

BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

May 20, 2011

Jefferson City, Missouri

Volume 31

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

MORRIS WOODRUFF, Presiding
 CHIEF REGULATORY LAW JUDGE

KEVIN GUNN, Chairman,
 JEFF DAVIS,
 TERRY JARRETT,
 ROBERT S. KENNEY

COMMISSIONERS.

REPORTED BY:
 Jennifer Leibach, CCR No. 1180
 TIGER COURT REPORTING, LLC

A P P E A R A N C E S

1
2 JAMES B. LOWERY, Attorney at Law
MICHAEL TRIPP, Attorney at Law

3 Smith, Lewis, LLP
111 S. 9th Street
4 Columbia, Missouri 65201
573.443.3141

5 FOR: AmerenUE

6 TOM BYRNE, Attorney at Law
WENDY K. TATRO, Attorney at Law

7 1901 Chouteau Avenue
St. Louis, Missouri 63109
8 314.554.2514

FOR: AmerenUE

9
10 RUSS MITTEN, Attorney at Law
Brydon, Swearngen & England
312 E. Capitol Avenue
11 Jefferson City, Missouri 65102
573.635.7166

12 FOR: AmerenUE

13 JENNIFER FRAZIER, Assistant Attorney General
P.O. Box 899
14 Jefferson City, Missouri 65102
573.751.8803

15 FOR: Missouri Department of Natural Resources

16 LELAND CURTIS, Attorney at Law
CARL LUMLEY, Attorney at Law

17 KEVIN O'KEEFE, Attorney at Law
130 S. Bemiston Suite 200
18 St. Louis, Missouri 63105
314.725.8788

19 FOR: The Municipal Group

20 DIANA VULYSTEKE, Attorney at Law
BRENT ROAM, Attorney at Law

21 CAROL ILES, Attorney at Law
ED DOWNEY, Attorney at Law

22 MARK LEADLOVE, Attorney at Law
Bryan Cave, LLP

23 211 N. Broadway, Suite 3600
St. Louis, Missouri 63102
24 314.259.2543

FOR: MIEC

25

1 JOHN COFFMAN, Attorney at Law
871 Tuxedo Boulevard
2 St. Louis, Missouri 63119
573.424.6779
3 FOR: AARP
FOR: CONSUMERS COUNCIL OF MISSOURI
4
5 DAVID WOODSMALL, Attorney at Law
Finnegan, Conrad & Peterson
6 428 E. Capitol, Suite 300
Jefferson City, Missouri 65101
7 573.635.2700
FOR: MEUA
8
9 THOMAS R. SCHWARZ, Attorney at Law
Blitz, Bardgett & Deutsch
10 308 E. High Street, Suite 301
Jefferson City, Missouri 65101
11 573.634.2500
FOR: Missouri Retailers
12
13 LEWIS MILLS, Public Counsel
P.O. Box 2230
14 Jefferson City, Missouri 65102
573.751.4857
15 FOR: Office of Public Counsel
16
STEVE DOTTHEIM, Chief Deputy Counsel
17 NATHAN WILLIAMS, Deputy Counsel
JAIME OTT, Legal Counsel
18 KEVIN THOMPSON, Chief Staff Counsel
JENNIFER HERNANDEZ, Legal Counsel
19 SARAH KLIETHERMES, Legal Counsel
ERIC DEARMONT, Legal Counsel
20 ANNETTE SLACK, Legal Counsel
MEGHAN MCCLOWERY, Legal Counsel
21 Public Service Commission
200 Madison Street
22 P.O. Box 309
Jefferson City, Missouri 65102
23 573.751.6514
FOR: The Staff of the Missouri Public Service Commission.
24
25

PROCEEDINGS

1
2 JUDGE WOODRUFF: All right. Let's come to
3 order, please. We're back for one more day of the Ameren
4 rate case hearing, taking up the class cost of service
5 issues.

6 There was a stipulation and agreement filed
7 last week that has been objected to. Under the Commission
8 rules, that means that the stipulation agreement is now just
9 a joint position statement of parties who signed it and
10 further it provides that no party's actually bound by that
11 position statement. So my understanding's that at this
12 point, we'll just be proceeding as if there -- basically as
13 if there had been no stipulation and agreement filed.
14 Parties can tell me if they have any other arrangements they
15 want to consider during opening statements and before we take
16 our first witness.

17 At this point, then, we'll start with opening
18 statements on the rate design class cost of service issue.
19 Beginning with Ameren.

20 MR. MITTEN: Your Honor, Ameren doesn't have
21 an opening statement. As we've indicated in our filing,
22 although the non-unanimous stipulation does not represent
23 Ameren's preferred rate design, the Company doesn't oppose
24 the provisions of that statement and we will not have an
25 opening statement with regard to any of the issues of rate

1 design.

2 JUDGE WOODRUFF: Okay. Then for Staff?

3 COMMISSIONER DAVIS: Judge, can I inquire?

4 And Mr. Mitten, will Ameren have someone who can answer
5 questions specifically about the effect of the stipulation?
6 For instance, if cost of service increases \$108 million, how
7 that's going to be broken out amongst the classes or should I
8 ask that of Staff or who should I ask that of?

9 MR. MITTEN: Mr. Cooper and Mr. Warwick are
10 here today and are prepared to testify if the Commission
11 desires that. Whether they'll have that specific
12 information, I can't say for sure. Since we weren't a
13 signatory to the stipulation, that may be something that the
14 parties who were signatories, that information is something
15 they may have.

16 COMMISSIONER DAVIS: All right. Thank you.

17 JUDGE WOODRUFF: All right. Opening, Staff?

18 MS. McCLOWERY: Staff doesn't have an opening
19 statement, but its position is that each customer class
20 should pay rates that are close to the Company's cost of
21 serving that class while still maintaining rate continuity,
22 rate stability, revenue stability, and minimizing rate shock
23 to any one customer class as stated in its rate design and
24 class cost of service report.

25 And regarding the stipulation and agreement of

1 the consumer groups filed last week, given that the
2 representatives of nearly all of Ameren Missouri's rate
3 classes appear to have agreed to that allocation of the rate
4 increases, the Staff does not oppose it.

5 JUDGE WOODRUFF: Opening for Public Counsel?

6 MR. MILLS: Judge, I don't have a prepared
7 opening either. We are a signatory to the stipulation
8 agreement. We believe it's a reasonable resolution of the
9 issues and we support it.

10 JUDGE WOODRUFF: All right. I don't see DNR
11 in the audience. MIEC?

12 MS. VUYLSTEKE: The MIEC supports the
13 non-unanimous stipulation as well. We will be presenting
14 today the testimony of Morris Brubaker, who is the MIEC's
15 witness on class cost of service and rate design.

16 JUDGE WOODRUFF: All right. For MEG?

17 MS. LANGENECKERT: Missouri Energy Group also
18 supports the non-unanimous stipulation. We do not have a
19 witness on this issue, but we believe that it is a fair
20 distribution of the increase that's granted or decreases as
21 granted to Ameren -- Ameren Missouri.

22 JUDGE WOODRUFF: All right. For MEUA.

23 MR. WOODSMALL: To keep us from getting done
24 too quick. I've got some copies of an overhead.

25 Good morning, and thank you. As an initial

1 matter, I wanted to say that MEUA supports the non-unanimous
2 stipulation that was filed last week by the joint
3 signatories.

4 That stipulation would provide a 2 percent
5 revenue-neutral increase on residential customers, a 4
6 percent increase on municipal lighting, while simultaneously
7 providing revenue-neutral decreases of 1.78 percent to the
8 other customer classes.

9 Now, this is probably superfluous since you've
10 been through it before, but basically the Commission rules
11 provide that a non-unanimous stipulation merely represents a
12 joint position of the parties and is not binding. State ex
13 rel. Fischer addressing that very situation noted that the
14 Commission can't simply adopt a non-unanimous stipulation but
15 must implement a full hearing procedure, including Findings
16 of Fact.

17 This came out kind of small, but what I'm
18 going to go through is the four class cost of service studies
19 that were done in this case and show you why we believe the
20 non-unanimous stipulation is reasonable. What you see here
21 is the AmerenUE class cost of service study and over the last
22 four cases.

23 And most relevant to my clients, what you see
24 is nothing has been done to date to help the problem
25 associated with the large general service/small primary

1 class. Over the last four cases, the subsidy inherent in
2 those class rates have actually gone up from 51.5 million to
3 63.6 million.

4 Same problem exists, in fact, is even greater
5 in Staff's class cost of service study. That shows that for
6 the large general service class, it's gone up from 25.6
7 million and almost tripled now to 76.7 million. So the
8 problem with this class and their rates continues.

9 OPC shows the same thing. It's gone from 22.8
10 million, now to 40.3 million.

11 And finally, the MIEC study shows that
12 basically it stayed the same. Since 2007, it's gone from 72
13 million up slightly to 74.2 million.

14 So putting these all together, here is what
15 you get. You see four different class cost of service
16 studies all showing the large general service/small primary
17 class has -- is paying -- currently paying rates above cost
18 of service. Three of them show 9 percent to 10.5 percent,
19 and then the OPC study shows 4.26 percent. So it's time to
20 do something for the large general service/small primary
21 class. In that regard, we believe that the 1.78 percent
22 represents a step in the right direction for this class and
23 should reverse the trend that we see continuing here.

24 This isn't a unanimous stip. As you noted,
25 the municipal lighting group has filed an objection to the

1 stipulation. I don't believe their objection has any
2 credibility. The non-unanimous stipulation provides for a 4
3 percent revenue-neutral rate increase on municipal lighting.

4 Let's look at how we got to where we are now.
5 The Commission's decision in the last case provided a gift to
6 municipal lighting. The Commission noted at page 96 of their
7 report and order that AmerenUE last performed a class cost of
8 service study for municipal lighting in the 80s and hadn't
9 done one in that case. They noted -- the Commission noted
10 that given that, the lighting class had simply been allocated
11 the same across-the-board adjustments allocated to every
12 other rate class.

13 So given the lack of a class cost of service
14 study, nothing since the 1980s, the Commission just simply
15 exempted them from any rate increase. And this is from page
16 99, the Commission said, Because no class cost of service
17 study has examined the lighting class since at least the
18 1980s, the entire class has been given rates that may or not
19 (sic) bear any resemblance to the cost to serve that class.
20 Under the circumstances, the Commission will exempt the
21 entire lighting class from the rate increase that will result
22 from this report and order. So the Commission just gave them
23 nothing.

24 But the Commission also approved a stipulation
25 that required AmerenUE to conduct a class cost of service

1 study for the lighting class in this case. So those studies
2 have been done and what you now see are three studies, OPC
3 didn't examine the lighting class, but three studies --
4 Staff, AmerenUE and MIEC -- that all show that municipal
5 lighting is currently paying rates that are 17.7 to 24.9
6 percent below cost. That's what you see here.

7 You see, AmerenUE and MIEC are virtually
8 identical. AmerenUE shows that municipal lighting currently
9 paying rates that are \$7 million below costs and that's on a
10 total revenue from that class of \$31 million and change. So
11 they need an increase -- according to the evidence, they need
12 a revenue-neutral increase of 22.4 percent. MIEC shows they
13 need an increase of 7.8 million or 24.9 percent, and Staff
14 shows 5.5 million, 17.7 percent.

15 So the evidence shows that 17.7 to a 24.9
16 percent below cost currently. This is largely a function of
17 the fact that the Commission just exempted them from the 10.4
18 percent increase in the last case. Now, remember, that was
19 without any evidence. There was no class cost of service
20 study, so the Commission just simply exempted them from that
21 increase. So you take 10.4 percent away, you quickly get to
22 the 17.7 and the 24.9 percent.

23 Realistically, in my mind, the Commission
24 should undo what they did in the last case. The Commission
25 exempted them from a 10.4 percent increase, at the least, the

1 Commission could rightfully impose that 10.4 percent
2 increase. But that's not what we did.

3 The joint signatories attempted to move in
4 reasonable gradual steps and our stipulation simply imposes a
5 4 percent increase. We believe it's a reasonable step and
6 the Commission should adopt it.

7 Now, the important part to remember is I
8 mentioned that there are three studies that show how far
9 below costs the municipal lighting class is. The other part
10 is there's no rebuttal to those studies. All the studies
11 show that they're well below cost and there's been nothing
12 filed to indicate that those studies are wrong.

13 Therefore, it's MEUA's belief that the
14 non-unanimous stipulation is a reasonable step towards
15 correcting the inequities contained in the currents rates.
16 We believe that once given all the evidence that will be
17 presented today, that the non-unanimous stipulation will be
18 supported by competent, substantial evidence and the
19 Commission should approve it. Thank you.

20 JUDGE WOODRUFF: Thank you. Opening for AARP?

21 MR. COFFMAN: I have no opening, but I'll
22 state that both of my clients, AARP as well as the Consumers
23 Council of Missouri, entered into the non-unanimous
24 stipulation after careful consideration and negotiation, and
25 we do believe that it's a fair way to resolve the issue and

1 that the joint proposal represented in the non-unanimous
2 stipulation is very clearly supported by the evidence in the
3 record.

4 JUDGE WOODRUFF: Thank you.

5 MR. COFFMAN: Or that will be in the record.

6 JUDGE WOODRUFF: Opening for Missouri
7 Retailers?

8 MR. SCHWARZ: The Missouri Retailers are a
9 signatory to the non-unanimous stip and agreement. We fully
10 support it as a reasonable resolution of the issues raised by
11 the evidence in the case. We do not have a witness in this
12 case, but are on record as supporting the non-unanimous
13 stipulation.

14 JUDGE WOODRUFF: Thank you. For the Municipal
15 Group.

16 MR. CURTIS: If it please the Commission, we
17 are the objecting party and we object for the following
18 reasons: First of all, Ameren's filed case produced a
19 lighting study for the first time since -- we've not even
20 seen one before. We believe the Commission did the correct
21 thing in the last case because there was no class cost of
22 service study current or even in the last two decades. So we
23 object to the characterization of it being a gift. We think
24 it was the proper decision on the evidence.

25 Now, with regard to the current case.

1 Ameren's study shows a cost of service increase, a need for
2 an increase for the lighting class, but they did
3 differentiate. And I want to focus on that differentiation.

4 For the 6M class, and for customer-owned poles
5 and facilities, they found the 6M class was underpaying by
6 216 percent. That's 216 percent.

7 I'm here representing primarily the 5M
8 municipal customers. Ameren concluded that for the 5M
9 customers, it was more of a modest 15 percent off on the cost
10 of service study. So that's a significant difference. I'm
11 here about the 5M customers. And that is company-owned
12 facilities.

13 Now, Ameren's filed case recommended, even
14 though they filed a cost of service study, they recommended
15 that the lighting class as a whole received the system-wide
16 average. It did adjust the 6M up slightly and adjusted the
17 5M down slightly also. I think 9.71 was the 5M recommended
18 increase. Staff took the position that the lighting class
19 should move somewhat in that direction and so Staff
20 recommended the system-wide average on revenue plus 1
21 percent. We have no objection to either one of those.

22 The 4 percent, we believe, is excessive and
23 we'll show that the 4 percent added to the system-wide
24 average, and who knows where that would be, but I'm going to
25 guess it's going to be for the lighting class, probably, a 10

1 percent increase. And if you look at a 10 percent increase
2 and you look how this is -- will effect the 5M lighting
3 class, you will find, as we talked about earlier, that a
4 number of the municipalities, typically the newer
5 municipalities like O'Fallon, will, in fact, get a 22 percent
6 increase. And that is a high rate. And that is much more
7 than, you know, even the cost of service study.

8 And the -- the reason for that is Ameren's
9 filed rates for the 5M all increased by 22 percent based on
10 their number, which is roughly about 10 percent. That was
11 the initial filing point. If you look at where the case
12 stands right now, it's likely to be with the non-unanimous
13 stipulation, the 4 percent added to a 5 or 6 percent, it's
14 going to wind up to be about 10 percent. So they're going to
15 be very similar in numbers. And that's going to effect a 22
16 percent increase for cities like O'Fallon, St. Peters and
17 some of the newer cities.

18 The reason for that is while the actual rates,
19 and we will show them in Ms. Eastman's schedule, show that on
20 each one of the 5M pole charges, rates, they were exactly a
21 22 percent increase and that's what we're looking at today.
22 The -- the reason for that is obviously the elimination of
23 the pole charge, which we have focused on before, the main
24 one being the \$7.68 pole charge per month for poles installed
25 prior to September 27, 1988.

1 Now, Ameren has proposed to eliminate those
2 charges completely. They have been charging cities, the
3 older cities with poles that were installed prior to 1988,
4 \$7.68 a month for a long, long time. And all of a sudden
5 they're saying oh, we're just going to eliminate that. Now,
6 if those charges were legitimate prior, how can they say
7 they're going to eliminate them now?

8 Because actually, as we told you before, they
9 are not eliminating them. They are, in fact, spreading those
10 to the entire 5M class. And that is why the cities like
11 O'Fallon and St. Peters, the newer cities where the vast
12 majority of their poles are post-1988 installed -- and under
13 the Tariff Sheet 40, post-1988 poles had to be paid by the
14 municipalities entirely up front.

15 So these cities paid for all their poles up
16 front and now the effect of what Ameren is proposing is that
17 in addition to having paid for those poles up front, these
18 newer cities also get the privilege of paying for these
19 eliminated pole charges. They haven't been eliminated.
20 They've been merely spread to the entire class. And that is
21 inequitable. And we are still puzzled.

22 We think, and we cannot prove it because we
23 did not have the resources to do it, but there is something
24 rotten in the state of those pole charges. All of a sudden,
25 Ameren comes in and says we're just going to eliminate them.

1 You just don't do something like that. If those were
2 properly charged against the cities who installed pre-1988
3 poles, how can they come in and say we're just going to
4 eliminate them now? That merits some investigation. And
5 that's one of the reasons we are objecting to this.

6 The other -- the other point, which we will
7 try to develop -- and we had taken the position that with
8 regard to the 2.8 million in pole charges under sheet 40 of
9 Ameren's tariff, that they're proposing to eliminate, we are
10 saying that they said they wanted to eliminate them,
11 eliminate them completely. Take that 2.8 out, it's probably
12 a suspect charge, and we don't know why they're trying to
13 sweep in under the rug by passing it on to the entire class,
14 but it doesn't smell right.

15 The other alternative that we will perhaps
16 explore today with some of the witnesses, is because if you
17 take the total elimination of the 2.8 million in pole charges
18 and spread them to the entire class, that is what exacerbates
19 the rates up to 22 percent for the newer cities.

20 And so what we are -- have suggested in some
21 of our conversations with the signatory parties in this
22 stipulation -- non-unanimous stipulation, is that in order to
23 eliminate the rate shock that a total elimination and a
24 spreading of the 2.8 million in pole charges would do to the
25 5M class, phase in that elimination over a ten-year period.

1 That would at least mitigate some of the rate shock to the
2 newer cities, and frankly, to the older cities, it would
3 allow them to wean off of that charge.

4 So that's our position. Our revised position
5 with regard to the pole charges is if you're not going to
6 eliminate it completely from the revenue, at least phase it
7 out for a ten-year period so we eliminate some of the rate
8 shock. Thank you.

9 JUDGE WOODRUFF: Thank you.

10 COMMISSIONER JARRETT: May I inquire?

11 JUDGE WOODRUFF: Sure.

12 COMMISSIONER JARRETT: Sir, I have a couple of
13 questions. You indicated in your opening statement that you
14 oppose the stipulation, which is now a joint position
15 statement of several of the parties?

16 MR. CURTIS: Yes.

17 COMMISSIONER JARRETT: So I assume that you
18 consider that under that stipulation, your client is the
19 loser?

20 MR. CURTIS: Yes.

21 COMMISSIONER JARRETT: Are there any other
22 losers, in your opinion, in that stipulation?

23 MR. CURTIS: Oh, I -- I can't say. I can't
24 really speak for the other classes. I'm not that familiar
25 with where their cost of studies are and the differentials.

1 Obviously, we feel that the 5M class is being somewhat
2 singled out, really. And again, it -- the municipal lighting
3 category, we think, is akin to residential. I mean, these
4 are -- these are public entities that are providing public
5 services in street lighting for the health and safety and
6 benefit of the entire community. You know, all residences,
7 businesses, et cetera. We think that some equity should flow
8 there, similar to the equities that had flowed traditionally
9 to the residential class, but I can't -- I can't pick winners
10 and losers, Your Honor.

11 COMMISSIONER JARRETT: Well, obviously you
12 think you're a loser --

13 MR. CURTIS: Yes.

14 COMMISSIONER JARRETT: -- in this. So who's
15 getting the benefit of your loss here?

16 MR. CURTIS: Uh-huh.

17 COMMISSIONER JARRETT: Can you answer that?

18 MR. CURTIS: Well, you know, an infinitesimal
19 amount because we're not dealing with large dollars here, of
20 course, but probably the large lighting class, and those are
21 the categories that are going down slightly and properly so.
22 But you know, I think it would be a matter of adjusting a .01
23 or .02 percent to those to at least cover for the Municipal 4
24 percent.

25 COMMISSIONER JARRETT: All right. Thank you.

1 I appreciate your answers.

2 COMMISSIONER DAVIS: Wait. Can I inquire,
3 Mr. Curtis?

4 MR. CURTIS: Certainly.

5 COMMISSIONER DAVIS: So what is your desired
6 outcome? And what relief are you asking for? You know, how
7 would you -- how would you amend the stip so you could be
8 made whole?

9 MR. CURTIS: We would -- we would amend the
10 stip. We would be -- and I don't know that -- I may be
11 speaking out of school because I'm going into matters that
12 have been in discussion and I probably should not reveal
13 where we are. It's possible we might arrive yet. We have
14 been in discussions. There is a number that we're -- that we
15 could live with.

16 COMMISSIONER DAVIS: Okay. But can you tell
17 us what you want?

18 MR. CURTIS: We want -- actually, we want, as
19 Ameren recommended, the system-wide increase. And -- and
20 Staff has recommended system-wide plus 1 percent. We would
21 not object to that.

22 One thing, though, we do -- we would like is
23 with regard to the pole charges, the 2.8 million in pole
24 charges that are being eliminated. We would -- Ameren has
25 said they're eliminated and we want them completely out of

1 their cost base. And we think it's improper -- if those were
2 properly charged to the pre-1988 installed pole cities, why
3 are they eliminating it completely now and spreading it to
4 the newer cities? That's very -- very suspect and very
5 unfair.

6 So we are suggesting, as we did before, that
7 that 2.8 be completely eliminated. But if the Commission
8 does not want to go that way, at least phase that out over a
9 ten-year period. 10 percent per year. You could take the
10 \$7.68 for the wood pole charge minus, you know, it's about
11 \$.77, I guess, for the first year, and then 10 percent for
12 every year thereafter.

13 If Ameren came in the next year for another
14 rate case, it would be another year and take it off gradually
15 that way. That would at least mitigate some of the rate
16 shock and it would be revenue-neutral to Ameren; it would be
17 revenue-neutral to all the other customer classes.

18 COMMISSIONER DAVIS: The PSC Staff is saying
19 keep the pole charges, aren't they?

20 MR. CURTIS: I'm not sure what their position
21 is.

22 COMMISSIONER DAVIS: Well, let's ask them.

23 MR. CURTIS: Good idea.

24 COMMISSIONER DAVIS: Ms. Kliethermes, what's
25 PSC Staff's position on the pole charges?

1 MS. KLIETHERMES: PSC Staff is recommending
2 retaining the pole charges. This phase-out is the first
3 we've heard of it this morning. Obviously we haven't talked
4 to technical staff, but I would just indicate to the
5 Commission that phasing in and out of rates tends to be a
6 somewhat complicated procedure, that perhaps if -- if there's
7 interest in going that route, I think additional testimony
8 would definitely need to be taken.

9 COMMISSIONER DAVIS: Mr. Curtis, did you have
10 anything to respond to Ms. Kliethermes?

11 MR. CURTIS: And I agree with what Ms.
12 Kliethermes has said, but I don't think it's a terribly
13 difficult calculation to phase out on a 10 percent over a
14 ten-year period. A -- you know, one or two pole charges.
15 That can -- those spreadsheets can say that's not a difficult
16 task, I don't believe.

17 And I do think that there is a merit in it
18 when you look at the unfairness of -- and the shock of
19 putting on a 22 percent rate increase to some of the -- the
20 newer cities who have already paid for all of their poles.
21 For them to even be charged for this -- these pre-1988 poles
22 that don't even exist in there and the bulk of them are in
23 other cities, there's something inequitable about that.

24 COMMISSIONER CURTIS: But you're not okay with
25 us keeping the pole charges?

1 MR. CURTIS: If you want to keep the pole
2 charges, that -- you know, we -- we don't think they've been
3 justified, but we have no evidence to -- to refute them. So
4 if you want to keep them, you can keep them.

5 COMMISSIONER DAVIS: So that was a yes, maybe?

6 MR. CURTIS: Maybe, yes.

7 COMMISSIONER DAVIS: Maybe, yes. Okay.

8 MR. CURTIS: Well, I mean, ultimately, it is
9 -- it probably would be better just to keep them. Although
10 if Ameren is talking about phasing them out, you know, a
11 transition over a ten-year period might work. But it's still
12 -- it still winds up being unfair to those 5M municipalities
13 that didn't have any pre-1988 poles.

14 COMMISSIONER DAVIS: Okay. Let's assume that
15 we keep the pole charges.

16 MR. CURTIS: Uh-huh.

17 COMMISSIONER DAVIS: Then what do we got to do
18 to make things equitable for your customers, in your opinion,
19 your 5M customers?

20 MR. CURTIS: 5M customers. I would say -- I
21 would say you go with Ameren's recommendation that the -- the
22 lighting class -- take the system average increase. That's
23 what they've recommended, and in fact, the -- they've sort of
24 split and moved the 6M up a little bit more and the 5M down
25 so that Ameren's filed case was requesting a 10.8 percent

1 increase. That's about, maybe, where we are with a 4 percent
2 additive that is recommended in the non-unanimous stip.

3 For the 5M class, Ameren recommended a nine
4 point -- I believe it was -- seventy-one percent increase.
5 So it's a little bit below the system-wide average. We would
6 take the system-wide average and we think that would be --
7 that would be equitable.

8 COMMISSIONER DAVIS: Okay. Well, we've got a
9 system here where, I think as Mr. Woodsmall demonstrated
10 fairly eloquently, that all four class cost of service rate
11 design studies demonstrated that the residential customers
12 were paying less than their fair share, at least to some
13 degree.

14 MR. CURTIS: Right.

15 COMMISSIONER DAVIS: Now, there's -- and I
16 think there were at least two other classes, the small
17 general services and the large general services/small primary
18 that everyone agreed were overpaying and entitled to a
19 reduction. And that's -- and then there's some -- a little
20 bit more debate about large primary, about Noranda, which is
21 large transmission service and lighting.

22 So I guess looking at the stip where
23 residential has agreed to take a 2 percent increase, and I
24 forget the number here, it's a -- approximately 1.78 percent
25 decrease; is that correct, Mr. Mills?

1 MR. MILLS: Yeah.

2 COMMISSIONER DAVIS: For everybody else, so is
3 there any way for us to fit you into that scheme? And if so,
4 how? And then we'll follow that up with is there evidence to
5 support it?

6 MR. CURTIS: Well, I think it is a balancing
7 game or a balancing decision that the Commission has with
8 regard to -- given the cost of service study, you know, are
9 there equities in moving people more rapidly or less rapidly.
10 So I think if you were to do a 2 percent, say, increase
11 similar to residential for lighting, I think you'd calculate
12 the math, somebody can, I think you're talking about an
13 infinitesimal percentage of decimal points. As I said before
14 .012 for some of the classes. It's not that much. I mean,
15 the difference between 2 and 4 percent on a lighting revenue
16 annually of about 32 million, you can do the math. It's
17 about --

18 COMMISSIONER DAVIS: We're talking 32 million
19 out of over a billion, correct?

20 MR. CURTIS: Yeah. So, I mean, the 2 percent
21 reduction spread to other classes is not -- not a big number,
22 I wouldn't think.

23 COMMISSIONER DAVIS: It might be to them.

24 MR. CURTIS: It might be. Apparently it is to
25 Mr. Woodsmall.

1 COMMISSIONER DAVIS: And that include -- that
2 would be the same if we were saying we're keeping the pole
3 charges?

4 MR. CURTIS: Yes. Yes, that's correct. The
5 removal of pole charges is a very strange thing.

6 COMMISSIONER DAVIS: Do you think that maybe
7 they're being punitive toward you?

8 MR. CURTIS: I wouldn't say that, no.

9 COMMISSIONER DAVIS: All right.

10 MR. CURTIS: I would not ascribe those motives
11 to a fine company like Ameren.

12 COMMISSIONER DAVIS: Okay. Did anybody else
13 want to comment on my questioning to Mr. Curtis about his
14 saying it's only a fraction of decimal points? I assume your
15 class doesn't want to pay anymore, Mr. Woodsmall.

