Page 238 1 STATE OF MISSOURI 2 PUBLIC SERVICE COMMISSION 3 4 5 6 TRANSCRIPT OF PROCEEDINGS 7 Evidentiary Hearing 8 February 24, 2015 Jefferson City, Missouri 9 Volume 16 10 11 12 In the Matter of Union ) Electric Company d/b/a ) 13 Ameren Missouri's Tariff ) File No. ER-2014-0258 to Increase Its Revenues ) for Electric Service 14 ) 15 16 17 MORRIS L. WOODRUFF, Presiding, CHIEF REGULATORY LAW JUDGE. 18 19 ROBERT S. KENNEY, Chairman STEPHEN M. STOLL, 20 WILLIAM P. KENNEY, DANIEL Y. HALL, 21 SCOTT T. RUPP, COMMISSIONERS. 22 23 REPORTED BY: 24 KELLENE K. FEDDERSEN, CSR, RPR, CCR NO. 838 MIDWEST LITIGATION SERVICES 25

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Page 242 PROCEEDINGS 1 2 (WHEREUPON, the hearing began at 3 10:00 a.m.) (MIEC EXHIBIT NOS. 501NP, 501HC, 502 4 5 AND 502HC WERE MARKED FOR IDENTIFICATION BY THE REPORTER.) 6 7 JUDGE WOODRUFF: Let's come to order, 8 please. Welcome back for day two of the Ameren 9 rate case hearing. I understand there were some additional settlements possibly. Ms. Tatro, if you 10 want to address that. 11 12 MS. TATRO: Yes. Thank you, your Honor. Staff, MIEC and Noranda have been having 13 discussions about fuel issues, and I think we 14 reached at least a settlement in principle on those 15 issues. We put that on paper last night and sent 16 17 it out to MIEC and Staff, but I'm not sure they've even had time to look at it. We'll be circulating 18 that to all the parties once MIEC and Staff confirm 19 20 that I got it right and hopefully filing it. 21 So our proposal is to not take up issues 4A, B and C today. Instead, we can move 22 those -- if we get the stipulation filed, we won't 23 24 need to take those up at all. If we don't get a 25 stipulation filed, then we can take those up on

Page 243 Friday when we have time, and Mr. Wilson's agreed 1 2 to come back. 3 JUDGE WOODRUFF: So who do we need to actually have on the stand today then? 4 5 MS. TATRO: It will still be 6 Mr. Wills. He will deal with Issue 4D, which is 7 labeled a weather issue, but it's really a load 8 issue. JUDGE WOODRUFF: And then Staff 9 witnesses would be the same? 10 MR. THOMPSON: Would be 11 12 Ms. Kliethermes. 13 JUDGE WOODRUFF: Which? 14 MR. THOMPSON: Sarah. Fair question. MS. TATRO: I did e-mail the parties, 15 and I think everyone responded back they were fine 16 17 with that. 18 JUDGE WOODRUFF: And one other thing to take up. The Commissioners indicated that, when 19 we were talking about this yesterday, there was a 20 21 chance we might ask questions about the Stipulation & Agreement today. It's been decided 22 that we'll wait until tomorrow to do that, if that 23 will work for the parties. And you can send your 24 people home. 25

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Page 244 MS. TATRO: Okay. Great. And I have 1 2 one last issue for you. Yesterday Ameren Missouri 3 filed a motion that had to do with the solar rebate testimony. And our presumption is we'll just take 4 5 that up tomorrow when the witnesses take the stand. 6 JUDGE WOODRUFF: Correct. 7 COMMISSIONER HALL: Judge, one 8 question about the on the record on the stip. Will the parties have their witnesses available? 9 10 MS. TATRO: Ameren Missouri will have its witnesses available. 11 12 MR. THOMPSON: We'll have ours. 13 MR. ALLISON: OPC. 14 COMMISSIONER HALL: Okay. Thank you. 15 JUDGE WOODRUFF: Okay. Actually, there's one other item to bring up. I had a 16 17 request by Renew Missouri to be excused from the hearing that was filed yesterday. That will also 18 be granted, as were the others. 19 Okay. Then we'll do mini openings on 20 21 the -- it's titled weather normalization issue. It would be Issue 4D. For opening we'll begin with 22 23 Ameren Missouri. 24 MS. TATRO: Good morning, Commissioners. Everyone discusses Ameren 25

		Page 245
1	Missouri's largest customer, that, of course, being	
2	Noranda, as a customer who consistently takes	
3	service at an extremely high load factor, and	
4	that's not untrue.	
5	What does extremely high really mean?	
6	In this hearing I've already heard someone	
7	reference them being a 98 percent load factor	
8	customer. Well, in fact, they aren't always a	
9	98 percent load factor. In this case, Staff's	
10	recommendation is to set rates presuming	
11	98.2 percent load factor, which is Noranda's load	
12	factor as of July of 2014.	
13	But things have changed since then,	
14	and since July Noranda's load has dropped	
15	significantly, and it hasn't returned as of to	
16	date, although it has increased. So even though I	
17	think we've all kind of lived with the presumption	
18	that they are a 98 percent load factor customer,	
19	they aren't, and we should examine that presumption	
20	and endeavor to get it right.	
21	So why aren't they at full load right	
22	now? Well, because all those pots that they had to	
23	replace after the 2009 ice storm are failing and	
24	they're having to be replaced, which is I guess a	
25	normal part of the process. But they've been	

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Page 246 failing since August, and that has lessened their 1 2 production and, consequently, the energy use that 3 they normally would use. So I'd ask that you turn to a 4 schedule that is in Mr. Steven Wills' rebuttal 5 testimony -- I'm sorry -- surrebuttal testimony as 6 7 SMW-1. Put it up on the ELMO. I'm not sure you 8 can read it. It's a lot of small numbers, so I did 9 hand out a copy. Everyone should have a copy to be able to look at at their desks. 10 But this can be found in the 11 12 surrebuttal testimony of Mr. Wills, and you will 13 see that during the ten years, it has all ten years that the company has served Noranda, and you will 14 see that their actual load factor has only been at 15 or above 98.2 percent for four of the ten years. 16 17 That, of course, means that they've been below the 98.2 percent load factor for six of 18 the ten years. And even if you removed 2009 as an 19 extreme example, they've still been below 98.2 20 21 percent more than they've been above. Now, as Mr. Wills points out in his 22 23 testimony, Noranda is the only customer in their 24 class. I think you guys are aware of that. So if 25 Noranda doesn't take service or they take service

		Page 247
1	at less than the factors used to set its rate, such	
2	as the load factor, there's no other customer	
3	offset possible that would to offset that	
4	decrease in usage. It isn't like large primary	
5	service where one customer might use less and	
6	another customer might use more. Noranda is a very	
7	large customer, they're a unique customer, so the	
8	decisions you make on these issues will have real	
9	impacts.	
10	Now, Mr. Wills in his testimony	
11	proposes a few ways to address this issue. One	
12	would be to take their load as of December 31,	
13	2014, but Ameren Missouri acknowledges the usage	
14	has changed since December 31st and that it's	
15	appropriate to recognize it's changed.	
16	But as Mr. Wills can explain,	
17	Noranda's usage still hasn't returned to the 98.2	
18	percent level. So what load factor do we use? It	
19	clearly shouldn't be 98.2 percent.	
20	A ten-year normalized load level, as	
21	you can see on the exhibit, is 93.5 percent, but	
22	that includes 2009, which we all consider to be	
23	extraordinary event. So using a three-year	
24	average, as Staff often does when normalizing,	
25	Noranda's load factor would be 97 percent. That is	

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1	also in the chart before you. And if one were just	
2	to remove the one outlier and normalize the	
3	remaining nine years, the result is 97.46 percent.	
4	Ameren Missouri's position is that	
5	97 percent is the correct number for you to be	
6	using in this case. That's the level that should	
7	be presumed when setting the factors for rates.	
8	Now, we recognize again this hasn't	
9	been an issue in prior cases, but really current	
10	facts have driven home the fact to Ameren Missouri	
11	that it's important to get this factor correctly.	
12	It's basic to the process of setting rates, and	
13	it's something we ask you to look at carefully.	
14	Thank you.	
15	JUDGE WOODRUFF: Thank you. And for	
16	Staff?	
17	MR. ANTAL: Good morning. May it	
18	please the Commission? My name is Alex Antal, and	
19	I will be offering Staff's opening statement on	
20	Noranda loads.	
21	The question before you is, what	
22	level of sales to Noranda should be assumed in	
23	setting rates in this case? Ameren has proposed	
24	using only a two-month average of sales to Noranda	
25	using December and November of 2014 actual sales.	

