
15 advertising, that the name and the logo brings about
16 some amount of name recognition?

17 A. I have to answer it this way. It is case
18 by case scenario. Each advertisement is different.
19 I have spent two days, these past two days, looking
20 at AG 6.24, 26, 27 and every shape and form of for
21 energy for life advertisement, okay. And it depends
22 on which page you look at, okay. And mostly, mostly,

1 largely and primarily it is all about Ameren, okay.

2 Say in your own opinion?

3 Q. I am being crossed here.

4 A. You are asking me. I don't know, case by
5 case. This is how I look. It is in your opinion or
6 in my opinion what does it say with the Company name
7 being small, with employee being big. I assume this
8 is employee.

9 Q. She is actually that large. What I am
10 trying to get to is, the Company's name and logo is
11 used on a lot of advertising?

12 A. Of course.

13 Q. All right. And simply because it is there,
14 there has to be some amount of name recognition?

15 A. Yes.

16 Q. All right. That's all I was trying to ask.

17 A. Yes.

18 Q. I want to get back to an earlier discussion
19 involving the IRS code, all 80,000 pages. As I
20 remember from your earlier testimony, you focused on
21 Section 501(c)(3), correct?

22 A. Yes.

1 Q. And you did so because that section of the
2 IRS code tells us which contributions to those
3 organizations are deductible for tax purposes, is
4 that a fair understanding of your review of this
5 section of the IRS code?

6 A. It is a case-by-case scenario.

7 Q. Right. Now, did you take any time to look
8 at how the IRS actual defines a charitable
9 contribution?

10 A. IRS really does define different
11 non-for-profit organizations in various different
12 codes.

13 Q. My question was, did you look at any other
14 section of the IRS code to find out how the IRS
15 defines a charitable contribution?

16 A. I look at so many of them, and I used to be
17 a tax accountant and --

18 Q. Well, in this discussion about what is
19 recoverable, shouldn't we know also about what is a
20 charitable contribution?

21 A. Charitable contribution, if you mean using
22 the IRS definition, yes.

1 Q. Okay. So that would be helpful to the
2 Commission to know how the IRS defines charitable
3 contribution in this discussion about what's
4 recoverable?

5 A. We can define what is charitable
6 contribution, but we have to leave what's recoverable
7 -- one subject at a time. That's all I am hoping
8 that you will ask me.

9 Q. I am going to show you a section of the IRS
10 code. Note that is AIC Cross Examination Exhibit 3.

11 (Whereupon Ameren Cross Exhibit
12 3 was presented for purposes of
13 identification as of this date.)

14 Okay. And if you would turn to page 7 of
15 that document, it is actually page 7 of 36 under
16 Subsection C. Now, again, I think you just said
17 previously that you were a tax accountant or
18 performed --

19 A. I prepared a lot of taxes.

20 Q. All right. And you are familiar somewhat
21 with various sections of the IRS code, you said?

22 A. As far as I remember, yes.

1 Q. And looking at Section 170(c), you can see
2 there that -- and on the second page that follows --
3 that a charitable contribution is defined, correct?

4 MR. LANNON: Your Honor, I am going to object
5 for lack of -- due to a lack of foundation that this
6 witness is familiar with this document at all.

7 MR. FITZHENRY: Well, we did -- we did make
8 clear that she was a tax accountant. She testified
9 that she has prepared several tax returns, that she
10 was aware that there are sections in the IRS code
11 that govern charitable contributions. And, you know,
12 if she is not familiar with this section, that's
13 fine.

14 JUDGE YODER: I will overrule the objection.

15 BY MR. FITZHENRY:

16 Q. The question is, you can read there, that
17 the IRS has defined a charitable contribution,
18 Section 170(c)?

19 A. Correct.

20 Q. And you didn't take that into account with
21 regard to any of the recommendations that you have
22 made in your testimony, correct?

1 A. Mr. Fitzhenry, are you saying that a
2 company should take a part of IRS rules without
3 considering the other part when it comes to one same
4 subject of charitable contribution deductibility?
5 Okay. It is clearly everywhere and everybody who
6 does income taxes knows that charitable contributions
7 cannot be deducted if one is expected to benefit.
8 Not even has to be a measurable benefit but expected
9 to be having benefit, okay.

10 This is -- this cannot be considered
11 without this other deductibility requirement.

12 Q. Right. But you didn't consider it.

13 A. I didn't consider it? This is automatic.

14 Q. Ma'am, I asked you --

15 A. You expect me to include every portion of
16 IRS codes? This is -- okay, for corporate taxes,
17 Form 1120, I can tell you which line that a
18 contribution goes into.

19 Q. I am not asking about that.

20 A. I can tell you in what -- how many years
21 carry backwards and forwards as far as how much you
22 can deduct. And you want me to code this, okay, a

1 corporation trust and community chest is how
2 charitable contributions should be defined. Isn't it
3 relevant point what I am trying to point to that
4 donation, the corporate way to deduct them and the
5 appropriateness to include as donation when the
6 benefits are expected and it is evident as you look
7 page and page and page of this type of transactions,
8 and you want me to -- I be sure to footnote this
9 particular page the next case.

10 Q. Uh-huh. Again I am using your words, you
11 say Section 501(c)(3) should be a filter of sorts?

12 A. Yes.

13 Q. And we understand that if the contribution
14 doesn't meet the definition under Section 170(c), it
15 doesn't make a difference whether or not the
16 organization is a 501(c)(3) because it wouldn't be
17 recovered anyway, correct?

18 A. I am confused of -- I am confused of your
19 question.

20 Q. All right.

21 A. Would you make them short?

22 Q. I will do that. We could agree that in

1 order for a contribution, a charitable contribution,
2 to be recoverable, it should meet the definition
3 under the IRS code?

4 A. Yes.

5 Q. Okay. And you did not take that into
6 account in your testimony?

7 MR. LANNON: Objection. I don't believe that's
8 in the record. You are making a statement that she
9 did not consider that.

10 MR. FITZHENRY: Well, you know what, I think I
11 asked that question earlier and got the answer. I
12 will move on.

13 Could I have a few moments? I am
14 going to try to wrap things up here in a few minutes,
15 Judge.

16 JUDGE YODER: Sure.

17 MR. FITZHENRY: Could we just take a
18 five-minute break? I think I can look at my notes
19 and get rid of about 20 minutes.

20 JUDGE YODER: Okay.

21 (Whereupon the hearing was in a
22 short recess.)

1 (Whereupon Ameren Cross Exhibit
2 4 was presented for purposes of
3 identification as of this date.)

4 JUDGE YODER: Back on the record.

5 Mr. Fitzhenry?

6 BY MR. FITZHENRY:

7 Q. Ms. Chang, did you get a copy of our next
8 cross examination exhibit laid out there?

9 A. Yes.

10 Q. And I have given it to the parties and to
11 the Judges. And simply you were asked to identify
12 the language in Section 501(c)(3) of the code upon
13 which you relied in support of the positions in your
14 testimony, and you have identified those sections,
15 correct?

16 A. Yes, these are 501(c)(3) part and sections
17 that I have read.

18 Q. Thank you. Now I would like to --

19 MR. LANNON: Excuse me, can I just interject?
20 Could we identify what she is looking at somehow?

21 BY MR. FITZHENRY: I am sorry, AIC Cross
22 Examination Exhibit 4. Sorry. Thank you for that,

1 Mr. Lannon.

2 Q. Ms. Chang, would you turn to page 7 of your
3 rebuttal testimony?

4 A. I am there.

5 Q. And, in fact, you had hit on this issue a
6 couple different times about the Company receiving
7 value for a charitable contribution, and here you say
8 again that for a donation to have a charitable
9 purpose, the organization should not obtain a benefit
10 from making that donation, correct?

11 A. That's my understanding of the definition
12 of donation.

13 Q. And you refer to in the next sentence the
14 value of the benefit, do you not?

15 A. On which line?

16 Q. I am sorry, lines 115 through 118. To
17 paraphrase you say if the benefit is received from a
18 donation, the value of that benefit should reduce the
19 amount of the contribution?

20 A. That makes sense to me.

21 Q. Correct. So let's just say on a
22 hypothetical I make a contribution of \$1,000 but I in

1 return get a benefit of \$500. I can only claim \$500
2 for the charitable contribution?

3 A. To make sure I understand what you are
4 saying, say if I spend \$20 and I bought two packs of
5 Girl Scout Cookies and how do I measure how much
6 cookies cost. So proportion deductibility, is that
7 what you are taking about?

8 Q. Well, I'm just looking at your testimony
9 and trying to understand it with a hypothetical.

10 A. Yes, I am on the same page with you.

11 Q. Okay. Well, in any event, let's talk about
12 the eleven organizations for which you have
13 recommended a disallowance associated with the
14 contributions. Is it your opinion that Ameren
15 received a value of some sort with regard to those
16 contributions?

17 A. I remember my testimonies I specifically
18 stated expect to, and I have included web pages and
19 so and so forth and explained the membership
20 benefits. I believe that that's -- you know, large
21 or small that was my objective.

22 Q. Right. And again looking at your answer

1 that begins on line 114, you say that in order for
2 the donation to have a charitable purpose, the
3 organization -- Ameren should not receive a benefit
4 from making that donation, correct? That's what you
5 say?

6 A. Yes, that is my definition of donation.

7 Q. Now, the eleven organizations that we are
8 talking about, the eleven Chambers of Commerce --

9 A. They are not all Chambers of Commerce.

10 Q. Most of them are; they are economic
11 development groups and such. Your opinion is that
12 Ameren should not receive a benefit from making those
13 contributions?

14 MR. LANNON: I am going to object to the form
15 of that again. Once again, counsel is testifying as
16 to what the witness's opinion is.

17 JUDGE YODER: Overrule. I think she can answer
18 that question if that's her testimony.

19 Q. I will say it again, okay. In your
20 Schedule 8.02 there is eleven different groups listed
21 and they are mostly Chambers of Commerce or economic
22 development groups, organizations of that nature.

1 And you have recommended a disallowance associated
2 with the contributions that Ameren has made to those
3 groups, correct?

4 A. Yes.

5 Q. And you say here in your testimony that in
6 order for those contributions to be charitable,
7 Ameren should not be able to receive a benefit or
8 claim a benefit?

9 A. Yes.

10 Q. All right. So my question is, with those
11 eleven different groups and organizations what is the
12 value that Ameren is receiving in return for making
13 those contributions?

14 A. I think Ameren has to answer that, what is
15 their -- why did they decide to become members of
16 those organizations. And I am sure when at a certain
17 level, a marketing department person would come to
18 somebody saying I want to be a member of so and so,
19 and that person might show here are the benefits and
20 here are the costs in order for typical management to
21 okay this particular -- no, I didn't even consider
22 those things because it is not in the scope of my

1 review.

2 Q. Okay. But we would agree that whatever the
3 value is that Ameren would receive is a value that is
4 monetary in nature or has some economic value?

5 MR. LANNON: Objection, calls for speculation.

6 Q. Well, I am actually reading her testimony.
7 If you want to look at lines 120 to 124, you are
8 referencing a section or some language from
9 Publication 526?

10 A. Yes.

11 Q. Do you read that to understand that Ameren
12 would have to receive a financial or economic benefit
13 that would be deducted from the amount of the
14 charitable contribution being made to these eleven
15 organizations?

16 A. On the first sentence you have -- the
17 emphasis should be placed on if you receive or expect
18 to receive. This is -- my concentration is "expect
19 to" because I have not have measurable outcomes to --
20 I don't have the measurable outcome.

21 Q. Okay. So you have -- I am sorry, you have
22 not done that?

1 A. It is not included in my review.

2 Q. All right. And if we were to be specific,
3 the contribution that was made to the Illinois State
4 Black Chamber of Commerce, do you have an opinion as
5 to what value or what Ameren expected to receive in
6 terms of a financial or economic benefit?

7 MR. LANNON: I am going to object again. The
8 value, however it is quantified, she stated she
9 doesn't know. She has no means of knowing. So this
10 question and questions along these lines call for her
11 to speculate. So the objection is cause for
12 speculation.

13 JUDGE YODER: I think I will overrule the
14 objection. That's a fair question if she is saying
15 they expect to receive a benefit. He is asking her
16 what that benefit is, as I understand.

17 Q. If she knows. She may not know.

18 A. If we are still talking about donations --

19 Q. We are.

20 A. Okay. And sometimes I am thinking of the
21 goodwill advertising. Sometimes then I am thinking
22 of, you know, in those lines it is part of the

1 expected return maybe. I cannot give you numbers. I
2 cannot give you monetary numbers or values or -- no,
3 I have not went to that kind of evaluation.

4 Q. Okay. Would you turn to page 11 of your
5 rebuttal testimony? And here we are now talking
6 about advertising. And at lines 211 through 213 you
7 indicate that you had adopted the adjustment that was
8 being made by Mr. Brosch, correct?

9 A. Correct.

10 Q. And your decision to adopt Mr. Brosch's
11 testimony was based on the testimony that he gave in
12 his Exhibit 1, lines 36 through 37?

13 A. At that time when I was preparing this
14 testimony, yes.

15 MR. FITZHENRY: Okay. Thank you, Ms. Chang.
16 You have been very patient. That's all the questions
17 I have.

18 EXAMINATION

19 BY JUDGE ALBERS:

20 Q. I just have one clarification question
21 regarding your position on the P-Cards.

22 A. Yes.

1 Q. Is it your position that all of the P-Card
2 expenses should be disallowed?

3 A. My position was all the P-Cards that didn't
4 have any descriptions, any -- all the P-Cards that
5 was not supported was disallowed. And the ones that
6 the description were provided, I disallowed one
7 particular purchase which the Company adopt which was
8 a set of books that they purchased.

9 Q. Does that list then or is that number --
10 excuse me.

11 After that disallowance, I think --

12 MR. KENNEDY: I think the number is about
13 27,000.

14 Q. Okay. So the number of your disallowance
15 in your testimony --

16 A. Yes.

17 MR. LANNON: Page 13, 12 to 13.

18 MR. KENNEDY: I think it relates to that \$200
19 that we discussed yesterday, anything under \$200.

20 BY JUDGE ALBERS:

21 Q. All right. So you are claiming anything
22 less than \$200 be disallowed?

1 A. I include an entire amount of unexplained
2 expenditures to be disallowed. What my evaluation
3 concluded was that there were 26 pages of items, and
4 in that approximately 45 lines in each page. And the
5 total description provided was 79 items. So even
6 though those were greater than \$200, but I say
7 quantity of description provided were very minimum.

8 Q. Okay. So if there is a \$200 value that has
9 a description with it, you are not recommending a
10 disallowance?

11 A. I did not recommend for disallowance.

12 JUDGE ALBERS: Okay. All right. Thank you.

13 JUDGE YODER: Do you need a moment or do you
14 have --

15 MR. LANNON: Five minutes, if we could?

16 JUDGE YODER: Before we break, are you moving
17 for the admission of your cross exhibits?

18 MR. FITZHENRY: Yes, all except for the
19 reference to the Commission's Order in the 11-0721
20 case, but the other cross examination exhibits.

21 JUDGE YODER: I don't think we marked that one,
22 did you?

1 MR. FITZHENRY: I am sorry?

2 JUDGE YODER: You didn't mark the excerpt from

3 --

4 MR. FITZHENRY: Oh, okay, so Exhibits 2, 3 and
5 4.

6 JUDGE YODER: Any objection to those cross
7 exhibits?

8 MR. LANNON: No objection.

9 JUDGE YODER: All right then, those will be
10 admitted in this docket.

11 (Whereupon Ameren Cross Exhibits
12 2, 3 and 4 were admitted into
13 evidence.)

14 JUDGE YODER: We will take a brief break while
15 counsel confers with the witness.

16 (Whereupon the hearing was in a
17 short recess.)

18 JUDGE YODER: All right. Back on the record.

19 Mr. Lannon, do you have any redirect
20 for your witness?

21 MR. LANNON: Yes, I am going to have a few
22 redirect questions based on trying to provide some

1 clarification regarding the questions Judge Albers
2 asked.

3

4

REDIRECT EXAMINATION

5

BY MR. LANNON:

6

Q. Karen, do you recall -- or excuse me.

7

8

9

Ms. Chang, do you recall Judge Albers
asking you some questions regarding what I will refer
to as a \$200 threshold?

10

A. Yes, he did.

11

12

13

Q. Okay. Now, is it fair to say that
initially the Company provided you with a list of
P-purchases, is that correct?

14

A. Yes, yes.

15

16

17

Q. And then you followed up and asked for some
more description, shall we say, would that be
correct?

18

A. Yes.

19

20

21

Q. And they then, in response to that request,
provided you with some description on 79 of those
original items, is that right?

22

A. Yes.

1 Q. And were all 79 of those items in -- were
2 they all above the \$200 threshold?

3 A. Yes.

4 Q. Okay. So you never received any further
5 descriptions on the items that were below the \$200
6 threshold, is that correct?

7 A. Yes.

8 MR. LANNON: That's all I have.

9 MR. KENNEDY: And if I could make one
10 clarification, that exhibit and the DR response the
11 Company provided are Attachment A, correct?
12 Attachment A to her rebuttal testimony, just so that
13 is clear.

14 MR. LANNON: I am sorry?

15 MR. KENNEDY: The DR response where we provided
16 information, it is correct is in Attachment A of her
17 testimony.

18 BY MR. LANNON: Okay. And I was just informed
19 I should clarify one more thing. The adjustment --
20 we made an adjustment downward on the less than \$200
21 items because we didn't get further descriptive
22 information.

1 MR. KENNEDY: Are you making that
2 clarification?

3 MR. LANNON: Yeah, I am afraid I am.

4 MR. KENNEDY: You want to ask a question?

5 BY MR. LANNON: Yeah, I think I probably
6 should.

7 Q. Is it true, Ms. Chang, or is it fair to say
8 that you adjusted by disallowing the below-\$200 items
9 because of the fact that none of the 79 descriptions
10 that were given you applied to the less than \$200
11 items, is that fair to say?

12 A. Yes.

13 MR. LANNON: That's all. No more questions.
14 That's it, hopefully.

15 MR. FITZHENRY: I have no questions for
16 Mr. Lannon or Mr. Kennedy and Ms. Chang, either.

17 MR. LANNON: I would love to take the stand.

18 JUDGE YODER: I have one question. I hope this
19 won't foul up the whole procedure.

20 EXAMINATION

21 BY JUDGE YODER:

22 Q. The \$200 limit where Ameren provided

1 information for items above that, did Ameren do that
2 on their own? Is that something you discussed with
3 them? How did that come about?

4 A. I believe it is a time constraint because
5 the DR was sent out on very tight schedule. So
6 Ms. Pagel, or with other Company people, have
7 probably made that decision to provide descriptions
8 only for those ones above 200.