16 MR. WOODSMALL: Absolutely not. And I think
17 the important thing that you need to understand here is from
18 what I understand from Mr. Curtis's statements, is it doesn't
19 appear that his problem is so much with class cost of
20 service, it's with rate design. All the class cost of
21 service studies show that he needs -- their class needs a 17
22 to 25 percent increase. The pole charges is merely how you
23 collect that increase.

24 COMMISSIONER DAVIS: Right.

25 MR. WOODSMALL: And it's a rate design within

1 that class. And getting rid of that pole charge doesn't
2 effect how much that class should pay. It would be, in my
3 mind, somewhat analogous to if you eliminated the customer
4 charge for residential, it doesn't change the fact that they
5 have to pay the same amount, you know, amount of costs,
6 you're now going to collect it over a demand charge, energy
7 charge.

8 Eliminating the pole charge doesn't effect the
9 fact that they are under cost. Get rid of the pole charge
10 now, you just might increase their facility charge or their
11 energy charge or something. So it's purely rate design and
12 I'm still --

13 COMMISSIONER DAVIS: Within -- within the
14 customer class?

15 MR. WOODSMALL: Within the lighting class,
16 right. So I'm a little -- still a little baffled given all
17 the class cost of service studies up to at least 25 percent,
18 4 percent seems reasonable still.

19 So we haven't commented on what the rate
20 design with them, the lighting class, should be. There may
21 be some arguments there for -- that Mr. Curtis has, but I
22 still don't see how that is relevant to whether the
23 non-unanimous stipulation is reasonable.

24 COMMISSIONER DAVIS: Okay. Let me divide that
25 up. Regardless of whether the non-unanimous stip is, I

1 guess, reasonable or not, he is objecting. So therefore,
2 it's a joint position statement and we can approve that joint
3 position, but it's --

4 MR. WOODSMALL: Let me take that --

5 COMMISSIONER DAVIS: I'm just trying to figure
6 out the legal semantics here.

7 MR. WOODSMALL: You can effectively approve
8 it, but you have to reach independent Findings of Fact to get
9 there. You can't just simply summarily approve it.

10 COMMISSIONER DAVIS: Right, right. We're
11 going to have to rely on the submitted testimony of
12 Mr. Brubaker, Staff, Ms. Meisenheimer, Mr. Kind, et cetera.

13 MR. WOODSMALL: Right.

14 COMMISSIONER DAVIS: Competent, substantial
15 evidence.

16 MR. WOODSMALL: Exactly.

17 COMMISSIONER DAVIS: All right. Anybody else
18 have anything to add?

19 MR. MILLS: Just with respect to that very
20 last question. I think really the -- in its most simple
21 form, the question that you're presented here by this
22 objection is: Is the municipal lighting class going to be
23 able to present evidence that shows that the 4 percent shift
24 to lighting is unreasonable? And I think that's kind of what
25 you're looking for here.

1 I think that's Mr. Curtis's job today, is to
2 come up with evidence to show that the aspect to which he's
3 objecting is not reasonable and not supported by the
4 evidence. And I think that's going to be an uphill battle.

5 COMMISSIONER DAVIS: Is that that whole burden
6 shifting thing from the Atmos case, Mr. Mills?

7 MR. MILLS: I don't recall that specific case.

8 COMMISSIONER DAVIS: All right.

9 MR. CURTIS: Your Honor, I don't see how a
10 non-unanimous stipulation can add an iota to a mound of
11 proof. It's merely a position statement. There's evidence
12 in the record and we will rely on that.

13 COMMISSIONER DAVIS: Okay. And I guess,
14 Mr. Curtis, what -- what is the evidence in the record -- I
15 mean, because we've got Ameren's cost of service study and
16 we've got four -- we've got Staff's, we've got four studies
17 here and what -- what specific evidence in the record will
18 support your position?

19 MR. CURTIS: Well, the evidence in the record
20 is the cost of service filed by Ameren primarily.

21 COMMISSIONER DAVIS: Okay.

22 MR. CURTIS: And the position that Ameren has
23 taken, which is, I would say, an admission with regard to the
24 lighting class. There should be no rate increase other than
25 the system-wide average. Staff has taken a similar position,

1 only it added a 1 percent additive. I think those are
2 admitted positions.

3 COMMISSIONER DAVIS: All right. I don't have
4 any further questions. Thank you, Mr. Curtis.

5 MR. MITTEN: Your Honor, could I add one
6 comment as well?

7 JUDGE WOODRUFF: Sure.

8 MR. MITTEN: I think it's important for the
9 Commission to recognize that everything you've heard from
10 Mr. Curtis today is not evidence, it's argument. The
11 lighting issue has been fully litigated in this case.
12 Pre-filed testimony was filed on behalf of the Company and on
13 behalf of the municipalities and we spent several hours earlier
14 in this hearing fully litigating that issue.

15 So all the evidence that needs to be in the
16 record is already in the record and I don't think there's any
17 basis for the Commission or for Mr. Curtis to be about to
18 relitigate any of those issues at the hearing today.

19 JUDGE WOODRUFF: All right. Well, I believe
20 that concludes the opening statements, then, on this issue
21 and we'll move on to our first witness. I assume we'll start
22 with Ameren's witnesses.

23 MR. MITTEN: I call Mr. Cooper.

24 JUDGE WOODRUFF: All right. Good morning,
25 Mr. Cooper.

1 THE WITNESS: Good morning.

2 JUDGE WOODRUFF: And you have testified
3 previously in this case, so you are still under oath.

4 THE WITNESS: Yes, thank you.

5 JUDGE WOODRUFF: The way we've handled
6 objected-to stipulations in the past is to offer the parties
7 an opportunity to do additional direct at the beginning of
8 the witness's testimony, if they wish to explain their
9 position on the stipulation. I assume we'll do that again
10 this time. So if you have any additional direct for this
11 witness, you can now ask it at this time.

12 DIRECT EXAMINATION

13 QUESTIONS BY MR. MITTEN:

14 Q. Mr. Cooper, are you familiar with the
15 statement that Ameren has filed with regard to the
16 non-unanimous rate design stipulation in this case?

17 A. Yes, I am.

18 Q. And could you please reiterate for the
19 Commission what that position is?

20 A. Yeah, I'll just read from the response that we
21 filed with the Commission.

22 Ameren Missouri continues to believe that the
23 equal, across-the-board allocation of the rate increase
24 sought in this case reflects the most appropriate rate design
25 for its customers. However, given that representatives of

1 nearly all of Ameren Missouri's rate classes, including the
2 Office of Public Counsel, who is charged with representing
3 the interest of the public, including importantly the
4 interest of residential customers, appears to have decided
5 that industrial customers and large retailers should bear
6 less of the rate increase and that the revenue shift cost of
7 service by that agreement should be borne primarily by
8 residential customers, Ameren Missouri does not intend to
9 assert its rights under 4 CSR 240-2.115(2)(B).

10 Q. Do you have any other statements with regard
11 to the proposed non-unanimous stipulation that you'd like to
12 make at this time?

13 A. No, I do not.

14 MR. MITTEN: I have no further questions for
15 Mr. Cooper and he's available for cross-examination.

16 JUDGE WOODRUFF: Then we'll go to MEUA.

17 MR. WOODSMALL: Thank you, Your Honor. Real
18 briefly. I've got two data requests that I'd like to have
19 marked. And I believe these are my first exhibits.

20 (Exhibit No. 550 was marked for identification
21 by the Court Reporter.)

22 CROSS-EXAMINATION

23 QUESTIONS BY MR. WOODSMALL:

24 Q. Mr. Cooper, do you recognize this data
25 request?

1 A. Yes, it was prepared by Mr. Jim Pozzo of our
2 team.

3 Q. Would you agree that this data request
4 indicates that school districts are primarily served under
5 the small general service and large general service classes?

6 A. Yes.

7 Q. Okay. Would you agree also that probably
8 churches are served under those rate classes?

9 A. Yes.

10 Q. Okay. Would you agree that charities are
11 probably served under those rate classes?

12 A. Yes.

13 MR. WOODSMALL: Your Honor, I'd ask for the
14 admission of 550.

15 JUDGE WOODRUFF: 550 has been offered, any
16 objections to its receipt? Hearing none, it will be
17 received.

18 (Exhibit No. 550 was received by the
19 Commission.)

20 (Exhibit No. 551 was marked for identification
21 by the Court Reporter.)

22 BY MR. WOODSMALL:

23 Q. Do you recognize Exhibit 551, Mr. Cooper?

24 A. Yes. This was prepared by Mr. William Warwick
25 of our team.

1 Q. And can you tell me what the data request --
2 would you agree that those data requests represent AmerenUE's
3 -- the results of AmerenUE's class cost of service studies
4 over the last four cases?

5 A. That is correct.

6 MR. WOODSMALL: Okay. Move for the admission
7 of 551, Your Honor.

8 JUDGE WOODRUFF: All right. 551 has been
9 offered, any objections to its receipt? Hearing none, it
10 will be received.

11 (Exhibit No. 551 was received by the
12 Commission.)

13 MR. WOODSMALL: No further questions.

14 JUDGE WOODRUFF: All right. Then move to
15 AARP.

16 MR. COFFMAN: No questions, Your Honor.

17 JUDGE WOODRUFF: Missouri Retailers?

18 MR. SCHWARZ: No questions, Judge.

19 JUDGE WOODRUFF: MEG?

20 MS. LANGENECKERT: No questions.

21 JUDGE WOODRUFF: Public Counsel?

22 MR. MILLS: I hope this will be a very brief
23 question.

24 ///

25 ///

1 CROSS-EXAMINATION

2 QUESTIONS BY MR. MILLS:

3 Q. Mr. Cooper, when you were on the stand earlier
4 on the municipal lighting issue, did you explain why Ameren
5 Missouri's proposing to eliminate the pole charges?

6 MR. MITTEN: Your Honor, I'm going to object
7 to any questions regarding municipal lighting. As I
8 mentioned earlier, that issue has been fully litigated in
9 this case and all parties, including Mr. Mills, had an
10 opportunity to ask questions about the Company's pre-filed
11 testimony on that issue at that time.

12 JUDGE WOODRUFF: Your response?

13 MR. MILLS: I don't have a response.

14 JUDGE WOODRUFF: All right. I'll sustain the
15 objection.

16 MR. MILLS: No questions.

17 JUDGE WOODRUFF: Staff.

18 MS. McCLOWERY: No questions.

19 JUDGE WOODRUFF: All right. Then we'll go
20 back to Muni Group.

21 CROSS-EXAMINATION

22 QUESTIONS BY MR. CURTIS:

23 Q. Good morning, Mr. Cooper.

24 A. Good morning, Mr. Curtis.

25 Q. With regard to the wood pole and ornamental

1 concrete pole and steel breakaway charges on that sheet 40,
2 Paragraph E.2 of Ameren's current tariffs. Are you familiar
3 with that?

4 MR. MITTEN: Your Honor, I'm going to object
5 to any questions of Mr. Cooper regarding the residential
6 lighting testimony that he filed in this case. As I
7 indicated previously, Mr. Cooper's already been on the stand
8 and has been subject to cross-examination by all parties,
9 including Municipal Group, on that pre-filed testimony.

10 MR. CURTIS: Your Honor, I haven't even asked
11 a question.

12 JUDGE WOODRUFF: I think the objection is
13 premature. We'll see what the question is, first.

14 THE WITNESS: Could you repeat the question,
15 please?

16 BY MR. CURTIS:

17 Q. I wanted to refer you first to sheet 40 and
18 those pole charges that are under Paragraph E.2.

19 A. Yes.

20 Q. Do you see those?

21 A. Yes.

22 Q. What did Ameren's class cost of service with
23 regard to lighting show with regard to those particular
24 charges?

25 MR. MITTEN: Your Honor, I'm going to object

1 to that question and any other questions regarding
2 Mr. Cooper's testimony on municipal lighting issues. As I've
3 indicated earlier, that issue's been fully litigated.

4 Mr. Cooper was presented as a witness on that issue and was
5 available for cross-examination by all parties, including the
6 Municipal Group. And in fact, the Municipal Group did spend
7 some time asking Mr. Cooper questions on that issue. So I
8 don't think it's appropriate for the municipals to get a
9 second bite of the apple on that issue.

10 And I would note that I've scanned the room,
11 and I don't believe that the Municipal witness on this issue
12 is even present at the hearing today. So it would be
13 especially inappropriate for the Municipal Group to be
14 allowed to ask the Company's witnesses questions on an issue
15 that's already been fully litigated without affording the
16 Company the same opportunity with regard to its own witness.

17 JUDGE WOODRUFF: Mr. Curtis, your response?

18 MR. CURTIS: My response is, I'm inquiring
19 regarding his class cost of service on which he is testifying
20 today.

21 MR. MITTEN: Mr. Cooper was a witness on the
22 lighting issue for purposes of answering questions regarding
23 the class cost of service study that was performed on the
24 lighting issues. So again, he's already been made available
25 for cross-examination on that issue and it would be

1 inappropriate for him to have to answer questions on that
2 issue today.

3 JUDGE WOODRUFF: All right. Well, I also do
4 not want to -- Mr. Woodsmall, do you want to --

5 MR. WOODSMALL: No, no.

6 JUDGE WOODRUFF: I also do not want to rehash
7 what we've previously heard, but Ameren's position would
8 preclude the Municipal Group from asking basically any
9 questions at this point.

10 MR. MITTEN: That's correct.

11 JUDGE WOODRUFF: And I'm going to overrule the
12 objection. The question that was asked was about the class
13 cost of service study and that's what this witness is here to
14 testify to today. It may be that -- and when further
15 questions come on, there may be appropriate objections, but
16 I'm not going to preclude the Municipal Group from asking
17 questions on anything today, so -- on the class cost of
18 service of issue today. So the objection is overruled, you
19 can answer the question.

20 THE WITNESS: Would you repeat the question,
21 please?

22 BY MR. CURTIS:

23 Q. What did your -- did Ameren's class cost of
24 service with regard to lighting show with regard to the wood
25 pole and other pole rental or installations -- charges that

1 were made for poles installed prior to September 27, 1988?

2 A. Mr. Curtis, Mr. Difani sponsored that
3 testimony and testified last week. What I do have in my
4 direct testimony at page 18 is that our class cost of service
5 results produced an increase of approximately 36 percent for
6 the lighting category -- and that would be both 5M, 6M, and
7 7M -- at equal rates returned for our respective customer
8 classes.

9 Q. And specifically, you would agree with me that
10 with regard to the 5M, cost of service study showed a 15
11 percent increase would be in line to bring it in line with
12 its cost of service?

13 MR. MITTEN: Your Honor, could I ask that the
14 record reflect the Company's continuing objection to any
15 questions of Mr. Cooper regarding lighting issues that have
16 already been litigated in this case?

17 JUDGE WOODRUFF: It will be so noted.

18 THE WITNESS: Correct.

19 BY MR. CURTIS:

20 Q. Did not your class cost of service study show
21 that the 5M customer class would need a 15 percent increase
22 to come in line -- fully in line with its cost of service?

23 A. No. The class cost of service study itself,
24 again, sponsored a 36 percent increase for the lighting
25 category. Mr. Difani performed what I would call a current

1 cost study, as indicated on page 23 of my testimony. And it
2 produced a 15 percent increase for the 5M and a 216 percent
3 increase for the 6M class in order to equitably distribute
4 the 36 percent increase between those two classes.

5 Q. So you do agree, then, for 5M, the increase
6 would need to be 15 percent?

7 A. That is correct. As indicated on page 23 of
8 my testimony, if you are to rely solely on the class cost of
9 service study with regard to the lighting category and then
10 the further refinement of that study on a current cost basis
11 performed by Mr. Difani.

12 Q. Right. And Mr. Difani testifies to that
13 effect on page 10 of his direct, does he not?

14 A. I will accept that. I do not have his
15 testimony with me.

16 Q. Given that class cost of service, though,
17 Ameren did file its case and its recommendation that the
18 lighting class receive a system-wide average increase?

19 A. That is correct. The lighting category.

20 Q. Lighting category, yes.

21 MR. CURTIS: I have nothing further, thank
22 you.

23 THE WITNESS: Thank you.

24 JUDGE WOODRUFF: Thank you. Then questions
25 from the bench, Commissioner Davis?

EXAMINATION

1
2 QUESTIONS BY COMMISSIONER DAVIS:

3 Q. Good morning, Mr. Cooper.

4 A. Good morning, Commissioner Davis.

5 Q. Did you review the non-unanimous stipulation
6 agreement filed by the various consumers in this case?

7 A. Yes, I did.

8 Q. Do you have a copy of it?

9 A. I believe I do. Bear with me for just a
10 minute, please. Yes, I have it in front of me.

11 Q. Okay. So I'm just trying to make sure that I
12 understand this correctly. In numbered Paragraph 1 on
13 page 1, there is a table. And the table says that current
14 revenues from the residential class are, I'm going to say,
15 that's 1,099,447,000; is that correct?

16 A. That is correct.

17 Q. Okay. And so the revenue increase is going to
18 be an additional \$21,989,000, correct?

19 A. That is correct, before any increases ran by
20 the Commission associated with the request in this case.

21 Q. That's before any increases. Okay. And so I
22 just want to make sure that -- that my interpretation of
23 those -- those numbers is correct.

24 And I seem to remember reading a newspaper
25 story where -- I believe it was Mr. Lowery was quoted, that

1 after you factor in the rate increase, that it figures out
2 like the residential customer class would get a 7 percent
3 increase and all the other classes would only get a 3 percent
4 increase. Is that correct? Is that how -- is that the
5 effect that this stipulation has?

6 A. Commissioner Davis, it would be -- depend on
7 the level of the increase granted in this case. I did take
8 the liberty to compute what the various class increases would
9 be for a certain range of increases. And if you'd like to
10 provide me with a hypothetical increase amount that I might
11 be able to shed some lighting on what the class impacts would
12 be.

13 Q. All right. Let me go to the May 16th true-up
14 reconciliation. Are you familiar with that document?

15 A. Yes, I am.

16 Q. All right. Now, I realize that it was
17 compiled by the PSC Staff, but is it true and accurate to the
18 best of your knowledge?

19 A. Yes.

20 Q. Okay. So right now, Ameren is seeking \$211
21 million, approximately, is that correct?

22 A. That is correct.

23 Q. All right. And Staff has recommended
24 reductions in the amount of approximately \$118 million and
25 OPC has recommended an additional -- they've said they were

1 for all of Staff's proposed reductions and plus an additional
2 10 million on Taum Sauk, so that would roughly be \$82
3 million. So how would that additional \$82 million be
4 apportioned?

5 A. In my hypothetical runs, I didn't get down to
6 the level of increase of 82 million, unfortunately. But I do
7 have 100 million. I can share with you our calculation.

8 Q. Why don't you just tell me what you got.

9 A. Okay. Why don't I start at \$100 million, a
10 nice round number.

11 Q. \$100 million would be a good, nice round
12 number.

13 A. Okay. The overall increase would be
14 approximately 4.1 percent for residential, it would be -- I'm
15 sorry.

16 Q. No, okay. 4.1 percent overall?

17 A. Overall.

18 Q. Overall increase would be about 4.1?

19 A. Approximately. For residential, we'd be about
20 6.1 percent.

21 Q. Okay. So 6.1 percent increase for
22 residential?

23 A. That is correct.

24 Q. Okay. Now what else?

25 A. Okay. For the small general service class,

1 about 2.3 percent. For the large general service/small
2 primary service class, about 2.3 percent. For the large
3 primary class, about 2.3 percent. For large transmission,
4 about 2.3 percent. For lighting, about 8.1 percent.

5 Q. Okay.

6 A. And why don't I move to 150, that's a nice
7 round number.

8 Q. Hold on. Before you get to 150, I think 150
9 is a very interesting number, because if we take Ameren's
10 revenue requirement of 211 million and just subtract around
11 61 million from MIEC's recommendation, 211 million minus 61
12 million is 150 million, isn't it?

13 A. Yeah, I agree with the math.

14 Q. You agree with that math. All right. So tell
15 us what 150 million would yield.

16 A. All right. That would yield an increase,
17 overall, of about 6.2 percent overall. Residential -- I'm
18 sorry.

19 Q. Overall increase of 6.2 percent?

20 A. That's correct. Residential would be about
21 8.2 percent.

22 Q. 8.2 percent on the residential side?

23 A. That's correct. Remaining non-residential
24 classes, excepting lighting, would be about 4.4 percent. So
25 that would be all the classes with the exception of lighting,

1 and -- I'm sorry, excepting lighting.

2 Q. Uh-huh.

3 A. And lighting would be about 10.2 percent.

4 Q. Okay. Is that with the pole charges or
5 without?

6 A. That would be assuming -- I'm sorry, utilizing
7 present revenues as if the pole charges were still in place.
8 So the actual increase for the lighting class that has poles
9 would be north of that.

10 Q. Okay.

11 A. For the effected customers is probably a
12 better way to state that.

13 Q. So under the \$150 million scenario, 8.2
14 percent increase for residential customers and 4.4 percent,
15 roughly, for all the other classes except for the lighting
16 customers?

17 A. That is correct.

18 Q. And 4.4 versus 8.2 would be roughly 51
19 percent; is that correct?

20 A. Yeah. In round numbers, that would be
21 correct, yes. I'm sorry, you said 4.4 percent of --

22 Q. No, I'm comparing -- I'm trying to compare 4.1
23 to -- 4.4 to 8.2.

24 A. Well, if you divide 4.4 divided by 8.2, yeah,
25 that's correct, 50 some-odd percent.

1 Q. So it's roughly half of the increase that the
2 residential class gets?

3 A. That's correct.

4 Q. Okay.

5 A. And I also have 200 million.

6 Q. You seriously think we're going to get to 200
7 million?

8 A. Possibly.

9 Q. If somebody else wants to ask you about that,
10 I'll let them ask you about that.

11 COMMISSIONER DAVIS: Judge, I don't think I
12 have anymore questions. Thank you, Mr. Cooper.

13 THE WITNESS: Thank you.

14 EXAMINATION

15 QUESTIONS BY COMMISSIONER JARRETT:

16 Q. Besides the \$200 million issue, are there
17 any -- is there anything else you want to share with us
18 today?

19 A. No, I have nothing else.

20 COMMISSIONER JARRETT: I don't have anything
21 else. Thank you.

22 JUDGE WOODRUFF: I don't have any questions.
23 Any questions -- any recross based on questions from the
24 bench? Anyone wish to recross?

25 COMMISSIONER DAVIS: Can I inquire of

1 Mr. Cooper one more question?

2 FURTHER EXAMINATION

3 QUESTIONS BY COMMISSIONER DAVIS:

4 Q. Let's go back to the \$150 million scenario.
5 In terms of real dollars, what would that increase be for
6 the -- in the aggregate for the residential class?

7 A. Do some quick math here. It could be about
8 \$.18 per day, approximately.

9 Q. Okay. But in terms of is it 18 million, is
10 it --

11 A. Oh, I'm sorry. I'm sorry. I apologize.

12 Q. I'm looking for a big round number here.

13 A. Okay. Approximately \$90 million.

14 Q. So that would be approximately \$90 million to
15 the residential class?

16 A. That's correct.

17 Q. Okay. So 90 out of 150 would go to the
18 residential class?

19 A. That's correct. 60 percent, I think it is.

20 Q. All right. Thank you, Mr. Cooper.

21 JUDGE WOODRUFF: All right. Any recross?

22 MR. WOODSMALL: Yes, real briefly, Your Honor.

23 RECROSS-EXAMINATION

24 QUESTIONS BY MR. WOODSMALL:

25 Q. Mr. Cooper, I believe you stated that at \$150

1 million increase, that would result in lighting getting a
2 10.2 percent increase; is that correct?

3 A. That's correct.

4 Q. Would you agree that in the last case, the
5 Commission ordered a 10.4 percent increase; is that correct?

6 A. In that range, yes. It is a little bit north
7 of 10. I don't have it committed to memory. I probably have
8 it here if you'd like me to check.

9 Q. So would you agree, then, that even at \$150
10 million, lighting would only be receiving the increase they
11 avoided in the last case?

12 MR. CURTIS: I object. Totally argumentative.

13 JUDGE WOODRUFF: Overruled.

14 THE WITNESS: Yes, that would be correct.

15 MR. WOODSMALL: No further questions, thank
16 you.

17 JUDGE WOODRUFF: Any other recross based on
18 questions from the bench? Mr. Schwarz?

19 RECROSS-EXAMINATION

20 QUESTIONS BY MR. SCHWARZ:

21 Q. In Commissioner Davis's questioning on the
22 increases to the lighting class, he got into whether that was
23 with or without the pole charges. Do you recall that?

24 A. Yes, I do.

25 Q. The class cost of service is determined

1 without reference to the individual rate elements that
2 constitute the current revenue stream from that class?

3 A. That's correct, it looks at the allocated cost
4 of service to the lighting category.

5 Q. And that allocation won't change if the --
6 subsequent to the revenue allocation in this rate case if the
7 rate elements within the class change; is that correct?

8 A. I don't know if I quite understand the
9 question, but maybe --

10 Q. It's poorly phrased. Let me try again.

11 A. I guess maybe an example, the balloon has air
12 and as a revenue requirement for the lighting class, if one
13 were to eliminate a given charge, push over here, it would
14 come out over here. So at the end of the day, the volume of
15 the balloon would not change.

16 Q. Thank you. A much more elegant answer than
17 the question.

18 A. Thank you.

19 JUDGE WOODRUFF: Any other recross? Then
20 redirect?

21 MR. MITTEN: No redirect.

22 JUDGE WOODRUFF: All right. Then you can step
23 down.

24 THE WITNESS: Thank you.

25 JUDGE WOODRUFF: You want to call your next

1 witness?

2 MR. MITTEN: William Warwick.

3 JUDGE WOODRUFF: Good morning, Mr. Warwick.

4 THE WITNESS: Good morning.

5 JUDGE WOODRUFF: I believe this is the first
6 time you've testified in this hearing.

7 THE WITNESS: Yes, it is.

8 JUDGE WOODRUFF: Please raise your right hand.

9 (The witness was sworn.)

10 JUDGE WOODRUFF: You may inquire.

11 DIRECT EXAMINATION

12 QUESTIONS BY MR. MITTEN:

13 Q. Would you please state your name and business
14 address for the record.

15 A. William M. Warwick, One Ameren Plaza, 1901
16 Choteau Avenue, St. Louis, Missouri 63103.

17 Q. Mr. Warwick, did you cause to be filed in this
18 case direct testimony, which has been marked for
19 identification as Exhibit 136, and rebuttal testimony, which
20 has been marked for identification as Exhibit 137?

21 A. Yes, I did.

22 Q. Did you prepare that direct and rebuttal
23 testimony?

24 A. Yes.

25 Q. And are there any changes or corrections that

1 you need to make to either your direct or rebuttal testimony
2 in this case?

3 A. No, there's not.

4 Q. If I ask you the questions that are contained
5 in your direct and rebuttal testimony, would your answers be
6 the same as reflected in that pre-filed testimony?

7 A. Yes, it would.

8 Q. And is the information contained in your
9 direct and rebuttal testimony true and correct to the best of
10 your knowledge and belief?

11 A. Yes, it is.

12 MR. MITTEN: Your Honor, I move 136 and 137.

13 JUDGE WOODRUFF: All right. 136 and 137 have
14 been offered. Any objections to their receipt? Hearing
15 none, they will be received.

16 (Exhibit Nos. 136 and 137 were received by the
17 Commission.)

18 MR. MITTEN: Mr. Warwick is available for
19 cross-examination.

20 JUDGE WOODRUFF: Okay. For cross-examination,
21 again, beginning with MEUA.

22 MR. WOODSMALL: No questions, thank you.

23 JUDGE WOODRUFF: AARP.

24 MR. COFFMAN: No questions.

25 JUDGE WOODRUFF: Missouri Retailers.

1 MR. SCHWARZ: No questions.

2 JUDGE WOODRUFF: MEG.

3 MS. LANGENECKERT: No questions.

4 JUDGE WOODRUFF: MIEC.

5 MS. VUYLSTEKE: Yes, we do have questions.

6 CROSS-EXAMINATION

7 QUESTIONS BY MS. VUYLSTEKE:

8 Q. Good morning, Mr. Warwick.

9 A. Good morning.

10 Q. Mr. Warwick, do you have a copy of your
11 rebuttal testimony there in front of you?

12 A. Yes, I do.

13 Q. Okay. Referring to page 3 of your rebuttal
14 testimony, and in particular at the top of the page, there is
15 a table. And it shows how Ameren Missouri, Staff, and
16 MIEC have categorized O & M expense.

17 A. Yes.

18 (Court reporter asks for clarification.)

19 BY MS. VUYLSTEKE:

20 Q. I was asking Mr. Warwick if he could see a
21 table at the top of that page that showed categorized
22 production of O & M expense into the fixed and variable
23 categories.