Page 249 Now, Ameren's attorney has offered a counter 1 2 proposal, but still their primary proposal is to 3 set the Ameren sales level at 437 megawatts per hour. 4 5 This, in Staff's opinion, is not an appropriate amount to set the Noranda level of 6 7 sales. Staff has utilized a normalized test-year sales volume of Noranda using the actual test year 8 9 sales. 10 As has been mentioned, Noranda has experienced pot failures which have reduced its 11 12 electricity needs for the latter half of 2014, 13 resulting in low revenues from this customer class. 14 However, Noranda has stated publicly in a response to Staff data request in this case 15 that they expect to have their pot failures fixed 16 17 and to be at their average annual sales volumes by March of this year. This will resume -- when these 18 pot failures are fixed, they will resume purchasing 19 approximately 480 megawatts of electricity per 20 21 hour. If the Commission accepts Ameren's 22 recommendation and Noranda resumes sales volumes in 23 24 line with test-year calculations, it will create a windfall profit for Ameren Missouri of 25

1 approximately \$9.8 million.

2	It is unfortunate that Ameren
3	Missouri it's unfortunate that Ameren Missouri
4	has been unable to sell as much electricity to
5	Noranda due to these pot failures, but at the risk
6	of doing but this is the risk of doing business.
7	There are going to be times that because of
8	economic circumstances or because of, you know,
9	adverse weather conditions, that the utility's
10	unable to sell as much electricity as we projected
11	them to be able to sell during a particular point
12	in time.
13	Accepting Ameren's proposed level of
14	sales to Noranda when we know that these levels of
15	sales are abnormal and will not continue into the
16	future amounts to allowing Ameren Missouri to
17	collect revenues for past under-collection, which
18	the Commission should not allow.
19	For these reasons, Staff recommends
20	the Commission adopt Staff's normalized test year
21	sales volumes for Noranda. Thank you very much.
22	JUDGE WOODRUFF: Thank you. Public
23	Counsel?
24	MS. BAKER: Public Counsel waives
25	opening on this issue.

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Page 251 1 JUDGE WOODRUFF: MIEC? 2 MR. DOWNEY: We have no opening. 3 JUDGE WOODRUFF: Does anyone else have an opening? 4 Okay. We'll proceed with the first 5 6 witness, then, which would be Mr. Wills. Good 7 morning. 8 THE WITNESS: Good morning. 9 (Witness sworn.) 10 JUDGE WOODRUFF: Thank you. You may inquire. 11 12 STEVEN WILLS testified as follows: DIRECT EXAMINATION BY MS. TATRO: 13 14 Q. Good morning. Can you state your 15 name and business address for the Commission, please? 16 17 A. Steven Wills. My address is 1901 Chouteau Avenue, St. Louis, Missouri 63101. 18 19 Q. And are you the same Steve Wills who 20 prefiled rebuttal and amended rebuttal and 21 surrebuttal testimony in this case? 22 A. Yes, I am. 23 Q. Do you have any additions or corrections to make to that testimony? 24 25 Only those contained in the amendment Α.

Page 252 to the rebuttal testimony. 1 2 Q. If I were to ask you the questions 3 that are contained in those testimonies, would your answers be the same? 4 5 A. Yes, they would. MS. TATRO: I offer Exhibits 53 and 6 7 54 into the record and tender the witness for cross-examination. 8 JUDGE WOODRUFF: Exhibits 53 and 54 9 have been offered. Any objections to their 10 receipt? 11 12 (No response.) 13 JUDGE WOODRUFF: Hearing none, they 14 will be received. (AMERENUE EXHIBIT NOS. 53 AND 54 WERE 15 MARKED AND RECEIVED INTO EVIDENCE.) 16 17 JUDGE WOODRUFF: And for cross-examination, just looking around to see who's 18 here, looks like OPC would go first. I'm sorry. 19 20 Consumers Council? 21 MR. COFFMAN: No questions, your 22 Honor. 23 JUDGE WOODRUFF: Public Counsel? 24 MS. BAKER: No questions. Thank you. 25 JUDGE WOODRUFF: MIEC?

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1	MR. DOWNEY: No questions.	
2	JUDGE WOODRUFF: Staff?	
3	MR. ANTAL: Yes, your Honor.	
4	CROSS-EXAMINATION BY MR. ANTAL:	
5	Q. Good morning, Mr. Wills.	
6	A. Good morning.	
7	Q. A few questions,	
8	A. Okay.	
9	Q. Is it still your primary	
10	recommendation that the Commission set Noranda	
11	sales at 437 megawatts per hour?	
12	A. No, it's not. As Ms. Tatro mentioned	
13	in her opening, at the time that we filed the	
14	testimony, there had been no evidence of any	
15	increase in load from the level that they had been	
16	gotten down over a six-month period.	
17	Since that time, we've been able to	
18	track some more recent load data and there has been	
19	an increase. I've got some of that data, if it's	
20	of interest to you, that I could share with you.	
21	But basically they've returned part	
22	of the way to their normal level, and when I say	
23	normal level, I meant what people are referring to	
24	as full load or that 98 percent load factor	
25	roughly.	

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1	But as Ms. Tatro also mentioned in	
2	her opening and I've had in my rebuttal or	
3	surrebuttal testimony, even when they are at,	
4	quote, full load, there has been some fluctuation	
5	over the years, this last year being one example.	
6	In 2005 and 2012 I think the load factor was	
7	97 percent roughly.	
8	Q. Thank you. That answers my question.	
9	A. Thank you.	
10	MR. ANTAL: If I may, Judge, what is	
11	Staff's next exhibit number?	
12	JUDGE WOODRUFF: That would be 242.	
13	MR. ANTAL: If I may, I would like to	
14	show the witness a data request.	
15	(STAFF EXHIBIT NO. 242 WAS MARKED FOR	
16	IDENTIFICATION BY THE REPORTER.)	
17	BY MR. ANTAL:	
18	Q. Mr. Wills, are you familiar with this	
19	document?	
20	A. No. I've seen it referenced in	
21	testimony, but I haven't actually read it in this	
22	form.	
23	Q. Would you agree that it is a data	
24	request marked 0564 in this case?	
25	A. Yes.	

Page 255 1 0. And would you agree that it is a 2 response from Missouri Industrial Energy Consumers 3 to a Staff data request? Α. Yes, that's what it appears to be. 4 5 Would you mind reading into the Q. record the response? 6 7 Α. Sure. Noranda has experienced higher 8 than normal pot failures since around mid 2014 which has led to lower production levels and, 9 therefore, lower electricity consumption. Noranda 10 is currently estimating to be back to full 11 12 production by the end of March 2015. This is the only circumstance known to have materially affected 13 power usage during the specified time period. 14 15 Q. Thank you. 16 MR. ANTAL: Judge, I would like to 17 offer one more exhibit, No. 243. 18 JUDGE WOODRUFF: Okay. MS. TATRO: Has 242 been offered? 19 20 Because I certainly want to object. JUDGE WOODRUFF: Has 242 been 21 22 offered? 23 MR. ANTAL: Staff would hike to offer 242. 24 25 JUDGE WOODRUFF: Okay. Objections?

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1	MS. TATRO: Yes, I would object.	
2	Mr. Wills has never seen this data request. It's	
3	not between Ameren Missouri. It's between Staff	
4	and MIEC. It's inappropriate to be using him. He	
5	cannot lay proper foundation using Mr. Wills when	
6	he didn't answer the question, he'd never seen the	
7	question.	
8	JUDGE WOODRUFF: Can you lay any	
9	foundation for this?	
10	BY MR. ANTAL:	
11	Q. Mr. Wills, in your rebuttal and	
12	surrebuttal testimony, you mention that Noranda has	
13	made representations publicly and in this case,	
14	responsive data requests in this case that they	
15	will return to their normal load sometime this	
16	year; is that correct?	
17	A. Publicly, yes. I don't recall	
18	mentioning a data request, but did mention that	
19	they made a public statement on their I think it	
20	was their third-quarter earnings call of last year	
21	that they expected to be back to full load. I	
22	believe that's contained in my rebuttal testimony.	
23	JUDGE WOODRUFF: Were you offering?	
24	MR. ANTAL: I will reoffer under the	
25	foundation.	

Page 257 MS. TATRO: I'm still not sure that 1 2 there's foundation for this exhibit. His testimony 3 is -- I'm not even sure it's consistent with the answer that's in here. So it really should be 4 5 offered through another witness, not through Mr. Wills. 6 7 JUDGE WOODRUFF: It seems to be 8 hearsay in that MIEC's witness is not here to 9 explain it. It's nothing that this witness can verify. I'll sustain the objection. 10 11 MR. ANTAL: Very well. BY MR. ANTAL: 12 Mr. Wills, in your testimony and just 13 Q. 14 now you stated that Noranda has made public 15 representations that they will return to full load sometime this spring; is that correct? 16 17 Α. What I had seen I think was from the third-quarter release, which just said sometime in 18 early 2015. It wasn't specific as to when other 19 than the word early, in my recollection, but in 20 21 2015 is what they expected at the time. 22 0. Based off that public representation, 23 do you have any reason to disbelieve that Noranda will return to their normal load? 24 25 I don't have any reason to believe Α.