9 JUDGE YODER: Okay. Thank you. Anything else?

10 MS. KENNEDY: I think Ms. Pagel also addressed
11 that in her surrebuttal testimony.

12 JUDGE ALBERS: Anything else?

13 MR. LANNON: No, that's it, Your Honor.

14 JUDGE YODER: Thank you, Ms. Chang.

15 Is there any objection to the
16 admission of Ms. Chang's 3.0R, the revised direct
17 with the attachments and schedules that were filed,
18 both previously and with that 3.04 being both
19 confidential and public or 8.0-C, the revised
20 corrected rebuttal of Ms. Chang, with the
21 accompanying schedules and attachments?

22 MR. FITZHENRY: No.

1 JUDGE YODER: All right. Then without
2 objection those will be admitted into evidence in
3 this docket.

4 (Whereupon Staff Exhibits 3.0,
5 3.01, 3.02, 3.3, 3.04
6 Confidential and Public, 8.0R-C,
7 8.01, 8.02 and 8.04 were
8 admitted into evidence.)

9 JUDGE YODER: Thank you, Ms. Chang. You may
10 step down.

11 (Witness excused.)

12 It is a quarter 'til 12. Do the
13 parties wish to start Ms. Phipps?

14 MR. KENNEDY: I think we hope to start and
15 finish her before we break, as long as Your Honors
16 are okay with that, to keep on pace to finish before
17 4:00.

18 JUDGE YODER: All right. Ms. Phipps, were you
19 briefly sworn?

20 THE WITNESS: No, I was not.

21 JUDGE YODER: All right. Raise your right
22 hand.

1 (Whereupon the witness was duly
2 sworn by Judge Yoder.)

3 JUDGE YODER: All right. Ms. Luckey or
4 Mr. Olivero?

5 ROCHELLE PHIPPS
6 called as a witness on behalf of Staff of the
7 Illinois Commerce Commission, having been first duly
8 sworn, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MS. LUCKEY:

11 Q. Good morning, Ms. Phipps, or almost good
12 afternoon. Could you please state your full name for
13 the record and spell your last name.

14 A. Yes, my name is Rochelle Phipps,
15 P-H-I-P-P-S.

16 Q. Who is your employer?

17 A. The Illinois Commerce Commission.

18 Q. And what is your position at the Illinois
19 Commerce Commission?

20 A. I am a Senior Financial Analyst in the
21 Financial Department of the Financial Analysis
22 Division.

1 Q. Did you prepare any written exhibits and
2 schedules for submittal in this proceeding?

3 A. Yes, I did.

4 Q. Do you have before you a document which has
5 been marked for identification as ICC Staff Exhibit
6 4.0 which consists of a cover page, a table of
7 contents, 13 pages of narrative testimony and
8 Schedules 4.01 through 4.06, and is titled the Direct
9 Testimony of Rochelle Phipps?

10 A. Yes.

11 Q. Did you prepare that document for
12 presentation in this matter?

13 A. Yes.

14 Q. Do you have any corrections to make to ICC
15 Staff Exhibit 4.0?

16 A. Yes, I have one correction. On page 6,
17 Footnote 7, the footnote should actually read,
18 "Company responds to ICC Staff DR RMP 3.01 Attach."
19 It should not reference Attach 3.

20 Q. Do you have any additional corrections to
21 make?

22 A. No, I do not.

1 Q. Is the information contained in ICC Staff
2 Exhibit 4.0 true and correct to the best of your
3 knowledge?

4 A. Yes.

5 Q. If I were to ask you the same questions set
6 forth in the testimony and schedules, would your
7 responses be the same today?

8 A. Yes.

9 Q. Do you also have before you a document
10 which has been marked for identification as ICC Staff
11 Exhibit 9.0 which has been -- or which consists of a
12 cover page, a table of contents, seven pages of
13 narrative text, Schedules 9.01 and 9.02, and
14 Attachments A through C which is titled the Rebuttal
15 Testimony of Rochelle Phipps?

16 A. Yes.

17 Q. Did you prepare that document for
18 presentation in this matter?

19 A. Yes, I did.

20 Q. Do you have any corrections to make to ICC
21 Staff Exhibit 9.0?

22 A. No, I do not.

1 Q. Is the information contained in ICC Staff
2 Exhibit 9.0 true and correct to the best of your
3 knowledge?

4 A. Yes.

5 Q. If I were to ask you those questions, the
6 same questions set forth in ICC Staff Exhibit 9.0,
7 would your responses be the same today?

8 A. Yes, they would.

9 MS. LUCKEY: Your Honor, I move for admission
10 into evidence ICC Staff Exhibit 4.0 and 9.0 including
11 the attached schedules and attachments subject to
12 cross examination.

13 JUDGE YODER: Very well. We will address the
14 admissibility following cross.

15 Mr. Tomc, you have cross?

16 MR. TOMC: I do, Your Honor. I think I have
17 about 30 to 45 minutes. So if we do need to break, I
18 will try to make it as quickly as I can.

19 CROSS EXAMINATION

20 BY MR. TOMC:

21 Q. Let me -- good afternoon, Ms. Phipps.

22 A. Good afternoon.

1 Q. Let me ask you just a few general questions
2 about your experience and your testimony as it
3 concerns the appropriate capital structure for Ameren
4 Illinois Company to be established in this case.

5 As I understand it, the Ameren
6 Illinois Company has testified that it targets a
7 range capital structure that its treasury department
8 manages its financial business to obtain as a
9 long-term target. Do you agree with that
10 representation?

11 MS. LUCKEY: Can you point Ms. Phipps to
12 something in AIC's testimony?

13 Q. Sure. You could take a look at
14 Mr. Martin's surrebuttal testimony.

15 A. Yes, I believe that management -- I have a
16 DR response that indicates that Ameren management
17 believes it is important and in the best interests of
18 the Company's ratepayers for the Company to maintain
19 investment grade credit ratings.

20 Q. And to do that, part of that process,
21 Ameren Illinois sets a targeted long-term capital
22 structure, is that your understanding?

1 A. That's my understanding.

2 Q. And what does that mean, a long-term target
3 capital structure? As a financial analyst, what
4 would you interpret that term to mean?

5 A. Well, I think managing a long-term capital
6 structure in the case of Ameren, for example, relates
7 to a targeted credit rating and then managing the
8 capital structure and your financial strength with
9 the goal to obtain that credit rating.

10 Q. And what does that mean by the term
11 "targeted." If Ameren Illinois has a desired capital
12 structure, why can't it just set that capital
13 structure exactly? Why is it targeted?

14 A. Well --

15 Q. Let me try to go about this another way
16 because the question is a little bit confusing and
17 there is a beeping that is going on as well.

18 The actual capital structure
19 experienced historically on a quarterly basis or an
20 annual basis is influenced by a number of variables,
21 including financings but also earnings, would you
22 agree with that?

1 A. Yes.

2 Q. And earnings fluctuate from quarter to
3 quarter depending on many variables, some variables
4 like weather which are just beyond the control of the
5 utility, would you agree with that?

6 A. Yes.

7 Q. And those earnings do impact the income
8 statement of the utility, would you agree?

9 A. Yes.

10 Q. And the income statement for a particular
11 quarter would be tied to the balance sheet for that
12 same quarter or year?

13 A. Yes.

14 Q. So from quarter to quarter, year to year,
15 the actual capital structure experience can vary to a
16 certain degree beyond the direct control of the
17 utility company, would you agree with that?

18 A. Well, I think that a company's cash flows
19 can vary based on some of those examples you just
20 provided. I think that a company's capital structure
21 is based a large part on financing decisions, too.

22 Q. If today Ameren Illinois were to have a 55

1 percent equity ratio and decided it was more
2 desirable to have a 51 percent equity ratio, would it
3 be able to achieve that by tomorrow morning?

4 A. Are you referring to Ameren Illinois
5 Company?

6 Q. Yes.

7 A. Well, Ameren Illinois Company's capital
8 structure is -- well, the equity ratio in particular
9 is ultimately managed by their parent company. So if
10 their goal was a 55 percent equity ratio, then an
11 equity infusion could accomplish that.

12 Q. But it would take some time to actually
13 accomplish and calculate what the equity infusion
14 would be, would you not agree?

15 A. If we had a balance sheet for today, we
16 could figure out what the equity infusion would have
17 to be.

18 Q. If we had a balance sheet and we knew today
19 with today's numbers all calculated, we would know
20 what the capital structure could be, correct?

21 A. What you are talking about, an equity
22 infusion to bring the equity ratio to a certain

1 number would require a calculation based on what the
2 balance sheet looks like today.

3 Q. Okay. If -- I guess what I am trying to
4 get at and perhaps it is taking me a little while to
5 get there, but the idea is that Ameren manages to a
6 goal or to a targeted capital structure and there are
7 various transactions that would need to be undertaken
8 to actually achieve that targeted capital structure,
9 would you not agree with that?

10 A. Not entirely. I would agree that there are
11 various factors that effect the Company's capital
12 structure, and I would also agree that Ameren
13 Illinois Company has stated that they target a
14 capital structure.

15 Q. Well, why would they target a capital
16 structure and just not set one?

17 A. Well, because there are various factors
18 that affect cash flows which is one of the things
19 that affect capital structure.

20 Q. Okay. Now, as I understand your testimony
21 in this case to be, generally you are testifying in
22 favor of the use of a capital structure that

1 incorporates approximately 51 percent equity ratio,
2 is that correct?

3 A. A 51 percent equity ratio, yes.

4 Q. And that is based on an analysis that is
5 premised upon your understanding of Section 9-230 of
6 the Public Utilities Act?

7 A. That's correct.

8 Q. And it also is premised upon an analysis
9 that a 51 percent capital structure would not result
10 in a downgrade?

11 A. Well, I performed an analysis to show that
12 a 51 percent equity ratio would not result in a
13 downgrade in response to a claim by the Company that
14 there was no quantitative analysis to show such.
15 That wasn't part of my initial analysis. My analysis
16 was the comparison of Ameren Illinois Company to its
17 parent company's capital structure.

18 Q. Does your testimony today remain the same
19 that you believe that a recapitalization to a 51
20 percent equity ratio would not result in a downgrade?

21 A. Yes.

22 Q. I would like to direct your attention to

1 ICC Staff Exhibit 4.0, page 7. Okay. Beginning on
2 line 119 you reference Section 16-108.5 of the Public
3 Utilities Act. Do you see that?

4 A. Yes.

5 Q. And that is the section of the Public
6 Utilities Act recently enacted that provides for
7 formula-based rates?

8 A. That's correct.

9 Q. And in this docket we are actually
10 considering the Company's annual filing under that
11 section to update their FERC Form 1 data for the
12 purpose of populating the formula that determines the
13 rate, is that a fair characterization?

14 A. Will you say that again? I am sorry.

15 Q. Yes. This docket, this proceeding, is for
16 the purpose to consider the Company's update that
17 will provide FERC Form 1 data for the year 2011 for
18 the purpose of determining what the formula rate will
19 be under 16-108.5. As a matter of general
20 description would you agree with that
21 characterization?

22 A. I would agree with that generally. That's

1 not entirely true with respect to the capital
2 structure because the FERC Form 1 includes the
3 purchase accounting adjustments.

4 Q. That's right. And the form ILCC -- is it
5 Form ILCC 21 that actually is the form that the
6 Company files with the ICC that excludes the effects
7 of purchase accounting?

8 A. That is correct.

9 Q. Okay. Now, you are not a lawyer, and I
10 understand that. But you do have some familiarity
11 with 16-108.5, is that fair to say?

12 A. Well, the specific sections of 16-108.5,
13 particularly Subsection C and D.

14 Q. Did at any time you ever review or read the
15 entire statute?

16 A. I have read the statute, yes.

17 Q. The formula-based rate treatment that is
18 afforded by that enactment, it is available to only
19 participating utilities that meet certain criteria,
20 would you agree with that?

21 A. Yes.

22 Q. Applicable to the Ameren Illinois Company

1 would be the obligation to make incremental capital
2 investments totalling \$625 million over the next
3 decade. Do you recall seeing that?

4 A. Yes.

5 Q. The formula rates under the law, those will
6 change, as we have discussed, annually based on an
7 update filing from the Company, would you agree?

8 A. Yes, I would agree with that.

9 Q. And the capital structure is expected to
10 change and vary over the next ten years, is that
11 correct?

12 A. I think it is likely that the capital
13 structure will vary over the next ten years. I don't
14 know that it is expected.

15 Q. Each year the capital structure for
16 ratemaking purposes will be updated by the Company in
17 a filing before the Commission, do you expect that?

18 A. That is correct.

19 Q. In this particular case as we discussed,
20 the Company is proposing to update its 16-108.5 rates
21 based upon FERC Form 1 reported data for the calendar
22 year 2011, is that right?

1 A. I am sorry, state that -- can you repeat
2 that?

3 Q. I am sorry. The update period by which the
4 Company proposes to establish capital structure in
5 this period is the calendar year 2011?

6 A. That is correct.

7 Q. Now, with regard to the \$625 million of
8 incremental investment required by the formula rate
9 law, Ameren Illinois, of course, will be required to
10 finance that amount of capital investment somehow,
11 would you agree?

12 A. Yes, I would agree with that.

13 Q. And it will most likely finance it with a
14 combination of both debt and equity in some
15 proportion, is that correct?

16 A. I would agree with that.

17 Q. If the \$625 million investment is financed
18 with a higher proportion of long-term debt than is
19 currently reflected in the Company's debt equity
20 ratio, that would alter the Company's capital
21 structure as it makes -- as it meets those investment
22 requirements, would you agree?

1 A. I agree to the extent that the Company
2 finances those investments with debt, it would affect
3 their capital structure, yes. I would agree with
4 that.

5 Q. If the Company finances those capital
6 investments in a ratio heavily weighted towards debt,
7 that would have the effect, would it not, of reducing
8 the equity ratio in the Company's capital structure
9 over the course of the next decade, would you agree?

10 A. Well, all else equal, if the only thing
11 that changes is the Company issues debt to finance
12 those investments, then, yes, it will result in a
13 lower equity ratio.

14 Q. Today do you know what portion or what
15 progress Ameren Illinois has made on spending in
16 investments \$625 million that are required under the
17 Act?

18 A. No.

19 Q. Is it possible that, as the Company
20 concludes the ten-year formula rate period, Ameren
21 Illinois could have a much lower percentage of equity
22 in its capital structure than it does today?

1 Let me ask the question a different
2 way. I will withdraw that question.

3 Is it possible that at the end of the
4 ten-year formula rate period, the Company's capital
5 structure has a proportion of -- proportion of equity
6 at or equal to 51 percent or less? Is that possible?

7 A. Yes.

8 Q. I have a few questions concerning credit
9 rating agencies. As you are aware, those agencies
10 and their reports are discussed in both, I think,
11 your testimony and Mr. Martin's. Does that square
12 with your recollection?

13 A. Yes.

14 Q. Now, as I understand it, Standard & Poor's
15 or S&P, Moody's and an organization called Fitch are
16 the three main credit rating agencies that are
17 recognized by financial professionals generally
18 speaking. Would you agree with that
19 characterization?

20 A. I would agree that they are the most
21 common, yes.

22 Q. And each of those agencies is a separate

1 organization, is that right?

2 A. That is correct.

3 Q. And they issue separate reports?

4 A. Correct.

5 Q. And their methodologies may be similar in
6 some respects, but they do differ, would you agree?

7 A. Yes.

8 Q. The agencies themselves, they opine upon
9 the creditworthiness of the companies they rate,
10 would you agree with that?

11 A. Yes.

12 Q. But they do not actually set the interest
13 rate of bonds and they do not price debt, is that
14 correct?

15 A. That's correct.

16 Q. The market sets the price of debt, would
17 you agree?

18 A. Yes.

19 Q. I believe in your testimony on page 7 where
20 we were at just briefly in your direct testimony, you
21 have a Footnote 8. In that footnote, the very last
22 line at the bottom of the page, right above the page

1 number, you write, "The optimal capital structure is
2 a function of dynamic operating risk and investor
3 risk preferences." Do you see that?

4 A. Yes.

5 Q. With regard to investor risk preferences,
6 let me ask you, are investor decisions influenced by
7 their perceptions of broader market risk and market
8 alternatives?

9 A. Yes.

10 Q. Now, ratings agencies, as I understand it
11 as a non-financial professional, issue ratings that
12 fall into two general and distinct categories,
13 investment grade and junk. Are you aware of that
14 dichotomy?

15 A. Yes.

16 Q. What's the difference?

17 A. Well, investment grade is anything that's
18 Triple B minus or Baa3 and above, and those are the
19 companies with the lowest amounts of default risk as
20 judged by the credit rating agencies.

21 Q. Okay. Thank you. And junk, a junk rating,
22 is that term intended to imply that that's an

1 unfavorable credit rating?

2 A. It implies that there is a greater risk of
3 default.

4 Q. Let me ask you, as a general matter and as
5 a matter of your financial expertise, would it be
6 challenging for a utility like Ameren Illinois to
7 make an incremental investment of \$625 million over
8 the next ten years while having a junk credit rating?

9 A. It is probably possible. It would be more
10 expensive then. I don't know what their credit
11 rating is.

12 Q. Is it possible that with a junk credit
13 rating there may not be many options for Ameren
14 Illinois managers to consider when trying to finance
15 those investments at a relatively low cost?

16 A. Well, as I just said, it would be more
17 costly. I don't think it means that it couldn't be
18 funded. But to the extent used debt or -- debt in
19 particular, I guess you are referring to in your
20 example, then it would be lower rated bonds and
21 higher yields than the higher rated bonds because
22 they have a greater amount of default risk.

1 Q. You cite two credit agency reports in your
2 testimony, as I recall. And you cite one report
3 issued from Moody's and one report that was issued by
4 S&P. Is that right?

5 A. Which? I reference several credit rating
6 reports. Which ones are you referring to?

7 Q. Well, I will direct your attention to page
8 8. And if you look at Footnote 9, you have a
9 citation there to a June 12, 2012, ratings report.

10 A. Yes, I see that.

11 Q. And then Standard & Poor's is an eleven,
12 and that is a report regarding Ameren Illinois
13 Company and that was issued March 16 of 2012. Now,
14 both of those reports were issued in the spring of
15 2012, is that right?

16 A. Yes.

17 Q. Did you consider the perspectives offered
18 by credit rating agencies in developing your
19 testimony for the years 2010 or 2011 as you prepared
20 your case, your testimony?

21 A. Well, but I recognized them to the extent
22 that in spring 2012 both of those rating reports

1 indicated that the new formula rate structure
2 resulted in lower operating risk for Ameren Illinois
3 Company.

4 Q. In establishing and managing the
5 capitalization policies of Ameren Illinois, did the
6 Ameren Illinois treasury department have the benefit
7 of the spring 2012 credit rating agency reports for
8 the year 2011?