24 A. Yes.

25 Q. And Mr. Warwick, is it true that this table

1 only addresses costs other than fuel and purchase power?

2 A. Yes.

3 Q. Is there any disagreement among the parties as
4 to how to classify fuel and purchase power expense?

5 A. No.

6 Q. And referring to page 2 of your rebuttal
7 testimony, lines 14 and 15.

8 A. Yes.

9 Q. You give Ameren's rationale for its
10 classification by stating that this approach is consistent
11 with the method the Company has traditionally used to
12 allocate these costs in its jurisdictional cost of service
13 studies; is that correct?

14 A. Yes, it is.

15 Q. Okay. Now, does the mere fact that the
16 Company may have used this in prior cases for a
17 jurisdictional cost of service study necessarily mean that
18 it's correct?

19 A. It means it's another method of allocation.

20 Q. It's another method. So it may not -- the
21 prior method may not be correct?

22 A. I don't have a basis to say whether it's
23 correct or incorrect. It's what was provided in past
24 studies. It was approved by the Commission in other studies,
25 so I would assume it's a valid methodology.

1 Q. Is it true that we don't even have a
2 jurisdictional cost of service allocation in this case?

3 A. That's correct.

4 Q. Would you acknowledge that Kansas City Power &
5 Light Company and KCP&L Greater Missouri Operations and
6 Empire District Electric, in their current round of rate
7 cases, all classified more than 90 percent of the production
8 O & M expense as fixed and allocated those costs using a
9 demand allocator?

10 A. I can't personally verify it, but it was in
11 Mr. Brubaker's testimony.

12 Q. Okay. Do you have any reason to believe
13 that's incorrect?

14 A. No, I do not.

15 Q. And then on page 3 of your testimony,
16 beginning at line 12, and commenting on the MIEC's
17 classification, you state, One could argue that it may be
18 appropriate to classify the labor component of these
19 maintenance costs as fixed. Are you saying that you would
20 find that as a reasonable variation to the method which is
21 contained in your cost of service study?

22 A. Yes, that's a reasonable.

23 MS. VUYLSTEKE: Thank you. No further
24 questions.

25 JUDGE WOODRUFF: Public Counsel.

1 MR. COFFMAN: No questions. Oh, I'm sorry.
2 You were looking at me.

3 MR. MILLS: And the current Public Counsel
4 also has no questions.

5 JUDGE WOODRUFF: All right. For Staff.

6 MS. McCLOWERY: No questions.

7 COMMISSIONER JARRETT: Old habits die hard.

8 JUDGE WOODRUFF: For the Municipal Group?

9 CROSS-EXAMINATION

10 QUESTIONS BY MR. CURTIS:

11 Q. Can you identify that document for me,
12 Mr. Warwick?

13 A. It looks like a Union Electric Company, Tariff
14 Sheet Number 40, 25th revised, effective March 1st, 2009.

15 Q. And that -- those tariffs are in effect today;
16 is that correct?

17 A. That is correct.

18 Q. And Ameren's filed tariffs in this case
19 proposed to eliminate all of the charges under Paragraph E.2
20 of that sheet; is that correct?

21 A. I believe that's correct.

22 MR. MILLS: Judge, I'm going to object to this
23 line of questioning because I was precluded from asking about
24 these charges in the questioning that I attempted to do with
25 Mr. Cooper, so I think it's inequitable and unfair to allow

1 someone else to ask questions about a topic from which I was
2 precluded from questioning.

3 MR. CURTIS: I'm going to inquire about the
4 cost of service study, and this is prefatory to it.

5 JUDGE WOODRUFF: I'll overrule the objection.

6 BY MR. CURTIS:

7 Q. You conducted the class cost of service study
8 for lighting, did you not?

9 A. No, that's incorrect. I conducted the overall
10 class cost of service, which lighting group was a part of.

11 Q. Lighting group was a part of. My question,
12 Mr. Warwick, is: What in your class cost of service for
13 lighting led you -- or were there any findings there that
14 indicated that the charges made in E.2 for installations
15 prior to September 27, 1988, were not justified?

16 A. Again, I did not do the sublighting class cost
17 of service. My class cost of service was an overall
18 allocation of the revenue requirement between what I call
19 buckets, residential, SGS, LGS, the lighting group. It does
20 not get into the detail of specific charges.

21 JUDGE WOODRUFF: Mr. Curtis, you need to get
22 over to the microphone or they won't hear you.

23 MR. CURTIS: Sorry.

24 BY MR. CURTIS:

25 Q. Do you know -- was there something in the

1 class cost of service for lighting that -- that led the
2 Company, to your knowledge, to eliminate these charges from
3 Tariff Sheet 40?

4 MR. MITTEN: Your Honor, again, I object to
5 the question. Mr. Warwick said he didn't conduct the
6 subclass cost of service study for lighting.

7 MR. CURTIS: I'm asking if he has any
8 knowledge.

9 JUDGE WOODRUFF: And I'll overrule the
10 objection.

11 THE WITNESS: I did not do the subclass cost
12 of service.

13 BY MR. CURTIS:

14 Q. I know you didn't do it, but do you have any
15 knowledge?

16 A. No.

17 MR. CURTIS: Thank you.

18 JUDGE WOODRUFF: All right. Before we come up
19 with questions from the bench for Mr. Warwick, we'll go ahead
20 and take a break now. As previously indicated, at ten
21 o'clock, we'll come back with an on-the-record presentation
22 concerning the various stipulations and agreements that have
23 been filed in this case. And then we'll resume with
24 Mr. Warwick when that's finished. So at the moment, we're on
25 a break. We'll come back at ten o'clock.

1 (A break was held.)

2 JUDGE WOODRUFF: Let's come to order, please.

3 All right. We're back on the regular session for the Ameren
4 rate case after taking that break to deal with the filed
5 stipulations and agreements.

6 Before we took the break, Mr. Warwick was on
7 the stand. He's not on the stand anymore. During the break,
8 I inquired of the Commissioners, they had no questions for
9 Mr. Warwick and Ameren indicated that they had no redirect.
10 So he has been excused and is on his way to Chicago, I
11 believe. So we'll move on to the next witness, then, which
12 would be, I believe, Staff's witness.

13 MS. McCLOWERY: Staff calls Mr. Michael
14 Scheperle.

15 JUDGE WOODRUFF: Good morning, Mr. Scheperle.
16 I believe this is the first time you've testified also; is
17 that correct?

18 THE WITNESS: No, I was here one other time.

19 JUDGE WOODRUFF: Okay. Then you are still
20 under oath. And you may inquire.

21 DIRECT EXAMINATION

22 QUESTIONS BY MS. McCLOWERY:

23 Q. Mr. Scheperle, you have prepared portions of
24 the class cost of service report in addition to those
25 sections which were offered when you testified on municipal

1 lighting, that's correct?

2 A. That's correct.

3 Q. Do you have any changes or corrections?

4 A. No corrections.

5 Q. If you were to draft it today, would it be
6 substantially the same?

7 A. Yes, it would.

8 MS. McCLOWERY: Judge, at this time, I would
9 like to offer any of Mr. Scheperle's testimony not previously
10 offered to complete Staff's report on class cost of service
11 and rate design.

12 JUDGE WOODRUFF: All right. Let's deal with
13 the Staff report first, which is 204. I had previously
14 deferred ruling on that. Does anyone object? Any objections
15 to receiving that document? Hearing none, it will be
16 received.

17 (Exhibit No. 204 was received by the
18 Commission.)

19 JUDGE WOODRUFF: Mr. Scheperle's direct,
20 rebuttal, and surrebuttal, was 226, 227 and 228. I had also
21 deferred ruling on that. Any objections to the receipt of
22 that evidence? Hearing none, 226, 227, and 228 will be
23 received.

24 (Exhibit Nos. 226, 227 and 228 were received
25 by the Commission.)

1 JUDGE WOODRUFF: For cross-examination,
2 then -- or I'm sorry, did you have any additional direct?

3 MS. McCLOWERY: I did.

4 JUDGE WOODRUFF: Go ahead.

5 BY MS. McCLOWERY:

6 Q. Mr. Scheperle, what is Staff's position
7 concerning the resolution of class cost of service and rate
8 design on the terms contained in the non-unanimous stip and
9 agreement?

10 A. Staff does not oppose the non-unanimous stip.

11 Q. Why did Staff not join that agreement?

12 A. We listed some of the positive features of it,
13 and also listed some of the -- what we consider, maybe,
14 negative features. And we listed them and Staff decided not
15 to -- not to oppose the non-unanimous stip.

16 Q. Could you list those features?

17 A. Yes, I could. What I consider the positive
18 features of the non-unanimous stipulation and agreement is
19 that the majority of consumer groups supported the rate
20 design. There was the OPC, AARP, Consumer Council, MIEC,
21 MEUA, Missouri Energy Group. That was the first positive
22 feature.

23 The stipulation is close to Staff's rate
24 design for many classes. For example, the stipulation for
25 the residential class, Staff had recommended system average

1 plus 1 percent. The stipulation -- the non-unanimous
2 stipulation recommends 2 percent.

3 For the large general service and primary,
4 Staff had recommended the system average minus 1.2 percent.
5 The non-unanimous stipulation says system average minus 1.78
6 percent. The same for the large primary class. For the
7 small general service class, Staff had recommended the system
8 average increase, but its revenue-neutral class cost of
9 service had recommended about a 5 percent decrease. The
10 stipulation recommends the system average minus 1.78.

11 The large transmission, Staff had recommended
12 the system average increase. The stipulation states the
13 system average minus 1.78 percent. But overall, that would
14 still be within 2 percent of Staff's class cost of service.
15 That was the second feature.

16 The overall bill impact to customers was
17 considered. There was no rate structure changes, and I don't
18 believe there will be any potential rate shock to any rate
19 group.

20 One thing that was important to Staff, and I
21 think to the Company, is that the commercial industrial rate
22 shifts -- there should not be any of that occurring because
23 all of the rate -- the four rate groups got a system average
24 minus 1.78, so there shouldn't be any rate shifts.
25 Residential rate structure remained intact. That was

1 important to Staff. That also dealt with the winter
2 residential tail block rate being basically what it is now.
3 That was important to Staff.

4 All rate groups would receive an increase in
5 this. That wasn't the case in the previous case. I think
6 one group did not get an increase in the last one, and then
7 one large group got a very, very small increase.

8 The non-residential inter-relationship
9 uniformity would remain the same, and this is the customer
10 charges for non-residential reactive charges in Rider-D
11 voltage credits. And I think overall, then, that was enough
12 agreeable portions to it where we would not oppose the
13 stipulation.

14 Q. Does your class cost of service study look at
15 the cost to serve a utility's various class of customers?

16 A. Yes, it does.

17 Q. Does the cost to serve a particular class
18 change by changing the manner costs are recovered from those
19 customers?

20 A. Would you repeat the question?

21 Q. Does the cost to serve a particular class
22 change by changing the manner costs are recovered from those
23 customers -- by changing the charges that are applied?

24 A. Yes.

25 Q. Does elimination of a particular charge change

1 the amount charged to that certain class?

2 A. No, it should not.

3 MS. McCLOWERY: I have no further questions,
4 and I tender the witness for cross-examination.

5 JUDGE WOODRUFF: Thank you. For cross,
6 beginning with MEUA.

7 MR. WOODSMALL: Thank you, Your Honor. I'd
8 like to mark an exhibit.

9 JUDGE WOODRUFF: All right.

10 (Exhibit No. 552 was marked for identification
11 by the Court Reporter.)

12 CROSS-EXAMINATION

13 QUESTIONS BY MR. WOODSMALL:

14 Q. Good morning, Mr. Scheperle.

15 A. Good morning.

16 Q. Do you recognize what's been marked as Exhibit
17 552?

18 A. Yes, I do.

19 Q. And I believe you'll see on the second page
20 that that says that it's your revised response as of April 4,
21 2011; is that correct?

22 A. That's correct.

23 Q. And would you agree that this -- these are
24 Staff's results of its class cost of service study in the
25 last four -- including this one, AmerenUE rate cases?

1 A. Yes.

2 Q. Relevant to the issues here today, would you
3 agree that your class cost of service study on a
4 revenue-neutral basis indicates that municipal lighting
5 should receive an increase of \$5.5 million?

6 A. Yes.

7 Q. And that amounts to a 17.62 percent increase;
8 is that correct?

9 A. That is correct.

10 MR. WOODSMALL: No further questions, Your
11 Honor. Oh, move to admit Exhibit 552.

12 JUDGE WOODRUFF: 552 has been offered. Any
13 objections to its receipt? Hearing none, it will be
14 received.

15 (Exhibit No. 552 was received by the
16 Commission.)

17 JUDGE WOODRUFF: Did you have anything else,
18 Mr. Woodsmall?

19 MR. WOODSMALL: No, thank you.

20 JUDGE WOODRUFF: And moving down the list,
21 Missouri Retail -- excuse me, AARP?

22 MR. COFFMAN: No questions.

23 JUDGE WOODRUFF: Missouri Retailers?

24 MR. SCHWARZ: No questions.

25 JUDGE WOODRUFF: MEG?

1 MS. LANGENECKERT: No questions.

2 JUDGE WOODRUFF: MIEC?

3 MS. VUYLSTEKE: We do have some questions.

4 CROSS-EXAMINATION

5 QUESTIONS BY MS. VUYLSTEKE:

6 Q. Good morning, Mr. Scheperle.

7 A. Good morning.

8 Q. Mr. Scheperle, you state that you have used a
9 base intermediate peak, or BIP, method in this case; is that
10 correct?

11 A. That is correct.

12 Q. Is it true that your employment -- excuse me,
13 your implementation of the BIP method in this case is not the
14 same as the implementation of the BIP method used in the
15 KCP&L rate case that was recently concluded?

16 A. In both cases, we used the BIP method. I
17 mean, there could be a few variations off of it.

18 Q. So you don't disagree that there may be a
19 difference in the implementation in this case versus the
20 KCP&L case? It's the same method, just perhaps a different
21 implementation?

22 A. Could be, yes.

23 Q. Okay. Is it true that in the KCP&L case, the
24 BIP method consisted of developing allocation factors for
25 three different kinds of generation facilities and applying

1 those different allocation factors to the costs associated
2 with -- with each of those types of facilities?

3 A. Yes.

4 Q. Is it true that the new and improved version
5 that you have applied in this case consists of developing a
6 single allocation factor to be applied to costs associated
7 with all generation facilities?

8 A. Yes.

9 Q. Is it correct that in developing this
10 allocation factor, you examined different measures of cost
11 responsibility by looking at components of the load curve?

12 A. Yes.

13 Q. Do you describe your derivation of the BIP
14 allocation factor at pages 12 and 13 of the Staff cost of
15 service and rate design report dated February 10, 2011?

16 A. What were those pages?

17 Q. That would be pages 12 and 13.

18 A. Yes.

19 Q. Is it correct that the base portion relates to
20 kilowatt hours or class average demand?

21 A. Yes.

22 Q. Is the base portion analogous to the average
23 demand component of the average-in-excess-demand allocator?

24 A. They're similar.

25 Q. In developing the intermediate component, is

1 it true you look at the 12 non-coincident peaks of each
2 class?

3 A. Yes.

4 Q. And in coming up with the intermediate part of
5 the demand, do you subtract the base demands from the
6 non-coincident peaks so as to avoid double counting?

7 A. Yes.

8 Q. And finally, in developing the peak portion,
9 do you look at the June, July, and August demands of each
10 class and subtract both the base and intermediate components
11 in order to avoid double counting?

12 A. Yes.

13 Q. And then you blend these together to develop a
14 composite allocation factor to be applied to the investment
15 in all the generation's facilities; is that correct?

16 A. That is correct.

17 Q. And Mr. Scheperle, is it true that in this
18 case, the way that you have derived the BIP allocation
19 factor, the result is virtually identical to the
20 average-in-excess for NCP factor that Ameren Missouri and
21 MIEC are using?

22 A. It is very similar for production investment
23 costs.

24 MS. VUYLSTEKE: No further questions. Thank
25 you.

1 JUDGE WOODRUFF: Okay. For Public Counsel?

2 MR. MILLS: No questions.

3 JUDGE WOODRUFF: For Ameren?

4 MR. MITTEN: No questions.

5 JUDGE WOODRUFF: For the Municipal Group?

6 MR. CURTIS: Thank you.

7 CROSS-EXAMINATION

8 QUESTIONS BY MR. CURTIS:

9 Q. Good morning, Mr. Scheperle.

10 A. Good morning.

11 Q. You have seen Ameren's witnesses Cooper and
12 Difani and their cost of service study for lighting
13 testimony?

14 A. Yes.

15 Q. And did you see that they broke down the --
16 the lighting class cost of service by -- in between the 5M
17 and the 6M customer class?

18 A. Yes. I think there was a 5M, 6M, and a 7M
19 also.

20 Q. Right. Do you recall that they said the
21 shortfall for 5M was 15 percent?

22 MR. MITTEN: Your Honor, I'd like to again
23 object to any questions regarding the class cost of service
24 study for lighting. That was the subject of Mr. Difani's
25 testimony. Mr. Difani's previously taken the stand and

1 answered questions regarding that study and I don't believe
2 it's appropriate to allow any party to inquire into that
3 study at this time.

4 JUDGE WOODRUFF: I'm going to overrule the
5 objection again. And if you'd like, it can be a continuing
6 objection.

7 MR. MITTEN: I would, Your Honor.

8 JUDGE WOODRUFF: All right. It's a continuing
9 objection.

10 THE WITNESS: If you could point me to it? I
11 remember a lot of numbers, but I don't remember the 15
12 percent.

13 BY MR. CURTIS:

14 Q. The 15 percent?

15 A. It might have been in Mr. Difani's or
16 Mr. Cooper's. But I don't -- I remember the 216 percent.

17 Q. For 6M?

18 A. Yes.

19 Q. And I think Ameren's overall deficiency for
20 lighting was somewhere in the 22 percent range; is that
21 right?

22 A. Well, if I remember right, it was 36 percent;
23 but I think maybe on a revenue-neutral basis, it might have
24 been 22 percent.

25 Q. 22 percent?

1 A. Yeah.

2 Q. And Staff's cost of service study indicates a
3 shortfall amount of 36 or 22, but more in the area of 17.6
4 percent; is that correct?

5 A. Yes, on a revenue-neutral basis, yes.

6 Q. Thank you. Did Staff break down its cost of
7 service study as between 5M and 6M classes?

8 A. No, it did not. It treated the lighting as
9 just one class in itself.

10 Q. Would you agree that the 5M, as Ameren's study
11 came out, showing it needed less contribution to come up to
12 cost of service, would you agree that 5M would be less of a
13 percentage jump than the 6M?

14 A. Yes.

15 Q. Now, I understand Staff is proposing to retain
16 the pole charges contained in Tariff Sheet -- current Tariff
17 Sheet number 40, Paragraph E.2?

18 A. That is correct.

19 Q. Was there evidence in the class cost of
20 service of -- the Staff's class cost of service study for
21 lighting that supported those charges at Tariff Sheet 40,
22 Paragraph E.2?

23 A. The class cost of service dealt with lighting
24 in the entirety, but we didn't perform anything just based on
25 the pole and span charges in 5M separately.

1 Q. Did you see any evidence to support those
2 charges at Sheet 40, Paragraph E.2, in Ameren's class cost of
3 service study for lighting?

4 A. Maybe not specifically, but they are currently
5 billing units that are used to support the lighting. And so
6 they are supported within the lighting study itself.

7 Q. But as to the pre-September, 1988 pole
8 charges, the study was not broken down to justify those
9 charges specifically?

10 A. That is correct.

11 Q. Staff's recommendation in your filed testimony
12 was for at least the lighting class and the residential
13 class, the system-wide average plus 1 percent; is that
14 correct?

15 A. That's correct.

16 Q. And that is still your recommendation?

17 A. Yes.

18 Q. You indicated that there would be -- on the
19 positive side of the non-unanimous stipulation, there would
20 be no rate shock to any particular class. Do you recall
21 that?

22 A. Yes.

23 Q. Do you -- are you aware that with Ameren's
24 proposal to eliminate the pole charges, at Sheet 40,
25 Paragraph E.2, that certain cities -- certain municipalities

1 do not have many pre-1988 poles; would find their rates going
2 up?

3 MS. McCLOWERY: Objection, assumes facts not
4 in evidence.

5 JUDGE WOODRUFF: Overruled.

6 BY MR. CURTIS:

7 Q. Would it have their rates go up by as much
8 as 22 percent?

9 A. That's not Staff's recommendation. Staff's
10 recommendation is that they would get the system average plus
11 1 percent. So Staff's not recommending that at all.

12 MR. CURTIS: Thank you. I have no further
13 questions.

14 JUDGE WOODRUFF: All right. Questions from
15 the bench, Commissioner Davis?

16 EXAMINATION

17 QUESTIONS BY COMMISSIONER DAVIS:

18 Q. Good morning, Mr. Scheperle.

19 A. Good morning, Commissioner.

20 Q. You're -- okay. Just going back to the
21 questions that you were asked on direct, you made a list of
22 the, quote, positives and negatives. And I guess -- I guess
23 let me ask you this: Your class cost of service study, would
24 you agree that of all of the classes, that the -- that the
25 LTS class was closest to their true cost of service than any

1 other?

2 A. Yes.

3 Q. And the LTS class, there's only one customer
4 in that class, and that's Noranda, correct?

5 A. That's correct.

6 Q. And so by having a stipulation that shifts
7 them 1.78 percent below the cost of service, or I guess
8 that's the joint proposal, this would actually be pushing
9 them further away from their -- from their cost of service,
10 would it not?

11 A. Based on Staff's class cost of service, that
12 is correct, for that class. But that's not true for any
13 other class.

14 Q. Right. There really wasn't any debate about
15 whether the residential class was underpaying or whether the
16 small general services, large general services, and small
17 primary classes were overpaying. I mean, that rang through
18 in all four of the class cost of service studies, did it not?

19 A. I'm not sure in all four of them. I know in
20 Staff's, it did. The one area I'm just not sure of is there
21 might have been a difference in the Office of Public
22 Counsel's class cost of service.

23 Q. Okay. Did you see Mr. Woodsmall's opening
24 statement?

25 A. Yes, I did.

1 Q. Did you -- did you get a copy of his handout?

2 A. No, I did not.

3 Q. Okay. So if -- Mr. Woodsmall represented in
4 his opening statement that -- or at least in the
5 PowerPoint -- and I know this is not competent, substantial
6 evidence, but I did not hear any objections to the
7 characterization that residential customer -- according to
8 the OPC class cost of service study, they had residential
9 customers overpaying at 34 million, small general services --
10 no, I'm sorry, residential were underpaying 34 million, small
11 general services were overpaying approximately 31 million,
12 and large general services/small primary were overpaying
13 approximately 40 million. Do you have any reason to dispute
14 those numbers?

15 A. No, I do not.

16 Q. Did you review Mr. Brubaker's testimony in
17 this case?

18 A. Yes.

19 Q. What would you say was the primary difference
20 between your testimony on the -- on the LTS Noranda issue and
21 Mr. Brubaker's testimony on the LTS Noranda issue?

22 A. Based on my understanding for just LTS, the
23 major difference is probably production maintenance expenses.
24 And Ameren has roughly about -- for production maintenance
25 expenses, about \$200 million. And whether you allocate them

1 on a variable component or a fixed component makes a lot of
2 difference. Sometimes that can be as much as a 4.5 percent
3 difference, and when you're talking about \$200 million
4 dollars, a 4.5 percent difference is -- can be as much as 9
5 million dollars. So that's probably the main difference
6 between Mr. Brubaker's and Staff's models.

7 Q. And were you on the -- on the variable side or
8 on the fixed side?

9 A. Actually, I'm in between. Staff allocated it
10 on what they consider a NARUC method, which is a -- it's a
11 combination of a fixed component and a variable component.
12 In this case, Ameren did all of the maintenance expense on a
13 variable component. MIEC did all of it only on a fixed
14 component, and Staff used a combination of a fixed and
15 variable based on NARUC recommendations on how to allocate
16 each account.

17 Q. And you are familiar with Noranda's load
18 characteristics, are you not?

19 A. Yes, I am.

20 Q. So the fact that they have better than a 98
21 percent load factor, I mean, wouldn't that -- wouldn't that
22 shift things towards Mr. Brubaker's methodology? I mean, at
23 least in their case? Maybe not for residential consumers,
24 but where they are pretty much taking the output of plants
25 24/7, then wouldn't that lean towards a fixed methodology, at

1 least for Noranda?

2 A. I mean, I understand Noranda's loads being 98
3 percent, and then them running basically 24 hours a day to
4 get basically up to that 98 percent. But a lot of the
5 production generators are -- I mean, they had -- it's on a
6 schedule on production maintenance where some of them, they
7 might schedule every five years, some maybe every six years.
8 And really, they're running KWH through there all that time.
9 And after about five or six years, they do it. So Staff, in
10 essence, was saying that there's a fixed component and a
11 variable component based on production maintenance expenses.

12 Q. Okay. So you're saying that you agree that
13 there's at least some fixed component, but that you would
14 argue that there's still a variable component as per the
15 NARUC methodology?

16 A. Yes.

17 Q. And that even though Noranda pretty much takes
18 the same amount of service 24/7, they should at least pay
19 some portion of the variable, and that's in essence the
20 difference between yours and Mr. Brubaker's testimony?

21 A. The main difference, yes.

22 COMMISSIONER DAVIS: I don't have any more
23 questions, Mr. Scheperle. Thank you.

24 JUDGE WOODRUFF: Commissioner Jarrett?

25

EXAMINATION

1 QUESTIONS BY COMMISSIONER JARRETT:

2 Q. Good morning, Mr. Scheperle. How are you
3 doing?

4 A. Just fine, Commissioner.

5 Q. I just have a few questions about the stip,
6 but I think maybe Commissioner Davis -- you answered my
7 question when you were -- when you were answering
8 questions -- his questions, but I'm going to ask it in a
9 little different way, I guess.

10 In the stipulation, which rate classes moved
11 closer to their actual cost of service?

12 A. Well, I guess, to me, it would be the
13 lighting. On a revenue-neutral basis, the Staff's class cost
14 of service said that the lighting class needed a 17.62
15 percent revenue-neutral adjustment, and we're adjusting that
16 4 percent. So that would be movement in that direction.

17 Q. Okay. So does that mean all of the other
18 classes are moving farther away from their actual cost of
19 service?

20 A. No, actually, for residential, Staff had -- on
21 revenue-neutral basis, had 9.04 percent underpaying and we're
22 actually moving them 2 percent. We're using the system
23 average plus 2 percent. The --

24 Q. So does that move them closer to their actual
25 cost of service or farther away?

1 A. No, it's moving them closer to their cost of
2 service in lighting classes.

3 Q. Okay. What about small general service?

4 A. Small general service, Staff had on
5 revenue-neutral basis 5.52 overpaying. And then we would be
6 moving them system average minus 1.78. So they would be
7 moving closer to their cost of service.

8 Q. Okay. Now, what about the large GS to small
9 primary class?

10 A. Staff's revenue-neutral had 10.82 overpaying
11 and we would be moving them to the system average minus 1.78.
12 So they would be moving closer to their class cost of
13 service. The large primary, we had -- Staff had
14 revenue-neutral of 7.01 overpaying and we'd be moving them
15 the system average minus 1.78.

16 That's according to the stipulation that we're
17 not opposing. So that would be moving closer to their class
18 cost of service.

19 Q. And then I think you said, in response to
20 Commissioner Davis's questions, the large transmission,
21 Noranda, is moving farther away?

22 A. They're moving farther away. According to
23 Staff's method, they were at .17 underpaying, which is --
24 that's 17-hundredths of 1 percent, and then by giving them a
25 system average of 1.78, then they would actually be moving in

1 the opposite direction. But it would still be within 2
2 percent of class cost of service for that class.

3 Q. Okay. So now my question is: Under this
4 stipulation, will the residential class be overpaying or
5 underpaying their actual cost of service?

6 A. According to Staff's class cost of service,
7 they will still be underpaying.

8 Q. So they will still be underpaying?

9 A. Yes.

10 Q. Will the small GS still be overpaying,
11 according to Staff's cost of service study?

12 A. Yes, based on the non-unanimous stipulation
13 and agreement.

14 Q. Okay.

15 A. But it would be getting closer.

16 Q. Closer, but still overpaying?

17 A. Yes.

18 Q. The large GS and small primary, would that be
19 the same, still overpaying but getting closer?

20 A. Yes.

21 Q. And then the large primary, still overpaying
22 but getting closer?

23 A. Yes. You said the large primary?

24 Q. Yes, large primary.

25 A. Yes.

1 Q. And then the large transmission, they're
2 underpaying now and they're going to get farther away
3 according -- more underpaying, according to this stipulation?

4 A. Yes.

5 COMMISSIONER JARRETT: Thank you,
6 Mr. Scheperle. That's all the questions I had.

7 JUDGE WOODRUFF: Then recross based on
8 questions from the bench? Anyone wish to recross? All
9 right. Redirect?

10 MS. McCLOWERY: I need to have something
11 marked.

12 JUDGE WOODRUFF: Okay.

13 (Exhibit No. 249 was marked for identification
14 by the Court Reporter.)