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1	one way or another. I mean, it took I know it	
2	took six months for the load to of deterioration	
3	from July through the end of the year, and as of,	
4	you know, mid January when I filed testimony, there	
5	had been really no sign of recovery.	
6	So my assumption was that with six	
7	months you know, a six-month decline, that it	
8	may take six months to come back up. Obviously I	
9	don't, you know, work at Noranda and know exactly	
10	how their process works as far as restoring those	
11	pots, but it appeared very reasonable to me that	
12	they may not be back entirely for much of the year.	
13	MR. ANTAL: Thank you very much. No	
14	further questions.	
15	JUDGE WOODRUFF: Come up for	
16	questions from the Bench. Mr. Chairman?	
17	QUESTIONS BY CHAIRMAN KENNEY:	
18	Q. I just want to be clear and try to	
19	figure out if you know this answer. Thanks for	
20	being here, first of all. Good morning.	
21	A. Good morning.	
22	Q. Ameren I'm sorry. Noranda's	
23	expected to return to full load March of 2015?	
24	A. That's what I understand that they	
25	they've said. My own firsthand knowledge of it is	

Page 259 just from the third-quarter release where they said 1 2 early. You know, then there's this data request, 3 which I read that there, but as Ms. Tatro said it's not something that I prepared or was involved in. 4 5 Q. So your own independent knowledge apart from that data request is what you heard on 6 7 an earnings call? 8 Α. Right. 9 And what's their capacity factor or 0. what's their load factor at full load, according to 10 11 your calculations? 12 Α. Why don't I look at the table in my 13 testimony? I'm sorry. I'm looking at the wrong 14 copy. 15 Q. Take your time. So I think, you know, if you look at 16 Α. 17 Table SMW-1, which is the one that Ms. Tatro referenced in her opening, at full load the highest 18 they've ever had is 98.6, but there's some amount 19 of variability. 20 So I think what we considered the 21 best representation of a normal level of full load 22 23 is looking at a three-year average, which we took 2012 through 2014, and that was a 97 percent 24 capacity factor. So full load I guess is a not 25

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Page 260 well defined term, but if you look at a multi-year 1 2 average of it, I think 97 percent is a reasonable 3 representation of how they've run for a period of time. 4 5 Q. How do you quantify the difference between Staff's 98.2 percent and Ameren's 6 7 three-year average of 97 percent? What's the 8 monetary difference between that 1.2 percent? What 9 does that represent? 10 In revenues it's probably around Α. \$2 million, ballpark. 11 12 CHAIRMAN KENNEY: Mr. Wills, thanks 13 for your time. I don't have any other questions. 14 THE WITNESS: Thank you. 15 JUDGE WOODRUFF: Commissioner Stoll? 16 COMMISSIONER STOLL: I have no 17 questions. Thank you for time. 18 THE WITNESS: Thank you. 19 COMMISSIONER W. KENNEY: I have no 20 questions. Thank you. 21 JUDGE WOODRUFF: Commissioner Hall? 22 COMMISSIONER HALL: Yes, thank you. 23 QUESTIONS BY COMMISSIONER HALL: 24 Looking at your surrebuttal Q. 25 testimony, there was a question asked that's the

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1	same question I have, and that relates to how this	
2	issue interacts with the AAO that's at issue in the	
3	case. And I'll be honest. I don't understand your	
4	answer here. So could you try to explain that to	
5	me?	
6	A. Sure. I think what I was getting at	
7	there is that there's now been a couple of	
8	instances where they've had material load	
9	deviations, one of them that 2009 ice storm event.	
10	We've sought extraordinary treatment for that	
11	through the AAO, which I think will be heard	
12	probably later in the case.	
13	So if you carve that out, we can get	
14	extraordinary treatment for that through this AAO	
15	mechanism, then you'd almost be double counting the	
16	impacts of that event if you also included it in a	
17	long-term average looking at how their load varies	
18	over time.	
19	I didn't want to double count there.	
20	So if we get certainly if we had the AAO	
21	recovery, I think there would be no reason to look	
22	back to that time period at all in assessing what	
23	their normalized load should be going forward. But	
24	if that AAO weren't granted, it seems to make sense	
25	that that's when you're looking at a very long	

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1	term like ten years that we've got, that's the type	
2	of event that could occur in a ten-year time	
3	horizon, and you could factor that into a	
4	normalization if you're not going to make special	
5	accounting for those large types of events.	
6	Q. So you said there were two events of	
7	a significant load decrease. What's the second	
8	one?	
9	A. Well, the second I'm referring to is	
10	just this past, you know, six or eight months that	
11	we've seen their load drop, not nearly as far as it	
12	did in 2009, but still a material degree that	
13	financially impacts the company.	
14	Q. Would it be your understanding that	
15	the party with the most knowledge of this issue	
16	would be Noranda?	
17	A. I think they would have the most	
18	direct knowledge of what they're how their load	
19	is going to operate.	
20	COMMISSIONER HALL: Is it appropriate	
21	at this junc thank you. I have no further	
22	questions.	
23	THE WITNESS: Thank you.	
24	COMMISSIONER HALL: Would it be	
25	appropriate at this juncture to ask Noranda's	

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1	attorneys why they don't have a witness on this	
2	issue, why they've taken no position?	
3	JUDGE WOODRUFF: Go ahead and ask.	
4	MR. DOWNEY: Ed Downey. I represent	
5	the MIEC. I also represent Noranda because it's a	
6	member of the MIEC.	
7	We actually do have some evidence on	
8	this issue. It's this issue is somewhat related	
9	to another issue, and this DR response is actually	
10	part of the testimony of Greg Meyer on another	
11	issue. We didn't provide testimony on weather	
12	normalization, but we did provide this testimony on	
13	another issue.	
14	I didn't answer your question. I	
15	don't know why we don't have a position on weather	
16	normalization.	
17	COMMISSIONER HALL: But do you have a	
18	position on load factor?	
19	MR. DOWNEY: Yes.	
20	COMMISSIONER HALL: And what is that	
21	position?	
22	MR. DOWNEY: And it's in Greg Meyer's	
23	testimony, and I'm not sure which iteration.	
24	Surrebuttal. And he has attached that DR response	
25	as an exhibit to his surrebuttal, and so whatever	

Page 264 is reported in that DR response is the position of 1 2 the MIEC and Noranda. 3 COMMISSIONER HALL: And will he be testifying on this issue? 4 5 MR. DOWNEY: When you say this issue, 6 are you talking about weather normalization? 7 COMMISSIONER HALL: No. Load factor. MR. DOWNEY: Yes. 8 9 COMMISSIONER HALL: Okay. Thank you. 10 MR. DOWNEY: Well, wait a second. MS. TATRO: Commissioner Hall, is 11 your question do they have an employee? Mr. Meyer 12 is not a Noranda employee. 13 14 COMMISSIONER HALL: Yeah, that's not my question. 15 16 CHAIRMAN KENNEY: Is he going to 17 testify eventually? MR. DOWNEY: Yes. Yes. I didn't 18 want to mislead the Commission. This will be in 19 the record. It's just not in the record for this 20 21 issue. COMMISSIONER HALL: I got it. Thank 22 23 you. 24 JUDGE WOODRUFF: I don't believe there was any -- I guess there were questions from 25

Page 265 the Bench. I'm sorry. Any recross based on 1 2 questions from the Bench? 3 I don't see anybody. So any redirect? 4 5 MS. TATRO: Yes, thank you. 6 REDIRECT EXAMINATION BY MS. TATRO: 7 Mr. Wills, you've had a lot of Q. 8 questions about when Noranda may or may not come 9 back to full load. Do you recall those questions 10 from Commissioner Hall? 11 A. Yes, I do. 12 Can you tell me, does the date of Q. their return impact your calculation of what normal 13 load should be? 14 No, it doesn't, because since we did 15 Α. a look -- a historical look at the last three years 16 17 of what level they have operated at, if they get back to full load, full load again being a term of 18 art, you know, they do have some amount of 19 variability, albeit less than most customers, but 20 21 when they do reach that full load, we think that some amount of that variability ought to be 22 reflected in the normalized level of load that's 23 24 expected of them going forward. 25 And explain to us what you consider Q.

Page 266 1 the normalized level of expected load and why. 2 A. That would be the three-year average, 3 I think is the best representation of that. The three-year average is a long enough time period to 4 5 experience some of that variability and smooth out 6 some of that variability with more normal 7 operations. I think it is consistent with a 8 9 number of other adjustments that are made in rate cases as a fairly common time period to look at. 10 So it seems representative of an ongoing condition 11 12 that we would expect to experience. 13 MS. TATRO: Thank you. I have no further questions. 14 15 JUDGE WOODRUFF: All right. Then, Mr. Wills, you can step down. 16 17 THE WITNESS: Thank you. 18 (Witness excused.) 19 JUDGE WOODRUFF: Sarah Kliethermes. 20 (Witness sworn.) 21 SARAH KLIETHERMES testified as follows: DIRECT EXAMINATION BY MR. ANTAL: 22 23 Q. Ms. Kliethermes, would you please 24 state your name and spell it for the court 25 reporter.