9 A. No.

10 Q. Let me ask you about just generally
11 speaking about credit rating agencies and what they
12 take into consideration. In your experience did they
13 take into consideration planned capital expenditures?

14 A. Yes, I believe so.

15 Q. And did they take into consideration
16 leverage ratios?

17 A. Yes.

18 Q. The term "leverage ratio" is a new term for
19 me and I am not sure if it is clarified in the
20 record. What does that term mean to you?

21 A. The amount of debt capital -- the debt
22 ratio.

1 Q. So it is a similar concept to capital
2 structure?

3 A. Yes, it is the proportion of debt capital
4 used in capital structure.

5 Q. On page 7 of your testimony, line 134, you
6 mention here in your note that Moody's upgraded AIC's
7 credit rating from Baa2 -- or, I am sorry, they
8 upgraded AIC's credit to Baa2 from Baa3. Do I read
9 that correctly?

10 A. Yes.

11 Q. And this is referring again to that spring
12 of 2012 ratings report, am I right?

13 A. Yes.

14 Q. On the second page, the next page, page 8,
15 starting on line 137 you note that Moody's noted that
16 the formula rate plan should result in more timely
17 cost recovery, right?

18 A. Yes.

19 Q. Resilient credit metrics?

20 A. Yes.

21 Q. And the better ability to earn returns?

22 A. Yes.

1 Q. And then you note while helping to
2 substantially offset lingering concerns about the
3 regulatory framework?

4 A. Yes.

5 Q. Do you know what the lingering concerns
6 are? Do you recall?

7 A. Well, the June 12, 2012, rating report
8 suggested unpredictability in the past.

9 MR. TOMC: I have an exhibit I would like to
10 share with you. Your Honor, what exhibit -- cross
11 exhibit?

12 MR. FITZHENRY: Five.

13 MR. TOMC: My colleague say five.

14 JUDGE YODER: Five.

15 MR. TOMC: It is not my golf colleague; it is
16 my boss. I was distracted by co-counsel.

17 (Whereupon Ameren Cross Exhibit
18 5 was marked for purposes of
19 identification as of this date.)

20 JUDGE ALBERS: Off the record.

21 (Whereupon there was then had an
22 off-the-record discussion.)

1 BY MR. TOMC:

2 Q. Okay. Do you see the document that I have
3 provided you that is identified as Ameren Cross
4 Exhibit 5?

5 A. Yes.

6 Q. Do you recognize that document?

7 A. Yes.

8 Q. Is this the "Moody's Investor Service
9 Report" issued on June 13 of 2012?

10 A. Yes.

11 Q. And is it the one that you discuss in your
12 testimony?

13 A. Well, I have the rating announcement in
14 Footnote 9. Yes.

15 Q. Okay. Now, the first page of this exhibit,
16 at the very bottom there is heading that says,
17 "Opinion." Do you see that?

18 A. Yes.

19 Q. And then below that is another heading, a
20 subheading, that says, "Ratings Drivers"?

21 A. Yes.

22 Q. Do you see how it indicates a bullet point,

1 and the bullet point reads, "Recent legislation
2 reduces uncertainty although regulatory framework
3 remains challenging"?

4 A. Yes.

5 Q. Do you interpret that to mean that Moody's
6 Investor Service believes that the regulatory
7 framework in Illinois remains what it calls
8 challenging?

9 A. Yes, they identify that as a rating driver.

10 Q. And if you turn to the next page, at the
11 top there are three more bullets listed, again under
12 the subheading "Ratings Drivers." And listed at the
13 last bullet is "High Capital Expenditures Over the
14 Next Several Years." Do you see that?

15 A. Yes.

16 Q. Do you believe that that is intended
17 perhaps as a reference to the capital expenditures
18 contemplated under 16-108.5, do you know?

19 A. Later in the report they reference the
20 EIMA, so, yes, in part.

21 Q. And if we turn the page on this report,
22 there is no page numbers on this document as far as I

1 can see, you will see about half way down the page
2 there is a bullet that says "High capital
3 expenditures over the next five years." Do you see
4 that?

5 A. Yes.

6 Q. And within that -- I will not read the
7 entire thing, but there is a reference to the EIMA?

8 A. That is correct.

9 Q. And the EIMA would be the same thing or at
10 least embodied Section 16-108.5, would you agree?

11 A. Yes.

12 Q. At the bottom of this page, Moody's has a
13 heading that says, "What could change the rating up."
14 Do you see that?

15 A. Yes.

16 Q. And, specifically, the last line of this
17 page says, "Given the relatively recent passage of
18 the EIMA legislation, the ICC Commission rejection of
19 its Smart Grid Plan, and its two pending formula rate
20 plans, an upgrade is unlikely over the near term."

21 A. I see that, yes.

22 Q. Is Moody's informing its audience that they

1 do not believe it is likely that they will make a
2 decision to upgrade AIC's credit rating in the near
3 future?

4 MS. LUCKEY: I have to object to just the form
5 of the question. I don't think that the witness can
6 speak to exactly what Moody's is doing. She can
7 speculate, but I don't think she can say exactly.

8 MR. TOMC: Well, let me rephrase the question.
9 I am really asking the witness what her
10 interpretation of the document is.

11 JUDGE YODER: That's fine. Rephrase it.

12 BY MR. TOMC:

13 Q. Is Moody's, in your interpretation,
14 advising that it will not likely issue a ratings
15 upgrade for AIC in the near future?

16 A. No, I don't think it says that. I think
17 that first sentence just describes the fact there is
18 a ratings upgrade unlikely. The following sentence
19 says, "An upgrade could be considered, however, if
20 there, I think that is supposed to be, an improvement
21 in the regulatory environment in Illinois and the
22 Company continues to maintain strong financial

1 metrics including CFO Pre-working capital above 22
2 percent and CFO Pre-working capital interest coverage
3 above four and half percent on a sustained basis
4 after adjustments for revenue depreciation."

5 So they list what makes an upgrade
6 unlikely, but then they also say what factors would
7 cause them to upgrade.

8 Q. Would it be fair to paraphrase this
9 sentence as they do not believe they will issue an
10 upgrade, but it is possible?

11 A. They do say an upgrade is unlikely over the
12 near term.

13 Q. The next heading says, What Could Change
14 the Rating Down. And the report says, "The rating
15 could be downgraded if the EIMA ratemaking rate
16 process is not implemented as legislatively intended,
17 if there are unsupported rate case outcomes or other
18 regulatory outcomes, if there is unfavorable or
19 adverse political intervention in the regulatory
20 process, or if financial metrics deteriorate." And
21 in listing -- I won't give those specific metrics,
22 but do you interpret this to mean that there is the

1 potential that Moody's could issue a downgrade to
2 AIC's credit rating if one of these conditions were
3 to occur?

4 A. No, I don't think so. I don't think that
5 the factors described as what could change your
6 rating up or down are supposed to indicate that it is
7 likely or unlikely. I think that the rating agencies
8 take a different action if there is an impending
9 upgrade or downgrade, and that is they alert their
10 audience that they are considering upgrading or
11 downgrading the Company. They put them on a positive
12 watch or a negative watch, for example.

13 Q. If the EIMA formula ratemaking process is
14 not implemented as legislatively intended, do you
15 think that in your opinion as a financial
16 professional it is possible that Moody's could change
17 the rating down in the future?

18 A. Well, they identified that as one of the
19 factors. I am not exactly sure what that means. But
20 it is kind of an ambiguous system, but that is a fact
21 that they listed something that could cause the
22 rating to be downgraded.

1 Q. What do you think that Moody's means when
2 it says, "Adverse political intervention in the
3 regulatory process"?

4 MS. LUCKEY: Are you looking for Ms. Phipps'
5 opinion as a financial analyst on that point?

6 Q. Yes.

7 A. I don't know exactly what that means. I
8 think the first time we saw language along those
9 lines was when there was a discussion of the rate
10 freeze of the legislature.

11 Q. And the rate freeze that you are referring
12 to, that was prior to 2007, is that right?

13 A. Yes, I believe so.

14 Q. And in 2007 when the rate freeze on
15 electric rates was lifted, isn't it correct that
16 market power prices were relatively high and had a
17 bill impact that affected customers of investment
18 utilities in Illinois, do you remember that?

19 A. I remember the discussion of the rate
20 freeze. I am not sure if I agree with all of the
21 underlying factors.

22 Q. Okay. But the rate freeze was lifted in

1 2007, do you remember that?

2 A. Yes.

3 Q. Going to Ratings Factors which is another
4 heading here, I see Factor 1 which is listed in this
5 box and it says, "Regulatory Framework," and then in
6 parentheses it says, "25 percent." What is -- what
7 is intended by that 25 percent, do you know?

8 A. Those percentages are the weighting that
9 they assign for the indicated rating from the grid
10 which they present at the bottom. In the bottom box
11 it says, "Rating, Indicated Rating from Grid." I
12 think that's what each of these factors suggest would
13 be the credit rating.

14 Q. Okay. And then if I look over here, they
15 have actually assigned a score to that Factor 1 and
16 they have a score "Current" and they have a score
17 that says, "Moody's 12 to 18-month Forward View." Do
18 you see that?

19 A. Yes.

20 Q. And in both places they put the score as
21 capital B, lower case A?

22 A. That's correct.

1 Q. Is that a -- is that an investment grade
2 rating?

3 A. No, it is not.

4 Q. Would that be a junk rating?

5 A. Yes. Anything below investment grade is
6 what they are referring to as a junk rating. So,
7 yes.

8 Q. Now, as I read through this report, I have
9 found no mention of Ameren Illinois Company's
10 affiliate AER, AERG, or what is collectively referred
11 to as Genco. Am I mistaken?

12 A. I don't recall anything.

13 Q. And certainly if we turn back to the first
14 page where it says, "Ratings Drivers," and it goes
15 onto the second page, it lists four bullet points?

16 A. Right.

17 Q. Nowhere in those bullet points does it
18 indicate anything about Genco, would you agree?

19 A. Yes.

20 Q. And if we go back as we were just
21 discussing to the "What Could Change Ratings Up,"
22 "What Could Change Ratings Down," there is no mention

1 of the Genco affiliate, is that correct?

2 A. That is correct.

3 Q. Now, when I say the Genco affiliate, do you
4 understand that to mean that Ameren Illinois
5 Company's parent company, Ameren Corp, has another
6 separate subsidiary or group of subsidiaries in the
7 unregulated merchant power business?

8 A. Yes.

9 Q. Now, in preparing your testimony, going
10 back to our earlier discussion about the credit
11 ratings agencies Fitch, did you look at the Fitch
12 credit ratings report issued in the spring of 2012 as
13 part of your testimony preparation?

14 A. I read those reports because they were
15 provided as part of the Part 285 filing by the
16 Company, but they are not part of my analysis.

17 Q. Okay. Let me show you a copy of that
18 report that I am going to mark as Ameren Cross
19 Exhibit 6.

20 (Whereupon Ameren Cross Exhibit
21 6 was marked for purposes of
22 identification as of this date.)

1 Do you recognize this document?

2 A. Yes.

3 Q. Have you read it before?

4 A. I have read it.

5 Q. This is a Fitch ratings report concerning
6 American Illinois Company?

7 A. Yes.

8 Q. I see a date in the lower right-hand corner
9 of March 13, 2012. Do you see that?

10 A. Yes, I do.

11 Q. If you go down the first page, the heading
12 What Could Trigger a Ratings Action, do you see that?

13 A. Yes.

14 Q. And then in bold it says, "Sustained
15 financial performance, colon"?

16 A. I see that.

17 Q. And then it says, "Maintenance of AIC's
18 existing financial condition and successful
19 implementation of the FRP should result in a one
20 notch upgrade." Do you see that?

21 A. Yes.

22 Q. Now, FRP, as I understand it, is a

1 reference to the formula rate plan?

2 A. Yes.

3 Q. And that would be -- that would implicate
4 16-108.5, is that fair?

5 A. Yes.

6 Q. "Maintenance of AIC's existing financial
7 condition," those words, do you see those?

8 A. Yes.

9 Q. Sorry, going back. But the existing
10 financial condition, well, that would include AIC's
11 capital structure, would it not?

12 A. Yes, it would include that.

13 Q. And then it appears that as well what Fitch
14 is saying -- and if you interpret it differently,
15 please tell me -- is saying that they could upgrade
16 AIC based on a successful implementation of FRP?

17 A. Yes.

18 Q. And that would be, indicate that the
19 formula rate plan would be successfully implemented
20 in a manner financially favorable to Ameren Illinois
21 Company. Would you agree with that characterization?

22 A. I think it -- I wouldn't agree entirely

1 only because it says right here maintenance of AIC's
2 existing financial condition and an implementation of
3 FRP. So I think your reference to favorable -- I am
4 sorry, I don't remember what you -- something, what
5 did you just describe it as?

6 Q. Going back, I think I indicated that the
7 expectation of success as it is stated here, at least
8 in my interpretation, would implicate that the FRP
9 was financially favorable as opposed to unfavorable
10 to the Ameren Illinois Company. Is that a correct
11 interpretation?

12 You know what, we can strike the
13 question. I think there is enough information on
14 this one in the record at this point.

15 I see the next bolded item is
16 Regulatory Risk. Do you see that?

17 A. Yes.

18 Q. There is a one-sentence explanation there.
19 And as I turn the page, there is a discussion of
20 liquidity in capital structure. What I do not see
21 under What Could Trigger a Ratings Action is I do not
22 see a mention of any generation affiliate of Ameren

1 Illinois Company. Am I reading this correctly?

2 A. Well, it is not one of the two items that
3 are listed as something that could trigger a rating
4 action. I haven't read this report in a while, so I
5 have to go back and look at it more carefully to
6 speak to the rest of it.

7 Q. Fair.

8 JUDGE ALBERS: Mr. Tomc, how much more time do
9 you have?

10 MR. TOMC: I believe I have ten minutes. Would
11 you like to break or --

12 JUDGE ALBERS: Keep going.

13 BY MR. TOMC: Thank you. I will wrap up as
14 best I can here.

15 Q. Page 9 of your direct testimony, okay, and
16 I see line 158 you begin an explanation "As the
17 appellate court found," and this sentence continued.
18 But at the end of the sentence you have a Footnote 15
19 that's listed at the bottom of the page, and you have
20 Citizens Utility Board versus Commerce Commission and
21 there is a citation provided.

22 A. Yes.

1 Q. You are not an attorney, but if it is
2 mentioned in your testimony, I believe you did rely
3 upon this authority at least in part in formulating
4 your opinion?

5 A. Yes.

6 Q. Okay. Would you agree with the assumption
7 that regulators have a duty to protect the investors
8 in a utility?

9 A. No, I would not agree with that
10 characterization. I think that the job of the
11 regulators is to balance the interest of investors
12 and ratepayers.

13 Q. Okay. Line 183 to 184, here you discuss
14 the basis for your recommendation of the 51 percent
15 equity ratio to be used in the capital structure. I
16 will represent that to you. Is it your opinion that
17 if a utility holding company has a lower equity ratio
18 than an Illinois subsidiary, that automatically
19 requires the capital structure to be adjusted?

20 A. Yes. Excuse me, yes.

21 Q. Therefore, as I understand it, your
22 interpretation of Section 9-230 is that whenever a

1 utility holding company has an equity ratio that is
2 lower than its Illinois utility subsidiary, that
3 statute requires the Commission to adopt the parent
4 company's capital structure?

5 A. Well, I am sorry. I think I left a part
6 out. Under the formula rate plan, that's required
7 because the cost of equity is no longer -- there is
8 no longer a direct relationship between the cost of
9 equity and the capital structure. The cost of equity
10 is set on a formula. So the higher equity ratio is
11 automatically going to result in a higher-rated cost
12 of equity. There is essentially an incentive to have
13 a higher equity ratio there.

14 So under the formula rate plan I would
15 say that a utility should not have a higher equity
16 ratio than its parent company. If it does, then it
17 should be adjusted so that it is no higher than its
18 parent company.

19 Q. If I understand the position correctly
20 then, if a utility elects to participate in 16-108.5
21 and that utility's parent company has a lower equity
22 ratio than the Illinois utility subsidiary, Section

1 9-230 in your opinion dictates the adoption of a
2 utility holding company's capital structure, is that
3 right?

4 A. Yes.

5 Q. That's your reading of the law?

6 A. I am not a lawyer, but yes, it is.

7 Q. Okay. I am going direct you just for a few
8 minutes to your surrebuttal testimony.

9 A. I am sorry?

10 Q. Or I am sorry, your rebuttal testimony,
11 lines 79 to 82. And here you discuss a qualitative
12 analysis that you performed. Let me ask you --

13 A. Oh, excuse me, a quantitative analysis.

14 Q. Oh, I am sorry, a quantitative analysis.
15 Are you certain if Ameren Illinois actually replaced
16 \$80 million of equity with long-term debt, a ratings
17 agency would not later issue a report downgrading
18 Ameren Illinois' credit rating?

19 A. Well, the \$80 million of additional debt
20 didn't have much effect at all in any of the credit
21 metrics. So I would say that's correct.

22 Q. Do you know that with certainty?

1 A. I don't know that. I can't guarantee that,
2 but it is extremely unlikely based on the analysis I
3 performed here.

4 Q. If Ameren were to actually replace \$80
5 million of its equity with debt, what would it do
6 with the equity?

7 A. Well, it could pay a dividend to its parent
8 company.

9 Q. So for the sake of this example, it is
10 possible, at least, that Ameren Illinois Company
11 would borrow \$80 million and then dividend \$80
12 million to its parent company?

13 A. Well, as we talked about earlier, there is
14 probably various things they could do to achieve
15 that, but that would accomplish what I --

16 Q. What would Ameren Corporation do with that
17 money?

18 A. I don't know.

19 Q. Could it use the money to subsidize other
20 affiliates?

21 A. I don't know what Ameren Corporation would
22 do with that money.

1 Q. Would it be appropriate under the Act for
2 Ameren Illinois Company to use those funds to
3 subsidize other affiliates in your opinion?

4 A. Well, it would be inappropriate for
5 ratepayers to pay any rates that included the cost of
6 Ameren Corporation subsidizing any of its affiliates.
7 But that's not necessarily what would happen under
8 your example.

9 Q. Is your testimony -- are you recommending
10 that Ameren Corporation actually undertake an \$80
11 million debt issuance to replace equity or is this
12 just an example?

13 A. Well, what I am recommending here is that
14 the revenue requirement that's authorized in this
15 case does not include a higher equity ratio than 51
16 percent. As far as what decisions Ameren Illinois
17 Company and Ameren Corporation take to either bring
18 their capital structure in line with the recommended
19 capital structure or not, I mean, if it is not
20 included in the revenue requirement, then I am not
21 really concerned if their actual capital structure
22 remains where it is right now or not. I don't think

1 ratepayers should pay that amount.