15 REDIRECT EXAMINATION

16 QUESTIONS BY MS. McCLOWERY:

17 Q. Mr. Scheperle, for the Commissioners asking
18 about Staff's recommendation, did you create something to
19 compare Staff's recommendation to the stipulation and
20 agreement?

21 A. Yes.

22 Q. Does this document accurately reflect that
23 comparison?

24 A. Yes, it does.

25 MS. McCLOWERY: I would like to offer Staff

1 Exhibit 249 at this time.

2 JUDGE WOODRUFF: 249 has been offered. Any
3 objections to its receipt?

4 MR. MILLS: Judge, I'd like to reserve ruling
5 until I get a copy. Judge, in the interest of efficiency,
6 can we just move on and take this question up after --
7 because the one copy I had has now been passed on, so there's
8 a lot of people trying to look at one copy.

9 JUDGE WOODRUFF: Okay. We'll defer ruling on
10 that. You can proceed.

11 BY MS. McCLOWERY:

12 Q. Mr. Scheperle, in the questions from
13 Ms. Vuylsteke, did multiple parties in the KCP&L case use the
14 BIP method?

15 A. Yes, they did.

16 Q. To clarify, then, in your description of the
17 BIP method in that case, which parties' application of the
18 BIP method were you referring to?

19 A. Staff's BIP method. The Company also used the
20 BIP method.

21 Q. Is the Company KCP&L?

22 A. Yes, it is.

23 MS. McCLOWERY: I have no further questions.

24 JUDGE WOODRUFF: All right. Then,
25 Mr. Scheperle, you can step down.

1 THE WITNESS: Okay.

2 JUDGE WOODRUFF: Are we ready to rule on
3 the -- Mr. Mills, do you have a copy of it yet?

4 MR. MILLS: Can I voir dire the witness?

5 JUDGE WOODRUFF: Go ahead.

6 VOIR DIRE EXAMINATION

7 QUESTIONS BY MR. MILLS:

8 Q. Mr. Scheperle, this shows, for example, for
9 the residential class, Staff's recommended neutral shift
10 is .97 percent?

11 A. Yes. I mean, that's close to 1 percent.

12 Q. But that's not your actual recommendation, is
13 it? Wasn't your actual recommendation 1 percent?

14 A. I think in my testimony, it said
15 approximately 1 percent, but the -- it was approximately 1
16 percent, which is -- .97 is approximately 1 percent.

17 Q. And is the negative point -- negative 1.23
18 percent for LGS, SP, and LP, is that the exact same number
19 you had in your testimony?

20 A. It's approximately. The testimony said that
21 the large general service and primary and the -- or small
22 primary and the large primary would not receive an increase
23 for the first \$30 million increase. When you actually put
24 that down, it's basically the -- it would be the system
25 average increase minus 1.23 percent.

1 Q. Okay.

2 A. So it's -- yeah, it's approximately.

3 Q. So is this -- is this a refinement of your
4 testimony, a clarification, or a change?

5 A. It's -- it's not a change. This is an
6 approximation of exactly what the testimony said. I mean, it
7 said approximately 1 percent, but actually, when you put it
8 down to it, it's .97 percent. When you actually run through
9 the calculation, I'm not giving the first 30 million to the
10 large general service, small primary, and large primary.

11 MR. MILLS: I don't think I have any further
12 questions, and I don't have any objection.

13 JUDGE WOODRUFF: All right. Anyone else wish
14 to object or inquire further? All right. Hearing no
15 objection, then --

16 THE WITNESS: Has this been submitted? Sorry.

17 JUDGE WOODRUFF: Hearing no objection, then,
18 249 is received. And Mr. Scheperle, you can step down.

19 THE WITNESS: Thank you.

20 JUDGE WOODRUFF: Next witness on my list,
21 then, is -- we'll actually go to the OPC witnesses. Mr.
22 Kind, I believe you have testified in this case.

23 THE WITNESS: Yes, I have.

24 JUDGE WOODRUFF: And you are still under oath.

25 THE WITNESS: Okay.

1 MR. MILLS: Judge, I don't have the exhibit
2 list with me. Is his class cost of service, rate design,
3 direct Exhibit 302?

4 JUDGE WOODRUFF: It's 301.

5 MR. MILLS: Thank you.

6 DIRECT EXAMINATION

7 QUESTIONS BY MR. MILLS:

8 Q. Mr. Kind, you've already been subject to
9 cross-examination and so I've qualified you, but with respect
10 to Exhibit 301, your class cost of service rate design
11 direct, do you have any corrections to make to that
12 testimony?

13 A. No, I do not.

14 Q. If I were to ask you the same questions that
15 are contained therein today, would your answers be the same?

16 A. Yes, they would.

17 Q. And are those answers true and correct to the
18 best of your knowledge, information, and belief?

19 A. Yes.

20 MR. MILLS: Judge, with that, I will offer
21 Exhibit 301 and tender the witness -- let me do that and I
22 will have a couple of additional follow-up.

23 JUDGE WOODRUFF: 301 has been offered, any
24 objections to its receipt? Hearing none, it will be
25 received.

1 (Exhibit No. 301 was received by the
2 Commission.)

3 BY MR. MILLS:

4 Q. Mr. Kind, are you familiar with the
5 non-unanimous stipulation agreement on rate design that's
6 been filed in this case?

7 A. Yes.

8 Q. And does Public Counsel support that
9 agreement?

10 A. Yes, we do.

11 Q. And is it a reasonable resolution of the
12 issues raised, with respect to class cost of service issues
13 in this case?

14 A. Yes, I believe it is.

15 Q. Okay.

16 MR. MILLS: That's all the direct I have, and
17 I'll tender the witness for cross-examination.

18 JUDGE WOODRUFF: Okay. Then for cross, we'll
19 begin with MEUA.

20 MR. WOODSMALL: One question, Your Honor.

21 CROSS-EXAMINATION

22 QUESTIONS BY MR. WOODSMALL:

23 Q. Good morning, Mr. Kind.

24 A. Good morning.

25 Q. Your direct testimony, you have Attachment A?

1 Do you have that in front of you?

2 A. Yes.

3 Q. Can you tell me, are the results there on a
4 revenue-neutral basis?

5 A. Yes, they are.

6 MR. WOODSMALL: No questions, thank you.

7 JUDGE WOODRUFF: AARP?

8 MR. COFFMAN: No questions.

9 JUDGE WOODRUFF: Missouri Retailers?

10 MR. SCHWARZ: No questions, Judge.

11 JUDGE WOODRUFF: MEG?

12 MS. LANGENECKERT: No questions.

13 JUDGE WOODRUFF: MIEC?

14 CROSS-EXAMINATION

15 QUESTIONS BY MS. VUYLSTEKE:

16 Q. Good morning, Mr. Kind. How are you?

17 A. I'm fine, thank you.

18 Q. Do you have your direct testimony there in
19 front of you? And can I refer to you pages 3 and 4 of the
20 testimony?

21 A. Yes, I'm there.

22 Q. And there you talk about an allocation called
23 Expenses Follow Plant. Does that mean that operation of
24 maintenance expenses are allocated the same way as the plant
25 investment is allocated?

1 A. Generally, they are.

2 Q. Is it fair to say that when it came to
3 allocating the generation systems, operation, and maintenance
4 expense, other than fuel and purchase power, you allocated
5 them using your demand allocation factor?

6 A. That's correct.

7 Q. And is it true that your cost of service study
8 uses the peak and average allocation approach?

9 A. Yes.

10 MS. VUYLSTEKE: No further questions. Thank
11 you.

12 JUDGE WOODRUFF: All right. For Staff?

13 MS. McCLOWERY: No questions.

14 JUDGE WOODRUFF: For Ameren?

15 MR. MITTEN: No questions.

16 JUDGE WOODRUFF: For Municipal Group?

17 CROSS-EXAMINATION

18 QUESTIONS BY MR. CURTIS:

19 Q. Mr. Kind, did Office of Public Counsel do a
20 cost of service study for lighting?

21 A. No, we did not.

22 Q. Okay. You are aware that Ameren and MIEC and
23 Staff did a lighting class cost of service study?

24 A. Yes, I am.

25 Q. Did you look at those studies?

1 A. I looked at the results of those studies, but
2 I did -- did not evaluate the details of how those studies
3 were performed.

4 Q. I think I maybe know the answer to this, but
5 I'm going to ask you anyway. With regard to the pole charges
6 found at Sheet 40, Paragraph E.2, of Ameren's lighting
7 tariff, did you find any evidence in any of the other three
8 lighting class cost of service studies to either support or
9 not support the pole charges found at Sheet 40?

10 A. The -- I don't believe the class cost of
11 service studies that we've been discussing today are relevant
12 to individual rate design elements for customer classes, such
13 as pole charges. Generally not relevant. The exception --
14 only exception I would know of is that as part of this -- as
15 part of the class cost of service study, some parties have
16 performed analysis of the customer-related cost that would be
17 appropriate to include in residential customer charge.

18 Q. Okay. My question was: If you looked at the
19 Ameren, MIEC, and Staff lighting class -- class cost of
20 service studies, did you see any specific evidence to either
21 support or not support the pole charges?

22 A. I did not see any and -- nor would I expect to
23 see any -- anything in those studies. And I'm not sure we're
24 talking about the same studies, but I'm referring to class
25 cost of service studies in terms of allocations of overall

1 company costs to individual customer classes, not to -- you
2 know, what's causing costs within customer classes.

3 Q. Can I take that as a no?

4 A. Yes, you could.

5 MR. CURTIS: I have nothing further. Thank
6 you.

7 JUDGE WOODRUFF: Okay. Questions from the
8 bench, then. Commissioner Davis?

9 EXAMINATION

10 QUESTIONS BY COMMISSIONER DAVIS:

11 Q. Good morning, Mr. Kind.

12 A. Good morning.

13 Q. The -- so you're familiar with the
14 non-unanimous stipulation agreement that has now become the
15 joint position of the OPC and several other parties in this
16 case?

17 A. Yes, and I have a copy of it right here.

18 Q. Using your methodology, did you run any models
19 as to what a -- what the effect of a hundred million dollar
20 increase in Ameren's rates might be under this rate design
21 stipulation?

22 A. I --

23 Q. Did you run any models?

24 A. I did do some simple spreadsheet analyses of
25 that. It didn't involve using my class cost of service

1 model, but I did do that. I actually did not bring that with
2 me here today.

3 Q. But do you recall what your spreadsheet
4 back-of-the-envelope calculations revealed?

5 A. Well, I recall what it revealed. It was -- I
6 wouldn't characterize it as back-of-the-envelope analysis.
7 Generally, what it revealed is that at that -- approximately
8 that level of a system-wide revenue increase, a
9 hundred-million, that you would see -- well, I can't tell
10 you, actually, the percentage increase that goes along with
11 that. I think it's probably 5, 6 percent, something in that
12 range.

13 And you would see, then, for individual
14 classes, that class revenue required would shift by what that
15 overall system average increase was, generally plus or minus
16 these percentages. But there's a little bit of a difference
17 because if it were to be precisely in line with these
18 percentages, you would be doing the shifts after you've done
19 the overall system average increase. And the stipulation and
20 agreement actually calls for doing the revenue-neutral shifts
21 prior to application of the system average.

22 So for instance, for the residence class, the
23 shift would be slightly more than 2 percent above system
24 average. It just makes a little bit of a difference whether
25 you do the shifts before or after applying overall system

1 increases.

2 Q. Okay. And so pursuant to -- I mean, your
3 study said, in essence, that the residential ratepayers were
4 underpaying by approximately \$34 million, correct?

5 A. That's correct.

6 Q. Okay. Now, MIEC -- MIEC had your class
7 overpaying at 106, Staff had it at -- had you underpaying it
8 at -- the residential class underpaying at 98 million, and I
9 think AmerenUE was approximately 76 million in underpayment.
10 Does that sound about right?

11 A. That sounds about right. I don't have those
12 figures in front of me, but that sounds correct.

13 Q. So according to their methodology, I mean,
14 if -- if the Commission were applying their methodology, we
15 would still have a ways to go to achieve rate design parity,
16 would we not?

17 A. Well, depends what you mean by "rate design
18 parity," but I don't think I would agree because I don't
19 think that rate design should be just a mechanistic method of
20 moving to class cost of service results. And on page 8 of my
21 direct testimony, I point out a lot of the other
22 considerations that the Commission would generally take into
23 account. And in fact, I've quoted from the Commission's
24 Order in the last case where they cite other considerations
25 in addition to class cost of service that would be taken into

1 account.

2 Q. Well, I mean, doesn't everybody have other
3 considerations? I mean, Mr. Woodsmall brought in the schools
4 this morning. He said -- he brought in the children. Would
5 you agree that that's -- that wasn't in your list, was it?

6 A. That's not on my list directly, although I do
7 mention things like public acceptance, value of service,
8 affordability, rate impacts, which probably that would --
9 that particular item he mentioned would be related to those.

10 Q. Well, I mean, let me ask the question this
11 way, then, Mr. Kind: We've already established here in this
12 proceeding that you are a regulatory expert, are you not?

13 A. I will accept that.

14 Q. I think you stipulated to that already. Do
15 you believe that it's highly likely that in a -- the next
16 Ameren rate case in the future, that Ameren, MIEC, and the
17 Staff will all come up with class cost of service studies
18 that once again show that the residential class is
19 underpaying based -- based on your analysis of the testimony
20 that their experts have provided in this case?

21 A. I think that is likely if they use the same
22 class cost of service methodologies that they've used in this
23 case.

24 Q. Mr. Kind, at what point in the rate case did
25 you become aware that -- or first of all, are you aware that

1 Ameren is entitled to at least some portion of the rate
2 increase that they've requested?

3 A. I think in the sense that the reconciliation
4 indicates that no party is arguing for a zero increase,
5 certainly.

6 Q. Right. No party is arguing for a reduction
7 rate, correct?

8 A. Correct.

9 Q. And no party is arguing for no rate increase,
10 correct?

11 A. That's correct.

12 Q. In fact, if we took all of the positions that
13 OPC is advocating for, which would be all of Staff's
14 position, which would be one hundred -- approximately \$118.5
15 million in reductions, plus the 10.4 million proposed Taum
16 Sauk disallowance, the Company would -- would still be
17 entitled to approximately \$82, \$83 million, correct?

18 A. I think I agree with that math, yes.

19 Q. At what point in this case did you become
20 aware of that? Was it after the first true-up
21 reconciliation? Was it after direct testimony was filed?

22 A. I think I became aware of it whenever I saw
23 the -- I don't know if it was the first reconciliation that
24 the Staff put together, but certainly it was a reconciliation
25 that was prior to the one that was just recently filed and --

1 I think earlier this week. Well, I don't even know if the
2 Staff filed it. But they put one together and I reviewed it.
3 I reviewed one at least prior to that. That would have been,
4 you know, probably a month or two ago.

5 Q. Do you recall when Ameren filed the rate case?

6 A. Not specifically. You know, I was certainly
7 busy with a lot of other things and didn't really get engaged
8 in the case until quite a few months after their initial
9 filing.

10 Q. But you filed direct testimony on or about
11 February 8th, 9th? Eighth?

12 A. I think prior to that.

13 Q. Even prior to that?

14 A. Well, no, you're right. The -- my class cost
15 of service direct -- I filed other direct prior to that, but
16 yes.

17 Q. Okay. And so in filing your direct, do you --
18 obviously you read some of Ameren's testimony prior to filing
19 that direct?

20 A. I'm sure I had.

21 Q. Sure you did? Okay.

22 A. The reason I'm sure I had is because I did --
23 before I did the direct rate design class cost of service
24 testimony, I had done my direct revenue requirement testimony
25 on the Taum Sauk issue. So I would have at least reviewed

1 their testimony on a limited range of issues.

2 Q. And, so, did you review their testimony on,
3 like, the Sioux Scrubbers?

4 A. No, I did not get engaged in that issue at all
5 and did not review the testimony of any of the parties on
6 that issue. I know Mr. Burke had testimony on that issue,
7 and he also had testimony on the Taum Sauk issue. I just
8 printed out the portions of his testimony related to the Taum
9 Sauk issue.

10 COMMISSIONER DAVIS: All right. Judge, I
11 don't have any further questions of Mr. Kind. Thank you,
12 Mr. Kind.

13 JUDGE WOODRUFF: Commissioner Jarrett?

14 COMMISSIONER JARRETT: I don't have any
15 questions either. I think he answered some of my questions
16 from answering Commissioner Davis's questions.

17 THE WITNESS: Thanks, Commissioner.

18 JUDGE WOODRUFF: Any recross based on
19 questions from the bench?

20 MR. MILLS: I don't have any redirect, either.

21 JUDGE WOODRUFF: Then, Mr. Kind, you may step
22 down. And let's call Ms. Meisenheimer.

23 Is this the first time you've testified today?

24 THE WITNESS: No. Oh --

25 JUDGE WOODRUFF: I mean in this proceeding.

1 THE WITNESS: First time today, not the first
2 time in the proceeding.

3 JUDGE WOODRUFF: You're still under oath. You
4 may inquire.

5 DIRECT EXAMINATION

6 QUESTIONS BY MR. MILLS:

7 Q. Ms. Meisenheimer, your testimony has all been
8 previously admitted, so I'm just going to ask you a couple
9 questions about the stipulation and agreement having to do
10 with revenue requirement -- I mean, with rate design and
11 class cost of service. Are you familiar with that
12 stipulation agreement?

13 A. Yes, I am.

14 Q. And does Public Counsel support that
15 stipulation agreement?

16 A. Yes.

17 Q. And do you believe that that stipulation
18 agreement represents a reasonable resolution of the issues
19 raised with respect to class cost of service and rate design?

20 A. Yes, I do.

21 MR. MILLS: That's all the questions I have,
22 and I tender Ms. Meisenheimer for cross-examination.

23 JUDGE WOODRUFF: Okay. For cross-examination
24 beginning with MEUA?

25 MR. WOODSMALL: No questions.

1 JUDGE WOODRUFF: AARP?

2 MR. COFFMAN: No questions.

3 JUDGE WOODRUFF: Missouri Retailers?

4 MR. SCHWARZ: No questions.

5 JUDGE WOODRUFF: MIEC?

6 CROSS-EXAMINATION

7 QUESTIONS BY MS. VUYLSTEKE:

8 Q. Hello, Ms. Meisenheimer.

9 A. Hello.

10 Q. Just a few questions. Is it correct that the
11 primary purpose of your direct testimony was to develop the
12 peaking average allocation factor that Mr. Kind used to
13 develop his cost of service study?

14 A. Yes.

15 Q. And is it true that in the previous Ameren
16 Missouri rate case Order that was issued by the Commission
17 last year, that the Commission rejected the peaking average
18 allocation methodology?

19 A. Yes.

20 MS. VUYLSTEKE: No other questions, thank you.

21 JUDGE WOODRUFF: All right. For Staff?

22 MS. McCLOWERY: No questions.

23 JUDGE WOODRUFF: For Ameren?

24 MR. MITTEN: No questions.

25 JUDGE WOODRUFF: For the Municipal Group?

1 MR. CURTIS: No questions.

2 JUDGE WOODRUFF: Questions from the bench,
3 then. Commissioner Davis?

4 EXAMINATION

5 QUESTIONS BY COMMISSIONER DAVIS:

6 Q. Ms. Meisenheimer, how are you today?

7 A. I'm good. How are you?

8 Q. I think I just have two questions. Okay.
9 Office of Public Counsel signed off on this stip, correct?

10 A. Yes.

11 Q. They signed off -- I think Mr. Mills also
12 signed off on the stip in ER-2010-0036; is that correct --
13 well, it was a joint proposal that Mr. Woodsmall objected to?

14 A. Yes. I think so.

15 Q. But -- I see Mr. Mills shaking his head yes
16 there, so.

17 MR. MILLS: That's correct.

18 COMMISSIONER DAVIS: That's affirmative.

19 BY COMMISSIONER DAVIS:

20 Q. Prior to the stip that became, I guess, a
21 joint position in ER 2010-0036, can you recall a rate case
22 where OPC signed off, on a class cost of service stipulation
23 that had an increase for residential consumers?

24 A. I think there have been cases in the past
25 where Public Counsel signed off where we felt that the costs

1 and other evidence and other facts led us to believe that the
2 outcome in a stipulation that we had negotiated was
3 preferable to the outcome we might receive at hearing.

4 Q. Okay. Can you recall? Can you list any of
5 those cases or years or anything?

6 A. I work in a number of different areas for our
7 office, and I think that we have agreed in the past to
8 stipulations in gas cases that would have that type of a
9 result. Electric, I can't think of a particular example,
10 but, I mean, my general impression based on my experience
11 with Public Counsel is that in certain cases, we have agreed
12 to an increased residential if we felt that the facts would
13 result in the best outcome relative to our opportunity costs.

14 COMMISSIONER DAVIS: Okay. Thank you, Ms.
15 Meisenheimer.

16 JUDGE WOODRUFF: Commissioner Jarrett?

17 COMMISSIONER JARRETT: Good morning,
18 Ms. Meisenheimer. I don't have any questions. Thank you.

19 THE WITNESS: Thank you.

20 JUDGE WOODRUFF: Anyone wish to recross based
21 on questions from the bench? Don't see any hands. Any
22 redirect?

23 MR. MILLS: Just briefly.

24 ///

25 ///

REDIRECT EXAMINATION

1
2 QUESTIONS BY MR. MILLS:

3 Q. In response to a question from Ms. Vuylsteke
4 about the outcome, the Commission's decision in the previous
5 case, can you explain why you chose to use that methodology
6 in this case, despite the Commission's Report and Order in
7 ER-2010-0036?

8 A. Yes. Although the Commission did make that
9 decision in the case, we felt that that wasn't a good
10 decision and we appealed that decision and continue to
11 believe that alternative methods of allocation, other than
12 what the Commission did go with in that case, are reasonable
13 to consider.

14 MR. MILLS: Thank you. That's all I had.

15 JUDGE WOODRUFF: All right. Then,
16 Ms. Meisenheimer, you can step down.

17 THE WITNESS: Thank you.

18 JUDGE WOODRUFF: We'll take a break for lunch
19 now and we'll come back at one o'clock.

20 (A break was held.)

21 JUDGE WOODRUFF: Let's come to order, please.
22 We're back from lunch and we will continue with the class
23 cost of service issue.

24 As Mr. Brubaker is coming forward to take the
25 stand, I do want to announce one other thing. The -- I had

1 sent out a notice a couple days ago suggesting that if no one
2 requested a true-up hearing, it would be cancelled. No one
3 has requested a true-up hearing, so the true-up hearing,
4 which is scheduled for Monday and Tuesday of next week, is
5 cancelled. And I'll put out a notice to that to get it into
6 the record.

7 Welcome to the stand, Mr. Brubaker.

8 THE WITNESS: Yes, sir. Thank you.

9 JUDGE WOODRUFF: As I recall, you had also
10 testified in this proceeding.

11 THE WITNESS: That's correct.

12 JUDGE WOODRUFF: You are still under oath.

13 And you may inquire.

14 DIRECT EXAMINATION

15 QUESTIONS BY MS. VUYLSTEKE:

16 Q. Good afternoon, Mr. Brubaker.

17 A. Good afternoon.

18 Q. Are you the same Morris Brubaker who filed
19 direct, rebuttal, and surrebuttal testimony in this case?

20 A. Yes.

21 Q. And if I asked you the same questions today,
22 would your answers as contained in your testimony, would your
23 answers be the same?

24 A. They would.

25 Q. Are those answers true and correct to the best

1 of your knowledge and belief?

2 A. Yes.

3 MS. VUYLSTEKE: I would move to admit Exhibits
4 404, 405 and 406 into the record at this time and tender the
5 witness for cross-examination.

6 JUDGE WOODRUFF: Okay. I have 405 and 406 as
7 already having been received. So 404, which is his direct
8 class cost of service has before offered. Any objections to
9 its receipt? Hearing none, it will be received.

10 (Exhibit No. 404 was received by the
11 Commission.)

12 JUDGE WOODRUFF: And for cross-examination,
13 we'll begin with MEUA.

14 MS. VUYLSTEKE: Your Honor, I do have a few
15 questions for Mr. Brubaker on direct. Do you want me to go
16 ahead and do the direct questions?

17 JUDGE WOODRUFF: Go ahead.

18 BY MS. VUYLSTEKE:

19 Q. Mr. Brubaker, are you familiar with the
20 non-unanimous stipulation and agreement that's been filed in
21 this case?

22 A. Yes, I am.

23 Q. And do you believe that that stipulation and
24 agreement is reasonable?

25 A. I do.

1 Q. Could you explain why you believe the
2 stipulation is reasonable?

3 A. Yes. There are several reasons why I believe
4 that. First is the movements in classes that are
5 contemplated by the stipulation are fully consistent with my
6 cost of service evidence and consistent with most of the cost
7 of service evidence for all classes.

8 The movement is in the right direction, closes
9 the gap, so to speak, part way between class revenues and
10 class costs. And does so giving attention to the principle
11 of gradualism, which means we typically don't go all the way
12 from where we are to where we desire to be all in one step.
13 Particularly if the increases required to do that are large,
14 which in this case they are very large for the municipal
15 lighting class, and hence the stipulation restricts the
16 increase to system average plus 4 percent rather than plus 20
17 percent as the cost of service studies would indicate.

18 So for those reasons, I believe this is a
19 reasonable resolution of the issues.

20 Q. Thank you, Mr. Brubaker.

21 MS. VUYLSTEKE: I would now tender the witness
22 for cross-examination.

23 JUDGE WOODRUFF: For MEUA?

24 MR. WOODSMALL: Thank you. Mark an exhibit,
25 please?

1 JUDGE WOODRUFF: You're 553.

2 (Exhibit No. 553 was marked for identification
3 by the Court Reporter.)

4 CROSS-EXAMINATION

5 QUESTIONS BY MR. WOODSMALL:

6 Q. Good afternoon, Mr. Brubaker.

7 A. Good afternoon.

8 Q. Do you recognize what has been marked as
9 Exhibit 553?

10 A. I do.

11 Q. Was that prepared under your supervision?

12 A. Yes.

13 Q. And do those represent the results of your
14 class cost of service study in the past three AmerenUE rate
15 cases?

16 A. Yes.

17 MR. WOODSMALL: Move for the admission of
18 Exhibit 553, Your Honor.

19 JUDGE WOODRUFF: All right. 553 has been
20 offered. Any objections to its receipt? Hearing none, it
21 will be received.

22 (Exhibit No. 553 was received by the
23 Commission.)

24 BY MR. WOODSMALL:

25 Q. Mr. Brubaker, do you have your direct

1 testimony in front of you?

2 A. I do.

3 Q. Would you turn to your schedule MEBCOS-5?

4 A. I have it.

5 Q. Is that the results of your cost of service
6 study in this case?

7 A. Yes, it is.

8 Q. Would you agree that Column 8 reflects the
9 move necessary to get completely to class cost of service for
10 each rate class?

11 A. Yes, that's what this indicates.

12 Q. And this is done on a revenue-neutral basis;
13 is that correct?

14 A. That's correct.

15 Q. Would you agree that there in Column 8, Row 6,
16 you indicate that in order to get lighting to its class cost
17 of service, would need a revenue-neutral increase of
18 approximately 7.75 million; is that correct?

19 A. Yes, that's correct.

20 Q. And that amounts to a 24.9 percent increase;
21 is that correct?

22 A. It does.

23 MR. WOODSMALL: No further questions, Your
24 Honor.

25 JUDGE WOODRUFF: All right. And for further

1 cross, let's go to -- it looks like AARP has left. Missouri
2 Retailers?

3 MR. SCHWARZ: No questions, Judge.

4 JUDGE WOODRUFF: MEG?

5 MS. LANGENECKERT: No questions.

6 JUDGE WOODRUFF: Public Counsel?

7 MR. MILLS: No questions.

8 JUDGE WOODRUFF: Staff?

9 MS. McCLOWERY: No questions.

10 JUDGE WOODRUFF: Ameren?

11 MR. MITTEN: No questions.

12 JUDGE WOODRUFF: And I believe the Municipal
13 Group has also left for the day. So we'll come up with
14 questions from the bench. Commissioner Davis?

15 EXAMINATION

16 QUESTIONS BY COMMISSIONER DAVIS:

17 Q. Good afternoon, Mr. Brubaker.

18 A. Good afternoon, Commissioner.

19 Q. Mr. Brubaker, do you recall, just in rough
20 terms of the year, when you appeared in front of the Public
21 Service Commission for the first time?

22 A. Geez, do I have to answer that? Probably
23 about 1972 or '71.

24 Q. 1972 or '71?

25 A. Yes.

1 Q. That's what I was looking for. Is it fair to
2 say that since the -- the mid-to-late 70s, that rate design
3 here at the Commission for electric utilities has been
4 imbalanced in favor of residential customers and to the
5 detriment of industrial and other large consumers?