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Page 267 Sarah Kliethermes, S-a-r-a-h, 1 Α. 2 K-l-i-e-t-h-e-r-m-e-s. 3 Q. Thank you. Are you the same Ms. Kliethermes that had -- Sarah Kliethermes, 4 5 rather, who caused or had prepared portions of Staff's Revenue Requirement Cost of Service Report 6 7 and Staff's Rate Design Class Cost of Service 8 Report? Α. 9 I am. 10 Do you have any corrections or Q. additions to those sections? 11 12 A. I do not. 13 Q. Are you the same Ms. Sarah 14 Kliethermes who prepared or had prepared rebuttal and surrebuttal in this case? 15 16 A. I did. 17 0. Do you have any corrections or additions to those testimonies? 18 19 Regarding my rebuttal testimony, upon Α. Ameren Missouri bringing some errors to my 20 21 attention, I corrected some information from my rebuttal testimony by providing corrected 22 information in my surrebuttal testimony. 23 24 Regarding my surrebuttal testimony, at page 7, line 2, 92 percent should read 25

		Page 268
1	90 percent. Page 7, line 3, 83 percent should read	
2	81 percent. Page 10, line 14, Labadie 1 should	
3	have been included. Page 21, lines 1 through 2	
4	should read, is it fair to say that Staff's dollar	
5	value of assigned capacity is equivalent to class	
6	average demands or average class energy usage?	
7	Page 21, line 7, load factor should be changed to	
8	average demand.	
9	Page 21, the chart following line 8,	
10	load factor should be changed to average demand.	
11	Page 23, line 19 refers to Case ER-2010-0036. It	
12	should refer to Case ER-2006-0314. Page 24, line	
13	18 refers to Case No. ER-2006-0314, and it should	
14	refer to Case No. ER-2010-0036.	
15	Q. Thank you. With those corrections in	
16	mind, are those sections of your report and your	
17	testimonies accurate and true to the best of your	
18	knowledge and belief?	
19	A. They are.	
20	MR. ANTAL: Your Honor, we will offer	
21	Ms. Sarah Kliethermes' rebuttal and surrebuttal	
22	testimony and tender the witness for cross.	
23	JUDGE WOODRUFF: All right. That	
24	would be Exhibit 221 is the rebuttal; 222HC and NP	
25	are the surrebuttal. Those have been offered. Any	

Page 269 objections? 1 2 MR. DOWNEY: Judge, yes. 3 Ms. Kliethermes addresses a lot of issues beyond just weather normalization. I don't think all the 4 5 lawyers at least and the other witnesses that 6 address her other issues are even here today. So I 7 don't think -- most of the changes that I think she just offered relate to a different issue than the 8 9 one that the Commission is addressing today. 10 So I'm not objecting. I'm just saying, I think probably later in the case would be 11 12 the appropriate time to offer those exhibits. JUDGE WOODRUFF: All right. At this 13 point they've been offered. I'll defer ruling on 14 15 the offer until I guess the last time she 16 testifies. 17 MR. ANTAL: Very good. Thank you. 18 JUDGE WOODRUFF: Okay. Then for cross-examination, we would begin with MIEC. 19 20 MR. DOWNEY: It's just happenstance 21 I'm here for this issue, because I thought the tax issue was starting at ten. I didn't intend to have 22 any questions for Ms. Kliethermes on weather 23 24 normalization because I don't know anything about that issue. 25

Page 270 CROSS-EXAMINATION BY MR. DOWNEY: 1 2 But I want to ask you questions about Q. 3 the corrections. You said you offered a number of corrections because of matters brought to your 4 5 attention by Ameren Missouri. Did you intend to 6 say MIEC? 7 Α. No. I was referring to the corrections I made to my rebuttal and my 8 surrebuttal. 9 10 Okay. Were there any corrections you Q. 11 made that resulted from your deposition that you 12 gave last Friday? 13 Α. Those would be what I just read to my 14 surrebuttal. MR. DOWNEY: Okay. That's what I 15 thought. No further questions. 16 17 JUDGE WOODRUFF: Public Counsel? 18 MS. BAKER: No questions. Thank you. 19 JUDGE WOODRUFF: Ameren? Ameren have 20 any questions? 21 MS. TATRO: I was waiting. I didn't hear you say that. I apologize. Just a few. 22 CROSS-EXAMINATION BY MS. TATRO: 23 24 Q. Good morning. 25 A. Good morning.

Page 271 1 **Q**. Ms. Kliethermes, is it correct that 2 your recommendation is to use Noranda's load as of 3 July 2014? Α. It is. 4 5 And do you know if their load has Q. 6 changed since that date? 7 Α. I would expect that any given load at 8 any given hour would be different. I'm not sure 9 what you mean. 10 Q. Do you know if their usage has 11 substantially changed since July of '14? 12 Α. I would not say that it has substantially changed. 13 14 Q. Has it changed? 15 A. Yes. 16 Q. How much has it changed? 17 Α. Looking at a 12-month rolling average of KWH, which is what I find most helpful, for the 18 19 12 months ending 2014 that usage was 347,261,599. For the 12 months ending 2013/08 that usage was 20 21 346,620,486. And consistent with my recommendation, looking at the 12 months ending 22 23 2014/06, that usage would be 349,251,130. 24 So the last number you gave was the Q. July number of '14, right? 25

Page 272 1 A. Yes. 2 When you say the year first, you Q. 3 threw me. All right. So do you know what's changed in there? Do you know what their load 4 5 factor has changed? 6 Α. I'm not sure why the focus is on load 7 factor. 8 Q. You know, that's not the question I 9 asked you. 10 Which is why I was going to say I've Α. not analyzed their load factor. 11 12 Q. So you don't know the answer to that 13 question? 14 A. I do not. 15 MS. TATRO: okay. I have no further 16 questions. 17 JUDGE WOODRUFF: Okay. Come up for 18 questions from the Bench. Mr. Chairman? QUESTIONS BY CHAIRMAN KENNEY: 19 20 Q. Good morning. 21 A. Good morning. 22 Q. How are you? 23 Quite well. Yourself? Α. 24 Q. Good, thanks. Your surrebuttal on 25 page 32.

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Page 273 1 Α. I'm there. 2 Q. Line 17 and 18. 3 Α. I'm there. I think indicates that Noranda will 4 Q. 5 return to its full load in March of 2016? 6 A. I'm sorry. That is a typographical 7 error. 8 Q. It should be 2015? It should be. 9 Α. 10 All right. Was that HC? We've just Q. been talking about March of 2015. 11 12 Α. It's if I could clarify, my understanding for the HC is because there were some 13 true-up issues kind of consolidated into 14 15 surrebuttal, and it was requested that we keep those as HC. It's my understanding that the time 16 17 for that being of issue has passed as it would pertain to this particular issue. 18 19 CHAIRMAN KENNEY: Okay. So that 20 was -- that's okay? MR. DOWNEY: I believe so. 21 CHAIRMAN KENNEY: You-all need to say 22 something if it's not. So that's a typographical 23 error. It's been said multiple times since we've 24 25 been here this morning.

Page 274 MR. DOWNEY: Yes. 1 2 BY CHAIRMAN KENNEY: 3 Q. You were about to get into a dialog 4 with Ms. Tatro about whether it was appropriate to 5 focus on load factor or not, and it seemed like you didn't think it was. 6 7 Α. Well, I attempted to avoid a dialog 8 on that issue. Load factor is a measure. Frankly, 9 prior to this morning it hadn't occurred to me that load factor would be what we would be looking at on 10 11 this, as opposed to the simple, you know, KWH and 12 KWs, which, of course, do comprise load factor. But it's no more relevant than the KW or the KWH. 13 14 Q. Did you hear Mr. Wills' testimony right before you? 15 16 Α. Yes. 17 Q. And the load factor that they favor is the three-year average of 97 percent? 18 19 Α. Yes. 20 Q. And Staff's is 98.2? 21 Α. That sounds right. 22 Q. Do you agree with him or do you 23 share his opinion that the difference between that 24 1.2 percent is about a million dollars, or do you 25 know?

	Pa	age 275
1	A. I'm not able to do that math in my	
2	head that quickly. That sounds about right.	
3	Q. Do you have any reason to it's not	
4	grossly different from what you would think it	
5	would be?	
6	A. No. With what they had with the	
7	two-month normalization, it amounted to	
8	\$9.8 million. So accounting for the change in	
9	position, that sounds right.	
10	CHAIRMAN KENNEY: I don't have any	
11	other questions. Thank you.	
12	THE WITNESS: Thank you.	
13	JUDGE WOODRUFF: Commissioner Stoll?	
14	COMMISSIONER STOLL: No questions.	
15	Thank for your testimony.	
16	JUDGE WOODRUFF: Commissioner Kenney?	
17	COMMISSIONER W. KENNEY: No	
18	questions. Thank you.	
19	JUDGE WOODRUFF: Commissioner Hall?	
20	COMMISSIONER HALL: No, no questions.	
21	JUDGE WOODRUFF: Commissioner Rupp?	
22	COMMISSIONER RUPP: Yes.	
23	QUESTIONS BY COMMISSIONER RUPP:	
24	Q. Good morning. How are you?	
25	A. Good. Yourself?	