2 MS. TOMC: All right. Thank you, Ms. Phipps.

3 I am done.

4 MS. LUCKEY: Could we have a moment to confer
5 for redirect? We will try to make it short.

6 JUDGE YODER: All right.

7 (Whereupon the hearing was in a
8 short recess.)

9 JUDGE YODER: All right. Back on the record.

10 Ms. Luckey, do you have any redirect
11 for Ms. Phipps?

12 MS. LUCKEY: We have one question for
13 Ms. Phipps.

14 REDIRECT EXAMINATION

15 BY MS. LUCKEY:

16 Q. Ms. Phipps, when Mr. Tomc was questioning
17 you about pages 7 - 8 of your testimony, you were
18 asked a question about the credit rating upgrade to
19 Ameren in early 2012. Why did you discuss that in
20 your testimony?

21 A. I discussed that, the upgrade by Moody's,
22 just to point out that this capital structure I

1 recommended in this case may not be appropriate in
2 future formula rate cases. The credit rating
3 agencies are re-evaluating the Company's risk based
4 on the formula rate law.

5 MS. LUCKEY: Thank you.

6 JUDGE YODER: Any recross?

7 MR. TOMC: No, Your Honor.

8 JUDGE YODER: Is Ameren moving for the
9 admission of Cross Exhibits 5 and 6?

10 MR. TOMC: Yes, Your Honor.

11 JUDGE ALBERS: Any objection?

12 MS. LUCKEY: And did you rule on admitting
13 Ms. Phipps' testimonies?

14 JUDGE YODER: Not yet.

15 MS. LUCKEY: All right. No objection.

16 JUDGE YODER: Then Ameren Cross Exhibits 5 and
17 6 will be admitted into evidence in this docket.

18 (Whereupon Ameren Cross Exhibits
19 5 and 6 were admitted into
20 evidence.)

21 JUDGE YODER: Is there any objection to the
22 admission of Ms. Phipps' direct and rebuttal

1 testimonies with accompanying schedules and
2 attachments?

3 (No response.)

4 Hearing no objection, those will be
5 admitted into evidence in this docket.

6 (Whereupon Staff Exhibits 4.0
7 and 9.0 were admitted into
8 evidence.)

9 JUDGE YODER: With that, we will break for
10 lunch and try to be back at 10 'til 2:00.

11 (Whereupon the hearing was in
12 recess until 1:50 p.m.)

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AFTERNOON SESSION

(Whereupon the proceedings are
now being stenographically
reported by Laurel A. Patkes.)

JUDGE ALBERS: Back on the record.

Mr. Brosch, were you sworn in this
morning?

MR. BROSCHE: I have not been.

JUDGE ALBERS: Okay. Would you stand and raise
your right hand, please?

(Whereupon the witness was sworn
by Judge Albers.)

JUDGE ALBERS: Thank you.

MS. LUSSON: Good afternoon, Mr. Brosch.

MR. BROSCHE: Good afternoon.

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MICHAEL L. BROSCH

called as a witness herein, on behalf of the People of the State of Illinois and AARP, having been first duly sworn on his oath, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. LUSSON:

Q. Could you please state your full name and business address for the record?

A. Michael L. Brosch, P.O. Box 481934, Kansas City, Missouri.

Q. You have before you exhibits that have been previously marked AG/AARP prepared testimony of Michael J. Brosch, Exhibit 1.0 with Attachments 1.1, 1.2, 1.3, 1.4, both public and confidential, 1.5, 1.6, 1.7, 1.8, and 1.9 as well as Rebuttal Exhibit 3.0 which is the rebuttal testimony of Michael J. Brosch on behalf of the People of the State of Illinois and AARP with Attachments 3.1 Corrected, 3.2, 3.3 and 3.4 all currently marked confidential.

Were these exhibits prepared by you or

1 under your supervision?

2 A. Yes, and I believe you said Michael J.
3 Brosch.

4 Q. Yes.

5 A. Michael L. Brosch.

6 Q. I'm sorry.

7 A. If I could be allowed to correct you.

8 Q. I'm confusing you with Mr. Effron.

9 Do you have any corrections to make to
10 those exhibits at this time?

11 A. Yes, I do.

12 Q. Can you describe those starting with your
13 direct testimony?

14 A. Yes.

15 In direct testimony, AG/AARP Exhibit
16 1.0 at page 37, line 880, the references that appear
17 after the word "lines" should be 3 and 4 in place of
18 1 and 2, and at the end of that row, the reference to
19 page 6 should be to page 7.

20 Q. And in your rebuttal testimony do you have
21 any corrections?

22 A. I do.

1 At page 27, line 538, there's a
2 reference at the end of that line to Exhibit 3.2. It
3 should be to Exhibit 3.3.

4 Next at page 29, line 583, the word
5 "at" should be "a."

6 And at page 38, line 823, the
7 reference to Exhibit 3.3 should be changed to 3.4.

8 JUDGE ALBERS: Which line was that, please?

9 THE WITNESS: 823. 3.3 should be 3.4.

10 I believe that's it.

11 Q. BY MR. LUSSON: Do you also have a
12 correction at this point to Exhibit 3.1?

13 A. Yes. Exhibit 3.1 was correct except for at
14 page 1, in column E, row 19, a tax factor was missing
15 in the formula, and when corrected, the value, the
16 filed value was negative 2890 and the corrected value
17 should be negative 5207.

18 And then below that in the rest of the
19 column, the negative 2890 amounts all change to
20 negative 5207.

21 MS. LUSSON: And for the record, the filing of
22 Exhibit 3.1, the earlier version, that was my fault.

1 I filed an earlier draft on August 28th as opposed to
2 the corrected draft, and I should note also for the
3 record that the company was served with the corrected
4 version of this the next day on August 29th.

5 And we will be filing a corrected
6 version of Exhibit 3.1 reflecting that change
7 tomorrow, possibly tomorrow, which will be explained
8 later during cross-examination.

9 Q. Mr. Brosch, with that correction to
10 Exhibit 3.1, does that correction change any of your
11 substantive conclusions regarding your Illinois state
12 tax rate adjustment?

13 A. It does not.

14 Q. And if I ask you the same questions today
15 that appear in AG/AARP Exhibit 1.0 and AG/AARP
16 Exhibit 3.0 today, would your answers be the same?

17 A. Yes, they would.

18 MS. LUSSON: Your Honors, I would move for the
19 admission of AG/AARP Exhibits 1.0 through 1.9 as well
20 as AG/AARP Exhibits 3.0 through 3.4 and tender
21 Mr. Brosch for cross-examination.

22 JUDGE ALBERS: All right. We'll address the

1 admission following the cross-examination.

2 Mr. Kennedy?

3 MR. KENNEDY: Good afternoon, Mr. Brosch.

4 THE WITNESS: Good afternoon.

5 CROSS-EXAMINATION

6 BY MR. KENNEDY:

7 Q. I'd like to direct your attention first to
8 AG/AARP Exhibit 3.1, page 6 of 7.

9 MS. LUSSON: Would you repeat that reference,
10 counsel?

11 MR. KENNEDY: AG 3.1, page 6 of 7.

12 Q. I believe this is your adjustment for
13 advertising corporate sponsorships, correct?

14 A. Yes, it is.

15 Q. Now, as I read the schedule, you're making
16 a 50 percent disallowance on the advertising piece
17 related to Focused Energy for Life?

18 A. That's correct. That appears at lines 1
19 through 3.

20 Q. And on line 1 you have that amount as
21 604,000?

22 A. That's right.

1 Q. Earlier today, did you have a conversation
2 between you and Mr. Stafford regarding this amount of
3 disallowance of 604?

4 A. I did, yes. I had responded to some
5 discovery from the company asking about potential
6 overlap and some company revisions to its case and
7 this particular adjustment on behalf of AARP, and we
8 did discuss those differences.

9 Q. Is it your understanding that the company's
10 position is that the amount of Focused Energy for
11 Life costs that are in its proposed revenue
12 requirement at this point is an amount that's less
13 than 604,000?

14 A. Yes, I understand that to be the case, and
15 Mr. Stafford and I were working toward sharing
16 information to confirm that change.

17 Q. And is it also your understanding if you
18 look at line 8 of that same exhibit, you've made an
19 adjustment there for 294,000 to Account 30 for
20 corporate sponsorships?

21 A. Yes.

22 Q. In that same conversation you had with

1 Mr. Stafford, did you and he discuss that the
2 company's position is that your disallowance should
3 be some amount less than 294,000?

4 A. Yes. I understand in its rebuttal filing
5 the company self disallowed some of the same costs
6 that are addressed in this adjustment that I propose,
7 and again, subject to verifying that the amounts do
8 in fact flow to the company's filing and into the
9 beginning point for page 1 of AG/AARP Exhibit 3.1,
10 the changes that we filed will reflect conforming
11 changes to page 6.

12 Q. Right. So your plan is you're going to
13 review the information that Mr. Stafford provided,
14 and to the extent that you agree with him, you'll
15 make your changes and file a revised Exhibit 3.1?

16 A. That's correct.

17 Q. Thank you.

18 I'd like to talk briefly about your
19 qualifications.

20 In AG/AARP Exhibit 1.1, you listed
21 your qualification. It's true you have a Bachelor of
22 Business Administration, correct?

1 A. Yes, with an emphasis in accounting.

2 Q. Do you recall submitting some data requests
3 to the company after it filed its rebuttal position
4 regarding a number of issues, one of which would have
5 been advertising and corporate sponsorships?

6 A. Probably. There were a lot of discovery
7 questions that I originated and many that others
8 originated that I reviewed.

9 Q. Do you mind if I show you one and ask if
10 this is a question you would have --

11 A. That would be helpful, yes.

12 MR. KENNEDY: If I can approach, Your Honor.

13 JUDGE ALBERS: Yes.

14 MR. KENNEDY: This is AG 6.23. I'm not going
15 to mark it because I'm not planning on moving it into
16 the record.

17 THE WITNESS: I recognize AG Exhibit 6.23 as a
18 question that I originated, yes.

19 Q. And do you recall if you reviewed the
20 response to it?

21 A. I'm sure I did, yes.

22 Q. This was a question that was posed to

1 Ms. Lord who sponsored testimony on Focused Energy
2 for Life for the company, and you were asking her
3 about a description of her current position.

4 A. That's right.

5 Q. If you look at page 1, one of the
6 qualifications or at least one of the items that are
7 listed here is that the person who holds this
8 position has to have a bachelor's degree in
9 communications or marketing.

10 Do you see that?

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

12 Q. Do you have a bachelor's degree in
13 communications or marketing?

14 A. No.

15 Q. Under experience...it may be hard to read;
16 it's cut off halfway...it says ten or more years of
17 relevant professional level experience in the media
18 or communications.

19 A. I see that.

20 Q. Do you have that level experience?

21 A. My experience is in utility regulation
22 dealing with issues like this one in cost recovery

1 matters surrounding advertising and communication
2 issues, but as far as experience solely in this area,
3 I cannot claim that experience.

4 Q. But you haven't worked for a public
5 relations firm for example?

6 A. That's correct.

7 Q. I know you've put testimony in for a number
8 of different consumer advocate groups.

9 Refresh my recollection. Did you ever
10 spend time working for any commission?

11 A. Yes. I started with the Missouri Public
12 Service Commission in the late '70s and worked there
13 for several years.

14 Q. Did you ever work in a consumer affairs
15 division of a state commission?

16 A. No. I believe they referred to it as the
17 accounting department in the day.

18 Q. Did Missouri have a consumer affairs
19 division at the time you were working there to the
20 best of your recollection?

21 A. I don't know.

22 Q. I'd like to go back and talk about

1 sponsorships, corporate sponsorships real quick.

2 A. All right.

3 Q. I'd like to show you another data request
4 that was in that same series. This is AG 6.22.

5 I'm also not going to move this into
6 the record. It's part of Ameren Exhibit 24.2.

7 Would you take a moment to look at it?

8 A. Okay.

9 Q. Did you recall asking this question or
10 reviewing this question?

11 A. Yes to both.

12 Q. Do you recall reviewing the response that
13 Ameren gave?

14 A. I do.

15 Q. Was this response said to you before you
16 filed your rebuttal testimony?

17 A. I believe so, yes.

18 Q. If you could turn to AG Exhibit 6.2,
19 Attachment 1, page 1 of 7, you could see there that
20 the information that was provided by the company, and
21 you can disagree if my characterization is incorrect,
22 is that the company attempted to identify the type of

1 presentation you can see in the one column that would
2 have occurred at these corporate sponsorship events?

3 A. You're talking about the column with the
4 yes or no?

5 Q. I'm talking about the column that's right
6 next to it, the type of presentation ad. It says
7 type of presentation: Ad (booklet magazine).

8 A. Right, what did we give away, what did we
9 hand out, that sort of thing?

10 Q. That sort of thing. And you can see that
11 some of the types listed are booth, booklet, bags,
12 and if you would look at the text response of AG
13 Exhibit 6.22, on the back there it says, attached to.

14 Is it fair to say that in that
15 paragraph what's listed there is copies of materials
16 that the company said that it gave away at these
17 particular events where it's so indicated in the
18 spreadsheet?

19 A. I'm not sure. It says, Attach 2, list the
20 page number and attach to this data request response
21 that includes the copy of the presentation material
22 which was distributed at the event. These copies or

1 the presentation material distributed are included in
2 Attach 2.

3 I assume that since these appear to be
4 ads, they might correspond to the events where there
5 was an ad placed in connection with the event.

6 Q. That's what I was asking. That's what the
7 attempt of the response was.

8 A. That's my understanding of it.

9 Q. And did you review this response before you
10 submitted your rebuttal testimony, if you remember?

11 A. I'm sure I did. There was a large volume
12 of material I think in response to the 6.24, this
13 whole series in the 6 set.

14 Q. Correct.

15 A. And I have some recollection of seeing this
16 one.

17 Q. And if I'm correct, your disallowance for
18 corporate sponsorships between your direct and
19 rebuttal stay the same in theory?

20 A. It has subject to the conversation we spoke
21 of earlier with regard to the potential overlap of
22 sponsorship adjustments between my adjustment and the

1 company's changes on rebuttal.

2 Q. So nothing that the company provided in
3 response to this data request made you change your
4 opinion on which events to disallow from corporate
5 sponsorship costs?

6 A. That's correct, although I suspect I will
7 find that the same overlap phenomenon may apply to
8 some of the listed events here...

9 Q. Correct.

10 A. ...that the company has now decided to
11 remove the revenue requirement.

12 Q. Let me make that clear that this response
13 is for each of the events that AIC sponsored in 2011
14 which does include some of the ones that the company
15 self-disallowed because when they made this response,
16 they did it for everything, not just the ones that
17 were still included in the revenue requirement. So
18 thank you for that clarification.

19 A. All right.

20 MS. LUSSON: Mr. Kennedy, can I ask, this
21 exhibit, does it include all of the attachments that
22 were supplied in response to this data request?

1 MR. KENNEDY: Yes.

2 MS. LUSSON: So this is the whole response to
3 this data request?

4 MR. KENNEDY: Yes, it is, and it's included in
5 its entirety in Exhibit 24.2 of Ameren.

6 I'm not going to ask you any more
7 questions on this exhibit, Mr. Brosch.

8 I'd like to ask you just one quick
9 question on your account, what I'll refer to as the
10 Focused Energy for Life disallowance, that
11 advertising disallowance.

12 A. Yes, sir.

13 Q. On rebuttal, you adopted a 50 percent
14 disallowance for that bucket of advertising expense?

15 A. Yes, I did. After reviewing primarily the
16 voluminous material responsive to the AG 6.24, I came
17 to conclude that that campaign had a dual message,
18 one of promoting the image of the utility and the
19 brand, the Ameren brand, as well as conveying
20 allowable types of customer education messages such
21 as energy conservation and safety and the like.

22 Q. And the theory there being that in your

1 opinion, it's appropriate for ratepayers to pay for
2 50 percent of the costs and for shareholders to pay
3 for the other 50 percent of the costs?

4 A. That's correct.

5 Q. The 50 percent is not tied to any
6 particular specific invoices, correct?

7 A. No. I don't think you could unpack it in
8 that way. The campaign was clearly an integrated
9 effort to work on the company's messaging and respond
10 to survey data and put forth a more cohesive and
11 consistent message associated with the Ameren brand.

12 Q. Did you attempt to review the invoices that
13 were specific to this particular cost item?

14 A. I'm sure I saw invoices. I looked at a lot
15 of advertising messages. I didn't try to correlate
16 the invoices to the messages and unpack the \$604,000
17 amount.

18 Q. So to the extent that there was an exhibit
19 put into testimony by an Ameren witness that would
20 have listed the invoices off, you didn't attempt to
21 use that in any way to come up with your 50 percent
22 disallowance, correct?

1 A. No. The 50 percent was a judgmental
2 adjustment.

3 Q. Thank you.

4 I'd like to talk about your CWIP
5 adjustment if that's okay.

6 A. All right.

7 Q. Do you know what I mean when I use CWIP
8 adjustment?

9 A. Construction work in progress.

10 Q. Right. Do you want to summarize what that
11 adjustment is?

12 A. Yes.

13 It appears at I believe it's the last
14 page, page 7 of AG/AARP Exhibit 1.3, and it first
15 recognizes that Ameren Illinois has included
16 construction work in progress as an element of rate
17 base and then makes adjustment to account for the
18 amounts of that CWIP investment that had not been
19 funded by investors but instead was supported by
20 accounts payable associated with those specific
21 construction projects.

22 Q. And it's your understanding that the

1 company opposes your additional adjustment to remove
2 those additional CWIP dollars?

3 A. It's my understanding that the company now
4 supports a staff adjustment that would reduce CWIP in
5 rate base for the projects that were also included in
6 projected plant additions after the base year to
7 avoid duplication of the same dollars being placed in
8 rate base twice but that the additional adjustment
9 that I am proposing to remove the vendor finance
10 amounts related to the CWIP projects included in rate
11 base has not been endorsed by the company.

12 Q. I'm going to hand you what's marked Ameren
13 Exhibit 11.0 Revised. This is a copy of
14 Mr. Stafford's revised rebuttal testimony that was
15 entered into the record earlier today.

16 If you could turn to page --

17 A. 23?

18 Q. That sounds like probably the page I want.
19 Actually, if you could turn to page 25.

20 MS. LUSSON: Are you on direct?

21 MR. KENNEDY: I'm in the revised rebuttal 11.0
22 of Mr. Stafford.

1 Q. Do you see the Q and A there at lines 521
2 to 528?

3 A. Yes.

4 Q. Is it your understanding that one of the
5 positions that the company has opposing your
6 adjustment is that the 37,000 at issue was paid by
7 the company ten days after the end of 2011, within
8 ten days?

9 A. I see that testimony. I don't think that
10 has much to do with the fact that part of the
11 company's CWIP balance at any given point in time is
12 supported by accounts payable.