6 A. I think generally that's what the cost of
7 service studies have shown over that period of time. It may
8 not have been true in each and every instance, but as a
9 general proposition, I think that's what we saw.

10 Q. All right. And in the mid-to-late 70s, would
11 you say that it was true that things were -- were pretty far
12 out of balance in terms of those -- those cost of service
13 studies, the ones that you would file and other people would
14 file?

15 A. You know, Commissioner, I don't remember,
16 sitting here, the relative magnitude of those differences
17 compared to what we see today. I'm sure in some cases it was
18 true and probably in other cases, it was not so true.

19 Q. Okay. And let me just -- I'll ask this
20 question one more time another way and if you don't know,
21 then that's fine.

22 I think I recall a -- in a previous case a
23 Staff witness saying something to the effect of it took, you
24 know, 20 years to rebalance the rates after -- after some of
25 the decisions were made in the late 70s to bring the -- and

1 I'm summarizing this, to bring the industrial consumers and
2 other large users back to parity. Do you have any reason to
3 dispute that reasoning?

4 A. No, I wouldn't dispute that. It took a long
5 time. Of course, one of the reasons is there was a period of
6 time when there were very few rate cases and the rate cases
7 that we had were small, so the rate cases were not large and
8 there were not a lot of opportunities. But certainly it did
9 take time. Until the recent past, there had not been much
10 movement taking place.

11 Q. I guess you are the one witness for -- for
12 Ameren now on rate design?

13 A. I don't know that Ameren would adopt me.

14 Q. I'm sorry, for Noranda.

15 A. Noranda -- for MIEC officially. Noranda's
16 part of the MIEC.

17 Q. Okay. Looking at the non-unanimous
18 stipulation and agreement that MIEC filed that I think was
19 referenced earlier?

20 A. Yes.

21 Q. Okay. The numbers for current revenues -- and
22 are those actual numbers for the test year? What are those
23 exactly?

24 A. Yes. Those are the actual true-up revenue
25 numbers agreed to by Staff, Ameren, and the other parties.

1 Q. And that's -- can you tell me what time period
2 that encompasses?

3 A. It's the -- let's see. The test year was 12
4 months into March, 2010, I believe, with known and
5 measurables through the end of February of 2011. Best of my
6 recollection.

7 Q. Okay. It's okay, Mr. Brubaker. I'll let you
8 cheat.

9 A. I didn't change my answer.

10 Q. Okay. So was Noranda up and running that full
11 time? Is that a -- I guess what I'm trying to figure out.

12 A. Yes, they were.

13 Q. Yes. So 139,472,000 would be roughly their
14 electric bill on an annualized basis, as of end of February,
15 2011? Is that a fair statement?

16 A. For the base tariff revenues, Commissioner.
17 None of these numbers include the separate adjustments for
18 FAC, so would you have to add that to get to the total cost
19 of service.

20 Q. Okay. All right. So that would be, like,
21 where another roughly 18 million would come in?

22 A. Close to that, yes, sir.

23 Q. Okay.

24 COMMISSIONER DAVIS: Judge, I don't think I
25 have any more questions for Mr. Brubaker.

1 JUDGE WOODRUFF: Okay. Commissioner Jarrett?

2 EXAMINATION

3 QUESTIONS BY COMMISSIONER JARRETT:

4 Q. Good afternoon, Mr. Brubaker. How are you?

5 A. Good afternoon, Commissioner. Just fine,
6 thanks.

7 Q. Well, first, refresh my memory, what was the
8 MIEC's position on the rate increase? Were they
9 acknowledging that Ameren deserved some rate increase?

10 A. Yes. Our numbers showed that.

11 Q. What amount, do you know?

12 A. I believe with the -- at the true-up stage of
13 the case or the reconciliation stage of the case, I think
14 we're at about roughly \$150 million.

15 Q. Okay. Is MIEC a member of FERAF? I believe
16 it's F-A-R-E-F (sic).

17 A. As far as I know, MIEC is not.

18 Q. Is not?

19 A. Correct.

20 Q. Okay.

21 COMMISSIONER JARRETT: I don't have any
22 further questions. Thanks.

23 JUDGE WOODRUFF: Any other recross based on
24 those questions from the bench? Don't see any hands going
25 up. Any redirect?

1 COMMISSIONER DAVIS: Judge, can I inquire?

2 JUDGE WOODRUFF: Sure.

3 FURTHER EXAMINATION

4 QUESTIONS BY COMMISSIONER DAVIS:

5 Q. Mr. Brubaker, have you done any work for the
6 Fair Energy Rate Action Fund, or FERAF?

7 A. Not -- well, let me answer it this way.
8 Occasionally I'm asked to look at a document and say is this
9 accurate. That comes to me through counsel, Ms. Vuylsteke.
10 So that's the extent of my involvement with anything FERAF.

11 Q. Okay. All right.

12 COMMISSIONER DAVIS: Thank you.

13 JUDGE WOODRUFF: Any recross? Any redirect?

14 Mr. Brubaker, you can step down.

15 THE WITNESS: Thank you.

16 JUDGE WOODRUFF: That leaves two more
17 witnesses for Noranda, I believe.

18 MR. MILLS: Judge, can I ask you a question?

19 JUDGE WOODRUFF: Sure.

20 MR. MILLS: You said a minute ago that you
21 believe the Municipal Group has left for the day?

22 JUDGE WOODRUFF: That's what I was -- was told
23 before he left -- before we broke for lunch, yes.

24 MR. MILLS: Isn't the Municipal Group the
25 reason that we are all here today?

1 JUDGE WOODRUFF: Apparently they're satisfied
2 with their cross to this point, so.

3 MR. MILLS: Okay. I just wanted to clarify
4 that on the record. I'm a little bit taken aback, but thank
5 you.

6 JUDGE WOODRUFF: I will say that Mr. Curtis
7 came up to the bench just before lunch and indicated that he
8 would not be back this afternoon, so, which is his -- his
9 decision.

10 MR. MILLS: Okay. Thank you.

11 COMMISSIONER DAVIS: So I guess if people
12 wanted to dump evidence into the record and there was no one
13 to object.

14 JUDGE WOODRUFF: I don't know what else is
15 going to be dumped.

16 MR. WOODSMALL: We all want to get done, too.

17 COMMISSIONER DAVIS: And Judge, I want to
18 piggyback off of Mr. Mills' question. Is Mr. Coffman gone?

19 MR. WOODSMALL: Yes. That's all my stuff.

20 COMMISSIONER DAVIS: That's all your stuff,
21 Mr. Woodsmall?

22 MS. LANGENECKERT: We figured we only needed
23 one Office of Public Counsel today.

24 COMMISSIONER DAVIS: All right. That's
25 disappointing. But all right.

1 JUDGE WOODRUFF: We've got the two Noranda
2 witnesses. Ms. Vuylsteke, how do you want to proceed with
3 that?

4 MR. LEADLOVE: Your Honor, this is Mark
5 Leadlove on behalf of MIEC and Noranda. We had previously
6 indicated, as the Commission knows, that the MIEC does not
7 intend to introduce the pre-filed written direct testimony of
8 either Mr. Feign or Mr. Smith into the record.

9 We received word that the Commissioners --
10 certain Commissioners may have questions for Mr. Feign and
11 for Mr. Smith. These witnesses are available for the
12 Commission's questions and we'd be happy to call them to the
13 stand and let the Commission inquire.

14 JUDGE WOODRUFF: All right. I assume the
15 Commission does wish to inquire of Mr. Feign and Mr. Smith?

16 COMMISSIONER DAVIS: Yes, I guess I just have
17 some procedural questions for Mr. Leadlove.

18 Since you're not proffering their pre-filed
19 testimony, does their testimony here constitute competent,
20 substantial evidence for the record, or not, or? I'm just a
21 little fuzzy as to how you think this should all work.

22 MR. LEADLOVE: Well, Your Honor, I'm frankly a
23 little fuzzy about it also. Frankly, these witnesses are
24 available for the Commission's discretion. We made the
25 determination not to introduce their pre-filed written direct

1 testimony. I believe that any testimony they give, though,
2 would be competent evidence for purposes of any decision that
3 the Commission is going to make.

4 JUDGE WOODRUFF: And I would say I intend to
5 swear them in --

6 MR. LEADLOVE: Yes.

7 JUDGE WOODRUFF: -- as witnesses, so.

8 COMMISSIONER DAVIS: And would they be subject
9 to cross-examination on Commission -- questions from the
10 Commission?

11 MR. LEADLOVE: Yes. Commissioner Davis, I
12 believe they would be subject to cross-examination along the
13 same scope of the questions that the Commission may have for
14 the witnesses, as well as redirect.

15 JUDGE WOODRUFF: And that was also my
16 understanding.

17 MS. VUYLSTEKE: I just want to confirm for
18 Commissioner Davis, too, that the reason that we decided not
19 to introduce testimony of Mr. Smith and Mr. Feign was in
20 consideration of our agreement with the parties on class cost
21 of service and rate design and specific discussions that we
22 had that it would make sense to -- in support of that
23 agreement to not introduce this testimony.

24 Yet we knew that and we were told that the
25 Commissioners had several questions. And so I agree with

1 Mr. Leadlove's understanding of how the procedure would go
2 forward regarding cross, et cetera, but I just wanted to
3 confirm that that's how things played out and that's why we
4 made these decisions.

5 JUDGE WOODRUFF: Okay. Mr. Feign first?

6 COMMISSIONER DAVIS: Sure.

7 JUDGE WOODRUFF: Okay. Mr. Feign.

8 (The witness was sworn.)

9 JUDGE WOODRUFF: Mr. Leadlove, even though
10 you're not going to offer his testimony, if you would
11 introduce him and requalify.

12 MR. LEADLOVE: I'd be happy to do that, Your
13 Honor.

14 DIRECT EXAMINATION

15 QUESTIONS BY MR. LEADLOVE:

16 Q. Would you state your full name for the record,
17 please?

18 A. My name is Henry W. Feign.

19 Q. And Mr. Feign, are you currently employed?

20 A. I am self-employed as a consultant.

21 Q. And have you been employed as a consultant for
22 Noranda and MIEC in this matter?

23 A. Yes, I have.

24 Q. And for purposes -- there was some specific
25 questions that I think we received a notice on from the

1 Commission regarding updating certain data that you had
2 relied on and testimony that we are not offering.

3 Have you had a chance to review any updated
4 CRU data? First of all, would you explain what CRU is for
5 the record?

6 A. Yes. CRU is a consulting firm that
7 specializes in -- let me get the exact wording here for
8 you -- that does business in consultancy focusing on mining
9 metals, power, cable, fertilizer, and chemical sectors. And
10 as in this specific instance, they do keep track of various
11 electric costs at various smelters.

12 Q. And did you review the CRU data to determine
13 if there was any updates to your previously filed written
14 testimony?

15 A. Yes, I did.

16 Q. And was there any change to that?

17 A. I did look at data that they now have for the
18 year 2011 and it continues to support the conclusion that the
19 New Madrid smelter is among the third highest cost smelter in
20 terms of electricity in the United States.

21 MR. LEADLOVE: Your Honor, I would tender the
22 witness, Mr. Feign, to the Commission for cross-examination.

23 JUDGE WOODRUFF: Commissioner Davis?

24 ///

25 ///

EXAMINATION

1
2 QUESTIONS BY COMMISSIONER DAVIS:

3 Q. Good afternoon, Mr. Feign.

4 A. Good afternoon, Commissioner.

5 Q. So how many smelters are there in the United
6 States now?

7 A. There are ten actually now. We have --
8 Massena East, which is in New York state, is starting a line
9 this year.

10 Q. Okay. And do you know what price they're
11 going to be paying for electricity?

12 A. The estimate is in the \$25 to \$30 range.

13 Q. Okay. And currently, there are -- the two
14 utilities that are -- I guess have higher rates than Noranda
15 are paying in the \$.50 per kilowatt range? Is that what I
16 recall from your direct testimony?

17 A. The schedules do show that, yes. The Mount
18 Holly smelter in South Carolina is in the 50s. The Ferndale
19 smelter, which is in the Washington state, shows a cost of
20 50, but part of that, I believe, is related to some financial
21 hedges that has increased the cost. I think the underlying
22 cost is lower.

23 Q. I also seem to recall, doesn't -- doesn't one
24 of those smelters, doesn't one of the other smelters have a
25 direct contract with -- was it Bonneville Power

1 Administration?

2 A. The Ferndale smelter.

3 Q. Ferndale. Okay. And refresh my recollection,
4 where is Bonneville located?

5 A. I don't know the precise. It's clearly out
6 west. It would be in, I believe, Washington state.

7 Q. And is it -- is it fair to say that Bonneville
8 has a lot of hydroelectric power?

9 A. Yes, sir.

10 Q. And in general, is it fair to say that
11 hydroelectric power, particularly from dams that are anywhere
12 between -- well, there haven't been many dams built in the
13 United States in the last 30, 35 years, have there?

14 A. No, they have not.

15 Q. So we're talking about assets that have been
16 around for at least 30, 35 years that have low input costs
17 and you'd agree that hydroelectric is some of the cheapest
18 electricity out there, would you not?

19 A. Hydroelectric is some of the cheapest because
20 there's no incremental energy cost of service associated with
21 it.

22 Q. Right. So is it -- is it fair to say that in
23 procuring their power from Bonneville, that the Ferndale
24 plant has an -- just an advantage that, you know, someone
25 like Noranda, where they have, you know, where they're

1 procuring their power from Ameren and it's, you know,
2 primarily coal-fired, that they're going to have an advantage
3 that you're just never going to be able to overcome?

4 A. The -- I'm not sure I can argue that you can
5 never overcome it because there are ways of doing that, but
6 the -- there's no question that if your power supply comes
7 from hydro, it has a lower cost than if it comes from coal.

8 A. Okay.

9 Q. Now, do any of the other aluminum smelters, do
10 they own any base load generation like coal plants?

11 A. The only smelter here that has self-generation
12 is Warrick.

13 Q. Okay. And what are Warrick's rates?

14 A. Warrick has a cost of electricity in the range
15 of \$32 a megawatt hour.

16 Q. Okay. So -- but obviously, I mean, that's
17 sort of the whole vertically integrated operation. They're
18 basically getting their electricity at cost with maybe buying
19 some excess if and when they need it or shut their coal plant
20 down for maintenance or whatever?

21 A. Yeah, I do not know what the transfer pricing
22 is in the vertically integrated company, so it's hard to
23 explain that precisely, but the price that they are actually
24 paying is in the \$32 range.

25 Q. So once again, when you're comparing a -- when

1 you're comparing a -- an aluminum smelter that gets its
2 electricity from an investor-owned electric company that
3 primarily generates using coal versus an aluminum smelter
4 that owns its own electricity and self-generates, I mean,
5 once again it looks like the -- the aluminum smelter that
6 actually owns its own coal plant that's vertically integrated
7 is going to have a competitive cost advantage, is it not?

8 A. Not necessarily, but in this case, it clearly
9 does. But I would clearly point out that there are other
10 smelters here, for example, the Hannibal smelter, which is
11 served by Ohio Power -- or AP's Ohio companies, which is also
12 a coal-based, investor-owned utility and by way of a special
13 contract arrangement, they're being charged in the
14 neighborhood of \$31 a megawatt hour.

15 Q. Now, is that one that you helped negotiate?

16 A. Yes, it is.

17 Q. And how long did that contract run?

18 A. It's a ten-year contract.

19 Q. And when does it expire?

20 A. It started in 2009, so 2018.

21 Q. 2018?

22 A. Yes, sir.

23 Q. Do you have any experience procuring
24 electricity contracts for longer than ten years?

25 A. No, I have not.

1 Q. So you'd say ten years is pretty much the
2 maximum that you could get right now?

3 A. In today's environment, I would think that
4 would be the case, yes.

5 Q. Do you think ten years is the max, or do you
6 think it would actually be less than that depending on if
7 you're in MISO?

8 A. No, I believe -- I mean, ten years seems to be
9 the magic point between the kind of certainty that a smelter
10 needs to operate and make investments and the kind of
11 commitment that the utility is making in view of
12 environmental regulation. So it seems to be the sweet spot
13 of them all.

14 COMMISSIONER DAVIS: I don't think I have any
15 other questions, Mr. Feign. Thank you.

16 THE WITNESS: Thank you.

17 JUDGE WOODRUFF: Commissioner Jarrett?

18 EXAMINATION

19 QUESTIONS BY COMMISSIONER JARRETT:

20 Q. Good afternoon, Mr. Feign.

21 A. Good afternoon, sir.

22 Q. You are one of -- you were one of Noranda's
23 witnesses or MIEC's witnesses for class cost of service?

24 A. No, I was not.

25 Q. Okay.

1 COMMISSIONER JARRETT: I don't have any
2 further questions, then, thanks.

3 JUDGE WOODRUFF: Anyone wish to recross based
4 on those questions from the bench? For Ameren?

5 RE CROSS-EXAMINATION

6 QUESTIONS BY MR. TRIPP:

7 Q. Good afternoon, Mr. Feign.

8 A. Good afternoon, sir.

9 Q. I just have a few questions for you, sir. As
10 a preliminary matter, it's fair to say, isn't it, that energy
11 consumption per ton of aluminum produced isn't the exact same
12 for each of these smelters?

13 A. No, it is not precisely the same.

14 Q. Because it would depend on the efficiency of
15 the smelter itself?

16 A. That is correct.

17 Q. So, for example, a state of the art smelter
18 might take 13,000 kilowatt hours per ton whereas some of the
19 others may require as much as 16,000 to 17,000?

20 A. I'm not equipped to tell you exactly what the
21 range is. I always use an average of roughly seven kilowatt
22 hours per pound as a ballpark.

23 Q. All right. But there is some variation,
24 depending on the efficiency of the smelter; is that right?

25 A. That would be true, yes.

1 Q. And so to actually have a truly accurate
2 picture, if we had that additional information in terms of
3 the efficiency, that would provide also some more information
4 for us to consider?

5 A. It would provide some information. I'm not
6 sure it would change the relative ranking, however.

7 Q. With regard to the -- this comparison, is
8 it -- are you aware of whether any of the contracts for power
9 of the smelters that you've identified, or that you've talked
10 about, or looked at, have their power prices tied in any way
11 to the LME price for aluminum?

12 A. Yes, some do.

13 Q. And so if the LME price goes up, what happens
14 to the power rate?

15 A. If the LME price moves up, the power rate
16 would move up as well.

17 Q. And conversely, if it goes down, the power
18 rate would go down as well?

19 A. It might, depending on whether it was the
20 before or not, yes.

21 MR. TRIPP: That's all the questions I have.
22 Thank you.

23 JUDGE WOODRUFF: All right. Redirect?

24 COMMISSIONER DAVIS: I'm sorry, can I go back
25 to Mr. Feign for just a second? I apologize.

1 FURTHER EXAMINATION

2 QUESTIONS BY COMMISSIONER DAVIS:

3 Q. Mr. Feign, do you know the locations of all
4 ten aluminum smelters?

5 A. Yes.

6 Q. Okay. Are there any aluminum smelters in
7 Texas?

8 A. No, sir, not currently operating.

9 Q. Okay. There used to be some?

10 A. Yes, sir.

11 Q. And Texas has restructured, has it not?

12 A. Texas has restructured generation, yes.

13 Q. Okay. Now, the -- the New York plant that you
14 said is -- is opening up, is that the only plant that's in
15 the northeast?16 A. No -- well, I'm in the sure how you define
17 "northeast."18 Q. What would -- are there any other plants
19 besides that plant that would be -- what you would consider
20 in the northeast?21 A. Well, there are two -- there were plants in
22 the northeast, Massena West and Massena East.

23 Q. Right. So they would both be in New York?

24 A. They're both in New York. I don't know what
25 you would count Kentucky as. I guess that's not really

1 northeast.

2 Q. I would -- I would count Kentucky as being in
3 the southeastern conference. Would you agree with that,
4 Mr. Feign?

5 A. I would. I would. And then Ohio is a debate.
6 But that would be Midwest.

7 Q. That would be -- that would be Upper Midwest.
8 And you said that -- is it Massena East is reopening?

9 A. That's correct.

10 Q. And is Massena West open?

11 A. Massena West has been opened, yes.

12 Q. And Massena East is getting \$32 a megawatt for
13 their electricity?

14 A. Massena East -- Massena East is probably
15 closer to the \$25 to \$30 range.

16 Q. Okay. In New York state, do you know how
17 they're getting their electricity so cheaply?

18 A. It is predominantly hydro power.

19 Q. So who are they getting that power from?

20 A. It's the New York Power Authority.

21 Q. So how -- you mean, I'm just curious, how do
22 they get the hydro power and what customers in New York City
23 don't get?

24 A. This was -- I was not directly involved in
25 this, so I can only tell you what I've read. But it was

1 really in return for the -- I call it the owner to commit him
2 to making an investment in the plant and maintaining a
3 minimum level of jobs. So it's really job-related.

4 Q. And is the situation at Massena West the same?

5 A. Yes, it is. Massena West and Massena East has
6 tagged along with that.

7 Q. Are you familiar with Doe Run here at all?

8 A. No, I'm not.

9 Q. Okay. Do you have any knowledge of why Lake
10 of the Ozarks was originally constructed?

11 A. No, I don't.

12 Q. And I've always been told that Lake of the
13 Ozarks was originally constructed to provide cheap
14 electricity to Doe Run. Now, I'm not sure exactly what
15 happened along the way because they don't get all their
16 electricity from Lake of the Ozarks anymore, but -- so you
17 don't have any reason to dispute that or know anything about
18 it?

19 A. I'm sorry, I don't.

20 Q. Okay. Do you think it's more difficult or
21 less difficult for aluminum smelters to operate in the states
22 that have been -- I guess have some level of competitive
23 retail choice? Ohio, New York?

24 A. I'm not sure what can draw that conclusion.
25 Clearly in Ohio, which I guess officially is deregulated in

1 terms of generation.

2 Q. Well, I'm not sure -- they started and they
3 stopped and I'm not sure exactly where they are.

4 A. Officially, it is deregulated. When you look
5 at the regulation, it's hard to tell. But it is deregulated.
6 But they were able to work out an arrangement in Ohio.
7 Similar kinds of arrangements have been made in regulated
8 states. So I think it's more a function of the specific
9 utility in the state and the specific regulatory climate and
10 the public policy of the state.

11 Q. Okay. Mr. Feign, we had a stirring discussion
12 here on Wednesday afternoon about capacity markets. Are you
13 familiar -- I mean, if you don't know what a capacity market
14 is and if you're not familiar with it, that's fine. We can
15 stop right here.

16 A. I have a general understanding.

17 Q. What is -- can you briefly give me your
18 general understanding of "capacity markets?"

19 A. Capacity markets are markets which have
20 established a value for having capacity available. So it's
21 having the generating capacity available for use. Whether
22 it's used or not, you're paying for the availability and then
23 you pay separately for the actual energy consumed.

24 Q. Okay. Do you think that kind of market is --
25 I mean, how do you think that -- if we were to implement that

1 kind of market here how do you think that would effect
2 Noranda, do you think? Short-term and long-term?

3 A. Again, if -- if Noranda is being served by the
4 regulated utility, the capacity market is not an issue. This
5 is as I would understand it. The only place I've seen
6 capacity markets is where -- have been where utilities have
7 been able to either sell capacity into the marketplace or
8 we're required to buy capacity from the marketplace depending
9 on their reserve position. Again -- so it doesn't have -- it
10 has an impact on the utility. I'm not sure I understand what
11 the impact would be on the end-use customer.

12 Q. Okay. Let's go back to you answer. So if the
13 utility is long on generation and has excess capacity, then
14 they're going to be able to sell that capacity into the
15 market and I guess the theory is that it would, in turn,
16 subsidize rates because the ratepayers would share in those
17 benefits with the company?

18 A. Correct.

19 Q. Okay. Now, if the utility were short and had
20 to buy capacity in the market, it could adversely effect
21 rates, could it not?

22 A. It depends on where that capacity charge is
23 relative to the cost of owning the generation yourself. So
24 it could be a benefit or a cost, depending on that
25 relationship.

1 Q. Okay. Now, are you aware that Ameren is a
2 member of MISO?

3 A. Yes, I am.

4 Q. And you're aware that there's a voluntary
5 capacity market in MISO?

6 A. That's right. I'm also aware that the value
7 of capacity at MISO is close to zero, right?

8 Q. That's right. But are you aware that MISO was
9 here on Wednesday and they've got a brand new proposal?

10 A. No, I was not.

11 Q. Okay. Have you read any of the industry
12 reports that there are going to be approximately 50 gigawatts
13 of coal plant retirements here in the next decade all across
14 the United States.

15 Q. I've seen suggestions that that would be the
16 case, which in response to environmental regulation, I have
17 no basis to judge the validity of that outcome, however.

18 Q. Do you have any idea what Ameren's forecast
19 for capacity is?

20 A. No, I don't.

21 Q. Okay. And so if Ameren had a projection that
22 they were going to be even where the demand would intersect
23 with supply in 2020, you wouldn't have any reason to dispute
24 that, would you?

25 A. No, I wouldn't.

1 Q. All right.

2 COMMISSIONER DAVIS: Thank you, Judge. I have
3 no further questions of Mr. Feign.

4 JUDGE WOODRUFF: Anyone wish to recross? Then
5 redirect?

6 MR. LEADLOVE: Yes, Your Honor. Thank you,
7 very briefly.

8 REDIRECT EXAMINATION

9 QUESTIONS BY MR. LEADLOVE:

10 Q. Mr. Feign, it dawns on me that with no written
11 direct testimony in the record, somebody reading the record
12 won't know about your background or expertise. Could you
13 just briefly sketch your background so someone knows why
14 you're testifying as a consultant?

15 A. Yes. I worked for 30 years for American
16 Electric Power. Towards the end of my career was their chief
17 financial officer; and then subsequent to that, their
18 executive vice-president for energy delivery. So I have 30
19 years in the utility business directly. And for the last six
20 years since I retired from AEP, I've been working with
21 various industrial customers, predominantly aluminum smelters
22 in helping them negotiate and find energy contracts.

23 MR. LEADLOVE: Thank you. No further
24 questions, Your Honor.

25 JUDGE WOODRUFF: All right. Then you may step

1 down.

2 THE WITNESS: Thank you.

3 JUDGE WOODRUFF: And then we'll bring in

4 Mr. Smith.

5 Good afternoon.

6 THE WITNESS: Good afternoon.

7 JUDGE WOODRUFF: Thank you. You may inquire.

8 MR. LEADLOVE: Your Honor, thank you.

9 DIRECT EXAMINATION

10 QUESTIONS BY MR. LEADLOVE:

11 Q. Sir, would you state your full name for the
12 record, please?

13 A. My name is a Layle Kiplan Smith. I go by Kip.

14 Q. And Mr. Smith, by whom are you currently
15 employed?

16 A. Noranda Intermediate Holding Company.

17 Q. And would you explain what the relationship is
18 with Noranda Intermediate Holding Company with the smelter
19 that we referred to?

20 A. The smelter in New Madrid is part of Noranda
21 Holding Company. It's one of the entities in the overall
22 company that I have responsibility for as the president and
23 CEO of the company.

24 Q. That was going to be my next question, what
25 your position is with Noranda Holding Company. President and

1 CEO; is that correct?

2 A. That's correct.

3 Q. And what's your business address, sir?

4 A. It is -- I got to remember the ZIP code -- 801
5 Crescent Centre Drive, Suite 600, Franklin, Tennessee 37067.

6 Q. And are you appearing today at the request of
7 the Commission?

8 A. That's correct.

9 MR. LEADLOVE: At this time, Your Honor, I
10 would tender the witness to the Commission for questions.

11 JUDGE WOODRUFF: All right. Commissioner
12 Davis?

13 EXAMINATION

14 QUESTIONS BY COMMISSIONER DAVIS:

15 Q. Good afternoon, Mr. Smith.

16 A. Good afternoon.

17 Q. Did you have an opportunity to watch the
18 opening statements in this case?

19 A. The opening statements in the case?

20 Q. Yes, Ms. Vuylsteke's opening statement?

21 A. I did not.

22 Q. Okay. Well, maybe she didn't ask you this,
23 then, but I think I had asked Ms. Vuylsteke if the members of
24 MIEC wanted to be deregulated for the purposes of purchasing
25 electricity. You've been the CEO and president, director of

1 Noranda since March 3rd, 2008; is that correct?

2 A. That's correct.

3 Q. And Noranda is one of the -- probably about
4 the largest single customer of electricity in this state; is
5 that correct?

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

7 Q. Did you watch any of the testimony in the
8 local public hearings?

9 A. I did not have the opportunity this year.

10 Q. Did you read any summaries or anything?

11 A. Summaries of the hearings themselves? No, I
12 did not, Commissioner.

13 Q. We had several customers at those local
14 hearings say that they wanted to be deregulated so they could
15 shop for electricity. There was even one lady who wanted to
16 have retail choice for distribution service. You know, I
17 guess here's the question that I'm trying to set up.