Page 276 1 0. Doing well. The response to one of 2 the previous questions, you were asked if there had 3 been a change in the load factor and the numbers, 4 and you read all the numbers out and everything. 5 You were asked if it was a significant change, and you said it wasn't. How do you determine if it was 6 7 a significant change? 8 Α. That's why I was hesitant to answer. 9 Is it significant to Noranda? Probably. Is it significant to Ameren? I don't know. I mean, if 10 11 you look at this as a percent of total sales, you 12 know, they sell I think it's about 3.5 billion-ish 13 KWH a year and, of course, the demand would, you know, be also a factor. So, you know, is 2 million 14 15 significant to Ameren, I guess is a question for 16 Ameren. 17 COMMISSIONER RUPP: Thank you. 18 JUDGE WOODRUFF: Recross based on questions from the Bench? 19 20 MS. TATRO: Yes, thank you. 21 RECROSS-EXAMINATION BY MS. TATRO: 22 Q. Ms. Kliethermes, would you agree with 23 me that if the load factor is down, that necessarily means the kilowatt hours of usage are 24 25 also down?

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Page 277 No. It could mean that the KW 1 Α. 2 demands are up. 3 Okay. Assuming that the KW demand, Q. 4 that the peak demand stays the same, all right? If 5 we assume peak stays the same? 6 If peak stays the same and load Α. 7 factor reduces, then usage was down. 8 MS. TATRO: Okay. Thank you. 9 JUDGE WOODRUFF: Any redirect? 10 MR. ANTAL: Just a bit, your Honor. REDIRECT EXAMINATION BY MR. ANTAL: 11 12 Ms. Kliethermes, you were discussing Q. 13 with the Chairman why or why not you would want to 14 look at the load factor as opposed to total KWH, 15 and you said that it hadn't occurred to you until 16 this morning that you would even consider looking 17 at load factor. Could you please explain why load factor isn't a good measure or is a good measure? 18 19 Α. Well, it has to do with the 20 relationship between peak demand and actual energy 21 usage over the course of the year. As Ms. Tatro said, all else being equal, if you're still using 22 the same amount at peak and you're only dropping 23 24 off in usage, that would cause lower load factor. 25 As I understand, these are smelting

		Page 278
1	pots. I know nothing about metallurgy and want to	
2	keep it that way, but unless they are still running	
3	them all at two o'clock in the afternoon, which I	
4	believe is when they do tend to have their peak,	
5	it's the load factor could stay the same, usage	
6	could be down, usage could be up. It's the	
7	relationship is or what is significant to	
8	revenues is what their billing demand is and what	
9	their billing usage is.	
10	MR. ANTAL: Thank you. You or no	
11	further questions. Thank you.	
12	JUDGE WOODRUFF: And you can step	
13	down.	
14	(Witness excused.)	
15	JUDGE WOODRUFF: Does that take care	
16	of the witnesses for this issue then?	
17	Okay. We'll move on then to income	
18	tax. We'll do mini openings on that issue,	
19	beginning with Ameren Missouri.	
20	MR. SELTZER: Good morning. I'm Brad	
21	Seltzer, and if it please the Commission, I'd like	
22	to offer a brief opening statement on behalf of	
23	Ameren Missouri.	
24	Although tax issues are frequently	
25	complex, the two disputed income tax issues in this	

		Page 279
1	case are in some respects rather straightforward.	
2	The first involves the proper amount of net	
3	operating losses taken into account in computing	
4	rate base; and the second, the proper calculation	
5	of the domestic production deduction or Section 199	
6	deduction for purposes of the revenue requirement.	
7	Mr. James Warren on behalf of the	
8	company has testified that Ameren Missouri, like	
9	virtually all utility groups and frankly all	
10	corporations that can, has joined in the filing of	
11	a consolidated federal income tax return.	
12	Mr. Warren and MIEC witness	
13	Mr. Brosch have testified that the filing of a	
14	consolidated return is generally beneficial to the	
15	affiliated group by allowing the losses of one	
16	member to offset the income of other members.	
17	Moreover, both Mr. Warren and	
18	Mr. Brosch agree that since 2008, Ameren Missouri's	
19	customers have benefited from the consistent use of	
20	the company's consolidated NOL approach to produce	
21	a significantly lower rate base and revenue	
22	requirement. This is important. The consolidated	
23	method has worked to the benefit of Ameren	
24	Missouri, providing cost-free capital since 2008,	
25	and to the benefit of its customers in all rate	

		Page 280
1	cases since 2008.	
2	Mr. Brosch has correctly testified	
3	that there are two methods for determining the	
4	proper amount of NOLs that are used to adjust rate	
5	base, the consolidated approach used by Ameren	
6	Missouri filing its returns and the stand-alone	
7	approach.	
8	Mr. Brosch advocates neither approach	
9	in this case. He does not propose that the company	
10	cease using the consolidated approach, nor does he	
11	advocate that the company should switch to the	
12	stand-alone approach going forward. Rather, he	
13	invents a new method that neither he nor Mr. Warren	
14	has ever seen advocated, let alone adopted by any	
15	Commission in any rate proceeding in any	
16	jurisdiction.	
17	His heads I win, tails you lose	
18	approach calculates the revenue requirement in each	
19	case based on the lower amounts that would be	
20	produced by either the consolidated approach or the	
21	stand-alone approach.	
22	But the company does not have the	
23	option under the tax rules to switch back and forth	
24	between its longstanding filing of the consolidated	
25	returns or its stand-alone returns. Under the tax	

		Page 281
1	rules, once it joins in the filing of a	
2	consolidated return, all members must continue to	
3	do so unless permission is granted by the IRS to	
4	change for good cause shown.	
5	Having watched Missouri ratepayers	
6	benefit from the consistent use of the consolidated	
7	approach for many years, Mr. Brosch now	
8	opportunistically switches methods and would be	
9	prepared to keep switching methods, notwithstanding	
10	the fact that the company does not have the option	
11	to do so available to it under the tax rules.	
12	Perhaps recognizing that his unique	
13	and opportunistic method of picking and choosing	
14	approaches on a rate case by rate case basis lacks	
15	economic and sound ratemaking to support it,	
16	Mr. Brosch attempts to ground his position loosely	
17	on the Commission's affiliate transaction rules,	
18	yet he has acknowledged that he does not know	
19	whether or how the affiliate transaction rules	
20	apply to taxes in general or to the specific issues	
21	such as the consolidated versus stand-alone NOL	
22	question before us.	
23	And lacking any transaction or	
24	exchange of goods or services amongst affiliates,	
25	it is difficult to understand how they could	

		Page 282
1	possibly apply to a decision prudently made and	
2	consistently employed to file consolidated returns	
3	for many years, especially one that has served	
4	Ameren Missouri and its customers so well.	
5	Regarding the 199 deduction, both	
6	Mr. Brosch and Mr. Warren have testified that the	
7	deduction is limited by the taxable income	
8	attributable to Ameren Missouri's generation	
9	activities, and that the tax rules expressly state	
10	that net operating losses are to be taken into	
11	account in determining the taxable income	
12	limitation for that purpose.	
13	Nevertheless, Mr. Brosch first	
14	advocates that net operating losses be ignored	
15	entirely, because they were excluded erroneously in	
16	prior rate cases.	
17	Perhaps anticipating that blindly	
18	following an erroneous methodology is indefensible,	
19	Mr. Brosch asserts that a consistent calculation	
20	with his primary position should be adopted, namely	
21	use in this rate case of a stand-alone calculation.	
22	Ameren agrees that the calculation	
23	should be consistent and hence it should reflect	
24	tax losses allocated on a consolidated basis. That	
25	concludes my statement. Company calls Mr. James	

Page 283 1 Warren. 2 JUDGE WOODRUFF: All right. And then 3 for Staff? MR. ANTAL: Good morning, again. May 4 5 it please the Commission? 6 As anyone who has spent any time with 7 the tax code knows, calculating one's income tax obligation is easier said than done. Calculating 8 9 the income tax obligation of an electric utility is no exception to this rule. 10 Electric utility companies like 11 12 Ameren pay many types of taxes, including income 13 taxes. To the degree that these taxes are related to providing electric service to customers, they 14 15 are included into the calculation of the company's revenue requirement. 16 17 The parties have presented two specific questions in regard to income taxes in 18 this case. The first, should Ameren Missouri's net 19 operating losses carryforward, or NOLC, related to 20 21 accumulated deferred income taxes, or commonly known to -- referred to as ADIT, be included in 22 Ameren Missouri's rate base and, if so, should it 23 be on a stand-alone or consolidated basis? 24 25 The second question, should Ameren's

		Page 284
1	IRC Section 199 production deduction be computed	
2	without regard to the NOLC from prior years in	
3	determining the company's income tax expense and,	
4	if so, should this be done on a stand-alone or a	
5	consolidated basis?	
6	Now, a little bit of background.	
7	Ameren Missouri has an agreement between Ameren	
8	Corporation and its various affiliate organizations	
9	called a tax allocation agreement. This allows all	
10	of the subsidiaries of Ameren Corporation to file a	
11	consolidated tax return. The tax allocation	
12	agreement also allows the affiliated organizations	
13	to combine and offset income and losses between the	
14	various affiliates.	
15	Ameren Missouri's expert has argued	
16	that the Commission should accept the company's	
17	calculated NOLC amounts on the basis that it is the	
18	company's actual NOLC as it appears on its	
19	consolidated tax return, and that regulatory	
20	treatment and tax treatment should be consistent.	
21	Staff, however, recommends that	
22	Ameren's net operating net operating loss	
23	carryforward be included, but only on a stand-alone	
24	basis to prevent Ameren Corporation's tax	
25	allocation agreement between Ameren Missouri and	

		Page 285
1	its various affiliates from detrimentally harming	
2	Missouri ratepayers.	
3	Historically, this tax treatment has	
4	not been harmful to Missouri's ratepayers,	
5	referring to the consolidated basis. However, due	
6	to the divestiture of Ameren Energy Resource	
7	Company and the corporate restructuring that	
8	happened after this, a significant net operating	
9	loss was allocated to Ameren Missouri, which would	
10	increase the NOLC by approximately \$51 million.	
11	This \$51 million represents the	
12	difference in the calculation of the company's	
13	consolidated NOLC and MIEC's witness' calculation	
14	of the stand-alone treatments.	
15	Staff and MIEC agree that there is	
16	nothing wrong with giving ratepayers the benefit of	
17	the better tax treatments. Given the specific	
18	circumstance in this test year, the tax allocation	
19	agreement confers a mutual benefit to both the	
20	ratepayers and Ameren affiliates in years when	
21	Ameren Missouri experiences a net operating loss	
22	because Ameren's affiliates can use these net	
23	operating losses to offset their income tax	
24	obligations, while Ameren Missouri's ratepayers	
25	will see a lower rate base.	