13 Q. Did you address this particular argument in
14 your rebuttal? If you can, show me. I don't think
15 you did.

16 A. The cases run together. I may have in 0001
17 and not in this case, but if you want me to, I will.

18 Q. Well, let me ask this question first.

19 Is it your opinion that the fact that
20 the company paid the 37,000 within ten days of the
21 end of the 2011 year, that's not relevant to whether
22 or not the adjustment should be made?

1 A. That's not relevant at all. I'm going to
2 assume that the company usually pays its bills at
3 some point, but that doesn't change the fact that
4 when you look at the investment in construction
5 projects at any point in time, some significant
6 amount of that balance is going to be supported by
7 accounts payable to vendors because vendors tend to
8 work on projects before they submit invoices and get
9 paid or deliver materials to construction sites
10 before invoices are submitted and get paid. There's
11 always a delay, and the point of my adjustment is to
12 account for that delay.

13 Q. If the amount of 37,000 issued would have
14 been paid on December 31, 2011, would that have
15 affected your adjustment?

16 A. Yes. It would not have been accounted for
17 as an accounts payable, that project. If it would
18 have been reported as paid, it couldn't be payable on
19 that date.

20 Q. Is it your opinion that for purposes of
21 making rates in this proceeding that it would be
22 inappropriate to consider costs that were incurred

1 after the end of 2011?

2 A. I'm not sure I can answer that one way or
3 the other. I mean, the formula rate framework that
4 we're working within requires that certain costs be
5 considered in a projected period including those
6 associated with plant and accumulated depreciation
7 and depreciation expense.

8 I couldn't give you a yes or no.

9 Q. But at least for this particular item, you
10 don't think it's appropriate to consider costs that
11 were incurred after December 31, 2011 or amounts that
12 were paid?

13 A. That has nothing to do with the adjustment
14 that I'm proposing for CWIP.

15 As I said before, my expectation is
16 that there are always accounts payable that are
17 ultimately paid by the company. The timing of that
18 payment doesn't matter.

19 Q. But I think we just established that the
20 timing does matter because you said that you would
21 not have made the adjustment if it was December 31,
22 2011, but the fact that it was paid by January 10,

1 2012 was insignificant?

2 A. Let me be clear.

3 What I think I said is had the company
4 paid for the construction projects in cash on the
5 31st of December, there would not have been an
6 accounts payable balance, but the fact is there was
7 an accounts payable balance which is more typical of
8 construction projects at any given point in time, and
9 those balances are usually paid in arrears after
10 materials or services are provided, invoices are
11 rendered and payment has been processed.

12 Q. I'd like to talk to you about your state
13 income tax adjustment.

14 A. All right.

15 Q. Which for the record, in your -- and I'll
16 refer you to your rebuttal testimony.

17 A. 29?

18 Q. Is it fair to say that the difference
19 between the company and you on this issue at this
20 point is whether or not the amount that should be
21 deducted should be amortized over a certain period of
22 years?

1 A. I think that's right. Obviously, it's
2 developed in more detail than that in the testimony,
3 but, yes, the numerical value of the issue I think
4 has been resolved, and we're talking mostly about how
5 to reflect it in the formula revenue requirement.

6 Q. And you agree that at least part, if not
7 all, of the analysis is a matter of interpretation of
8 how the formula rate legislation should be applied?

9 A. No, I think it's more than that. Part of
10 what I've discussed in my testimony is that from a
11 practical perspective, this change is not like the
12 one time or unusual transactions that are addressed
13 subject to a dollar threshold in the act where
14 amortization is required. This tax rate change is,
15 in fact, an annual recurring expense impact that is
16 unlike storms or severance programs or that sort of
17 one time event.

18 Q. Do you mind if I show you a copy of the act
19 that we're discussing?

20 A. That would be fine.

21 Q. What I've given to Mr. Brosch is a copy of
22 the legislation. I'm not going to be moving this

1 into evidence either.

2 If I can refer you to what is marked
3 in the corner as 29132. Again, this is an excerpt of
4 the Public Utilities Act where the formula rate
5 legislation is included.

6 A. Yes, I'm there.

7 Q. Do you see the section we're discussing
8 which is I believe 16-108.5(c)(4)(f)?

9 A. It starts with the word amortization?

10 Q. Right. Amortization over a five-year
11 period of the full amount of each charge or credit.

12 A. I'm there.

13 Q. Now, I believe you were just talking about
14 the fact that this, in your opinion, this pertains to
15 unusual extraordinary one time events. Is that
16 correct?

17 A. Right.

18 Q. Does the word unusual appear in this
19 section of the law?

20 MS. LUSSON: Objection. The statute speaks for
21 itself.

22 MR. KENNEDY: I'll eventually tie this back to

1 other testimony that Mr. Brosch has given about
2 whether or not words appear in the statute, but I
3 think it's appropriate given other testimony on other
4 parts of the statute.

5 JUDGE ALBERS: Overruled. We'll see where we
6 go with this.

7 Q. BY MR. KENNEDY: Again, I'm not asking for
8 your legal opinion of the statute, Mr. Brosch, but do
9 you see the word unusual or extraordinary or one time
10 in that statute?

11 A. No. I see a list of events or occurrences
12 that I would characterize to be of that type.

13 Q. As part of that list, do you see changes in
14 law listed about halfway down?

15 A. Yes.

16 Q. So you're not disputing that there could be
17 a change in law that would trigger the application of
18 this particular statute, correct?

19 A. No, I'm not disputing that.

20 Q. Hypothetically, if the state income tax
21 increase for 2011 had been high enough so that the
22 3.7 threshold was reached, would you agree, all other

1 things being constant, that that would trigger
2 application of the statute?

3 MS. LUSSON: Objection. Calls for a legal
4 conclusion.

5 MR. KENNEDY: I believe Mr. Brosch's testimony
6 on this topic concerns application of this particular
7 statute and how he has applied it for purposes of
8 netting state income tax to come to his result that
9 there should not be an amortization, and I'm asking
10 him about a different hypothetical as an expert
11 witness on how that would be applied.

12 JUDGE ALBERS: Overruled.

13 THE WITNESS: Let me make sure I understand.

14 I'm to assume that there's a change in
15 tax law that impacts expense by more than 3.7?

16 MR. KENNEDY: Correct, with the assumption that
17 there would be nothing that would net against that to
18 lower that amount below 3.7.

19 THE WITNESS: I would think so, subject to
20 there being consistent accounting for the
21 amortization in subsequent periods.

22 Q. In your opinion, if that tax increase was

1 permanent, would that change your opinion on how the
2 statute was applied?

3 MS. LUSSON: Mr. Kennedy, can you clarify if
4 you're still talking about the hypothetical now or --

5 MR. KENNEDY: Correct. The hypothetical is
6 that there's an increase in the state tax for 2011
7 that would trigger the 3.7 threshold assuming that
8 there was nothing netting against it to lower that
9 amount below 3.7, and what I've asked is, assume that
10 that tax increase is permanent at least for the next
11 year, would that change how Mr. Brosch would apply
12 the statute for 2011 in my hypothetical.

13 MS. LUSSON: Did you say permanent for the next
14 year? I mean, that's sort of inconsistent. If it's
15 a permanent tax, then presumably it would last for
16 longer than a year.

17 I mean, I guess I'm confused by the
18 question.

19 MR. KENNEDY: Well, I'll let Mr. Brosch
20 determine if he understood the question.

21 MS. LUSSON: Well, then I guess I object. The
22 question is vague.

1 JUDGE ALBERS: I agree.

2 Could you rephrase that or refine it?

3 Q. BY MR. KENNEDY: I believe, Mr. Brosch, you
4 testified that if there was an increase in 2011 that
5 triggered the statute, assuming that there wasn't
6 anything to net against that to lower it below 3.7,
7 you testified that the statute would apply, this
8 provision.

9 A. It would appear to, yes.

10 Q. And my question to him is if that tax
11 increase, and you may not have an opinion on this,
12 but if the tax increase, this hypothetical tax
13 increase was permanent for 2012 and the fact that it
14 did not go down, it stayed the same in 2012, does
15 that change how you would apply the statute in 2011?

16 A. I'm a bit confused by your question, and
17 let me tell you why I'm confused, and maybe you can
18 bring it back to something that you're after.

19 If tax rates are changed in year 1 and
20 the impact exceeds 3.7 million and we apply this
21 amortization provision and then there's no change in
22 law in the next year, presumably, there is no

1 significant incremental impact from using the same
2 tax rates in year 2 relative to year 1, but we
3 have --

4 Q. You're following my line of logic.

5 A. Okay. But, in fact, this particular state
6 income tax rate change is not permanent in the sense
7 that today's high rates remain in place indefinitely
8 into the future. In fact, there is a scheduled
9 reduction in stages to that rate in the out years.

10 Q. Correct. That was not part of the
11 hypothetical.

12 A. That's the offset presumably you were
13 talking about.

14 Q. Correct. That's the offset.

15 I wanted to ask you, in reviewing your
16 testimony on this topic, I notice you cite -- it's
17 correct that you cite the Commonwealth Edison update
18 docket, or I'll call it the 2011 docket, 12-0321?

19 A. Yes. In direct testimony I quoted
20 Mr. Frueh's testimony regarding ComEd's treatment of
21 the state income tax rate issue.

22 Q. In preparing your testimony in direct and

1 rebuttal on this issue, did you review what I'll call
2 the 2010 ComEd formula rate order in 11-0721 specific
3 to this issue? I realize you probably reviewed it
4 for other issues.

5 A. I don't think that order spoke to this
6 issue. If it did, I don't recall speaking to it.

7 Q. Do you mind if I show you an excerpt of the
8 order?

9 A. That would be fine.

10 Q. What I'm handing to Mr. Brosch and I'm not
11 going to move this into the record either is -- what
12 I've given you for the record is pages 105, 106, 107,
13 108 of that order, and it deals with regulatory asset
14 amortization IEDT which is known as the electric
15 distribution tax for Illinois.

16 A. I thought you were asking me about state
17 income tax rates.

18 Q. I was asking if you reviewed this section,
19 if you reviewed the order in preparation of your
20 testimony on that particular topic, yes.

21 A. Well, we're talking past each other because
22 I thought you were asking me if the state income tax

1 rate change issue was an issue in 11-0721, and I
2 answered that I don't believe it was.

3 Now you're asking me about IEDT, a
4 different tax?

5 Q. I'm just asking you if in preparing your
6 testimony on rebuttal on the amortization issue of
7 the tax, did you review the Commonwealth Edison order
8 of 11-0721. I agree that the issue that we're
9 talking about is not in that order.

10 A. I don't think I reviewed 11-0721 in
11 connection with my thinking on the state income tax
12 rate change issue.

13 Q. So to the extent that that order discussed
14 application of this particular statutory provision
15 that we're discussing in the formula rate law, you
16 didn't rely on that for purposes of your opinion?

17 A. That's correct. This is a different fact
18 pattern with regard to IEDT.

19 Q. Thank you. That is all the IEDT and state
20 income tax questions I have for you.

21 I'd like to talk about two other
22 issues. You may be relieved I'm not going to ask you

1 any questions about cash working capital, so for the
2 people in the audience that were waiting for that,
3 they can now get up and leave.

4 A. The room is going to empty.

5 Q. I would like to talk to you about your late
6 payment revenue adjustment.

7 Is it your understanding that what the
8 utility is electing to recover in this docket and in
9 the 12-0001 docket are its electric delivery service
10 costs?

11 A. I pause because I've not seen a concise
12 definition in those terms of the costs. We're
13 looking at the revenue requirements for the utility
14 based upon its jurisdictional costs.

15 Q. If I can refer you to the statute again if
16 you still have a copy there, what's numbered here on
17 page 27 of 132, if you can see at the bottom there,
18 Subsection (c), where it says a participating
19 utility.

20 A. I see the reference to Subsection (c).

21 Q. Do you see the first sentence where it says
22 a participating utility may elect to recover its

1 delivery service costs through a performance-based
2 formula rate approved by the Commission?

3 A. Yes, I see that, and I see reference on the
4 top of page 28, "In the event the utility recovers a
5 portion of its cost, the automatic adjustment clause
6 tariffs, on the effective date of this amendatory act
7 of the 97th General Assembly, the utility may elect
8 to continue to recover these costs through such
9 tariffs but then these costs shall not be recovered
10 through the performance based formula rate."

11 Q. Correct.

12 And it's your understanding -- well,
13 do you have an understanding that the utility is not
14 seeking to recover costs that it's recovering due
15 riders that are not delivery service costs; for
16 instance, its portion of uncollectible expense and
17 other power supply costs?

18 A. My understanding is that the company
19 separately recovers power supply, transmission, and
20 uncollectible costs through riders that are
21 reconciled so that revenues match costs periodically.

22 Q. And you're not proposing in this docket

1 that those costs be included in the formula rate for
2 delivery service costs, correct?

3 A. No. My understanding is that the company
4 has elected to continue its recovery of its cost
5 through those riders.

6 Q. If I could refer you to your rebuttal
7 testimony...

8 Let me ask a more general question
9 that doesn't specifically tie to anything you said on
10 your testimony but just a topic in general.

11 If the company were to modify a tariff
12 so that the portion of late payment revenues that in
13 the company's opinion are not tied to delivery
14 service costs, if those flowed back to customers
15 through other tariffs, would you continue to make
16 this adjustment in future formula rate cases?

17 A. I don't think I would need to make this
18 adjustment that I'm making here because the company's
19 filing where it now removes the costs and revenues
20 associated with power supply for example would
21 presumably recognize the specific revenue crediting
22 of same late payment revenues to the reconciliation

1 of rider PER and could make a showing that there had
2 already been an accounting for those revenues through
3 that other rider such that my adjustment would be
4 inappropriate or duplicative.

5 Q. Do you think it's unfair to power supply
6 customers if they're not going to get the revenues
7 netted against cost under your proposal?

8 MS. LUSSON: Objection. Assumes facts not in
9 evidence.

10 MR. KENNEDY: Well, the facts are in evidence.
11 They're not going to get the revenues because they're
12 going to the delivery service rate.

13 MS. LUSSON: Well, I object to the form of the
14 question. Mr. Kennedy is presenting the company's
15 view of this issue in the form of the question.
16 Mr. Brosch's adjustment is to ensure that customers
17 get credit for late payment revenues in the revenue
18 requirement, so the notion that his adjustment will
19 hurt power supply customers is certainly a fact not
20 in evidence.

21 MR. KENNEDY: His testimony is that's a
22 windfall to the company to retain these revenues, the

1 implication or suggestion being that it's unfair if
2 the company keeps those revenues.

3 I'm simply asking him as a point of
4 fairness whether he thinks it's unfair that power
5 supply customers will not get the netted effect of
6 the revenues formed with their tariffs under his
7 proposal.

8 MS. LUSSON: Again, my objection remains
9 because, again, we're assuming here that power supply
10 customers would not benefit from Mr. Brosch's
11 adjustment, and in our view, they would because late
12 payment revenues are applied to customers as a whole,
13 and they're not divided by whether or not they're
14 late on their supply or their distribution because
15 late payment revenues are applied to the entire bill.

16 MR. KENNEDY: Let me ask a different question.
17 I mean, you could rule on it but I could ask a
18 different question.

19 JUDGE ALBERS: Are you withdrawing that one?

20 MR. KENNEDY: Yeah, let me withdraw that one
21 and make it easy on you.

22 Let me ask you this question,

1 Mr. Brosch.

2 Q. Under your proposal, assuming that power
3 supply revenues, that portion of late pay revenues
4 continue to flow through the formula rate in years
5 continuing from now, so, for instance, we continue to
6 net them against delivery service cost in future
7 cases under your proposal.

8 A. I think you're asking me to assume the
9 Commission approves the adjustment. Am I correct?

10 Q. Yeah. Assuming the Commission approves
11 your adjustment...

12 A. All right.

13 Q. ...and that treatment continues onward, you
14 would agree with me that the company should not also
15 net those revenues through the power supply tariff
16 for instance?

17 A. I would agree, and I submit to you that the
18 company has not been doing that historically. What's
19 unfair is what's been happening historically that's
20 been remedied by my adjustment.

21 MR. KENNEDY: Well, now I'm going to ask him
22 the unfairness question based on that testimony.

1 JUDGE ALBERS: Go ahead.

2 Q. BY MR. KENNEDY: I mean, do you think it's
3 unfair to power supply customers not to have a netted
4 effect of the revenues flow through the tariff?

5 A. I don't think they've been getting that
6 historically, and if the company is not taking the
7 share of late payment revenues it would remove from
8 the delivery service revenue requirement and
9 affirmatively plugging it into the reconciliation of
10 rider PER, customers haven't been getting that
11 historically.

12 Q. I have one more topic to talk to you about,
13 and I apologize I'm going over on this.

14 I'd like to refer you to -- I'm
15 actually going to show you -- the issue is going to
16 be average rate base, and I'd like to show him his
17 rebuttal testimony from 12-0001 which I have a copy
18 of.

19 Mr. Brosch, it's true that there's
20 some overlap of issues between these two dockets,
21 12-0001 and 12-0293?

22 A. Yes, plenty.

1 Q. And one of the issues you testified on in
2 both dockets has been the issue of average rate base?

3 A. That's correct.

4 JUDGE ALBERS: Is this supposed to be a cross
5 exhibit or is this just a reference?

6 MR. KENNEDY: Just a reference. I'm not going
7 to enter this into the record, only to the extent I
8 would be reading a part of it. That would be all.

9 Q. If I could refer you to page 6. Starting
10 at the Q and A starting at line 79, it reads, "Is
11 Mr. Nelson correct that an average reconciliation
12 rate base is not provided for or consistent with the
13 provisions of Section 16-108.5 of the act."

14 Answer. And I'm only going to read
15 the first sentence of the answer. "My search of
16 Section 16-108.5 revealed that it does not specify
17 either an average or a year end approach to
18 reconciliation rate base measurement causing this
19 issue to be reasonably resolved by the Commission
20 based upon the merits of each alternative approach."

21 Did I read that correctly?

22 A. I think so.

1 Q. And my question to you is, is that still
2 your opinion today?

3 A. Yes.

4 Q. Can I refer you to -- well, let me ask
5 this.

6 If the statute were to be amended such
7 that the General Assembly included the words year end
8 in that section, would that still be your opinion?

9 MS. LUSSON: And by that section, do you mean
10 16-108 generally or a reference to the reconciliation
11 balance?

12 MR. KENNEDY: If you have a copy of the
13 statute, why don't we make it specific.

14 Q. Let me refer you to page 32 of 132 in the
15 handout I gave you with the law, 108.5(d).

16 Do you find that on that page?

17 A. Starting with the word subsequent?

18 Q. Right.

19 A. Okay.

20 Q. Subsection (1), the first sentence reads,
21 "The input to the performance-based formula rate for
22 the applicable rate year shall be based on final

1 historical data reflected in the utility's most
2 recently filed annual FERC Form 1 plus projected
3 plant additions and, correspondingly, updated
4 depreciation reserve and expense for the calendar
5 year for which the inputs are filed."