18 A. Sure.

19 Q. You're the CEO of one of the largest electric
20 consumers in this state. You lawfully can shop for
21 electricity. You've worked in the power industry. You've
22 got an undergraduate degree and an MBA from Harvard
23 University, and you really don't have a financial interest,
24 per se, in utility deregulation.

25 But obviously you're very sophisticated and

1 you've got a lot of credentials. I mean, do you think that
2 the conventional electric deregulation or retail choice
3 that's been around for approximately ten years now is good,
4 bad, better, indifferent, for the average residential
5 customer, or are they better off with state public utility
6 commissions, you know, regulating the vertically integrated
7 utilities?

8 A. That's a very difficult question for me
9 because as I'm sure you're well aware, I'm not an expert on
10 that matter and I'm not an expert on commenting on the
11 consumer rate class. And frankly, with the amount of
12 electricity that we buy and our focus on working within the
13 process here in Missouri, because Noranda originally came to
14 Missouri because power was structurally provided to them
15 right next door to meet one of the fundamentals of the
16 business, which is to have low cost sustainable power.

17 So for us, since I've been here, we have been
18 so focused on working within the process and have been very
19 committed to the regulatory process that I have not -- I have
20 not developed a view on what deregulation may -- how that may
21 impact the consumers, Commissioner.

22 Q. Have any of your fellow MIEC colleagues, have
23 they ever come to you and said, boy, I want to be deregulated
24 just like you?

25 A. Boy, I don't remember a conversation like

1 that.

2 Q. So they're not clamoring to you saying, I want
3 to get in on some of this action?

4 A. I'm just trying to think if I've had that
5 conversation. I don't recall such a conversation. I just
6 don't recall such a conversation.

7 Q. All right. Would you agree with -- first of
8 all, you've got a state law that says that you can shop. But
9 let's set that aside for a minute. Because you are --
10 because Noranda is a large electric consumer, I mean, would
11 you agree that you've got a lot more bargaining power than,
12 say, a residential consumer or even a collective group of
13 residential consumers?

14 A. I think it's a fair assessment that if a large
15 supplier was willing for accurate base load of electricity,
16 the 480 megawatts that we have would be a pretty attractive
17 -- it would be a pretty attractive base load.

18 Q. It was pretty attractive to Ameren back a few
19 years ago, wasn't it?

20 A. Well, we hope so. We try to be a good
21 customer.

22 Q. Would you agree with me that the ratepayers
23 shouldn't be held responsible if Ameren makes a bad
24 management decision?

25 A. I think that ultimately as leaders of a

1 business, we need to be held accountable for the decisions
2 that we make. It's a little difficult for me to answer that
3 question because I know how accountability works in the
4 unregulated market.

5 If you make enough bad decisions, your
6 shareholders will -- they'll react to that and then you have
7 a board of directors that reacts to that. And so, you know,
8 within the portfolio of decisions that we make. And I've
9 talked a lot to my organization about how we strive to run
10 the business. None of us are going to be perfect.

11 The objective at running our business is to
12 have the preponderance of our decisions to be really good
13 quality decisions since that the overall portfolio of our
14 decisions makes sense and that we're able to drive
15 sustainable growth in our profitable and our revenue.

16 So I think perfection for any organization is
17 impossible to achieve, but -- but as business leaders, we
18 have to get a vast majority of them right. And when you get
19 to the question of holding, of transferring risk to your
20 customers, I think that's where the real challenge comes in,
21 that there shouldn't be inappropriate risk transferred to
22 customers.

23 Q. And that -- that would apply for both Ameren
24 and Noranda, would it not?

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

1 Q. Okay. Mr. Smith, you've been there since
2 2008, so you've signed off on all the 10-Ks since 2008,
3 correct?

4 A. That's correct.

5 Q. And everything in those documents are true and
6 correct to the best of your knowledge?

7 A. Yes.

8 Q. Looking at your biographical information on
9 page 151 of the 2010, 10-K. You were CEO and director of --
10 is it Next Phase Corporation?

11 A. Yes, I was.

12 Q. And they manufactured high-voltage digital
13 optical sensors, relays, recorders, et cetera?

14 A. Yes, we did.

15 Q. Now, your biography said a receiver was
16 appointed for Next Phase in 2004; is that correct?

17 A. That's correct.

18 Q. So you were replaced by a receiver?

19 A. I resigned from the company, and shortly
20 thereafter, a receiver was replaced. So I think I was
21 technically replaced by my former CFO, but a receiver was
22 placed. We were a pre-profit start-up company, and we ran
23 out of money.

24 Q. Okay. So there was a bankruptcy there?

25 A. It was actually a Canadian company, I believe

1 they call it a plan of arrangement.

2 Q. Okay. Now, after Next Phase, you went to
3 Resolution Performance Products?

4 A. That's correct.

5 Q. Okay. Resolution Performance Products is, you
6 said -- it's listed in your biography as a, quote, Apollo
7 Portfolio Company.

8 A. That is correct.

9 Q. Who is Apollo and what is an Apollo Portfolio
10 Company?

11 A. Apollo Management is a private equity firm.
12 It is one of the larger private equity firms in North America
13 and an Apollo Portfolio Company is a company that is owned by
14 Apollo Management. They own the equity or majority share or,
15 some cases, they have partnerships, you know, with other
16 partners, private equity firms, et cetera. But it would be a
17 company where Apollo Management was a significant owner.

18 Q. And is it -- is it fair to say that since
19 September, 2004, that you have been, I guess, somehow
20 employed most, if not all of the time, by an Apollo Portfolio
21 Company?

22 A. That's exactly correct.

23 Q. Okay. And so then you went to -- you were
24 with Restitution Performance Products until it merged with
25 Hexion Specialty Chemicals?

1 A. That's correct.

2 Q. And then you went to -- CoValence?

3 A. And CoValence merged with Perry Plastics?

4 A. That's correct.

5 Q. And then -- then you went to Noranda back in
6 2008?

7 A. That's correct.

8 Q. Okay. Now, Noranda is now, again, publicly
9 traded on the New York Stock Exchange, correct?

10 A. That's correct.

11 Q. How many shares of Noranda Aluminum stock are
12 there, roughly?

13 A. Well, first, in terms of percentage ownership,
14 the folks at Apollo Management own about 64 percent,
15 management owns about 1.5 percent, and then the rest is owned
16 by the public market.

17 Q. Okay. So there's roughly 66, 67 million
18 shares, Apollo owns roughly 42, 43 million of them. That's
19 64 percent, and management owns another percent and a half?

20 A. That's correct.

21 Q. Do you receive any additional income from the
22 Apollo companies, funds, entities, et cetera?

23 A. No, not related to my employment. I am an
24 investor in their Fund 7, but that's just as a private
25 investor.

1 Q. So you're just a private investor. So you
2 don't have voting rights?

3 A. No, no. I invest in one of their funds.

4 Q. Okay. And it's -- is it Fund Six that owns
5 Noranda?

6 A. I believe that's correct.

7 Q. Okay. Your total compensation from Noranda
8 was a little over 2.1 million last year?

9 A. That's correct.

10 Q. Would you agree with me that you have a direct
11 financial interest in the outcome of this rate case?

12 A. I have a direct financial interest in a lot of
13 things, but yes, in terms of the rate case, my bonus, I have
14 a bonus that has a number of factors that play into it. One
15 of those factors is the performance of the upstream products
16 business. And in the upstream products business, obviously
17 the cost of power is a very big deal. So in the event that
18 we're successful in containing our cost of power, that
19 effects the overall profitability of that business. So
20 power, just like every other cost in that business, has an
21 impact on my -- on my bonus.

22 Now, it's a -- when you look at all the
23 different factors that go into this, and understand that my
24 bonus is a summary of -- oh, we have four different business
25 segments, there are five different bonus factors in each one

1 of those businesses. There is a -- an arithmetic sum that
2 derives from that business and then based on that arithmetic
3 sum, that's how I get paid.

4 Q. I'm going to go back to Hexion Specialty
5 Chemicals for a minute. Do you know -- that's the same
6 Hexion Specialty Chemicals, Incorporated that along with
7 Apollo lost a counterclaim in Delaware Chancery Court on or
8 about September 29, 2008, to Huntsman Corporation, isn't it?

9 A. Yes.

10 Q. Okay. In that case, Vice Chancellor Steven
11 Lamb found that Hexion Apollo's conduct in merger, quote,
12 willfully violated Hexion's covenants in the merger agreement
13 including the covenants not to do anything to impair
14 financing, to use its reasonable best efforts to do all
15 things necessary, proper, and advisable to consummate the
16 financing of the merger, the covenant to consult with
17 Huntsman before making public statements regarding the
18 merger, and the implied covenant of good faith and fair
19 dealing. Is that a fair statement?

20 A. I would have no basis to judge that. I wasn't
21 a part of that transaction. I left the company prior to that
22 transaction.

23 Q. Okay. Mr. Smith, who's Eric L. Press?

24 A. Rick Press would be one of the members our
25 board of directors and he's also an employee at Apollo

1 Management.

2 Q. Okay. And he's also on the board of
3 Innkeepers Trust USA (sic), isn't he?

4 A. If that's what it states in his bio, yes.

5 Q. It's page 156 of your 2010 10-K?

6 A. Uh-huh.

7 Q. Now, Innkeepers Trust USA (sic), they are
8 currently in bankruptcy, are they not?

9 A. I have no knowledge of that situation,
10 Commissioner.

11 Q. Okay. Going back to your 10-K, page 19, last
12 paragraph, there are a couple of sentences that state on June
13 21st, 2010, the Missouri Public Service Commission ruled on
14 power rate case filed by Ameren on July 24th, 2009. The
15 Missouri Public Service Commission's rulings resulted in,
16 quote, no significant change to the base electricity rates
17 for the New Madrid smelter. That's a correct statement,
18 isn't it?

19 A. Yes, it is.

20 Q. And to the best of your knowledge, can any
21 other customer or class of customers make that statement?

22 A. To the best of my knowledge, no.

23 Q. Okay. Are you familiar with the
24 MIEC positions in this case?

25 A. Commissioner, I'm sorry, I'm not sure I

1 understand your question.

2 Q. The issues that MIEC has -- has chosen to --
3 to try in this case, are you familiar with those issues in
4 general?

5 A. Boy, I haven't -- I haven't attended the
6 hearing, so I'm not -- again, issues in terms of --

7 Q. With the -- have you looked at the true-up
8 reconciliation at all?

9 A. I did not look at the true-up reconciliation.

10 Q. Do you know who Greg Meyer is?

11 A. Yes.

12 Q. He is a -- an expert witness appearing for
13 MIEC in this case?

14 A. Yes.

15 Q. Okay. Earlier when he was on the stand, he --
16 upon questioning from me, stated that if MIEC had prevailed
17 on all of the issues that they presented evidence on, that
18 AmerenUE would still be entitled to approximately a \$145
19 million increase in their cost of service. Does that sound
20 correct to you?

21 A. Certainly -- if -- you were there, so
22 certainly.

23 Q. He is your expert witness, is he not?

24 A. Yes, he is.

25 Q. Okay. Are you familiar with your group or

1 Fair Electric Rate Action Fund, or FERAF?

2 A. Yes, we are.

3 Q. Is Noranda a member of that group?

4 A. Yes, we are.

5 Q. Have you seen the little black and yellow
6 stickers that they were handing out at the local public
7 hearings?

8 A. I have not.

9 Q. Did you see any of the black and yellow
10 T-shirts that FERAF employees were wearing?

11 A. From last year's? The last rate case? I did
12 see one of the T-shirts from last year.

13 Q. Do you know, if the T-shirts changed any from
14 last year?

15 A. I don't know, Commissioner.

16 Q. Okay. Hang on here just a second. Are you
17 familiar with the -- what FERAF's message has been at all?

18 A. I'm familiar with the -- a ratepayer bill of
19 rights, which is a message that has been delivered by FERAF
20 and also -- many of the aspects of that are also supported by
21 the MIEC. But as far as specific messages go, very specific
22 cases. Again, that's what I would be familiar with.

23 Q. So have you ever heard the phrase "stop the
24 rate increase" in connection with FERAF?

25 A. I'm just thinking. I'm not sure that I have.

1 Q. You're not sure that you have.

2 A. No.

3 Q. I guess, Mr. Smith, I'm just a little
4 perplexed because we've had Mr. Meyer here, who acknowledged
5 that AmerenUE is entitled that if MIEC prevailed on all of
6 the points that it has raised, that he thought that AmerenUE
7 would still be entitled to approximately \$145 million.

8 Then Noranda is also a member of FERAf, and
9 I'm going to read to you a quote from the FERAf web site.
10 Right now, that says: Sign the petition below to tell Ameren
11 and the PSC: No more rate increases on our monthly bills,
12 and STOP THE RATE INCREASES.

13 Does that message seem consistent to you?

14 A. First, if I could, let me comment on your
15 comments pertinent to Mr. Meyer. I have been aware that
16 there was an estimation of percentages in terms of what the
17 potential overall rate increase might be.

18 Concerning the -- the FERAf petition --
19 electronic petition drive, there's -- based on what you
20 shared with me, they're clearly not consistent.

21 Q. Okay. Well, thank you. We'll get back to
22 that. Now, you are part of MIEC, and MIEC is currently
23 appealing the Commission's decision in the 2010 Ameren
24 Missouri, AmerenUE rate case?

25 A. That's correct.

1 Q. And you've attempted to stay the effect of
2 that rate increase, have you not?

3 A. That's correct.

4 Q. And would you agree with me that AmerenUE's
5 current rate case is built on the existing rates including
6 the rates that you are attempting to stay in that case?

7 A. Yes, I believe that's correct. But I'm not an
8 expert in rates, but that certainly makes sense.

9 Q. I'm going to try not to ask you too many math
10 questions.

11 Do you remember what the -- what the overall
12 number was from the -- from the last rate case?

13 A. In terms of the overall revenue increase?

14 Q. Uh-huh.

15 A. My recollection was it was about \$225 million;
16 is that correct?

17 Q. That is correct. That is correct. Okay. And
18 so you've got Mr. Meyer's acknowledgment of 145 million in
19 this case, plus 225 million in that case, that would put us
20 at approximately 370 million, correct? 145 plus 225 would be
21 370.

22 A. Uh-huh.

23 Q. And now you're also appealing the 2008 rate
24 case, are you not?

25 A. That's correct.

1 Q. Do you recall what amount's on the table
2 there?

3 A. I do not. Not on that one.

4 Q. If I said 162 million, would you have any
5 reason to dispute that one?

6 A. No, I would not.

7 Q. And you've also asked that that amount be
8 stayed, too, didn't you?

9 A. For us, yes.

10 Q. So if we add the 370 million plus another 160
11 million for the 2008 case, that -- that would totality \$530
12 million, correct?

13 A. That's correct.

14 Q. Mr. Smith, do you know what a basis point of
15 ROE is worth to Ameren in this case?

16 A. I do not.

17 Q. If I said it was worth approximately \$530,000,
18 would you have any reason to dispute that fact?

19 A. No, I would not.

20 Q. So if the Company's allowed ROE is 10 percent,
21 the Company is underearning by \$145 million, and we were to
22 stay the last two rate increases of 225 million and roughly
23 162 million, the Company would be at a zero ROE or possibly
24 even in the negative. Do you follow my reasoning there?

25 A. Yes.

1 Q. Do you think that would be a reasonable
2 outcome?

3 A. That's a very difficult question to answer,
4 but when you look at the -- if the rates are not justified,
5 then on that basis, the outcome would be that outcome.

6 Q. Okay. But, you know, here and now, and other
7 than I guess -- well, actually, MIEC is not contesting the
8 issue of fuel adjustment in this case, other parties are, but
9 doesn't appear that you're contesting the fact that Ameren's
10 costs in this case not only cover all of those amounts that
11 were at issue in the two proceeding rate cases, as well as an
12 additional \$145 million, or actually as of the May 16th
13 true-up reconciliation, maybe even \$150 million now. Is that
14 a fair statement?

15 A. Well, what we're doing, Commissioner, my
16 understanding, again, in working with our legal team is we're
17 pursuing those options and procedures that are within the
18 process. And we have been and continue to be dedicated to
19 the process, this regulatory process. And so we have been
20 following the procedures and avenues that have been allowed
21 to us legally through the process.

22 Now, my understanding also is this legislative
23 session is that there have been revisions to the appeal
24 process that the MIEC and we have supported. And so as we go
25 forward in the future, we'll have a different avenue if we

1 feel it's necessary to appeal, but right now, we're
2 participating within the boundaries of the process as the
3 process prescribes them.

4 Q. Okay. Mr. Smith, the -- how many employees
5 does Noranda have total?

6 A. In New Madrid, 908.

7 Q. And how many total throughout the country,
8 including you've got the four or five rolling mills?

9 A. We've got 615 in the rolling mills.

10 Q. Okay.

11 A. And we've got about 470 in the refinery and
12 we've got about 330 down in Jamaica.

13 Q. Okay. And would you agree with me that the
14 New Madrid facility is located near what's called the New
15 Madrid fault?

16 A. Yes, it is.

17 Q. And I seem to recall that -- that you wrote a
18 letter to the Navy trying to get them to put a nuclear
19 aircraft carrier there next to the plant to provide the plant
20 with at least some of its power?

21 A. That's not precisely correct. We inquired of
22 the Navy as to whether or not their technology might be
23 available for civil use and we were denied that request.

24 Q. Okay. Do you really think it would be a good
25 idea to locate a nuclear reactor, even a small nuclear

1 reactor, there in an area that is a known earthquake zone as
2 well as prone to flooding?

3 A. I guess the answer to your question is we want
4 to make sure that any plant that's put into place anywhere in
5 the United States, no matter what the technology is, in a
6 thoughtful and appropriate place. The purpose for this
7 inquiry was truly to figure out whether or not this was
8 another option that could be placed in a manner or utilized
9 in a manner that could get low cost sustainable power to
10 Noranda. Because in the end, that's what we need for our
11 sustainability.

12 Q. Mr. Smith, could you define for me what a
13 "proforma adjustment" is?

14 A. Do you have a particular type of proforma
15 adjustment that you're looking at?

16 Q. Well, there are several proforma adjustments
17 in your 10-K statements, so let's look in the context of
18 those proforma adjustments.

19 A. Well, I don't have the document with me,
20 Commissioner, so, you know, proforma adjustment could be
21 something as simple as if two entities had been combined and
22 you looked at a -- and are combined in the last quarter of a
23 year, you could do a proforma looking back to see what that
24 entity would have been had they been combined for the whole
25 year. There are a variety of different ways that proformas

1 can be applied.

2 Q. Okay. If you had a proforma adjustment of
3 \$113 million, would you agree with me that's a pretty big
4 proforma adjustment?

5 A. Depends on what it is and where it is. That's
6 a lot of money. There's no question, that's a lot of money.

7 Q. All right. Well, in relation to your electric
8 bill right now is approximately 158 million.

9 A. That's correct. That's a lot of money.

10 Q. That's correct. That's a lot of money. So if
11 you had a proforma adjustment of 113 million, that's getting
12 northwards of getting close.

13 A. Exactly. That's a lot of money.

14 Q. Getting close. Looking at page 39 of your
15 2010, 10-K. There's a footnote 5. And when I flip over to
16 that footnote, it says, quote, reflects the net effect of the
17 increase in interest expense related to the additional
18 indebtedness, occurred in the Apollo transactions and the
19 special dividend in the aggregate principle amount of -- it
20 says 1,227.8. But I believe that's actually \$1,227,800,
21 isn't it?

22 A. And that would be the indebtedness put in
23 place at the time of the acquisition. That would be about
24 right. Again, I was not here at the time of the acquisition,
25 that would be about right. I mean, again, I was not here at

1 the time of the acquisition, but it was a highly leveraged
2 transaction.

3 Q. And how would you define a "highly leveraged
4 transaction?"

5 A. I'm not a financial expert, Commissioner. I'm
6 setting standards for highly leveraged. But we were. It's
7 simple. We had a billion dollars worth of leverage. That's
8 a highly leveraged transaction. Had about \$220 million worth
9 of equity and the rest was debt.

10 Q. Okay. Well, let me read to you a definition
11 for a highly leveraged transaction and let me see if you
12 agree with that.

13 A highly leveraged transaction occurs when an
14 investor, typically a financial sponsor typically in private
15 equity, acquires a controlling interest in a company's equity
16 to where a significant percentage of the purchase price is
17 financed through leverage or borrowing.

18 A. Uh-huh.

19 Q. The assets of the acquired company are used as
20 collateral for the borrowed capital, sometimes with assets of
21 the acquiring company. Typically, highly leveraged
22 transactions use a combination of various debt instruments
23 from bank and debt capital markets, the bonds or other paper
24 issued for highly leveraged transactions are commonly
25 considered not to be investment grade because of the

1 significant risks involved.

2 Is that a fair statement?

3 A. Yes.

4 Q. Is it -- is it also fair to say that the
5 highly leveraged transaction that occurred when Apollo
6 acquired Noranda was non-recoursed to the financial sponsor
7 who would be Apollo and to the equity fund and everyone
8 upstream?

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

10 Q. Would you agree with me that one of the
11 fundamental tenants of executing a leverage buy-out or highly
12 leveraged transaction is that you depend on the assets and
13 the cash flows of the acquisition target, in this case
14 Noranda, to make the principal and interest payments
15 associated with the debt that you're placing on the target
16 company?

17 A. Yes.

18 MR. SCHWARZ: I'm going to object and ask that
19 that question and answer be stricken unless there's some
20 explanation of the relevancy and materiality of any of this
21 line of questions to the setting of rates in Ameren's rate
22 case. I'm particularly concerned because Ameren's got four
23 attorneys sitting in the room and rate case expense is
24 spiraling out of control even as we sit here.

25 COMMISSIONER DAVIS: If you would indulge me

1 for just another minute or two here, hopefully we'll get to
2 that and the witness's credibility.

3 MR. SCHWARZ: I will reserve the objection.

4 COMMISSIONER DAVIS: Thank you.

5 BY COMMISSIONER DAVIS:

6 Q. Mr. Smith, do you know, is Noranda a member of
7 the Missouri Retailer's Association?

8 A. Yes, we are.

9 Q. You are?

10 A. Yes.

11 Q. So you're a member of the Missouri
12 Industrial -- you're an intervenor here as Noranda. You're
13 an intervenor through the Missouri Industrial Energy and
14 you're also through the Missouri Retailer's Association?

15 A. That's correct.

16 Q. I have to digest that for a moment.

17 Getting back to the highly leveraged
18 transaction, would you agree that the investor itself only
19 needs to provide a small fraction of the capital for the
20 acquisition?

21 A. That's correct.

22 Q. And assuming the economic internal rate of
23 return on the investment exceeds the weighted average
24 interest rate on the acquisition debt, the financial
25 sponsor's returns are significantly enhanced because they

1 have little or almost no capital in the acquisition, correct?

2 A. That should be correct.

3 Q. Highly leveraged transactions are risky
4 transactions, aren't they?

5 A. That's correct.

6 Q. Would you characterize your management style
7 as aggressive?

8 A. I think I would characterize my management
9 style as -- as being focused on the fundamentals. When we --
10 and maybe if I could, I'll just go back to the mission
11 statement that we -- that we drive for for our company.

12 We have two number one priorities. To do the
13 right things the right way and get the results. We have to
14 do both. You have to do the right things the right way in
15 order to have a sustainable business and you got to get the
16 results to stay in business. And so I guess that's the
17 characterization I would make of my management style.

18 Q. Uh-huh. Do you know what Noranda's total
19 indebtedness was prior to the May 17th, 2007, acquisition of
20 Noranda by Apollo?

21 A. I do not.

22 Q. Do you know what their annualized interest
23 expense was?

24 A. I do not.

25 Q. Wouldn't it be in your 10-Ks that you've

1 signed?

2 A. Yes, but I just don't recall those numbers.

3 Q. If I said the -- that I've read the 10-K and
4 it looked it me like the annualized interest expense prior to
5 the Apollo acquisition of Noranda was approximately 20
6 million, does that sound about right?

7 A. I don't have a -- I just don't recall,
8 Commissioner.

9 Q. Don't recall?

10 A. No.

11 Q. Do you recall what the acquisition was?

12 A. Right about a billion, two. But again, I was
13 not a CEO.

14 Q. But you've signed off on 10-Ks --

15 A. That's correct.

16 Q. -- since then?

17 A. Yeah.

18 Q. You were CEO in 2008, were you not?

19 A. I was.

20 Q. So the 2008 10-K that you submitted to the SEC
21 in 2009 would have had your signature on it, would it not?

22 A. That's correct.

23 Q. I'm going to go back to page 47 of your 2008
24 Form 10-K, under the heading entitled Liquidity in Capital
25 Resources. First paragraph, last sentence, I'm going to read

1 this statement and I'd like for you to tell me if it's true
2 or not. It says, As of December 31st, 2008, our total
3 indebtedness was one thousand, three hundred forty-six point
4 six million. So that would be approximately one billion,
5 three hundred forty-six point six million, and our annualized
6 cash interest expense based on our indebtedness and current
7 interest rates as of December 31st, 2008, was approximately
8 74.2 million. Does that sound like a true statement to you?

9 A. Yes.

10 Q. And the "our" in that sentence refers to
11 Noranda, correct?

12 A. That's correct.

13 Q. So is it fair to say that between Apollo's
14 acquisition of Noranda from, I guess, Xstrata or Xstrata
15 (Phonetically said) that on May 17, 2007, through December
16 31st, 2008, Noranda accumulated more than \$1.1 billion worth
17 of debt?

18 A. Yes.

19 Q. Would you consider racking up more than \$1.1
20 billion in additional debt best management practice?

21 A. Well, I think the ultimate success of Noranda
22 has demonstrated that the company has the capacity and the
23 capability to handle it. We sit today with about \$419
24 million worth of debt as of the end of the first quarter.

25 The owners when they purchased the company put

1 in place a financial structure that had great capacity and at
2 the same time also sold forward their products such that we
3 had assets embedded in our financial structure as the LME
4 dropped. And through the course of the time that I've been
5 CEO, we've had an opportunity to execute a number of
6 different financial actions. A number of different financial
7 actions.

8 And from that time of our \$1.3 billion worth
9 of debt, we've reduced that debt by almost \$910 million to
10 actually -- since the time of the acquisition itself, because
11 we did the acquisition that added some additional debt, it's
12 about \$590 million worth of debt. We are down into the range
13 of our targeted debt to EBITDA ratios. We have managed the
14 cost structure of the company to take out \$140 million worth
15 of cost and capital avoidance.

16 So at the end of the day, there's a whole
17 portfolio of actions that build success for a company. And
18 the last time that we were here, we were in a very difficult
19 market working through very difficult challenges and we
20 focused here in front of this Commission on cost of service.
21 We're back today in a better environment, in a much more
22 stable condition, again talking about the same issues,
23 sustainable cost, competitive power based on cost of service.

24 Q. Mr. Smith, do you know John Rogers, who's the
25 senior vice-president at Moody's?

1 A. No, I don't know John.

2 Q. Are you familiar with Moody's?

3 A. Yes, I am.

4 Q. Do they cover Noranda?

5 A. Yes, they do.

6 Q. Are you familiar with a January, 2009, report
7 that Moody's issued where they singled out Apollo as one of
8 the, quote, most aggressive private equity firms in taking
9 dividends out of highly leveraged companies?

10 A. I don't recall that report.

11 Q. Okay. I'm going to read to you a statement,
12 and I'd like for you to tell me if it's true or not. In the
13 case of Noranda, Apollo rewarded its shareholders, including
14 itself, with \$216.1 million in cash payouts in June, 2007, a
15 month or so after the leverage buy-out closed.

16 A. Uh-huh.

17 Q. This was followed by a further 102.2 billion
18 in dividends in June, 2008. Apollo, which invested 214.2
19 million at the time of the deal was hoping to generate more
20 gains after taking the company public sometime last year, but
21 the offering never materialized. But it since has
22 materialized, hasn't it?

23 A. Yes, it has.

24 Q. Now, those numbers that I read you back, were
25 those numbers roughly a true statements?

1 A. Yes, they were.

2 Q. And so you were CEO in June, 2008, when the
3 \$102.2 million in dividends?

4 A. That's exactly correct.

5 Q. And did you issue debt at roughly the same
6 time?

7 A. At that time, I believe the majority of that
8 one was paid for from cash from operations. But when we did
9 the large dividend at the get-go of the company, we did, in
10 fact, raise debt.

11 Q. Okay. So just doing the math here, and this
12 is just rough math. Apollo had approximately 216 million --
13 well, actually, \$214 million in equity in 2007 -- May, 2007.
14 They got, in essence, their money back a month later and they
15 paid out -- you paid out another dividend of \$102.2 million
16 roughly in June, 2008. So that would have been roughly 13
17 months after the transaction closed. So in essence, I would
18 say a hundred million dollars on a 214 million investment
19 over a 13-month period, that would be roughly a 45, 46, 47
20 percent return on investment, would it not be, if you
21 annualized it?