		Page 286
1	However, in years when an Ameren	
2	Missouri affiliate experiences a net operating loss	
3	which is then assigned to Ameren Missouri, this	
4	will increase the company's rate base and,	
5	therefore, increase the rates of its ratepayers.	
6	For these reasons, Staff advocates	
7	that the Commission accept or adopt its treatment	
8	of Ameren's NOLC related to accumulated deferred	
9	income taxes on a stand-alone basis.	
10	Turning to the Ameren Missouri's	
11	Section 199 production deduction. Staff recommends	
12	that the that Ameren Missouri's Section 199	
13	deduction be computed by taking into account the	
14	company's net operating loss carryovers, but again,	
15	only on a stand-alone basis.	
16	It is Staff's understanding that in	
17	previous rate cases, as well as Ameren Missouri's	
18	direct and initial true-up filings in this case,	
19	that the calculation of the company's Section 199	
20	deduction was computed on a stand-alone basis.	
21	It wasn't until February 3rd of this	
22	year that Ameren Missouri provided a revision to	
23	its true-up numbers, changing the methodology of	
24	computing it's Section 199 deduction to a or	
25	from a stand-alone basis to a consolidated basis.	
1		

		Page 287
1	This change in methodology increased Ameren	
2	Missouri's total income tax obligation by more than	
3	\$4.5 million, if you look at Ameren's numbers, or	
4	looking at MIEC's numbers, it should have been on a	
5	stand-alone basis 7.9 million. Which will this	
6	amount will increase the amount of money Ameren	
7	will have to collect from its ratepayers.	
8	It is Staff's recommendation that	
9	Ameren Missouri's Section 199 deduction continue to	
10	be treated on a stand-alone basis as it has done in	
11	the past cases and how it has been treated in this	
12	case prior to February 3rd of this year. Treating	
13	this income tax issue on a stand-alone basis is in	
14	the best interests of ratepayers and it reduces the	
15	amount of money Ameren Missouri must collect from	
16	ratepayers.	
17	Ameren's expert has argued in his	
18	testimony that the Section 199 deduction should be	
19	treated on a consolidated basis. However, Staff	
20	disagrees with this and believes that the	
21	stand-alone basis is the most appropriate treatment	
22	and is what the Commission should adopt. Thank you	
23	very much.	
24	JUDGE WOODRUFF: Questions? Thank	
25	you. And for Public Counsel?	

Page 288 MS. BAKER: We will waive opening on 1 2 this issue. 3 JUDGE WOODRUFF: MIEC? MR. DOWNEY: May it please the 4 5 Commission? My name is Ed Downey, and I represent the MIEC. 6 7 Prior to yesterday's general opening statements, Ms. Vuylsteke asked me to explain this 8 issue with two slides, and I spent about five hours 9 and it was impossible to do. I realize it's tax 10 and most of us are not wired to understand tax, so 11 12 what I've tried to do with some PowerPoint slides is explain these issues. And we're not able to get 13 it on that screen. Okay. 14 JUDGE WOODRUFF: This is what's 15 streaming out to the world. 16 17 MR. DOWNEY: So Mr. Brosch is our witness on this case. He's seated at counsel table 18 right now. He proposed in his direct testimony 19 eight adjustments, and these are multi-million 20 21 dollar adjustments, the two that remain. So they're very important to ratepayers and also to 22 23 Ameren. And I will say, like most tax issues, 24 there aren't any facts in dispute. When you hear 25

		Page 289
1	the witnesses' testimony or you read their prefiled	
2	testimony, you're not going to see a situation	
3	where one within says the facts are A and another	
4	witness says the facts are B. What this boils down	
5	to is the application of law and policy to the	
6	undisputed facts.	
7	So what are the two issues that	
8	remain? As the lawyers that preceded me indicated,	
9	one is the proper calculation of the net operating	
10	loss carryforward deferred tax asset. That's to be	
11	included in rate base. So that's the first issue.	
12	The second is the proper calculation	
13	of the domestic production deduction to be	
14	categorized in the test-year income tax expense	
15	calculation.	
16	No one, none of the witnesses are	
17	proposing that Ameren change the way it files tax	
18	returns. That's not the question before you at	
19	all.	
20	The question before you is, how do	
21	you allocate benefits of tax filing as between	
22	Ameren Corporation and its subsidiaries and the	
23	regulated entity, which is Ameren Missouri?	
24	So just briefly, the operating loss	
25	carryforward, NOLC within the deferred income tax	

		Page 290
1	ADIT issue, why do we have this issue? Well,	
2	changes in federal law allow taxpayers like Ameren	
3	Missouri to greatly accelerate depreciation of	
4	their capital assets, and as you know, Ameren	
5	invests in a lot of capital assets, and enhance	
6	expense treatment for other purchases of assets.	
7	These changes caused higher tax deductions than	
8	book expenses.	
9	So these differences are referred to	
10	as book/tax timing differences. Utilities are	
11	required to record deferred income taxes for these	
12	book/tax timing differences. Deferred taxes are	
13	actually collected from the ratepayers, even though	
14	they're not paid to the IRS or to the state of	
15	Missouri in the form of income taxes.	
16	So the accountants well, let me	
17	explain further. It essentially works as an	
18	interest-free loan from the ratepayers to Ameren	
19	Missouri, because the tax Ameren would have owed in	
20	a year is deferred and it's going to be paid at	
21	some later date. Yet ratepayers are paying the	
22	full amount of taxes now. So it essentially works	
23	as an interest-free loan from ratepayers Ameren.	
24	So what is the quid pro quo for	
25	allowing this treatment? It's ADIT. ADIT is a	

		Page 291
1	number, and it's calculated by determining what the	
2	taxes would have been without the preferential tax	
3	treatment versus what they are, and that difference	
4	is recorded as ADIT, and ADIT is subtracted from	
5	rate base.	
6	Ratepayers want rate base to be	
7	lower. The utility wants rate base to be higher.	
8	Accordingly, we want ADIT to be higher. Ameren	
9	wants ADIT to be lower, since it's subtracted from	
10	rate base. It's really that simple.	
11	When these deductions grow really,	
12	really large, you have situations where even though	
13	the taxpayer has all sorts of pre-tax income,	
14	because of accelerated depreciation, because of	
15	expense treatment, those deductions can actually	
16	force the taxpayers into a net loss situation.	
17	So we've had a lot of net operating	
18	losses created. They are as you know, you can't	
19	use them in the year they're created. You carry	
20	them forward. And so we're carrying forward these	
21	net operating losses.	
22	Okay. This dispute on the first	
23	issue, it centers on the calculation of the net	
24	operating loss carryforward tax asset, namely that	
25	calculation of a figure that we're going to deduct	

		Page 292
1	from rate base, and it will the larger the	
2	figure, the more deduction and the lower rates will	
3	be for ratepayers.	
4	There's two possibilities for	
5	computing that. One is the consolidated group	
6	method. The other is the stand-alone method.	
7	Mr. Warren offers use of the consolidated group	
8	method. Mr. Brosch and Staff, as you just heard,	
9	offer the stand-alone method.	
10	Now, why does Mr. Brosch suggest that	
11	we should use the stand-alone method? Simple. It	
12	benefits ratepayers. So why is that relevant? And	
13	the reason it's relevant is because of your	
14	regulation.	
15	You've got a regulation on affiliate	
16	transaction, and I've included on this slide the	
17	relevant parts of that regulation. The purpose in	
18	a one part of the purpose clause in that	
19	regulation says its purpose is to prevent regulated	
20	utilities from subsidizing their non-regulated	
21	operations, and that's exactly what we have here.	
22	That regulation further provides, and	
23	I'm quoting, a regulated electrical corporation	
24	shall not provide a financial advantage to an	
25	affiliated entity. An electrical corporation shall	