6 A. I see that.

7 Q. My hypothetical to you is if the statute
8 was amended such that in between final and historical
9 they inserted the words "year end," would the opinion
10 that you gave in your rebuttal testimony that you
11 read earlier, would you still have that opinion,
12 based on his application of the statute which he
13 seems to be interpreting in this testimony.

14 MS. LUSSON: Well, I'm going to object to the
15 form of the question because Mr. Brosch's testimony
16 in terms of whether year end or average rate base
17 should be used is focused on the reconciliation
18 portion of the formula rate revenue requirement, and
19 the portion of the act that you've handed him deals
20 with the initial part of the formula rate title, not
21 the reconciliation.

22 MR. KENNEDY: No. I believe that Section D is

1 the reconciliation section.

2 THE WITNESS: I think it's both.

3 MR. KENNEDY: If you'd like to interpret the
4 law some more, feel free to do that.

5 THE WITNESS: I would just note that the next
6 sentence starts, "The filing should also include a
7 reconciliation," and the testimony, my testimony from
8 12-0001 was talking about the reconciliation.

9 MS. LUSSON: Right, and the initial -- that's
10 my point of this question. The language that you've
11 cited him after Part 1 is for the initial rate, the
12 initial formula rate portion of the two prong process
13 as opposed to the reconciliation.

14 MR. KENNEDY: I'll withdraw the question, and
15 I'll tie it back into the current testimony.

16 Q. If you could refer to your rebuttal
17 testimony, page 6, starting at line 84.

18 MS. LUSSON: This is direct?

19 MR. KENNEDY: His rebuttal, page 6, AG/AARP
20 Exhibit 3.0.

21 THE WITNESS: I'm there.

22 Q. The question and answer read there:

1 Question: "Is Mr. Nelson correct in stating that an
2 average rate base is not 'final data' as required in
3 Section 16-108.5(d)(1) of the act?"

4 You say no. The answer is, "No, the
5 average rate base that I recommend would be used in
6 calculating the reconciliation revenue requirement
7 and would be based on a 2 point average of the actual
8 final balances that were reported in the FERC Form 1.
9 These amounts would be just as "final" and
10 "historical" as any of the FERC Form 1 amounts that
11 Mr. Nelson would need to use to calculate his
12 preferred year end rate base."

13 Do you see that Q and A?

14 A. I do.

15 Q. Is it fair to say that you took the words
16 final and historical to refer back to the language
17 that we just discussed in Section D, 16-108.5(d)(1)?

18 (Pause)

19 MS. LUSSON: Well, if I could interject.

20 MR. KENNEDY: Sure.

21 MS. LUSSON: First of all, it was Mr. Nelson
22 who cited 16-108.5(d)(1) in terms of final data, and

1 there's also as I recall the statute, though I'd have
2 to read it, there's also reference to the final data
3 and reconciliation in a portion of 16-108.5(c).

4 MR. KENNEDY: I'm just asking Mr. Brosch what
5 he meant when he was quoting final historical rate,
6 and maybe he doesn't know.

7 THE WITNESS: I think the reference was to the
8 statute, and I was trying to find it.

9 Q. Well, maybe this can short-circuit it,
10 unless you want to continue to look. I can give you
11 a different hypothetical.

12 A. Okay.

13 Q. If the legislation made clear that by
14 inserting the words year end that the General
15 Assembly intended for the reconciliation rate base to
16 be year end data, would that change your opinion?

17 A. As a hypothetical?

18 Q. As a hypothetical.

19 A. If the law says reconciliation should use
20 year end rate base, yes, that would be the law.

21 Q. I want to show you one more document that
22 I'm not going to put into evidence. It's a document

1 that's already been admitted. It's the rebuttal
2 testimony of Mr. Nelson, Ameren Exhibit 9.0. This
3 would be the rebuttal testimony referred to in that Q
4 and A.

5 Did you review in preparation for your
6 testimony the rebuttal testimony of Mr. Nelson?

7 A. I'm sure I did.

8 MS. LUSSON: I'm sorry. Can you repeat the
9 reference.

10 MR. KENNEDY: Exhibit 9.0, rebuttal testimony.
11 I'm just asking generally if he reviewed Mr. Nelson's
12 rebuttal testimony.

13 THE WITNESS: I'm sure I have seen this, yes.

14 Q. Can I refer you to the Q and A that starts
15 at line 927?

16 A. I'm there.

17 Q. I'm not going to read through it. Your
18 other witnesses have talked about this. It's in the
19 record. But is it accurate to say that Mr. Nelson
20 here is talking about House Resolution 1157?

21 A. He is.

22 Q. Now, in your rebuttal testimony you don't

1 refer to this House Resolution 1157?

2 A. No.

3 Q. Did you consider it in your response to
4 Mr. Nelson?

5 MS. LUSSON: Wait. First of all, can I have
6 the prior question read back please unless you want
7 to repeat it?

8 MR. KENNEDY: He already answered it so I don't
9 need to repeat it.

10 JUDGE ALBERS: Laurel, would you read it back?

11 (Whereupon the reporter read
12 back the last question.)

13 Q. BY MR. KENNEDY: Did you consider it when
14 responding to Mr. Nelson in your rebuttal testimony?

15 A. I believe I discussed it with AG counsel.
16 I'm not sure. I must have considered it as part of
17 that discussion.

18 Q. Did you give it any weight in your rebuttal
19 testimony?

20 A. If memory serves me, I was advised that
21 counsel would address that matter in the brief.

22 Q. So you gave it no weight?

1 A. That's correct.

2 MR. KENNEDY: That's all the questions I have.

3 JUDGE ALBERS: I don't think anybody else had
4 any questions for Mr. Brosch.

5 Do you have any redirect?

6 MS. LUSSON: I don't think so but can I have
7 just a moment to consult?

8 JUDGE ALBERS: Yes.

9 JUDGE YODER: Take five.

10 (Recess taken.)

11 JUDGE ALBERS: Whenever you're ready,
12 Ms. Lusson.

13 REDIRECT EXAMINATION

14 BY MS. LUSSON:

15 Q. Mr. Brosch, do you recall the line of
16 questions about late payment revenues where
17 Mr. Kennedy questioned as to whether or not power
18 supply customers would be, for lack of a better term,
19 shortchanged should your adjustment be invoked and
20 late payment revenues not be flowed through to power
21 supply customers? Do you recall that line of
22 questions?

1 delivery service customer is also a power supply
2 customer of Ameren, of AIC?

3 A. No.

4 Q. That's not the assumption for your opinion?

5 A. No. I said the general case would be that
6 power supply customers would also be delivery service
7 customers of Ameren.

8 Q. So every power supply customer of Ameren
9 would also be a delivery service customer?

10 A. Not every. I said generally that would be
11 the case.

12 Q. Generally.

13 Do you have a percentage in mind?

14 A. No.

15 MR. KENNEDY: I have no further questions.

16 JUDGE ALBERS: All right. There are no cross
17 exhibits as I recall.

18 Is there any objection then to the --
19 let me go ahead and identify them to be clear since
20 there are some revisions.

21 AG/AARP Exhibits 1.0 through 1.3, 1.4
22 Revised (confidential and public version), 1.5

1 through 1.9, 3.0, 3.1 Revised and 3.2 through 3.4.

2 Any others?

3 MS. LUSSON: Yes. I would just note as I
4 indicated earlier that the 3.1 Corrected will be
5 filed on e-Docket probably tomorrow given the earlier
6 exchange this morning between Mr. Stafford and
7 Mr. Brosch about whether or not the company's removal
8 of certain Focused Energy for Life expenses are, in
9 fact, incorporated within Mr. Brosch's beginning
10 balance and his adjustment.

11 (Whereupon an off-the-record
12 discussion transpired at this
13 time between Judge Albers and
14 Judge Yoder.)

15 JUDGE ALBERS: I think with the exception of
16 3.1 Revised, if there's no objections to any of the
17 other ones...

18 MR. KENNEDY: No, Your Honor. Ms. Lusson and I
19 talked about Exhibit 3.1, and I'm fully aware of all
20 the issues.

21 JUDGE ALBERS: Okay. Well, with the exception
22 of 3.1, the other ones are all admitted.

1 (Whereupon AG/AARP Exhibits 1.0
2 through 1.3, 1.4 Revised
3 (confidential and public
4 version), 1.5 through 1.9, 3.0,
5 3.1 Revised and 3.2 through 3.4
6 were admitted into evidence at
7 this time.)

8 JUDGE ALBERS: And I think we'll just wait till
9 we see 3.1 to make sure everybody is on the same page
10 once it actually exists, and then we'll rule on the
11 admissibility of that just to make sure everybody is
12 comfortable with what numbers end up in that
13 corrected version.

14 MR. KENNEDY: Sure.

15 MS. LUSSON: And perhaps we could have some
16 sort of e-mail exchange between myself and
17 Mr. Kennedy that says, you know, do you have any
18 objection to this as corrected and then, you know,
19 obviously serve everyone and perhaps then a ruling.

20 MR. KENNEDY: Yeah. I don't know if you were
21 thinking about leaving the record open I think
22 obviously to get the exhibit in.

1 JUDGE ALBERS: Yeah, I think we're going to
2 leave it open anyway so we will figure it out. We'll
3 take care of it.

4 JUDGE YODER: Thank you, Mr. Brosch.

5 (Witness excused.)

6 JUDGE YODER: Mr. Olivero, do you want to do
7 Ms. Everson's while Ms. Ebrey is coming forward?

8 MR. OLIVERO: I can do both her and Mr. Johnson
9 as well.

10 JUDGE YODER: I'll have to type fast or you can
11 talk slow.

12 MR. OLIVERO: Staff would move for admission
13 into the record ICC Staff Exhibit 5.0 which is the
14 direct testimony of William R. Johnson which consists
15 of a cover page, table of contents, narrative
16 testimony, and Attachment 5.1, and that was filed on
17 the Commission's e-Docket system on July 3, 2012.

18 And then we would move for admission
19 of Mr. Johnson's affidavit which was identified as
20 ICC Staff Exhibit 5.1 that was filed on the
21 Commission's e-Docket system September 11, 2012.

22 JUDGE ALBERS: What was the affidavit number?

1 MR. OLIVERO: 5.1.

2 JUDGE ALBERS: That was it for Mr. Johnson?

3 MR. OLIVERO: That was it for Mr. Johnson.

4 JUDGE ALBERS: Okay. Any objection?

5 Hearing none, they are both admitted.

6 (Whereupon ICC Staff Exhibits
7 5.0 and 5.1 were admitted into
8 evidence at this time.)

9 MR. OLIVERO: And then staff would also move
10 for admission into the record of ICC Staff
11 Exhibit 10.0 which is the rebuttal testimony of Mary
12 H. Everson which consists of a cover page, narrative
13 testimony, a Schedule 10.01, and Attachments A
14 through D, as in dog, and that document was filed on
15 the Commission's e-Docket system August 28, 2012.

16 And finally, staff would move for
17 admission into the record of ICC Staff Exhibit 10.1
18 which is the affidavit of Mary H. Everson, and I
19 would note that that document was filed on the
20 Commission's e-Docket system.

21 JUDGE ALBERS: So you have 10.01 and a 10.1?

22 MR. OLIVERO: Well, the 10.01 was a schedule

1 with her testimony.

2 JUDGE ALBERS: Right.

3 MR. OLIVERO: And then the 10.1 is the
4 affidavit.

5 JUDGE YODER: 10.01 is the schedule.

6 MR. OLIVERO: Correct.

7 JUDGE ALBERS: Okay. Any objection?

8 MR. WHITT: No objection, Your Honor.

9 JUDGE ALBERS: Thank you.

10 They are admitted.

11 (Whereupon ICC Staff Exhibits
12 10.0 and 10.1 were admitted into
13 evidence at this time.)

14 JUDGE YODER: How much cross is there scheduled
15 for Ms. Ebrey?

16 MR. WHITT: Your Honor, I believe an hour was
17 scheduled but it will be substantially less than
18 that.

19 (Whereupon an off-the-record
20 discussion transpired at this
21 time.)

22 (Whereupon Judge Yoder left the

1 hearing at this point.)

2 JUDGE ALBERS: Before we turn to Ms. Ebrey,
3 there's an update on the confidentiality of the
4 exhibits?

5 MR. KENNEDY: Yes.

6 Yesterday we discussed whether or not
7 certain exhibits that have been filed in this docket
8 related to advertising expense are confidential
9 protected documents. The two documents in question
10 are AG 3.4 (Confidential) which was just moved into
11 the record and AG/AARP/Ameren Group Exhibit 1-C which
12 was introduced into the record yesterday.

13 The issue is that there's several
14 documents that the company considers confidential for
15 different reasons depending on whether or not the
16 document was produced by a vendor or an Ameren
17 specific document, and since we think the issue will
18 probably pop up in formula rate dockets and general
19 rate increase dockets in the future, we thought it
20 would be best if we just filed a motion for
21 protection of documents explaining our position and
22 give the AG and anybody else an opportunity to

1 respond, and we were going to propose to file that on
2 Tuesday.

3 JUDGE ALBERS: That's fine.

4 MR. O'BRIEN: Just for the record, the People
5 have no objection to Mr. Kennedy's proposal.

6 JUDGE ALBERS: All right.

7 MR. KENNEDY: And just so it's clear, we did
8 not discuss with the AG how much time they will need
9 for a response. We'll let you make that decision.

10 JUDGE ALBERS: We'll take a look at the volume
11 of it.

12 One thing that occurs to me, to the
13 extent that any of your requests for proprietary
14 treatment relates to an agreement with Simantel or
15 any vendor, could you please address in there, in
16 your explanation or argument, to what extent a state
17 agency should accord proprietary treatment based on
18 an outside agreement between a vendor and a company?

19 MR. KENNEDY: We'll address that issue.

20 JUDGE ALBERS: So we'll have that mesh up --

21 MR. KENNEDY: With the state laws?

22 JUDGE ALBERS: Yes.

1 MR. KENNEDY: Yeah, we can do that, Your Honor.

2 JUDGE ALBERS: Okay. Thank you.

3 Next Tuesday is the 18th? Does that
4 sound right?

5 MR. OLIVERO: Correct.

6 JUDGE ALBERS: All right. Our next witness
7 then is Ms. Ebrey I believe?

8 MR. OLIVERO: That's correct.

9 JUDGE ALBERS: Ms. Ebrey, I don't believe
10 you've been sworn in. Will you raise your right
11 hand?

12 (Whereupon the witness was sworn
13 by Judge Albers.)

14 JUDGE ALBERS: Thank you.

15 MR. OLIVERO: Good afternoon Ms. Ebrey.

16 MS. EBREY: Good afternoon.

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THERESA EBREY

called as a witness herein, on behalf of staff of the Illinois Commerce Commission, having been first duly sworn on her oath, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. OLIVERO:

Q. Could you please state your full name and spell your last name for the record?

A. Theresa Ebrey (E-b-r-e-y).

Q. And by whom are you employed?

A. Illinois Commerce Commission.

Q. And what is your current position with the Illinois Commerce Commission?

A. I'm an accountant in the Accounting Department of the Financial Analysis Division.

Q. And, Ms. Ebrey, have you prepared written testimony for purposes of this proceeding?

A. Yes, I have.

Q. And do you have before you a document which has been marked for identification as ICC Staff Exhibit 1.0 entitled Direct Testimony of Theresa

1 Ebrey which consists of a cover page, a table of
2 contents, 18 pages of narrative testimony,
3 Schedules 1.01 through 1.11 and attachments A through
4 E?

5 A. Yes.

6 Q. And are these true and correct copies of
7 the direct testimony that you have prepared for this
8 proceeding?

9 A. Yes.

10 Q. Do you also have before you a document
11 which has been marked for identification as ICC Staff
12 Exhibit 6.0, and you filed this in two versions,
13 confidential and public versions of rebuttal
14 testimony of Theresa Ebrey which consists of a cover
15 page, a table of contents, 32 pages of narrative
16 testimony, Schedules 6.01 through 6.14 and Attachment
17 A?

18 A. Yes.

19 Q. And are these true and correct copies of
20 the confidential and public versions of the rebuttal
21 testimony that you have prepared for this proceeding?

22 A. Yes.

1 Q. And, Ms. Ebrey, as you sit here today, do
2 you have any corrections to make, first of all, to
3 your prepared direct testimony?

4 A. No.

5 Q. And do you have any corrections to make to
6 your prepared rebuttal testimony?

7 A. Yes, I do.

8 Q. And what would those be?

9 A. On page 9 of my rebuttal testimony, lines
10 168 and 169, I refer to pension expense. That should
11 be payroll expense on both lines 168 and 169.

12 Q. Okay. Just for clarification, that was an
13 item you had noted in a DR response to the company,
14 correct?

15 A. Right. There was a data request from the
16 company, and I indicated that that correction needed
17 to be made.

18 Q. Okay. And do you have any additional
19 corrections to make to your rebuttal testimony or
20 schedules?

21 A. Yes, I do, my Schedule 6.09. After
22 reviewing Mr. Stafford's surrebuttal testimony, I

1 needed to make a correction to the amount of approved
2 vacation pay that was accounted for in cash working
3 capital.

4 My calculation for that is consistent
5 with what Mr. Effron had proposed for the AG
6 testimony. The amount of my adjustment, rather than
7 being 11,983,000 would be 11,604,000.

8 I will be providing corrected revenue
9 requirement schedules with staff's initial brief to
10 reflect this change as well as the changes that
11 Ms. Chang filed in I think it was corrected
12 testimony, corrected rebuttal testimony.

13 Q. And are those, the two changes that we've
14 noted, are those the only two changes that would be
15 made to your rebuttal testimony?

16 A. Yes.

17 Q. Is the information contained in ICC Staff
18 Exhibits 1.0 and 6.0 and the accompanying schedules
19 and attachments true and correct to the best of your
20 knowledge?

21 A. Yes.

22 Q. If you were asked the same questions today,

1 would the answers contained in your prepared
2 testimony be the same?

3 A. Yes.

4 MR. OLIVERO: Your Honor, at this time and
5 subject to cross-examination, I would ask for
6 admission into the evidentiary record Ms. Ebrey's
7 prepared testimony marked as ICC Staff Exhibit 1.0
8 including schedules and attachments and Ms. Ebrey's
9 prepared rebuttal testimony both in confidential and
10 public versions marked as ICC Staff Exhibit 6.0
11 including schedules and attachments, and I would
12 tender Ms. Ebrey for cross-examination at this time.