22 A. I'll trust your math in that. But I would
23 also point out is, again, those are two financial decisions
24 that were made at a time when -- and this points very much to
25 the -- points very much to the volatility of the LME at a

1 time when the forward curve on the LME averaged about a \$1.58
2 for a five-year period. Of course, that was in July of 2008.
3 In February of 2009, that same forward curve averaged \$.81.

4 So those initial decisions were followed by
5 decisions to -- to -- given the new environment, to
6 strengthen the financial backbone of the company and to gain
7 access to the public financing and the use of both of our
8 primary offerings were for the payout of debt, and that was a
9 very key element to bringing greater strength to the company
10 that we run here in Missouri and in Arkansas and in St. Ann
11 and in Louisiana.

12 And so overall, in our journey, the -- those
13 portfolio decisions, not just those decisions -- and I would
14 point out that our shareholders, none of our management
15 shareholders or our majority shareholders sold any shares in
16 secondary offerings at the time of those two primary
17 offerings.

18 So we can judge specific actions without
19 context. But if you look at where Noranda sits today, we are
20 a healthier company with a stronger financial backbone and
21 are taking the success that we have generated in 2010 in the
22 first quarter of this year and at least in part investing that
23 in our plant in New Madrid in the form of a \$38 billion
24 capital expansion and efficiency project.

25 Q. Refresh for my recollection how paying

1 yourself dividends strengthens the financial backbone of the
2 company.

3 A. If you look at the outcome results, and again,
4 those -- the actions associated with the dividends -- the
5 first one, again, I was not here as a CEO at that point in
6 time. And at the point of the time of the second dividend,
7 the market appeared to be able to sustain that. Market
8 conditions changed, and if you look at where Noranda sits
9 today, the actions that we've taken to run the company and to
10 bring it where it is today, we have a -- we have a healthy
11 company.

12 Q. And you're still contesting the 2008 Ameren
13 rate increase, are you not?

14 A. That's correct.

15 Q. And one of the issues in that case was return
16 on equity, was it not?

17 A. Yes.

18 Q. Do you recall what the authorized return on
19 equity for Ameren was in that case?

20 A. I do not recall.

21 Q. If I said it was approximately 10.76, would
22 you have any reason to dispute that?

23 A. I would not.

24 Q. So an ROE for Apollo shareholders in 2008 of
25 approximately 40-plus percent is okay, but an ROE for Ameren

1 of 10.76 percent is not?

2 A. In terms of our contesting of the 2008 rate
3 case, again, Commissioner, we're following the procedures and
4 the process that was available to us to contest those issues
5 that we felt were inappropriate. And I think to compare
6 those to a private equity transaction is -- is extremely
7 difficult.

8 Q. Did Noranda issue any debt in June, 2008?

9 A. I don't recall.

10 Q. I thought you told me earlier that you didn't.

11 A. I'm sorry. If I did, I misspoke. I said I
12 know that we issued debt for the 2000 -- or for the initial
13 dividend. The second, I said -- I thought I said that the
14 majority of that was from operations.

15 Q. Would you agree with me that but for Apollo's
16 highly leveraged trans -- or purchase of Noranda from Xstrata
17 and the assumption of more than \$1.3 million in debt by the
18 end of calendar year 2008, Noranda would have been in a much
19 better financial position when the ice storm occurred in late
20 January, 2009?

21 A. Well, that's a hypothetical question that I
22 think would depend very much on what the alternative was.

23 Q. Would you agree that they would have had --
24 that if they would have gone back to just the level of debt
25 that they had in May 1, 2007, that they would have had over a

1 billion dollars less in debt?

2 A. If their -- if their owner was willing to
3 continue to keep them and that's the hypothetical situation
4 that we want to consider, I think the answer to that would be
5 yes. But they were a part of a sale process and ownership
6 changed hands to Apollo, which in the end, for Noranda, I
7 believe turned out to be a positive event given the structure
8 today, and the process and the values that we're driving into
9 the company to create a long-term position here in the state
10 of Missouri.

11 Q. Okay. Now, Noranda has been here since 1971.

12 A. That's correct.

13 Q. Has it not?

14 A. Yep.

15 Q. Can you tell me how much principal and
16 interest Noranda paid on its debt in 2010?

17 A. I'd have to look the specific number up.

18 Q. Can you guess?

19 MR. SCHWARZ: Objection, calls for
20 speculation.

21 BY COMMISSIONER DAVIS:

22 Q. Do you have an educated? 300 million?

23 A. Commissioner, I'm not going to guess. If
24 you'd like, I can look those numbers up in the financials.

25 Q. Well, I mean, you gave a number earlier, what

1 was it 900 million in the past three years; is that correct?

2 A. Well, we've paid down since the time of the
3 acquisition, yeah, to about 590 million since the time of the
4 acquisition.

5 Q. Since the time of the acquisition, you've paid
6 down about 590 million in principal?

7 A. That's correct.

8 Q. And what about debt -- or what about interest?
9 I'm sorry.

10 A. I'd have to add it up, sir.

11 Q. Okay. So you've owned the company for
12 approximately four years this week?

13 A. That's correct.

14 Q. So if we were going to assume that's 590
15 million in principal, plus interest and we just divided that
16 out over four years, that would be roughly \$150 million per
17 year plus some interest?

18 A. Correct.

19 Q. And that's roughly the equivalent of your
20 electric bill now, isn't it?

21 A. That's correct.

22 Q. Do you recall your testimony in the last rate
23 case?

24 A. I'm not sure, Commissioner, I recall every
25 single word of it, yes. But I recall being here.

1 Q. You recall being here and you recall giving
2 testimony?

3 A. That's correct.

4 Q. Do you recall stating that you needed a -- a
5 rate of \$27 a megawatt hour?

6 A. Yes, I do.

7 Q. Would you agree with -- I think it was -- it's
8 not in evidence, but it was submitted, it's in EFIS, that
9 Mr. Feign gave some testimony or at least made a statement,
10 that only two states have a -- or only two smelters have a
11 lower rate than \$27 a megawatt hour; is that correct?

12 A. That's correct.

13 Q. Would you agree that there are also at least
14 two U.S. smelters paying more than \$.50 per KW?

15 A. That's correct.

16 Q. Mr. Smith, I guess here's my concern. You're
17 55, 56?

18 A. Uh-huh.

19 Q. And you've got a, what, five-year contract?

20 A. Yes.

21 Q. Is that rolled over annually?

22 A. It's a fixed-term contract, but both parties
23 can extend with mutual agreement.

24 Q. It's a fixed-term contract that expires in?

25 A. Four years, I think.

1 Q. Four years. So that would be?

2 A. Three, four years, yeah.

3 Q. So that would be 2015?

4 A. Uh-huh.

5 Q. So you'll be 60?

6 A. Sixty.

7 Q. Sixty-one, about that time. So your contract
8 is up in 2015. Noranda's contract with Ameren is set to
9 expire in 2020. At that point, you know, they're going to, I
10 guess, still be a -- you'll be in Ameren's service territory,
11 correct?

12 A. I'm not sure I understand that question.

13 Q. Does Ameren have an obligation to serve
14 Noranda after 2020?

15 A. Well, our contract ends in 2020, but I believe
16 that there's a legal case that, yes, they would have an
17 obligation to service.

18 Q. Right. But theoretically, you could go
19 elsewhere?

20 A. That's correct.

21 Q. And would you agree with me that one of the
22 things that will limit your shopping ability is that you're
23 still going to be captive to the transmission system between
24 you're going to have Ameren on one side and Associated
25 Electric Cooperative on the other?

1 A. The transmission system will be part of the
2 consideration we have to make in deciding on where we're
3 going to get power, yes.

4 Q. And -- so 2020 is going to roll around. By
5 that time, you will -- your contract will have expired or you
6 will be roughly about 65 at that time. Apollo will in all
7 likelihood have sold a majority, if not all, of its shares in
8 Noranda.

9 You know, are you at all concerned that you
10 are damaging your relationships with Ameren and Associated to
11 the point that it's going to be very difficult for your
12 successors to maintain an ongoing and viable business
13 operation there at New Madrid?

14 A. First off, we certainly understand that
15 business is a game of relationships. I mean, if you're going
16 to be successful in business, this is not just about the
17 finances, it's about the people and it's about the
18 relationships. So we are always concerned.

19 Always concerned when we have to take
20 positions that are contrary to our current provider or
21 someone that may be a potential provider because this is a --
22 this is an environment where ultimately -- ultimately we want
23 to be a desirable customer. And we want Ameren or Associated
24 to be desired and effective supplier, which Ameren has been
25 for us a very reliable supplier, Associated has been for us a

1 very reliable supplier.

2 Again, let's leave out the ice storm because
3 that certainly wasn't their fault. In fact, the people at
4 Ameren were -- and Associated were extraordinary in terms of
5 their desire and drive to get our plant back up and running.

6 There's a whole lot of statements and a whole
7 lot of questions in this, so maybe I can try to address some
8 of them. I spend an awful lot of my time focused on
9 balancing the short-term versus the long-term of our company.
10 And it really has to be a game where we get the short-term
11 results in order to create the cash to be able to reinvest to
12 make it to the long-term, and those things are -- require an
13 awful lot of effort and an awful lot of balance.

14 And so for us, having long-term -- so the
15 first thing is that we don't manage the business quarter by
16 quarter. We don't manage the business just to this issue.
17 We manage the business to get short-term results, to be able
18 to be sustainable for the long-term. So for us, being
19 involved in this process and being involved in this process
20 in a productive way is very important to us.

21 It's very important to us. And it's why we
22 participated in the proposed changes in legislation of the
23 appeal process because we don't want the process to be
24 putting us in places where we are adversarial because that's
25 perhaps what -- where the process will move us.

1 The -- the specter of me being gone when I'm
2 60 or 61, any good company, any sustainable company is
3 training people that can take over and step into my shoes.
4 And frankly, the short-term issues that we have with rate
5 cases, I would hope and expect that we would be able to work
6 through those relationship issues, to the extent they exist,
7 with Ameren and/or Associated Electric.

8 So we're very concerned about our position in
9 the community. We're very concerned about our position with
10 our suppliers, our co-workers, our customers. It's all part
11 of our mission statement.

12 So Commissioner, yes, we are very concerned
13 about those things, but low costs, cost of service,
14 competitive power for us is critical and that's why we're so
15 involved in the process.

16 Q. I seem to remember a data request from
17 Mr. Woodsmall, and I think -- how would you define "low cost
18 competitive power?"

19 A. We focus on being in the second quartile, if
20 we can be in the second quartile globally from an overall
21 cost position, we believe we can sustain our position for the
22 long-term.

23 Q. And how many -- would that be out of four
24 quartiles? Three?

25 A. Four quartiles. Yeah, second quartile.

1 Q. So there are ten smelters, and so you need to
2 be somewhere between number three and number five in terms of
3 least cost.

4 Q. And Commissioner, for the purposes of this,
5 when we focus on our competitive position, understand that
6 since we don't control the LME, which is a globally traded
7 price, we really believe that we have to have globally
8 competitive costs. So while it's very disconcerting that we
9 are third from the top in North America, we are around the
10 middle globally in terms of our costs. So we're kind of
11 right at that midpoint on the break point between the second
12 quartile and the third quartile.

13 Q. You would agree that there are certain
14 circumstances that you may not be able to overcome? For
15 instance, if someone locates an aluminum smelter in Iceland
16 and they're getting heat from, you know, thermal volcanoes or
17 whatever, it's going to be tough to compete with that?

18 A. Yes, it's very difficult to compete. Doesn't
19 mean that we can't, but to be -- from a cost standpoint on
20 our power, we have to be -- in order to compete with people
21 who build smelters next to Iceland -- no one builds a new
22 smelter at the far right-hand side of the cost curve. I
23 don't mean to put words in your mouth, but that's really the
24 point.

25 People build a smelter to put them at the

1 left-hand side of the cost curve. So the cost curve, if we
2 do nothing -- if we do nothing -- the curve shifts on us
3 automatically. It just shifts on us automatically. That's
4 why the focus on productivity, that's why the focus on our
5 power.

6 Q. And likewise, and I guess, I mean, you're
7 familiar with the aluminum industry in the last decade or so,
8 are you not?

9 A. I'm familiar with -- for somebody that's -- I
10 haven't lived in the aluminum industry for the last decade,
11 Commissioner.

12 Q. Well, I mean, you're familiar with -- are you
13 familiar with a scenario that back in 2000, 2001 when they
14 had the California energy crises, there were several more
15 aluminum smelters in the northwest?

16 A. That's correct.

17 Q. And many of them just sold out their power,
18 made some very nice profits and then moved their operations
19 to countries in South America where it could be argued that
20 environmental regulation is more lax than it is here in the
21 United States. Is that -- do you think that -- I mean, is
22 that a valid point?

23 A. I think the -- the summary of what transpired
24 in terms of the power companies buying contracts back from
25 aluminum companies, that absolutely happened. And that's an

1 issue borne of capacity. If my memory serves me correctly,
2 there were some pretty significantly brownouts and the
3 occasional blackout or two.

4 And the next year following, they didn't have
5 those problems because they bought back their capacity. I
6 think that's why your pulling -- the relationships, it's very
7 imperative for us to work first together as consumers and
8 overall together with our power providers to make sure that
9 there is ample capacity as we go forward. And it's a tough
10 call. It's a very tough call because of fluctuating demand.

11 And, you know, for us in New Madrid, I spent
12 all of my -- when I think about the long-term for New Madrid,
13 I don't spend my time running scenarios about what if we sold
14 a power contract. We spend all of our time -- or what is our
15 shutdown scenario. Our time is spent running scenarios to
16 see what are the fundamentals of our business? What do we
17 have to do to be competitive? And what do we have to do to
18 be here for the long-term?

19 And that's why we spend a lot of time in this
20 process. Because we can't let a third of our cost just grow
21 at an organic rate. We need to be involved in the process.

22 Q. How many board members does Noranda have?

23 A. Besides myself, ten.

24 Q. And how many of those board members are
25 affiliated with Apollo?

1 A. There are four outside directors. They're not
2 affiliated with Apollo.

3 Q. So there are four outside directors not
4 affiliated with Apollo, so everyone else is?

5 A. Yes, and I think Bill Brooks -- I want to make
6 sure I get this right, but Mitch McEvans and Shoemaker
7 (phonetic) are all pure independents. Bill Brooks was
8 affiliated with Noranda, not about Apollo. And then of
9 course I'm affiliated with Noranda, with a long track record
10 with Apollo Portfolio companies.

11 Q. Right. Can you guarantee me that the Noranda
12 board is not going to take any more actions that are going to
13 be adverse to the long-term viability and employment of more
14 than 900 people at the Noranda plant?

15 A. I'm very comfortable saying that I don't
16 believe that our board of directors -- regardless,
17 Mr. Commissioner, what you may feel about the dividends that
18 they took out, that they ever took an action that was adverse
19 to Noranda's best interest or would they do so in the future.
20 I just don't believe that that would -- I just don't believe
21 that that would happen.

22 Within the context of the market that was --
23 that was excellent at that time, but again I wasn't there for
24 the first one, but not once during the course of the decision
25 on that particular decision did we believe that that was an

1 action that was taken that was adverse to Noranda. We felt
2 that it was -- I was there. I felt it was affordable based
3 on where the LME was. It didn't turn out to be -- didn't
4 turn out to be that way.

5 So sitting around the table saying we're about
6 to take a decision adverse to Noranda all in favor, I don't
7 see that. I don't see that happening.

8 Q. So you view acquiring \$1.3 billion worth of
9 debt on Noranda is -- at the end of 2008 as a benefit to
10 Noranda employees?

11 A. When we look at -- and again, this is the game
12 of hypothetical. But what if the former owners of Noranda
13 couldn't find a buyer and didn't want to continue to run it?
14 What if?

15 Q. So you think they -- think they would have
16 just shut it down when they were -- looks like they were
17 making pretty good cash at the time if you borrowed a billion
18 dollars to acquire it.

19 A. But what if they still owned it at the bottom
20 of the downturn and weren't making that cash and were losing
21 money. This industry in the United States 20 years ago
22 started 23 smelters. Four years ago, it's 14; today it's 10.
23 It was nine last year, one's restarted.

24 So, you know, we can -- we can "what if" all
25 day long, but the collection of actions associated with

1 Noranda, I believe, have brought Noranda to a place where if
2 we run the business well, we focus in our fundamentals, if we
3 compete on the basis of costs, all of our costs -- if we
4 compete on the basis of cost, then I believe that we can
5 create the best possible scenario for our future success.

6 COMMISSIONER DAVIS: Thank you, Mr. Smith. I
7 don't have any further questions at this time, Judge.

8 JUDGE WOODRUFF: Commissioner Jarrett?

9 EXAMINATION

10 QUESTIONS BY COMMISSIONER JARRETT:

11 Q. Good afternoon, Mr. Smith. How you doing?

12 A. How you doing, Commissioner Jarrett?

13 Q. I don't have too many questions, so hopefully
14 I won't keep you too much longer.

15 Do you remember Commissioner Davis asked you
16 some questions about MIEC's position on the rate increase,
17 and I believe he mentioned Mr. Meyer who had testified Ameren
18 deserves about a \$145 million rate increase. And I believe
19 you indicated that you had -- you weren't here to hear his
20 testimony?

21 A. That's correct.

22 Q. Now, you were here when Mr. Brubaker was on
23 the stand earlier today, were you not?

24 A. Yes.

25 Q. And in questioning from me, I think

1 Mr. Brubaker said approximately 150 million. Do you recall
2 him saying that?

3 A. Yes.

4 Q. Okay. Do you have any reason to disagree with
5 him on that?

6 A. No. We rely on our experts.

7 Q. Okay. And I believe you indicated to
8 Commissioner Davis that Noranda is a member of FERAF?

9 A. Yes.

10 Q. And what does that membership entail? Do you
11 provide financial support for FERAF?

12 A. We do make donations to FERAF, yes.

13 Q. All right. And I believe Commissioner Davis
14 asked you about the T-shirts and the stickers and you really
15 didn't have any --

16 A. I saw -- two years ago, I saw the T-shirts. I
17 don't remember the stickers.

18 Q. And I think he also asked you about a petition
19 on the web site and you really didn't know too much about
20 that either?

21 A. That's correct.

22 Q. How about the radio ads that ran where FERAF
23 was telling members of the public to come out to the local
24 public hearing that's scheduled at the PSC and tell the PSC
25 no rate increase. Do you remember those ads that were run?

1 A. I don't. I don't believe I ever heard the ad.
2 But I'm aware that the -- again, as you talk this through,
3 I'm aware that there was an appeal to the public to come out
4 from FERAF to go to the Public Service Commission, yes.

5 Q. But you don't remember whether or not they
6 said to come and tell the PSC no rate increase? You don't
7 remember that part?

8 A. Again, I didn't hear the ads, Commissioner. I
9 didn't hear the ads.

10 Q. Is it Noranda's normal business practice to
11 fund -- to become a member of an organization and fund an
12 organization and then really not know what they're doing?

13 A. There are people within my organization that I
14 rely on to -- I have a vice-president that handles our
15 government affairs for us, and I rely on him to -- to take
16 supervision of those actions that we invest in.

17 Q. But you don't have any -- do you dispute that
18 those ads ran as I described them?

19 A. No, I do not, Commissioner.

20 Q. Okay. Now, you're also a member of MIEC?

21 A. That's correct.

22 Q. And do you know if MIEC is a member of FERAF?

23 A. I believe I heard today that they are not.

24 Q. I think Mr. Brubaker said he didn't know. Do
25 you know?

1 A. No, I don't.

2 Q. Do you know if MIEC provides any financial
3 support for FERAF?

4 A. I do not.

5 Q. Or gives them any money?

6 A. I do not, no.

7 Q. Okay. You were here when Mr. Scheperle was on
8 the stand, were you not?

9 A. Yes, I was.

10 Q. And we walked through the numbers on the
11 stipulation, and just basically paraphrasing what he told me,
12 every other -- every other class was either overpaying or
13 underpaying, but they were moving closer to their actual cost
14 of service, except for the large transmission class, which
15 Noranda is. And he said it was his position that Noranda was
16 paying below their cost of service, and under the stipulation
17 would be paying even farther from their cost of service. Do
18 you recall that?

19 A. Yes, I do.

20 Q. Okay. Do you think FERAF's going to run ads
21 doubting that?

22 A. Boy, for me to speculate on that, but I have
23 no indication that FERAF would run ads on that.

24 Q. Well, here, let me -- I'll tell what you my
25 concern is and I'll let you respond. Noranda belongs to an

1 organization that puts out ads, has an online petition,
2 drumming up people to come to our public hearings and
3 advocate for no rate increase. And so we have all of these
4 elderly people, people on fixed incomes coming to testify
5 because FERAF brings them out through their advertising and
6 tells us not to raise their rates.

7 But then the organizations that are funding
8 FERAF after the cameras are off and the reporters are gone,
9 come into this rate case and advocate for a rate increase.
10 And as a matter of fact, advocate for a rate increase that's
11 going to increase the residential customers that are targeted
12 by FERAF more than they're going to increase for you.
13 Do you see -- do you see the hypocrisy there?

14 A. Sir, I absolutely see your concern. I
15 absolutely see your concern. I think that the -- we are very
16 committed to this process. We are very committed to this
17 process. It is not our intent to disrupt this process.

18 My understanding is this is a pretty unique
19 event for me to be here. I didn't end up submitting any
20 testimony. I came here willingly because I felt that no
21 matter what the questions were that were asked of me, we're
22 the -- we're the largest consumer of electricity in this
23 state. You might imagine it's very dear to us that the
24 process that is here to provide for our rates works and works
25 well.

1 We also come here, by the way, because we do
2 expect to be held accountable. We're a big user of
3 electricity. We come here and ask for support to keep our
4 company competitive. I think that there are very few things,
5 and I think that Commissioner Davis has pointed to one, since
6 I've been here where you can -- where we could get into a
7 lively dispute about whether or not that action was done for
8 the best short-term, long-term interest of the company. From
9 my perspective, I would tell you everything that I have tried
10 to do has been for the best short-term and long-term impact
11 for this company.

12 But the final reason why we like to be here in
13 this process is that we think that because in the end, this
14 is a supplier-customer relationship. Commissioner Davis
15 raised a very good point, which is those relationships have
16 to be strong and they have to progress but they also have to
17 go through the step in the process. And so as the largest
18 customer in the state, we think it might be of help for us to
19 be here.

20 So I absolutely understand your concern,
21 Commissioner. And it is -- it is our desire in every one of
22 the endeavors that we participate in, no matter how tough the
23 fight, that at the end, we're more respected at the end of
24 the fight -- first, we would like to avoid the conflicts. We
25 really, honestly, don't go out looking for a slug fest.

1 But this is about -- this is about having your
2 actions being respected, and running a business in the way we
3 really mean it. When we say do right things the right way,
4 we try very hard to live for that motto. We don't always --
5 we're not perfect.

6 As I said earlier when the question was asked,
7 should ratepayers be held accountable for Ameren's mistakes,
8 I'm sorry if I don't remember the exact words of the
9 question, Commissioner. This is about working every single
10 day. Every single day to try to do the right things and to
11 try to get the results because unfortunately, we're not
12 involved in a remake of an old Disney movie. We don't get to
13 come to work just to be good people. But we have to do the
14 right things the right way to get the results for our
15 customers, our co-workers, our communities, our suppliers.
16 And if we do that well, we get a result for our shareholders.

17 So I can understand both your frustration and
18 the concern. But -- but as I said to Commissioner Davis, we
19 really are trying to be here for the long-term. We've been
20 here for a very long time. There was a company didn't want
21 to be a part of Missouri anymore, so they sold Noranda. They
22 didn't want to be in aluminum, they didn't want to be in
23 Missouri.

24 Apollo bought the company, and one thing I
25 would point out is whatever your view of private equity might

1 be, that Resolution Performance Products you talked about,
2 when I got there, that was a company that Apollo had owned
3 and they went nine consecutive quarters without getting cash
4 flow to break even, if you annualize their quarterly cash
5 flow.

6 So they owned that company for three years or
7 better -- two years or better before I got there. They still
8 own that company as part of Hexion. They rode through it
9 through a very tough time. They remained committed to it.
10 Same way with Barry Plastics and Covalence. They still own
11 that company. So they have been, frankly, very helpful
12 advisors. Again, notwithstanding -- and they participated
13 in a portfolio of decisions that have helped our company
14 advance.

15 So we -- we are here for the long-term. That
16 plant will be there for the long-term. The question is: How
17 successful will we be in running it? And I will contend that
18 by working in this process and doing what we're doing, we're
19 being pretty successful.

20 Q. Well, and I appreciate that, and I am a
21 believe in the free market system and capitalism. I think
22 you have every right to make any business decisions you deem
23 necessary to maximize profits and minimize expenses. I don't
24 begrudge you any of that. I don't begrudge you taking
25 positions in the rate case that are -- that are advantageous

1 to your company. I don't begrudge you appealing decisions
2 that we make if you feel that you've been -- that we haven't
3 given you a fair shake and they should be appealed.

4 I guess my point was that Noranda is funding
5 an organization that's basically misleading people, telling
6 them to come out and argue for no rate increase, thinking
7 that this organization truly believes in no rate increase and
8 so these elderly folks and all these other folks that really
9 come out really have hope that someone's fighting for them.

10 When in fact, the companies and the people
11 that are funding them want to -- agree that there should be a
12 rate increase and then they actively work to try to push the
13 rate increase -- as much of the rate increase off on other
14 classes. And, you know, and that, of course, isn't told to
15 any of those people.

16 So I think it's unconscionable to mislead
17 folks that are in the low income class and elderly on fixed
18 incomes by telling them to go out and tell the PSC no rate
19 increase and come in here and have a completely different
20 position in the rate increase. Like I said, once the cameras
21 aren't rolling anymore, once the reporters have stopped
22 scribbling, come out with a completely different position
23 than they took in the public hearings. So you can respond to
24 that, if you want. I don't have any further questions.

25 THE WITNESS: Commissioner Jarrett, I would

1 like to respond to that and I appreciate the questions that
2 you've asked.

3 The stated purpose of FERAFF is to educate. If
4 that's not being done effectively, then the contributions
5 that we and others are making aren't being used effectively
6 because that is the ultimate objective of FERAFF and the
7 reason why we participate. So I will -- you can rest assured
8 that I will understand from the folks from Noranda that
9 participate in this how we can make sure that we're
10 fulfilling that -- that goal of education, even if it is
11 taking positions that are contrary to other parties that are
12 in this room. But I understand the concern that you've
13 raised.

14 Q. Thank you. And education is great. I believe
15 in education, too. So I appreciate it, Mr. Smith. Thanks
16 for being here today. I know you weren't a witness and you
17 weren't subpoenaed and you appeared here voluntarily. So I
18 appreciate that very much.

19 THE WITNESS: Thank you.

20 JUDGE WOODRUFF: Any recross based on those
21 questions from -- or actually original cross based on those
22 questions from the bench?

23 MR. TRIPP: Ameren has a few questions, but
24 can we take a quick break?

25 JUDGE WOODRUFF: All right. We have been

1 going to for over two hours. Let's make it about a 12-minute
2 break. We'll come back at 3:20.

3 (A break was held.)

4 JUDGE WOODRUFF: Let's come to order again,
5 please. We were going to move to cross-examination of
6 Mr. Smith and Ameren indicated they had some questions.

7 COMMISSIONER DAVIS: Judge, can I just go
8 back. I just have a couple more questions for Mr. Smith.

9 JUDGE WOODRUFF: Go ahead.

10 FURTHER EXAMINATION

11 QUESTIONS BY COMMISSIONER DAVIS:

12 Q. Mr. Smith, are you or Noranda a member of any
13 other associations or groups that are a party to this case?

14 A. Yeah, I think so. I'm just looking for my
15 AARP card. I'm a member of the AARP. But if I've lost it,
16 there goes my 10 percent discount at the Best Western.

17 But yes, I am a proud member of the AARP and
18 like the Missouri Retailers, we didn't go to them to
19 intervene on our behalf at this rate case. We're just
20 members of the organization.

21 Q. Does Noranda have a board seat?

22 A. On the AARP?

23 Q. Retailers.

24 A. No.

25 Q. No? Are there any -- are you familiar with

1 the membership of the MIEC?

2 A. Noranda's membership?

3 Q. Well, yes, and do you know any of the other
4 members?

5 A. Sure. Monsanto, Anheuser Busch, the large
6 industrials.

7 Q. Are they all members of FERAF, too?

8 A. You know, I don't know who-all is in FERAF,
9 who all the members of FERAF are. I believe that Ford is, I
10 believe Anheuser Busch is.