		Page 293
1	be deemed to provide a financial advantage to an	
2	affiliated entity if, and then there's multiple	
3	paragraphs, but the one I would focus on, if it	
4	transfers assets to an affiliated entity below the	
5	greater of the fair markets value price or the	
6	fully distributed cost to the electrical	
7	corporation.	
8	Mr. Brosch and the MIEC and Staff	
9	believe that the net operating loss deferred tax	
10	asset is an asset under the example that I just	
11	cited to you from the regulation.	
12	However, even if you did not conclude	
13	that that was an asset, a tax asset for purposes of	
14	the example in the regulation, the regulation does	
15	not provide that the listed examples are the only	
16	situations where the affiliated transaction	
17	regulation would be apply.	
18	Significantly, it does not say,	
19	quote, for purposes of this rule, a regulated	
20	electrical corporation shall be deemed to provide a	
21	financial advantage to an affiliated entity only	
22	if. The word only is not in the regulation. And I	
23	think the way Ameren Missouri reads the regulations	
24	it reads that word into it.	
25	Here there I believe there's no	

		Page 294
1	question that the net operating loss carryforward	
2	asset, if overstated as proposed by Ameren Missouri	
3	in this case, will allow it, quote, to provide a	
4	financial advantage to an affiliated entity, namely	
5	Ameren Corporation, and it does so at the expense	
6	of ratepayers.	
7	So what we're suggesting is that the	
8	Commission should adopt Mr. Brosch's adjustment,	
9	and it appears in his surrebuttal, page 18, lines 1	
10	through 10.	
11	So we have another issue here, and	
12	that is the domestic production income tax	
13	deduction. I will tell you and I'm sorry if I'm	
14	going into too much detail, but this is a deduction	
15	that is available only when a corporation has	
16	taxable income.	
17	Ameren Missouri has historically	
18	calculated this, I'm going to call it DPD, domestic	
19	production deduction, without factoring into	
20	consideration prior year net operating loss	
21	carryforward amounts. It has changed that approach	
22	in this case resulting in a lower calculated tax	
23	deduction and then higher rates for ratepayers.	
24	Why has it done that? I think the answer is pretty	
25	simple. Higher rates.	

		Page 295
1	Using the formula that Ameren	
2	Missouri has historically used for this deduction,	
3	as Mr. Brosch proposes, yields a higher deduction	
4	and thus lower rates for consumers.	
5	So why is the old formula right? It	
6	uses test year inputs, including the rate increase	
7	requested and all of the tax deductions for the tax	
8	year, to determine if there is sufficient taxable	
9	income to claim the deduction.	
10	Why is Ameren Missouri's method	
11	wrong? Because no one knows if Ameren Missouri	
12	will still have a net operating loss carryforward	
13	when these rates become effective. Ameren's	
14	operating under the assumption that come May of	
15	this year, it will still be in a loss position, and	
16	we don't think that's a fair assumption to make.	
17	Even if this Commission adopts Ameren	
18	Missouri's new method, which we suggest you should	
19	not do, but if you do adopt it, we believe at a	
20	minimum you should use the recalculating	
21	recalculated net operating loss carryforward out of	
22	Mr. Brosch's testimony. And I have a highly	
23	confidential document that	
24	JUDGE WOODRUFF: If it's on the	
25	screen, it's going out to the world.	

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Page 296
                  MR. DOWNEY: It's not -- it's not in
 1
 2
     the PowerPoint presentation. I was going to put it
     on this device, and I think we have to close the
 3
     record for that, though.
 4
 5
                  JUDGE WOODRUFF: Okay. We will go
 6
     in-camera then. Do you have more PowerPoint
 7
     coming?
                  MR. DOWNEY: I do not.
 8
 9
                  JUDGE WOODRUFF: Let me try and get
10
     this off of here.
11
                  (REPORTER'S NOTE: At this point, an
12
     in-camera session was held, which is contained in
     Volume 17, pages 297 through 299 of the
13
14
    transcript.)
15
16
17
18
19
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21
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23
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25
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Page 300 1 MR. DOWNEY: I really tried to 2 simplify as much as I could. Unfortunately, I'm 3 not sure how successful I was. Are there any questions? 4 5 CHAIRMAN KENNEY: Yes. Let me see if I can just distill it a little bit for myself. As 6 7 I understand, with the net operating loss carryforward, MIEC's position is that historically 8 Ameren calculated it on a consolidated basis, the 9 same way they file their taxes? 10 MR. DOWNEY: Correct. 11 12 CHAIRMAN KENNEY: MIEC's proposal would have it calculated on a stand-alone basis 13 because that results in a better advantage for 14 15 ratepayers by lowering rate base? 16 MR. DOWNEY: Correct, because of the 17 affiliated transaction rule. 18 CHAIRMAN KENNEY: Let me get to that part in a minute. So that's the first part. The 19 20 NOLC is an asset, right? 21 MR. DOWNEY: It is -- I'm not an accountant, so when you ask about assets and 22 liabilities, I get confused. It is a --23 24 CHAIRMAN KENNEY: You're saying it has to be considered an asset if the affiliate 25

Page 301 transaction rules are going to apply, right? 1 2 MR. DOWNEY: What I'm saying is it's 3 a calculated amount that is deducted from 4 ratepayers. 5 CHAIRMAN KENNEY: So, but as I 6 understand in MIEC's argument, the affiliate 7 transaction rules mandated that we adopt Mr. Brosch's calculation because it's an asset 8 9 being transferred to an affiliate? 10 MR. DOWNEY: I would say the value 11 of -- yes. 12 CHAIRMAN KENNEY: So is that a 13 disputed issue whether, in fact, this net operating loss carryforward is an asset as contemplated by 14 our affiliate transaction rules? 15 16 MR. DOWNEY: I think that is a 17 disputed issue. I believe Ameren Missouri does not 18 read the affiliate transaction rule the way we do. 19 CHAIRMAN KENNEY: To embrace the net operating loss carryforward as an asset, right? 20 21 MR. DOWNEY: And Ameren's in a better position to tell you their position, but I think 22 23 their position is that your rule applies to buying 24 and selling things. 25 CHAIRMAN KENNEY: So that brings me

	Page 302
1	to the next component of the affiliate transaction.
2	Let's assume it is an asset for the sake of
3	argument. The affiliate transaction rules also
4	require that the asset actually has to have been
5	transferred from one affiliate to the other, and
6	MIEC's argument is that this is being transferred
7	from Ameren Missouri to Ameren Corporation or
8	what just refine a bit more for me, please.
9	MR. DOWNEY: Yeah, I believe it is
10	Ameren Corporation and the other members of the
11	affiliated group.
12	CHAIRMAN KENNEY: Which this net
13	operating loss carryforward is being transferred?
14	MR. DOWNEY: The asset is the net
15	operating loss carryforward adjustment, if you
16	will, the ADIT, is created from the disconnect
17	between tax accounting and book accounting.
18	CHAIRMAN KENNEY: So I guess my
19	question is, is it really an actual transfer or is
20	the dispute as to the methodology by which you
21	compute the value of the asset?
22	MR. DOWNEY: Well, that's a good
23	question.
24	CHAIRMAN KENNEY: Thank you.
25	MR. DOWNEY: I'll give you my answer.

		Page 303
1	I believe the way we calculate the asset determines	
2	whether or not we are transferring value from	
3	Ameren Missouri to the other members of the Ameren	
4	affiliated group.	
5	The way Mr. Brosch does it, we don't	
6	believe we're transferring value of that asset from	
7	Ameren to the group. The way Ameren does it we	
8	believe transfers a significant amount of value	
9	that I showed you from the slide in Mr. Brosch's	
10	surrebuttal.	
11	CHAIRMAN KENNEY: Is there any legal	
12	defect in Ameren calculating its taxes or filing	
13	its taxes on a consolidated basis and then	
14	calculating the net operating loss carryforward on	
15	a stand-alone basis for purposes of this	
16	proceeding?	
17	MR. DOWNEY: Let me say this: I	
18	think the way Ameren Missouri files its income tax	
19	is not really an issue.	
20	CHAIRMAN KENNEY: Does it matter at	
21	all?	
22	MR. DOWNEY: I'm sorry?	
23	CHAIRMAN KENNEY: Does it matter, the	
24	fact that they file their taxes on a consolidated	
25	basis?	