13 JUDGE ALBERS: All right. Thank you. We'll
14 address admissibility following questioning.

15 MR. WHITT: Thank you, Your Honor.

16 I believe the company is the only
17 party to have reserved time, is that correct?

18 JUDGE ALBERS: I think so.

19 MR. WHITT: Very well.

20 Good afternoon, Ms. Ebrey.

21 THE WITNESS: Good afternoon.

22

1 CROSS-EXAMINATION

2 BY MR. WHITT:

3 Q. I'd like to start by asking you some
4 questions about your regulatory Commission expense
5 adjustment.

6 If you'll turn with me to page 11 of
7 your direct testimony, and it's your position --
8 well, you are proposing a disallowance of certain
9 regulatory Commission expenses incurred in 2011,
10 correct?

11 A. Yes.

12 Q. And it's your position that the expenses
13 incurred in litigating a rate case in Docket 11-0279
14 should be disallowed because the company made a
15 unilateral decision both to file that case and
16 dismiss that case, correct?

17 MR. OLIVERO: Your Honor, I might object at
18 this point because I think -- I don't know if she had
19 used the word unilateral with respect to both the
20 filing of the action and then the withdrawal. I
21 think she said two different things in her testimony.

22 JUDGE ALBERS: Well, I'll let her address that

1 if she did, in fact, do something different.

2 Overruled.

3 THE WITNESS: If I could go back to your
4 previous question, I believe you asked if I was
5 disallowing costs that were incurred in 2011, and as
6 I sit here today, I don't know that all of those
7 costs were actually incurred in 2011. Some may have
8 been in 2010, but the company had, it's my
9 understanding they had reclassified the cost from a
10 regulatory asset to an expense account, and to the
11 extent that those costs were included in the expense
12 account in 2011, I'm disallowing those costs.

13 Q. Okay. And those costs relate to expenses
14 incurred in the litigation of the Docket 11-0279
15 proceeding, correct?

16 A. That's my understanding, yes.

17 Q. Okay. And just so we're clear, I know your
18 counsel raised a question about what you actually
19 said in your testimony, and I'll direct you to line
20 246 of your direct, and at line 246, you say, "Ameren
21 made a unilateral decision to file an electric rate
22 case in February 2011 and also made a unilateral

1 attempt to withdraw its electric rate case once
2 before a Commission order was to be issued."

3 Did I read that correctly?

4 A. Yes.

5 Q. Now, it's the case, is it not, that to the
6 extent the company believed that in February 2011
7 that it was not receiving sufficient revenues that
8 its only recourse at that time was to file a rate
9 proceeding under Article IX of the Public Utilities
10 Act, correct?

11 A. I don't know if that was the reason that
12 the company decided to file a rate case.

13 Q. Well, let's assume that it was.

14 A. Okay.

15 Q. Would you agree then its recourse was to
16 file a request for general rate increase?

17 A. Yes.

18 Q. And the formula rate legislation that
19 brings us here today did not exist in February of
20 2011, correct?

21 A. I think it may have existed in some draft
22 form but it was not signed into law.

1 Q. Right. The law at the time was whatever
2 was provided in Article IX?

3 A. Correct.

4 Q. The formula rate legislation became law at
5 the very end of 2011, correct?

6 A. I think it was October of 2011.

7 Q. Have you heard reference to something
8 called the trailer bill I think is how people refer
9 to it?

10 A. Generally I've heard of that.

11 Q. And is it your recollection that the
12 trailer bill is the piece of legislation that speaks
13 to the issue of the effect of filing a formula rate
14 proceeding for utilities that have rate cases
15 pending?

16 A. I don't know.

17 Q. Okay. But the formula rate law you
18 understand does require the Commission to dismiss any
19 pending electric rate case for an entity that elected
20 to become a participating utility?

21 A. Correct.

22 Q. So it wasn't up to the Commission or the

1 company, neither one had any say in whether the then
2 pending case, Docket 11-0279, could continue,
3 correct?

4 A. Once the company made the decision to be a
5 participating utility, that's correct.

6 Q. And in the company's initial formula rate
7 proceeding, Docket 12-0001, staff is recommending an
8 approximate rate reduction in the neighborhood of
9 \$50 million, is that correct?

10 A. I'll accept that subject to check.

11 Q. Okay. And if the Commission adopts staff's
12 recommendations in this proceeding, there would be an
13 additional rate reduction, correct?

14 A. Correct.

15 Q. Those reductions would not occur but for
16 the company electing to become a participating
17 utility, correct?

18 A. I don't think I agree with that.

19 Q. Well, if the company had not filed a
20 petition in Docket 12-0001, we wouldn't be here
21 today, right?

22 A. Right. But if the company had not decided

1 to become a participating utility and had let
2 Docket 11-0279 continue through a final order, it's
3 possible that there would have been a rate decrease
4 from that order.

5 Q. It's possible there could have been a rate
6 increase from that order as well, correct?

7 A. My understanding of the proposed order
8 would indicate that the possibility of the rate
9 decrease was probably a little bit stronger than the
10 possibility of a rate increase.

11 Q. But the proposed order was not, in fact,
12 adopted by the Commission, and the Commission has
13 discretion to adopt or reject or come up with a
14 completely new order, correct?

15 A. That's true.

16 Q. Would you consider a rate decrease
17 beneficial to customers?

18 A. Yes.

19 Q. Would you consider that the investment
20 commitments and performance measures that are
21 attached to the formula rate legislation is something
22 that's beneficial to ratepayers?

1 A. I think that's what they're designed to be.

2 Q. And can we agree that customers would not
3 achieve those benefits unless the utility elects into
4 a formula rate process?

5 A. I don't think I agree with that, no.

6 Q. Well, if the company did not elect to
7 become a participating utility, it would not have any
8 investment commitments under formula rate
9 legislation, correct?

10 A. That's correct.

11 Q. Nor would any performance measures that are
12 contained in the formula rate legislation apply to
13 the company, correct?

14 A. That wouldn't keep the company from doing
15 those same measures outside of becoming a
16 participating utility.

17 Q. But there would be no obligation for the
18 company to do so, correct?

19 A. Right.

20 Q. There would be no statutory requirement for
21 a reduction in its rate of return had it not met
22 voluntary performance measures, correct?

1 A. Right.

2 Q. Nor would it have any obligation to hire
3 450 additional personnel in the peak year of its
4 investment program, correct?

5 A. I'm not sure about those statistics.

6 Q. Now, in your rebuttal testimony at line
7 234, you indicate...and it's actually at line
8 236...that the costs for a rate case should be
9 granted no different treatment than the legal fees
10 associated with a potential purchase of property that
11 was not culminated.

12 Did I read that correctly?

13 A. Yes.

14 Q. Are you aware of any proceeding where the
15 Commission has disallowed rate case expense or
16 regulatory expense under the circumstances you
17 describe here at line 236?

18 A. I'm not aware of an instance where a rate
19 case had proceeded to the point that this one did
20 that the company chose to withdraw the case.

21 Q. Well, my question really is, you suggest
22 here that legal fees associated with the potential

1 purchase of property where the transaction isn't
2 consummated would result in a disallowance of legal
3 fees, and my question is, are you aware of a
4 circumstance where the Commission has said that or
5 done that?

6 A. As I sit here today, no, I can't tell.

7 Q. Would it be fair to also consider the legal
8 fees associated with Docket 11-0279 as analogous to
9 legal fees incurred for a cancelled generating plant?

10 A. Could you repeat that question?

11 Q. Would it be fair to consider legal fees
12 associated with Docket 11-0279 as analogous to legal
13 fees incurred for a or associated with a generating
14 plant that is cancelled?

15 A. I would think that the utility would need
16 to get approval from the Commission for that type of
17 an investment, and the utility has the discretion to
18 file a rate case or not, so I don't think it would be
19 the same.

20 I think the Commission would be
21 involved in the construction of the generating plant
22 from the beginning where the company has complete

1 discretion about filing a rate case.

2 The Commission doesn't say, yes, you
3 should file a rate case or, no, you shouldn't.

4 Q. Are you aware of situations not only in
5 Illinois but in utility regulation generally where
6 commissions have authorized the recovery of
7 construction costs associated with generation plants
8 that have been cancelled?

9 A. No, I'm not personally aware of that.

10 Q. Okay. And at line 266 of your rebuttal,
11 actually, it begins at line 265, but you indicate
12 that the rate case expense incurred in Docket 11-0279
13 did not improve or enhance the electric service to
14 Ameren electric customers. Is that right?

15 A. That's right.

16 Q. Are you aware of or can you direct me to
17 any provision of the formula rate legislation that
18 ties cost recovery to whether an expenditure improves
19 or enhances service?

20 A. To the extent that the cost to be or that
21 the cost recovery under the formula rate legislation
22 is to be consistent with prior Commission practice

1 and law and in prior cases the improvement and
2 enhancement of electric service has been an area that
3 the Commission has made a decision.

4 Q. So are you suggesting that if the company
5 had not or I should say if the Commission had not
6 dismissed Docket 11-0279 that electric service would
7 somehow have been improved or enhanced?

8 A. I don't think the Commission had the option
9 not to dismiss 11-0279.

10 Q. Right.

11 Well, apart from formula rates and
12 just speaking more generally, in your opinion when a
13 utility files a rate case under formula rates or
14 otherwise, does that improve or enhance electric
15 service?

16 A. I think that that is usually part of the
17 argument that a company presents for the reason they
18 need to file a rate case. They need additional money
19 in order to hire more employees, to improve their
20 plant investment, and those things would improve or
21 enhance electric service to the customers.

22 Q. Okay. And you had mentioned I think

1 actually a few answers ago the notion of prior
2 Commission cases and decisions and a requirement for
3 consistency. Do you recall that in your answer?

4 A. I don't recall that in an answer today, no.

5 Q. Is it your understanding that the
6 Commission historically has allowed recovery of
7 expenses incurred to meet legal requirements?

8 A. Are you speaking generally or...

9 Q. Yes, generally.

10 A. ...specifically to a rate case?

11 Q. Just generally.

12 A. Yes, it's my understanding the Commission
13 has approved legal fees in rate cases.

14 Q. Now, you also discuss an alternative
15 partial disallowance of regulatory Commission expense
16 in the event that the Commission doesn't disallow
17 that expense in its entirety, correct?

18 A. Correct.

19 Q. And on page 14 of your rebuttal at line
20 282, you reference a data request response, and then
21 at the bottom of page 14 over to page 15, you have a
22 list of items for which you are proposing

1 adjustments, correct?

2 A. Correct.

3 Q. I want to ask you some questions about each
4 of these generally, and let's start with SFIO
5 Consulting.

6 In your opinion, it's unclear to you
7 what value SFIO added to the rate case process since
8 they did not present a witness who offered testimony,
9 correct?

10 A. That's part of the reason.

11 Also, in reviewing the invoices that
12 were provided, it seems that, as I say on lines 292
13 through 294, the invoices for SFIO Consulting provide
14 a vague description of services rendered, and the
15 services described seem duplicative and redundant of
16 company management and legal counsel
17 responsibilities.

18 Q. Can we agree then that whether a service
19 provider has a witness that testifies on the company
20 shouldn't be dispositive of whether that expense
21 should be recovered?

22 A. Can you explain what you mean dispositive?

1 Q. Well, let's assume hypothetically that the
2 SFIO invoices that you looked at gave descriptions
3 that you thought were adequate and there wasn't an
4 issue with redundancy or anything of that nature but
5 no one from SFIO actually testified.

6 Would it be your recommendation in
7 that scenario that because there was no witness that
8 testified, SFIO fees should be disallowed?

9 A. Well, I think to the extent that I allow
10 legal fees, no attorney provides testimony that I can
11 see what they provided in the case.

12 The same way with Concentric
13 Consulting. They don't file testimony. No, there
14 was a witness from that group that did file
15 testimony, but the invoices provided evidence of what
16 they provided to add to the rate case.

17 Q. And I don't want to put words in your mouth
18 here, but it seems like your major concern is the
19 invoice detail or lack thereof as opposed to whether
20 someone testified, but you obviously considered both.

21 A. Right, but the invoice detail is probably
22 more weighted than whether or not a person provided

1 testimony.

2 Q. You also discuss some charges by Accenture,
3 and that's on lines 308 to 312 of your rebuttal?

4 A. Correct.

5 Q. And you indicate that in the invoices you
6 reviewed, the identity of the witness was not
7 disclosed, correct?

8 A. That's correct.

9 Q. And you, in subsequently reviewing the
10 Commission's e-Docket, you came to understand that
11 James Mazurek was the witness from Accenture, is that
12 correct?

13 A. That's correct.

14 Q. With regard to your adjustment for charges
15 for CCA, and for the record, that's an acronym that
16 stands for Communications Council of America, you
17 indicate beginning on line 317 that it's unclear why
18 the witnesses required additional training, correct?

19 A. Correct.

20 Q. Have you investigated who CCA is or what
21 they do?

22 A. I reviewed the invoices that were provided.

1 Q. Did you do anything else?

2 A. No.

3 Q. Do you know anything about CCA's witness
4 training programs?

5 A. Only what was presented on the invoices.

6 Q. Do you know what sort of topic CCA covers
7 in its programs either generally or during the
8 specific program provided to Ameren Illinois?

9 A. No. I reviewed the support that was
10 provided for rate case expense from the company.

11 Q. Did you investigate whether fees associated
12 with CCA were disallowed in any prior Ameren Illinois
13 cases?

14 A. No.

15 Q. And you personally have testified in many,
16 not only rate cases but proceedings generally before
17 the Commission, correct?

18 A. Yes.

19 Q. Do you have a list of those cases?

20 A. Not in my pocket.

21 Q. This actually came up the other day. Does
22 such a list exist somewhere?

1 A. Yes, it does. I've received data requests
2 from companies in rate cases where I've provided that
3 list.

4 Q. Okay. Do you have a list that if I were to
5 ask you to go to your office, and I'm not going to
6 ask you to do this, but if I were to say show me or
7 tell me every Commission case in which you appeared,
8 could you go to your office and get that or would you
9 have to go back in your records and put it together?

10 A. I don't have it sitting on my desk. I do
11 have that kind of information on the computer so I
12 would have to get the -- I would have to put it
13 together, but I do have that information.

14 Q. Okay. And I really don't intend to belabor
15 this, but when you say put it together, is it a
16 matter of pulling up a file on your computer and
17 hitting print or do you have to look at a couple of
18 different things and compile it?

19 A. I could pull it up on the computer and hit
20 print. There's a database that tracks cases, and I
21 do have that information pretty readily available.

22 Q. Okay. Now, despite your -- well, let me

1 ask one more question.

2 By order of magnitude, how many cases
3 do you think you've testified in?

4 A. This question came up earlier this year.
5 Cases involving tariff filings, including rate cases,
6 it was around 150. That doesn't include certificate
7 cases, waiver cases, short form filings that had been
8 made by water companies.

9 Q. Okay. Now, despite your extensive
10 experience in witnessship, I assume that you do
11 something in every case to prepare to testify, don't
12 you?

13 A. Right.

14 Q. And when I talk about testifying, I want to
15 make sure we're on the same page here. Testifying
16 meaning coming in and sitting in the witness chair
17 and being sworn in and answering someone's questions
18 as opposed to writing testimony and filing it on
19 e-Docket.

20 Can we agree that there's a
21 distinction there?

22 A. Yes.

1 Q. And when you say you've testified, that
2 means that you've been in the hearing room around 150
3 times, excluding some of the minor cases, correct?

4 A. Correct.

5 Q. And any time you know that you have to come
6 to the hearing room and give testimony, I assume that
7 you do something to prepare?

8 A. Yes.

9 Q. And I assume you did something in
10 preparation for today's testimony, didn't you?

11 A. Yes.

12 Q. And is one of your goals in testifying, you
13 seek to be persuasive and credible?

14 A. Yes.

15 Q. Do you endeavor to be prepared to answer
16 difficult and sensitive questions?

17 A. Yes.

18 Q. Do you think about how you might be able to
19 simplify complex topics in testifying?

20 A. Yes.

21 Q. Let's talk briefly about the Winston &
22 Strawn expenses associated with Mr. James Warren, and

1 as I understand it, you have an issue with the
2 reasonableness of Mr. Warren's hourly rate, is that
3 correct?

4 A. That's correct.

5 Q. And you cite an Illinois-American case,
6 Docket 11-0767 where his hourly rate was reduced,
7 correct?

8 A. I don't think there's a final order in that
9 case yet.

10 Q. Fair point. However, the recommendation
11 was made?

12 A. Correct.

13 Q. Did you investigate whether an adjustment
14 associated with Mr. Warren's rates had been ordered
15 in any prior Ameren case?

16 A. No.

17 MR. OLIVERO: Can I just ask a clarification?
18 Was that just with respect to Mr. Warren?

19 MR. WHITT: Yes.

20 I have no further questions.

21 JUDGE ALBERS: I might have a question.

22

1 CROSS-EXAMINATION

2 BY JUDGE ALBERS:

3 Q. Ms. Ebrey, can you tell me what
4 Accenture -- I'm sorry. Do you still seek to
5 disallow the Accenture expenses?

6 A. Yes, I do.

7 Q. Okay. And why was that again?

8 A. The information that was provided on the
9 invoices in support of the costs that the company
10 wanted to recover for 11-0279 did not provide any
11 kind of detail as to what was done, who performed any
12 services, what the hourly rate was, how many hours
13 were worked on the project. These were all areas
14 that in I believe it was a ComEd order, 10-0467, the
15 order that initiated the rulemaking case for rate
16 case expense, those were all areas that were
17 mentioned in that order the Commission was interested
18 in seeing to support rate case expense for outside
19 consultants.

20 One of the late filed exhibits that
21 it's my understanding is going to be going into the
22 record has those invoices included and, for

1 example...and I don't have the late filed exhibit
2 with that reference on it but I did look at the late
3 filed exhibit during the lunch break, and the same
4 reference that was on the DR response appears on that
5 late filed exhibit.

6 So, for example, on TEE 3.02S, Attach
7 4, page 3 of 27 is the Accenture bill dated May 9,
8 2011, and it just says for services rendered in
9 connection with Illinois rate case support, April
10 fees -- I don't know that I can talk about the dollar
11 amount that's on that invoice because it's marked
12 confidential.

13 Q. That's okay. Don't go into the dollar
14 amount. I'm just trying to get at...

15 A. Okay. But there's nothing on this invoice,
16 even though I understand an employee of Accenture
17 testified in that case, there's nothing on this
18 invoice of the type of information that I understand
19 the Commission is looking for to judge the
20 reasonableness of rate case expense.

21 Q. Okay. Well, you've touched on something
22 that I wouldn't mind pursuing just so I understand

1 more about what this late filed exhibit is.

2 You said it's primarily copies of
3 invoices and such regarding the rate case expense
4 from 11-0279?

5 A. Right.

6 Q. Are these invoices that you have previously
7 seen or you just saw for the first time today?

8 A. No, I received these during the case.

9 Q. Okay.

10 A. The late filed Exhibit 1 are the invoices
11 to support the rate case expense from 11-0279, and I
12 received those, I think they were filed late on
13 July 3rd, so on July 5th I saw those.