11 Q. Okay. And just for the record, you're not a
12 member of the Missouri Energy Users Association, are you?

13 A. Not that I'm aware of.

14 MR. WOODSMALL: You're not.

15 THE WITNESS: Thanks, not that I'm aware of.

16 BY COMMISSIONER DAVIS:

17 Q. Last question, Mr. Smith: Does Noranda employ
18 or has Noranda employed any state senators or any law firms
19 that employ state senators?

20 A. Boy, not that I'm aware of. I just had to
21 pause because I'm thinking. Not that I'm aware of.

22 Q. Okay. Thank you.

23 JUDGE WOODRUFF: All right. Cross, then, from
24 Ameren?

25 ///

1 CROSS-EXAMINATION

2 QUESTIONS BY MR. TRIPP:

3 Q. Thank you. Good afternoon, Mr. Smith.

4 A. Good afternoon.

5 Q. Mike Tripp, attorney for Ameren.

6 You've talked about how important it is for
7 Noranda to be involved in this rate process.

8 A. Yes.

9 Q. Correct? And part of that -- in that process
10 that you're dedicated to, part of that process in attending a
11 stay, for example, when you appeal a rate case, is based on
12 the argument that without the stay, Noranda will suffer some
13 type of financial harm, correct?

14 A. That's correct.

15 Q. And you've talked several times today about
16 the need to -- for the sustainability of Noranda to have low
17 electric rates?

18 A. That's correct.

19 Q. And electric rates aren't the only thing that
20 really impacts a long-term sustainability of a company, fair?

21 A. That's correct.

22 Q. For example, today we've talked about the
23 amount of debt a company carries or the dividends it pays?

24 A. That's correct.

25 Q. I wanted to ask you a few questions, though,

1 about another aspect of the company that would effect its
2 long-term sustainability or its ability to compete.

3 A. Yes.

4 Q. As an integrated company, Noranda does enjoy
5 the advantage over other smelters that have to purchase its
6 raw materials on the open market; isn't that true?

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

8 Q. And when we talk about Noranda being
9 vertically integrated, what we're talking about here
10 specifically is Noranda owns not only the bauxite mine in
11 St. Ann, or at least has an ownership interest in that, but
12 it also owns the Gramercy Refinery that takes that bauxite
13 and turns it into alumina, correct?

14 A. That's correct.

15 Q. And so -- and part of the ability of -- not
16 only your ownership, Noranda's ownership in the mine or the
17 refinery but also its ability to sell some of that excess
18 bauxite or alumina, reduces the cost to Noranda of that
19 alumina?

20 A. That's actually an important part of our
21 strategy, yes.

22 Q. And in fact, the CRU information that Noranda
23 provided in this rate case in response to a data request
24 indicated that Noranda had the lowest alumina cost for all of
25 the smelters for which it was provided. Would that strike

1 you -- would that surprise you?

2 A. No, that would be because of the way that
3 we're integrated, I believe that would be consistent.

4 Q. And so in terms of Noranda's ability to
5 compete, it's not just the electrical cost, it's also the raw
6 material cost; fair?

7 A. That's exactly correct.

8 Q. And -- and in fact, I think you mentioned
9 earlier in your testimony that it's Noranda's desire to stay
10 within that second quartile?

11 A. That's correct.

12 Q. Of costs globally?

13 A. That's correct.

14 MR. TRIPP: I just need an exhibit marked,
15 please.

16 JUDGE WOODRUFF: Okay. Ameren's next number
17 is 173.

18 MR. TRIPP: All right.

19 (Exhibit No. 173 was marked for identification
20 by the Court Reporter.)

21 MR. TRIPP: Judge, I'm sorry, was that 173?

22 JUDGE WOODRUFF: Yes, 173.

23 BY MR. TRIPP:

24 Q. Mr. Smith, what I'm showing you that's marked
25 173, do you recognize that?

1 A. Yes, I do.

2 Q. And that's a chart, actually, from Noranda's
3 2010, 10-K?

4 A. Yes, it is.

5 MR. TRIPP: Your Honor, move to admit
6 Exhibit 173.

7 JUDGE WOODRUFF: 173 has been offered. Any
8 objections to its receipt? Hearing none, it will be
9 received.

10 (Exhibit No. 173 was received by the
11 Commission.)

12 BY MR. TRIPP:

13 Q. And that exhibit demonstrates that globally
14 for 2010, New Madrid is in the second quartile?

15 A. Yes, it is.

16 Q. All right. I think that you said in your
17 testimony that it is your desire that Noranda actually
18 remained in that second quartile to order to have that
19 long-term sustainability; is that fair?

20 A. Yes, that's correct.

21 Q. And I think what you also said was that even
22 if, for example, Noranda's rates remain the same, there's
23 still movement because there are other people coming in in, I
24 guess, the first or second quartile?

25 A. Yes, I think it would be surprising for

1 someone to build a brand new smelter that wasn't situated
2 such that you would certainly target -- I think it would make
3 good common building sense to target a smelter that had first
4 quartile business cost as opposed to any other quartile.

5 Q. And it looks like it's not quite at 1,600 when
6 you look at this chart on the cost per ton, and actually I
7 think in 2010 if your cost per pound was \$.70, it would
8 really be about \$1,400 a ton in terms of this chart in where
9 it falls?

10 A. That's correct.

11 Q. Noranda's costs; is that correct?

12 A. One thing I would point out, if you're using
13 the \$.70 per pound that's in our K, the methodology that CRU
14 uses to position us on this grid is different than the
15 methodology that we use to calculate cost per ton. We
16 believe that based upon that number, that the \$.70 per pound
17 that we report, that we would not have a dispute with the
18 methodology that CRU used to put us where they put us.

19 Q. But based on the \$.70 per pound, it would be
20 \$1,400 per ton?

21 A. If we used our methodology, yes.

22 Q. Correct.

23 A. \$.70 a pound.

24 Q. And I guess the LME, at least yesterday, was
25 2515?

1 A. Yes.

2 Q. And that was metric ton?

3 A. Right.

4 Q. So for --

5 A. \$1.12 per ton today, round numbers.

6 Q. So that's somewhere around \$2,280 per U.S.
7 ton?

8 A. Uh-huh.

9 Q. Yes?

10 A. Yes, sorry. My apologize.

11 Q. No, that's fine. So when we talk about where
12 Noranda is or was in 2010, and really first quarter 2011,
13 they're still in that second quartile, correct?

14 A. That's correct, yes.

15 Q. Now, with regard to its electric cost, now
16 we're not talking about the raw material costs which are
17 lower so it makes Noranda competitive, but the electrical
18 costs, one of the things Noranda believes is beneficial to it
19 is having an electrical supply contract that's not based on
20 the LME price.

21 A. That's correct.

22 Q. Because some, as I think Mr. Feign mentioned,
23 that some of the smelters that we see on the ten smelters in
24 the U.S., some of those have an electrical cost that will go
25 up when the LME goes up?

1 A. That's correct.

2 Q. And so that's an advantage that Noranda enjoys
3 over other smelters in the United States; fair?

4 A. I believe that's a fair statement. In a
5 rising LME environment, we have an opportunity, if we manage
6 our costs well. But then also the responsibility, if the
7 costs go down -- as the LME goes down, to take responsibility
8 to manage our costs out there.

9 Q. And you said if you manage your costs,
10 correct?

11 A. That's correct.

12 Q. And you have been doing a good job of managing
13 your costs?

14 A. We believe that we have, yes. We have a core
15 productivity program that we publicly report that's 2009,
16 2010, first quarter 2011. That was about \$140 million worth
17 of cost savings and avoided capital, so.

18 Q. Well, and it looks like the unit net cash cost
19 to Noranda, which would include the electrical cost?

20 A. Yes.

21 Q. Where primary alumina per pound has dropped
22 significantly in the past few years?

23 A. Yes.

24 Q. For example, 2008 was \$.82 a pound?

25 A. Uh-huh.

1 Q. 2009, \$.70 -- \$.77?

2 A. Uh-huh.

3 Q. 2010, \$.70?

4 A. Yes.

5 Q. And in first quarter, it was \$.66 per pound?

6 A. Yes.

7 Q. So in that downward movement in terms of costs
8 for Noranda, I think that you've also testified that Noranda,
9 other than I guess the FAC, has not had a rate increase,
10 really, to speak of in those years?

11 A. I just want to make sure that -- we didn't get
12 a rate increase the last time and I thought the rate increase
13 before for us was about 6 percent.

14 Q. Oh, and I meant -- I meant that you paid,
15 actually.

16 A. Well, there is about -- is moving up to \$20
17 million that we have paid into an escrow account.

18 Q. Right, but you haven't even booked that as an
19 expense, according to your annual report; true?

20 A. Well, my understanding was that we -- that
21 those costs had been, but.

22 Q. I'll get to that.

23 A. Sure.

24 Q. I understood that as late as April of this
25 year, Mr. Smith, you believed that the proposed rate increase

1 was a threat to New Madrid's ultimate survival.

2 A. Our sustainability, yes.

3 Q. Well, I think you actually said "ultimate
4 survival" was what you told the Chamber of Commerce here in
5 Jefferson City on April 7th; isn't that true?

6 A. Yes.

7 Q. But 2010 was a great year for Noranda?

8 A. It was a very good year for us, yes.

9 Q. Cash flow from the operating activities were
10 up \$50 million over the prior year?

11 A. That's correct.

12 Q. And in the fourth quarter of 2010, for
13 example, New Madrid had achieved a new quarterly production
14 record?

15 A. Yes, it did.

16 Q. And in fact, actually, it's not just Noranda,
17 but the alumina industry as a whole is experiencing a
18 recovery from that downturn in 2008, 2009?

19 A. That's correct.

20 Q. And Noranda believes that global demand for
21 aluminum is going to increase?

22 A. Yes, we do.

23 Q. And I think the CRU expects U.S. aluminum
24 consumption to grow 13 percent in 2011, and that's after a 14
25 percent increase in 2010, fair?

1 A. That's correct.

2 Q. And in fact, I think you mentioned earlier
3 you're even doing a \$38 million --

4 A. That's correct.

5 Q. -- project down in the New Madrid facility; is
6 that true?

7 A. That's correct.

8 Q. And I don't know if -- I guess Noranda just
9 recently received a million dollars in state assistance for
10 that project making the total economic development package
11 provided by the state about nine million dollars?

12 A. Yes.

13 Q. Now, also in 2010, Noranda completed an
14 initial public offering of 11.5 million shares of common
15 stock with gross offering proceeds of around 92 million.

16 A. That's correct.

17 Q. Also had a follow-on offering in December of
18 2010 of another 11.5 million shares resulting in an aggregate
19 gross offering proceeds of 130.5 million, correct?

20 A. That's correct.

21 Q. And I think yesterday, the stock prices --
22 well, 1435, I think it's what it was at close, is that fair?

23 A. That's correct.

24 Q. About twice of the value of the initial \$8
25 share price?

1 A. That's correct.

2 Q. And I think you've already told the Commission
3 that you repaid the debt in 2010 at least with some of those
4 proceeds?

5 A. Yes, virtually all of the net proceeds went to
6 pay down debt.

7 Q. And credit rating improved?

8 A. Yes.

9 Q. And generally speaking, Noranda itself has a
10 strong customer base and is very stable?

11 A. That's true, yes.

12 Q. And we've already talked about the fact that
13 the price per pound has dropped significantly, so I'll go on.

14 And the sale price, of course, has risen,
15 which I think you've already stated as well.

16 A. That's correct.

17 Q. So the cost of producing aluminum for Noranda
18 has gone down the last few years, the Company's doing better
19 than ever, but I think it's your -- or your testimony that
20 you don't want one-third of your costs, which I think you're
21 talking about the electrical costs, to grow in an organic
22 rate? Is that what you said?

23 A. Yes, and by that, I meant -- was searching for
24 a word, but we want to be involved in the process to make
25 sure that that -- that that rate is as low and based on cost

1 of service is as low and as reasonable as we can be. So I
2 apologize if I picked the wrong word there.

3 Q. That's okay. So -- and I think that you've
4 already agreed with the Commission that I guess an expert on
5 behalf of MIEC and Noranda has admitted that somewhere in the
6 neighborhood of \$150 million rate increase would be
7 appropriate in this case? Is that correct?

8 A. I'm not sure if "appropriate" is the right
9 word.

10 Q. Well, supported. I'm not sure what would be
11 appropriate.

12 A. Yeah.

13 Q. At least some rate increase, correct?

14 A. Correct.

15 Q. I guess if the Commission would order a rate
16 increase of \$145 million, are you going to tell us that
17 Noranda's not going to appeal that rate increase? You don't
18 have to answer that question.

19 MR. TRIPP: I don't have any further
20 questions.

21 JUDGE WOODRUFF: Redirect?

22 MR. LEADLOVE: Thank you, Your Honor.

23 REDIRECT EXAMINATION

24 QUESTIONS BY MR. LEADLOVE:

25 Q. Mr. Smith, Mr. Tripp just talked about 2010

1 results of Noranda with you. Is that fair to say that that
2 success is based largely on the LME price of aluminum
3 currently?

4 A. There's no question that -- perhaps I could
5 answer just a slightly broader question. We're in business
6 where we have little or no influence over the global price of
7 aluminum. Global price of aluminum is established on the
8 London Metal Exchange, and there's no question that the --
9 that the price of aluminum has a very significant impact on
10 our business, but we never -- we never give up on our need or
11 our responsibility to manage the fundamentals for our
12 business that we can.

13 We can't control the LME, but we do need to
14 control our costs. And there's no question that that power
15 as a third of our cost is something that is very important to
16 us. Alumina, which is the next largest bit of our cost is
17 also very important.

18 So when we look at our results in 2010, we
19 would hope that -- that Missouri would be excited that
20 Noranda as a commodity company is having a good year.
21 Because these are the years where you make the investment
22 dollars to do just exactly what we're doing, which is to
23 invest in our plant, that million dollar support, I believe
24 is because this was an energy efficiency project. To drive
25 our energy efficiency up, to drive our costs down because in

1 the end, we're in the aluminum business.

2 We see demand fundamentals that encourage us.
3 But we also understand the volatile nature of this industry.
4 And I believe I've got my numbers right, that back in July of
5 2008, the forward curve averaged \$1.58 a pound. For a
6 five-year period, they looked forward and said, You know
7 what, not only is it going to average \$1.58 a pound, but it's
8 going to get better every year.

9 And in February, maybe I remember this more
10 clearly because my birthday is in the month of February, the
11 price had dropped on that curve to \$.81 for a five-year
12 period. And the following year it was back up to \$1.36.
13 Same curve. So the point here is it's very volatile.

14 So we have to be prepared to deal with the
15 fundamental of our industry, which is a very volatile revenue
16 stream. In 2008, a billion three; 2009, under \$800 million;
17 2010, back up to around a billion three. These numbers are
18 obviously rounded.

19 So as we look at why we're here, again, and
20 why we're so focused on the cost of our power, and every
21 other one of our costs, is that's the way we compete. And we
22 don't compete just for the quarter. We have to have a good
23 quarter result because every step of our journey needs to be
24 as good as it can be for the long-term health and success of
25 our company, so.

1 Q. So Commissioner -- you were asked by one of
2 the commissioners about, and I guess challenged somewhat,
3 about guaranteeing that you wouldn't do anything that would
4 damage the smelter in New Madrid. Tell me about -- or can
5 you explain to the Commission what this \$38 million
6 investment is?

7 A. It's a direct fire farm (phonetic). Right now
8 not only is our growth limited by our ability to convert AC
9 power to DC to drive ourselves, but we also have the right
10 kind of redundancy. So this gives us redundant direct fire
11 capacity, gives us added direct fire capacity, gives us more
12 efficient operations, and then we go from there.

13 Q. Would you agree that committing to make an
14 investment of \$38 million is something that would be
15 inconsistent with the idea of doing anything to damage the
16 smelter?

17 A. Yes.

18 Q. Mr. Tripp asked you some questions about the
19 rates that Noranda has paid for electricity the last few
20 years, and I think he excluded the fuel adjustment charge
21 issues. With the fuel adjustment charge included, can you
22 comment on what Noranda's cost of power had been for the past
23 three years?

24 A. Since 2008, a bit over -- a bit over 20
25 percent increase. And last year, our total cost for power at

1 the smelter, when you include the wheeling charge, right
2 around \$150 million in 2010.

3 Q. So it has increased on a percentage basis over
4 the past three years?

5 A. Yes.

6 Q. Commissioner Jarrett pointed out, I think in
7 his questioning, that you were not subject to a subpoena,
8 that you were here voluntarily. You sat through a fairly
9 extensive examination by the Commission, including questions
10 regarding your previous employment with companies not even
11 part of this case. But can you tell the Commission why
12 you're here?

13 A. I'll repeat a lot of what I said earlier, but
14 first I think it's a privilege to be here. It's actually a
15 privilege to have a job like mine and there are
16 responsibilities that you have that you just need to fulfill
17 and this is one of them. We are the largest electrical --
18 electricity consumer in the state. And as a result of that,
19 I think it's important for us to work within the public
20 service process.

21 I think it's important for us to be here and,
22 frankly, as the largest customer, I think it's important to
23 share our views because whatever happens in the world of
24 electricity is amplified by us. So for me, I do view this as
25 a privilege to be in Missouri. Missouri has been a great

1 place for us to do business since 1971.

2 We expect to continue to do business here as
3 we evaluate our growth projects and we're looking at a
4 variety right now, one of which is a rod project that would
5 replace the rod mills that we have today in the plant. And
6 we hope that -- that investment is something that we find
7 that's both affordable and appropriate and that the
8 environment here is such that -- that we continue to grow
9 more in Missouri because this has been a great place for us.
10 We've been treated with a great deal of respect throughout
11 the years and we look forward to continuing to do business
12 here.

13 MR. LEADLOVE: Thank you. I have no further
14 questions, Your Honor.

15 JUDGE WOODRUFF: Thank you. You may step
16 down.

17 THE WITNESS: Thank you very much.

18 JUDGE WOODRUFF: And I believe that concludes
19 all the evidence in this case. I have a couple things that I
20 notice that I wanted to bring up as far as admission of
21 documents.

22 First of all, for Ameren, for Number 155,
23 which was exhibit that Commissioner Kenney had requested, the
24 value of savings from the switch to tile. Has that ever been
25 filed?

1 MR. MITTEN: Yes.

2 MS. TATRO: Yes, it was.

3 MR. TRIPP: It was filed two weeks ago, Your
4 Honor.

5 JUDGE WOODRUFF: All right. I don't have it
6 as having been received. Does anyone have any objections to
7 its receipt? Hearing none, it will be received.

8 (Exhibit No. 155 was received by the
9 Commission.)

10 JUDGE WOODRUFF: Then there was also documents
11 163 and 164, which was documents from Mr. Rieg that Ameren
12 was going to produce later. Does anyone know what happened
13 to that?

14 MS. TATRO: That was filed yesterday by
15 Mr. Lowery. It was documents that he relied upon in
16 preparation for his portions of his expert testimony that was
17 requested by one of the Commissioners. I have to apologize,
18 I don't remember which one.

19 JUDGE WOODRUFF: I don't remember which
20 commissioner it might have been either. But you believe it
21 was filed in EFIS yesterday?

22 MS. TATRO: Yes, I believe it was.

23 JUDGE WOODRUFF: Let me check that. While I'm
24 checking that, then, moving over to MIEC, Mr. Dauphinais had
25 testimony direct and HC and NP that's never been offered and

1 he's never testified. What do you want to do with that?

2 MS. VUYLSTEKE: Your Honor, I believe all the
3 issues that Mr. Dauphinais had testimony with respect to were
4 settled issues. And I'm not sure why the testimony was not
5 offered except that perhaps it was because his issues were
6 settled and he never appeared.

7 JUDGE WOODRUFF: Would you like to offer his
8 testimony?

9 MS. VUYLSTEKE: We would like to offer his
10 testimony at this time.

11 JUDGE WOODRUFF: 412 NP and HC has been
12 offered. Any objections to its receipt? Hearing none, it
13 will be received.

14 (Exhibit Nos. 412 NP and HC were received by
15 the Commission.)

16 JUDGE WOODRUFF: Anything else anyone needs to
17 bring up?

18 MR. MILLS: Judge, with respect to the
19 exhibits from Mr. Rieg filed yesterday, they are extremely
20 lengthy and I would like at least ten days to be able to
21 review those before I have to object or not object.

22 MS. KLIETHERMES: And similarly, I know that
23 there was some discussion of those exhibits yesterday in our
24 office, and I'm not the person to speak as to whether or not
25 Staff has an objection to those.

1 JUDGE WOODRUFF: Okay. Well, since they were
2 filed late, they must have slipped in on me when there were a
3 lot of other documents coming in that had previously been
4 admitted. I'll give the other parties a chance -- as
5 Mr. Mills indicated, ten days to respond to those before I
6 rule on them.

7 MR. MILLS: Thank you.

8 MS. TATRO: Can I just clarify how long you're
9 giving parties the opportunity -- because the first round of
10 briefs are due June 1st.

11 JUDGE WOODRUFF: Well, we need to have it done
12 before June 1st, I guess.

13 COMMISSIONER DAVIS: Well, today's the 20th.

14 JUDGE WOODRUFF: And May 30th is Memorial Day.
15 Let's say a week from today, the 27th.

16 MS. TATRO: Thank you.

17 JUDGE WOODRUFF: Okay. Anything else that we
18 need to bring up?

19 COMMISSIONER DAVIS: Judge, can I inquire of
20 Ms. Vuylsteke?

21 JUDGE WOODRUFF: Sure.

22 COMMISSIONER DAVIS: Ms. Vuylsteke, I'm going
23 to read to you from our rules, Chapter 4 CSR 240-4.020. It's
24 regarding ex parte and extra record communications. And this
25 would be, I'm going to say subsection 14(g). It says that

1 attorneys are to exercise reasonable care to prevent a
2 client, its employees, and the attorney's associates from
3 making a statement that the attorney is prohibited from
4 making.

5 And if you go back up to the -- to the
6 preceding section, which would be F(f), the attorneys -- one
7 of the things that is a prohibited communication is the
8 attorney's opinion as to the -- to the merits of the claims,
9 defenses or positions of any interested person.

10 And I guess here it appears to me that we have
11 your -- well, we've got your client Noranda and potentially
12 some of your other clients through MIEC, who through a
13 different corporate body, the fair electric rate action fund
14 are expressing their opinions as to the -- to the merits of
15 the claims, defenses or positions of Ameren in this case.

16 And I guess I'd like to know, are you
17 exercising any reasonable care to prevent your clients from
18 making statements that you would be otherwise prohibited from
19 making?

20 MS. VUYLSTEKE: Your Honor, if I recall, this
21 issue came up in the last rate case. First of all, I
22 exercise reasonable care and due diligence in all matters. I
23 do believe that any speech that my clients have engaged in
24 through various organizations and missionary is entirely
25 appropriate. And to the extent that the Commission's rules

1 would try to restrict or prohibit that, they would be
2 unconstitutional.

3 COMMISSIONER DAVIS: Okay. So you are saying,
4 then, that it is constitutionally protected free speech that
5 your clients can go out and say, Say no to the rate increase,
6 while at the same time they are here today manifesting that
7 it is -- that they are at least acquiescing to some rate
8 increase and agreeing that the residential payers should bear
9 an increased cost to that rate increase; is that correct.

10 MS. VUYLSTEKE: Your Honor, I -- excuse me,
11 Commissioner Davis. I want to be very clear. I am not the
12 attorney for FERAF. I represent Noranda, I represent Ford,
13 and I represent Anheuser Busch, which are all independently
14 members of FERAF. I do not control the speech of FERAF and I
15 do not control the speech of those clients. I can tell that
16 you all of them intend to respect the Commission process and
17 the Commission's rules.

18 If I was to be held accountable -- or my
19 clients were to be held restricted by the same rules that
20 attorneys are, these are very large companies, global
21 companies, and they engage in a wide variety of speech in
22 many contexts.

23 And I can't believe that the Commission's rule
24 would be properly construed to restrict that speech.
25 However, I will add that we have briefed this issue

1 previously and we would be glad to revisit that issue through
2 legal briefs if there's any question as to the propriety of
3 either my conduct or the conduct of my clients.

4 COMMISSIONER DAVIS: I will -- I will go back
5 and review the arguments in the last case before I ask the
6 parties to brief that issue again. But thank you,
7 Ms. Vuylsteke.

8 JUDGE WOODRUFF: All right. With that, then,
9 we are adjourned and I look forward to your briefs.

10 (The hearing was adjourned.)
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF MISSOURI)

) ss:

COUNTY OF GASCONADE)

I, JENNIFER L. LEIBACH, Registered Professional Reporter, Certified Court Reporter, CCR #1108, and Certified Realtime Reporter, the officer before whom the foregoing matter was taken, do hereby certify that the witness/es whose testimony appears in the foregoing matter was duly sworn; that the testimony of said witness/es was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this matter was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

Court Reporter

I N D E X

AMERENUE'S EVIDENCE

WIL COOPER:

1	Direct Examination by Mr. Mitten	2445
2	Cross-Examination by Mr. Woodsmall	2446
3	Cross-Examination by Mr. Mills	2449
4	Cross-Examination by Mr. Curtis	2449
5	Examination by Commissioner Davis	2455
6	Examination by Commissioner Jarrett	2460
7	Further Examination by Commissioner Davis	2461
8	Recross-Examination by Mr. Woodsmall	2461
9	Recross-Examination by Mr. Schwarz	2462

WILLIAM WARWICK:

10	Direct Examination by Mr. Mitten	2464
11	Cross-Examination by Ms. Vuylsteke	2466
12	Cross-Examination by Mr. Curtis	2469

STAFF'S EVIDENCE

MICHAEL SCHEPERLE:

13	Direct Examination by Ms. McClowery	2472
14	Cross-Examination by Mr. Woodsmall	2477
15	Cross-Examination by Ms. Vuylsteke	2479
16	Cross-Examination by Mr. Curtis	2482
17	Examination by Commissioner Davis	2486
18	Examination by Commissioner Jarrett	2491
19	Redirect Examination by Ms. McClowery	2494
20	Voir Dire Examination by Mr. Mills	2496

OFFICE OF PUBLIC COUNSEL'S EVIDENCE

RYAN KIND:

21	Direct Examination by Mr. Mills	2498
22	Cross-Examination by Mr. Woodsmall	2499
23	Cross-Examination by Ms. Vuylsteke	2500
24	Cross-Examination by Mr. Curtis	2501
25	Examination by Commissioner Davis	2503

BARB MEISENHEIMER:

26	Direct Examination by Mr. Mills	2510
27	Cross-Examination by Ms. Vuylsteke	2511
28	Examination by Commissioner Davis	2512
29	Redirect Examination by Mr. Mills	2514

I N D E X (continued)

MIEC'S EVIDENCE

MORRIS BRUBAKER:

1	Direct Examination by Ms. Vuylsteke	2515
2	Cross-Examination by Mr. Woodsmall	2518
3	Examination by Commissioner Davis	2520
4	Examination by Commissioner Jarrett	2524
5	Further Examination by Commissioner Davis	2525

HENRY FEIGN:

6	Direct Examination by Mr. Leadlove	2529
7	Questions by Commissioner Davis	2531
8	Questions by Commissioner Jarrett	2535
9	Recross-Examination by Mr. Tripp	2536
10	Further Examination by Commissioner Davis	2538
11	Redirect Examination by Mr. Leadlove	2544

KIP SMITH:

12	Direct Examination by Mr. Leadlove	2545
13	Examination by Commissioner Davis	2546
14	Examination by Commissioner Jarrett	2590
15	Further Examination by Commissioner Davis	2600
16	Cross-Examination by Mr. Tripp	2602
17	Redirect Examination by Mr. Leadlove	2613

	EXHIBIT INDEX	MARKED	RCV'D
1			
2	Exhibit No. 155		
3	Value of Savings Worksheet		2619
4	Exhibit No. 173		
	Chart from Noranda's 2010 10-K	2604	2605
5	Exhibit No. 204		
6	Staff Report		2473
7	Exhibit No. 226		
	Direct Testimony of Michael Scheperle		2474
8	Exhibit No. 227		
9	Rebuttal Testimony of Michael Scheperle		2474
10	Exhibit No. 228		
	Surrebuttal Testimony of Michael Scheperle		2474
11	Exhibit No. 249		
12	Staff's Comparison to the Stipulation and Agreement	2494	
13	Exhibit No. 301.		
14	Class Cost of Service Rate Design Direct		2499
15	Exhibit No. 412NP		
16	Direct Examination of James Dauphinais		2620
17	Exhibit No. 412HC		
	Direct Examination of James Dauphinais		2620
18	Exhibit No. 550		
19	Data Request No. MEUA 001	2446	2447
20	Exhibit No. 551		
	Data Request No. MEUA 2.1	2447	2448
21	Exhibit No. 552		
22	Data Request Revised Response As of April 4, 2011	2477	2478
23	Exhibit No. 553		
24	Results of Mr. Brubaker's Class Cost Of Service Study for the Past Three AmerenUE rate cases	2518	2518
25			