14 The invoices that were provided as
15 late filed Exhibit 2 are the invoices to support the
16 company's request for rate case expense for the
17 12-0001 case, the costs that were incurred in 2011,
18 and I believe it was late July when I got those, so I
19 have reviewed these previously.

20 Q. Okay. The late filed Exhibit 1 then, that
21 includes invoices concerning Accenture. Did it
22 include invoices from other vendors?

1 A. Right. It's all of the invoices, invoices
2 to support all of the costs that the company is
3 asking for recovery.

4 Q. Okay. And I feel like I'm at a bit of a
5 disadvantage here because I'm the only one that
6 hasn't seen the invoices, and I'm not asking about
7 the details of any of them, I'm just wondering now as
8 a practical matter, these are invoices that you and
9 Mr. Stafford have discussed in terms of them coming
10 into this record so that Judge Yoder and I and the
11 Commission can have them to assess the content of
12 them? Is that the idea behind it as far as you know?
13 I'm not asking you to put words into Ameren's mouth,
14 but that's your understanding?

15 A. In my testimony, my rebuttal testimony on
16 page 21 starting at line 418, I discuss that the
17 Section 9-229 of the act requires the Commission to
18 expressly address in its final order the justness and
19 reasonableness of any amount expended by public
20 utilities to compensate attorneys or technical
21 experts to prepare and litigate a general rate case
22 filing.

1 And I recommended, as staff has in the
2 last couple years I think in rate cases, that the
3 invoices to support rate case expense are entered
4 into the evidentiary record so the Commission has
5 access to those to judge the justness and
6 reasonableness.

7 Q. And you asked for those in those four DRs
8 identified there on page 21?

9 A. Right. Page 21 is in reference to the rate
10 case expense for 11-0279.

11 On page 25, I have the same Q and A
12 regarding the expense incurred in 2011 for
13 Docket 12-0001.

14 Q. Okay. So late filed Exhibit 1 contains the
15 responses to the four DRs identified on page 21 as
16 far as you understand?

17 A. As far as I know. I looked at them very
18 quickly at lunch. I didn't look at them in any
19 detail.

20 Q. And late filed Exhibit 2 contains the
21 responses to the three DRs on page 25 as far as you
22 know?

1 A. Correct.

2 JUDGE ALBERS: Okay. And if Ameren wants to
3 add to that, I'm happy to listen to Mr. Stafford if
4 he wants to come to the stand later to help me
5 understand what you have for us here.

6 MR. WHITT: Yes, Your Honor. I think it may
7 help if you want to refer to Mr. Stafford's revised
8 surrebuttal testimony. There's a discussion I think
9 starting on page 34 and continuing through the next
10 several pages on the whole issue of regulatory
11 Commission and rate case expense explaining what has
12 been produced in discovery and what is or will be
13 included in exhibits that are going to be separately
14 filed simply because of the volume of material.

15 JUDGE ALBERS: Okay.

16 Q. And then back to Accenture for a minute,
17 I'm sure it's in the record somewhere, but just for
18 my benefit, Accenture is a consulting firm as far as
19 you know?

20 A. Correct.

21 Q. They have multiple people as far as you
22 could tell working on this case or not this case but

1 I mean earlier cases?

2 A. The 11-0279. My understanding is that an
3 employee of Accenture filed testimony.

4 Q. That's the extent of your knowledge?

5 A. That's the extent of my knowledge on that.

6 Q. Can you tell me -- was the other consulting
7 firm SFIO?

8 A. Correct.

9 Q. Is that similar, as far as your knowledge,
10 one person working on it to help Ameren with the rate
11 case?

12 A. That's my understanding. It's not clear
13 from the invoices.

14 Q. Okay. That's fine. I'm just trying to
15 gauge the scope of the work. You were saying that
16 was part of your problem? You couldn't tell either?

17 A. Correct.

18 JUDGE ALBERS: Okay. All right. Okay. Thank
19 you.

20 MR. OLIVERO: Could we have just a few minutes
21 to see if we have any redirect?

22 JUDGE ALBERS: Yeah, that's fine.

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(Recess taken.)

JUDGE ALBERS: Back on the record.

Mr. Olivero, do you have any redirect?

MR. OLIVERO: Very briefly, Your Honor. I know you have deadlines.

REDIRECT EXAMINATION

BY MR. OLIVERO:

Q. Ms. Ebrey, you were asked on cross-examination by Mr. Whitt about the number of cases you have testified to on the stand.

Could you clarify what you meant when you were responding to that answer?

A. When I said that I testified 150 times, that's 150 individual dockets that I filed testimony in.

For instance, I've testified in Ameren cases on multiple occasions, but that would count six separate dockets when the company would file gas and electric rate cases. That's six dockets that would be counted in the 150, but I would only have been on the witness stand one time.

I've been on some Utilities, Inc.

1 cases, same thing, multiple cases that were
2 consolidated. I was only cross-examined one time.

3 So as far as the number of times I've
4 actually been cross-examined, I don't know.

5 Q. And just for clarification, when you're
6 talking about the six rate cases, that would have
7 been the three former Ameren separate companies,
8 correct?

9 A. Right.

10 Q. For both gas and electric?

11 A. Correct.

12 Q. Okay. And then just very briefly, you were
13 asked questions about what you do to prepare for
14 testifying, and I don't know if you were specifically
15 asked that question, but what is it that you do in
16 order to be put on the stand for a typical case?

17 A. I prepare my book with my testimony, my
18 responses to data requests that came from the company
19 or from other parties. I read my testimony to make
20 sure I'm familiar with it as well as my responses. I
21 read the company testimony that I've replied to in
22 the testimony that I have filed.

1 You know, I consider which issues may
2 be more contentious than others and try to anticipate
3 questions the company may ask me and think of what my
4 responses will be.

5 Q. Okay. And then do you have any outside
6 assistance in terms of preparing for your testimony?

7 A. If you mean outside the agency, outside
8 training?

9 Q. Well, I guess both outside the agency and
10 within the agency.

11 A. There's no formal training that I've had.
12 No outside parties have come in and provided any
13 training for witnesses.

14 If I have some issues that I'm unsure
15 about, I may talk to my supervisors, you know, here's
16 something that I'm concerned about. How do you think
17 I should address this, or does this sound reasonable.

18 You know, I speak with other, more
19 experienced people at the Commission.

20 MR. OLIVERO: All right. That's all the
21 redirect we have, Your Honor.

22 JUDGE ALBERS: Any recross?

1 MR. WHITT: No recross, Your Honor.

2 JUDGE ALBERS: All right. Thank you.

3 Any objection then to Ms. Ebrey's
4 exhibits?

5 Hearing none, then Staff Exhibits 1.0
6 through 1.11, Attachments A through E, 6.0 public and
7 confidential versions, 6.01 through 6.14 and
8 Attachment A are all admitted.

9 (Whereupon Staff Exhibits 1.0
10 through 1.11 and 6.0 (Public &
11 Confidential) through 6.14 were
12 admitted into evidence at this
13 time.)

14 JUDGE ALBERS: Thank you, Ms. Ebrey.

15 (Witness excused.)

16 JUDGE ALBERS: And I believe our next witness
17 then that we would like to do today is Mr. Smith.

18 I think we need to engage him in a
19 phone bridge.

20 At this time though, if Mr. Ghoshal
21 would like to enter an appearance.

22 MR. GHOSHAL: Appearing on behalf of the

1 Citizens Utility Board, Orijit Ghoshal. That's
2 O-r-i-j-i-t; last name G-h-o-s-h-a-l, 309 West
3 Washington Street, Suite 800, Chicago, Illinois
4 60606.

5 (Whereupon a phone call placed
6 to the next witness, Ralph
7 Smith, at this time.)

8 MR. GHOSHAL: Good afternoon, Ralph.

9 MR. SMITH: Good afternoon.

10 MR. GHOSHAL Your Honor, before we proceed, we
11 need to swear in Mr. Smith.

12 JUDGE ALBERS: Yes. Mr. Smith, would you
13 please raise your right hand.

14 MR. SMITH: Yes, it's raised.

15 (Whereupon the witness was sworn
16 by Judge Albers.)

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RALPH SMITH

called as a witness herein telephonically, on behalf of Citizens Utility Board, having been first duly sworn on his oath, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GHOSHAL:

Q. Could you please state your full name and business address for the record?

A. My name is Ralph Steve Smith. My business address is Larkin & Associates, PLLC, 15728 Farmington Road, Livonia, Michigan.

Q. And who is your employer?

A. My employer is Larkin & Associates.

Q. And who are you testifying on behalf of today?

A. Today I'm testifying on behalf of the Citizens Utility Board, or CUB.

Q. And do you have before you documents that have been marked as CUB Exhibits 1.0, 1.1, 1.2, 1.3, 2.0 Corrected and 2.1?

A. I do.

1 Q. And are these documents true and accurate
2 copies of your direct and rebuttal testimonies filed
3 in this proceeding?

4 A. Yes, I believe they are.

5 Q. And if asked the same questions in your
6 rebuttal and direct testimonies today, would your
7 answers be the same?

8 A. Yes, they would.

9 MR. GHOSHAL: Your Honor, at this time, CUB
10 moves for the entry of the following exhibits into
11 the record: CUB Exhibits 1.0, 1.1 and 1.2 prefiled
12 on e-Docket July 3, 2012, CUB Exhibit 1.3 (Public and
13 Confidential) prefiled on e-Docket August 8, 2012,
14 CUB Exhibit 2.0 Corrected prefiled on e-Docket
15 September 10, 2012, and CUB Exhibit 2.1 prefiled on
16 e-Docket August 28, 2012, and we tender Mr. Smith for
17 cross-examination.

18 JUDGE ALBERS: Thank you. We'll address
19 admissibility following questions.

20 MR. STURTEVANT: Thank you, Your Honor.

21 Mr. Smith, my name is Albert
22 Sturtevant. I'm an attorney for Ameren Illinois

1 Company. Can you hear me okay?

2 THE WITNESS: Yes, I can.

3 MR. STURTEVANT: Okay. Before I ask any
4 questions, we have agreed to the admission of a
5 couple of exhibits that I think will hopefully speed
6 things along marked as Ameren Cross Exhibits 7, 8 and
7 9.

8 (Whereupon Ameren Cross Exhibits
9 7, 8 and 9 were marked for
10 identification as of this date.)

11 CROSS-EXAMINATION

12 BY MR. STURTEVANT:

13 Q. Okay. Mr. Smith, you are an attorney, is
14 that correct?

15 A. Yes.

16 Q. And you're licensed in Michigan, is that
17 correct?

18 A. I am.

19 Q. Is that the only state where you're
20 licensed?

21 A. Yes, it's the only state.

22 Q. And do you actively practice law?

1 A. Not a full-time occupation. I'm primarily
2 a regulatory consultant.

3 Q. Okay. But none of the statements or
4 recommendations contained in your testimony are
5 intended to be legal opinions, is that correct?

6 A. No. The legal opinions and legal arguments
7 will be presented in CUB's legal pleading, not in my
8 testimony.

9 Q. Mr. Smith, I've got just a couple questions
10 regarding FIN 48.

11 FIN 48 addresses the accounting
12 treatment of uncertain tax positions, is that
13 correct?

14 A. Yes, that's correct.

15 Q. Okay. And then regarding those uncertain
16 tax positions, you would agree that the IRS would
17 allow the uncertain amount as a deduction, is that
18 correct?

19 A. Could either allow or disallow it, yes.

20 Q. Okay. If they allowed the deduction, you
21 would agree that the allowance of such deduction
22 would cause ADIT to increase, correct?

1 A. That could be the impact if they allow it.
2 Actually, the amount should already be reflected in
3 ADIT.

4 Q. And once reflected for ratemaking purposes,
5 an increase in ADIT would benefit ratepayers by
6 reducing rate base, is that correct?

7 A. If it's a credit balance ADIT amount that's
8 deducted from rate base, that would reduce rate base.

9 Q. Right. But what I'm asking you is the
10 allowance of the deduction such that it increases
11 ADIT would benefit ratepayers by reducing rate base,
12 is that correct?

13 A. No. The rate base --

14 Q. I'm sorry. I...

15 A. -- already has been reduced by the ADIT.

16 Q. Right.

17 A. So if the IRS allows the deduction, that
18 would have no impact on ADIT.

19 Q. Well, an increase in ADIT would result in a
20 larger reduction or deduction from rate base, is that
21 correct?

22 A. Larger credit balances of ADIT result in

1 reducing rate base.

2 Q. Right. And you would agree that that then
3 benefits ratepayers, correct, reduction to rates?

4 A. When something is related to the ADIT 2, I
5 mean, if it's a plant addition, then it's just
6 offsetting some of the plant investment.

7 Q. So you don't believe that increases to ADIT
8 benefit ratepayers?

9 A. I believe that increases in credit balance
10 ADIT should be deducted from rate base. It's not
11 being deducted because it's a benefit to ratepayers.
12 It's being deducted because it reflects the proper
13 accounting and regulatory ratemaking treatment.

14 Q. Sure. But I guess my question is, that
15 reduction, a reduction to rate base, do you consider
16 that to be a benefit to ratepayers?

17 A. In general, a reduction to rate base is
18 better for ratepayers than not having a reduction.

19 Q. Okay. Next I'm going to ask you a couple
20 questions about changes in state income tax, the
21 state income tax rate, and you have proposed a
22 reduction to AIC's 2011 deferred income tax expense

1 resulting from the state income tax rate changes
2 occurring in 2011, is that correct?

3 A. That's correct.

4 Q. Okay. And just to make sure...and I think
5 you've set this out in your testimony, but I just
6 want to confirm what the law did when it changed its
7 tax rates...in 2010, the rate was 7.3 percent, is
8 that correct? And I'm referring to, generally to
9 page 34 and 35 of your direct testimony.

10 A. Okay. I was actually looking at a page in
11 my rebuttal but you said in 2010 it was 7.3?

12 Q. Correct.

13 A. Yes.

14 Q. And then because the law changed, the 2011
15 rate increased to 9.5 percent, is that correct?

16 A. That's correct.

17 Q. And then the rate remained at that until
18 2015 when it reduces to 7.5 percent?

19 A. That is also correct.

20 Q. And then it remains at that level until
21 2025 when it goes back to 7.3 percent, is that
22 correct?

1 A. That's also correct.

2 Q. Okay. You would agree that the change in
3 the tax rate resulted from a change in state tax law,
4 right?

5 A. Yes.

6 Q. At page 21 of your rebuttal testimony, you
7 testified...I'm looking at lines 495 through at least
8 498...you testified that you agree with AIC's
9 proposed reduction or credit to 2011 deferred income
10 tax expense of 4.137 million, right?

11 A. We agreed that that amount appears to be a
12 reasonable estimate of that impact.

13 Q. Okay. And you also testified that the
14 change in the tax law, and now I've gone over to page
15 22, results in an increase or charge to current
16 income tax expense of approximately 1.8 million, is
17 that correct?

18 A. That's correct.

19 Q. Okay. So you agree that the change in the
20 tax law resulted in a charge to current state income
21 tax expense and a credit to deferred income tax
22 expense, correct?

1 A. It increased current state income tax
2 expense and decreased deferred state income tax
3 expense.

4 Q. Right. So are you saying then that you
5 agree that the law resulted in a charge to current
6 state income tax expense and a credit to deferred
7 income tax expense?

8 A. Yes.

9 Q. Okay. With respect to your testimony at
10 line 22 or, sorry, page 22, line --

11 MR. GHOSHAL: Which testimony, sir?

12 MR. STURTEVANT: I'm sorry, his rebuttal
13 testimony, page 22, line 509.

14 Q. You use the term net in that line.

15 As an accountant, do you have a
16 definition of the term net as you use it in your
17 testimony at line 509?

18 A. Yeah. It just means that the impact of the
19 state tax law change on 2011 did not exceed the
20 3.7 million threshold for amortization that's
21 provided for in the act at I think Section
22 16-108.5(c) (4) (f).

1 In other words, this is a change in
2 state tax law, and when you combine the increase in
3 current state income tax expense and a decrease in
4 deferred income tax expense, one went up and the
5 other one went down, that net impact doesn't exceed
6 the 3.7 million threshold that applies to Ameren.

7 Q. But your use of the term net means like a
8 combination of the two items?

9 A. Right. And both of the items are the
10 result of the change in the state tax law, so I think
11 in this instance, you personally have to combine them
12 to evaluate whether they're above or below the
13 3.7 million.

14 Q. Okay.

15 A. It's the same tax law change that impacts
16 both current and deferred income tax expense, so they
17 have to be combined.

18 MR. STURTEVANT: Your Honor, I have no further
19 questions of Mr. Smith. Thank you.

20 JUDGE ALBERS: Any redirect, sir?

21 MR. GHOSHAL: No, Your Honor. No redirect.

22 JUDGE ALBERS: Thank you.

1 JUDGE ALBERS: Okay.

2 MR. GHOSHAL: 1.3 was filed August 8th.

3 JUDGE ALBERS: August 8th you said?

4 MR. GHOSHAL: Yes.

5 JUDGE ALBERS: Okay.

6 MR. GHOSHAL: 2.0 Corrected was filed

7 September 10th.

8 JUDGE ALBERS: Let me interrupt you a second.

9 Mr. Smith, thank you, and you're
10 excused.

11 (Witness excused.)

12 JUDGE ALBERS: Go ahead.

13 MR. GHOSHAL: And Exhibit 2.1 was filed

14 August 22nd.

15 JUDGE ALBERS: Okay. Thank you.

16 All right. I think all that's left
17 then for the record is we have to take care of
18 affidavits for Mr. Effron, and I believe there's a
19 couple of DRs that the AG and AARP and Ameren have
20 agreed to submit, and there's also the affidavits for
21 eight Ameren witnesses if I counted that right.

22 MR. STURTEVANT: Sounds about right.

1 MR. O'BRIEN: Did staff have anything that
2 needed to be entered in?

3 MR. OLIVERO: No. I think we've got in all our
4 affidavits. We put in Bill Johnson and Mary Everson
5 so I think we're good.

6 JUDGE ALBERS: Yeah, you're good.

7 Okay. Let me go off the record for a
8 couple minutes to figure out how to address these
9 couple housekeeping matters that we need to take care
10 of.

11 (Whereupon an off-the-record
12 discussion transpired at this
13 time.)

14 JUDGE ALBERS: Back on the record.

15 It appears if we reconvene here at
16 9 o'clock, we can take care of the remaining
17 affidavits and exhibits and any other loose ends we
18 can think of between now and then.

19 So if that's it, thank you all.

20 We'll continue this to tomorrow
21 morning at 9 o'clock.

22 (Whereupon the hearing was
23 continued to September 14, 2012