		Page 304
1	MR. DOWNEY: It matters, but I don't	
2	think this Commission tells Ameren how to file its	
3	income tax.	
4	CHAIRMAN KENNEY: Exactly. We don't.	
5	MR. DOWNEY: But what this Commission	
6	has to do is determine just and reasonable rates,	
7	and to do that, it has to determine the fair value	
8	of a lot of factors, a mind-boggling number of	
9	factors, but this is one factor.	
10	And just because Ameren files its	
11	taxes a certain way doesn't mean the Staff, doesn't	
12	mean the consumer parties or this Commission are	
13	bound by that treatment for purposes of assigning	
14	value to assets and liabilities.	
15	CHAIRMAN KENNEY: Okay. So under	
16	that theory, irrespective of our affiliate	
17	transaction rules, we could order that the net	
18	operating loss carryforward be calculated on a	
19	stand-alone basis because simply because it's in	
20	the public interest and it provides a benefit to	
21	the ratepayers?	
22	MR. DOWNEY: I think that's right.	
23	CHAIRMAN KENNEY: All right. Thank	
24	you.	
25	MR. DOWNEY: And maybe I was too	

Page 305 limited in my PowerPoint presentation. 1 2 CHAIRMAN KENNEY: I'm not suggesting 3 that. But thank you. 4 JUDGE WOODRUFF: Commissioner Stoll? 5 COMMISSIONER STOLL: No questions. COMMISSIONER W. KENNEY: I have a 6 7 couple of questions, but I think they would be better answered by Mr. Brosch. 8 JUDGE WOODRUFF: Commissioner Hall? 9 10 COMMISSIONER HALL: Yeah, I'm going to get remedial on it for a minute. Taxes are a 11 12 normal business expense that we need to go to the 13 test year and see what the utility paid in order to figure out what the company's expenses are going 14 15 forward in a rate base, correct? 16 MR. DOWNEY: With adjustments, 17 correct. 18 COMMISSIONER HALL: Explain to me what is the purpose of those adjustments. 19 20 MR. DOWNEY: The utility keeps a set 21 of books where they have book value of everything, 22 including their assets. They also keep a set of 23 records where they have tax value of assets, with 24 things like bonus depreciation. You can have an asset with a 40-year useful life fully depreciated 25

Page 306 within a few years because Congress is trying to 1 2 encourage the investment by businesses. 3 So you have -- you have a situation where maybe you have \$500 million in assets that 4 5 you've acquired that you would depreciate 1/40 each year on your books, but you're depreciating half of 6 7 it in one year. 8 Or in the case of an expense 9 treatment, the IRS is allowing you to expense that asset in the first year. So what you have is all 10 sorts of expenses for tax purposes that you don't 11 12 have for book purposes. Even though the 13 corporation may make a lot of income for tax purposes, it might actually show as a loss, and so 14 15 why you have this disconnect. 16 So a corporation that makes -- let's 17 say it makes \$500 million and let's say that the tax on that is 35 percent of 500 million, so 18 whatever that works out, 18 million, 180 million. 19 \$180 million. 20 21 The ratepayers are paying in their rates \$180 million worth of taxes, even though the 22 23 corporation hasn't made the \$180 million. So the 24 accountant create something called ADIT to adjust for that. And they -- I think they call it an 25

		Page 307
1	asset, and it is deducted from rate base.	
2	COMMISSIONER HALL: Do we the	
3	taxes that Ameren paid in the test year, and this	
4	is the allocated amount of taxes that that	
5	Ameren paid, how does that compare to the prior	
6	five years?	
7	MR. DOWNEY: That's a good question,	
8	and I think that's in a number of schedules	
9	attached to Mr. Brosch's testimony. The schedule I	
10	showed you	
11	COMMISSIONER HALL: If that's the	
12	case, I can ask those questions of the witnesses.	
13	MR. DOWNEY: Okay. What happened,	
14	and I think counsel for the Staff mentioned this,	
15	when Ameren sold the unit, the Illinois production	
16	unit, it real is this highly confidential, the	
17	losses, et cetera?	
18	MR. SELTZER: I would say they're	
19	substantial.	
20	MR. DOWNEY: When Ameren divested	
21	itself of its energy for-profit energy private	
22	business, it realized substantial losses, and	
23	that's what really has changed things markedly in	
24	the last few years.	
25	COMMISSIONER HALL: In the test year?	

	Page 30	18
1	MR. DOWNEY: Including the test year.	
2	COMMISSIONER HALL: Compared to prior	
3	years?	
4	MR. DOWNEY: Correct. This would not	
5	have been an issue in prior years where the	
6	consolidated group was making money, reporting	
7	income. This is a big issue now because of the net	
8	operating losses that were generated.	
9	COMMISSIONER HALL: All right. Thank	
10	you.	
11	JUDGE WOODRUFF: Commissioner Rupp?	
12	COMMISSIONER RUPP: Yes. Thank you.	
13	Good morning, sir.	
14	MR. DOWNEY: Good morning.	
15	COMMISSIONER RUPP: If you can't	
16	answer this, I just wanted to throw it out there,	
17	someone can answer it. But according to FERC,	
18	utilities are supposed to use the Uniform System of	
19	Accounts, and there's a whole bunch of documents	
20	and things of that nature. According to them or	
21	according to the Universal System of Accounts, is	
22	this treated as an asset?	
23	MR. DOWNEY: I believe so, but I am	
24	going to defer to Mr. Brosch and he would I	
25	think he can explain this much better than me, much	

		Page 309
1	clearer than me. He's much more articulate when it	
2	comes to tax issues, and if he disagrees with	
3	anything I said, I'm, of course, deferring to him.	
4	COMMISSIONER RUPP: Okay. It should	
5	be it should not be really open to	
6	interpretation, in my opinion. Either it is	
7	according to the Universal System of Accounting,	
8	the FERC's guidelines or things for what it is or	
9	it isn't. And that's kind of once we answer	
10	that question, everything else becomes moot on this	
11	particular report or we go to the next question.	
12	So then my next question would be,	
13	and again, going back to being rudimentary, like	
14	Commissioner Hall, which I appreciate, under the	
15	transferring of assets, you have the benefit to the	
16	organization of filing consolidated return. Is	
17	there going to be differences amongst different	
18	affiliates and they're going to be offsetting those	
19	profits, losses, deductions, assets, liabilities,	
20	what have you?	
21	So under your interpretation of this	
22	rule, how could an organization like the company	
23	file anything under a consolidated manner without	
24	violating this rule of which you're pointing out?	
25	MR. DOWNEY: I want to be clear, I'm	

<ol> <li>not accusing the company of violating the rule.</li> <li>What I am saying is the rule mandates an</li> </ol>	
2 What I am saying is the rule mandates an	
3 adjustment, and that adjustment is what we're	
4 talking about net operating losses, that issue.	
5 The adjustment is what Mr. Brosch proposes and what	
6 Staff accepts. We are not suggesting Ameren filed	
7 its taxes incorrectly or	
8 COMMISSIONER RUPP: That's not my	
9 MR. DOWNEY: or even violated the	
10 rule.	
11 COMMISSIONER RUPP: That's not where	
12 I'm leading with my question. The question is,	
13 from the larger scale of, if you're unable if	
14 you have an asset and you're unable to transfer	
15 that under the rule of which you're pointing out in	
16 your presentation, how does that not apply	
17 everywhere else when they file or use the	
18 consolidated method to come up with their tax	
19 liability of transferring assets and liabilities	
20 and rolling them all into one? How is this rule	
21 that we're supposed to focus on not triggered in	
22 other instances when using the consolidated method?	
23 MR. DOWNEY: I'll be honest. I don't	
24 know the answer to that question. My knowledge on	
25 this is pretty much limited to this one issue, and	

		Page 311
1	so I don't know. I'm sure there's accountants in	
2	the room who could answer that question, and	
3	they'll be testifying. I can't.	
4	COMMISSIONER RUPP: Because it seems	
5	to me that I'm being asked to focus in on a rule	
6	that is applicable in many, many other	
7	circumstances, but I'm being told to look at it in	
8	a very strict constructionist faction on this	
9	particular instance. And I'm not understanding the	
10	correlation of why that interpretation applies just	
11	to this instance and not when this consolidated	
12	method is used in other accounting factors and	
13	ratemaking.	
14	MR. DOWNEY: I don't know how the	
15	consolidated method is used in other accounting	
16	factors in ratemaking, and that's why I'm	
17	struggling to answer your question.	
18	COMMISSIONER RUPP: I'm asking these	
19	questions so that other people can respond when the	
20	witnesses come up. I'm not asking you to answer	
21	them. It's more of putting the seed in people's	
22	minds to answer that when they come up.	
23	MR. DOWNEY: Thank you. I would	
24	encourage you to ask Mr. Brosch questions when he's	
25	on the stand, because I am confident he can answer	

Page 312 them clearly and correctly. 1 2 COMMISSIONER W. KENNEY: Good 3 afternoon. Good morning. You started talking about accelerated depreciation with Mr. Hall and 4 5 where companies have the opportunity afforded to our tax laws. So you also said something, you 6 7 mentioned that this wouldn't be an issue unless Ameren divested itself of some assets and 8 9 experienced some losses, correct? 10 MR. DOWNEY: Correct. COMMISSIONER W. KENNEY: Otherwise 11 12 you wouldn't be here on this issue. MR. DOWNEY: On this issue, correct. 13 14 COMMISSIONER W. KENNEY: So it's 15 something that, you know, on any type of accelerated depreciation or any type of loss 16 17 carryforward, eventually that all gets usually worked out in the cycle. That's why our government 18 allows us to do those things. But eventually it's 19 20 going to come back. 21 I mean, if it's like any other type of asset, eventually there's lack of being able to 22 write off those things. So usually I found it 23 24 comes back around towards the end. I mean, they're going to have less writeoffs in the future than 25

Page 313 they have right now. Do you agree? 1 2 MR. DOWNEY: Well, because it's 3 accelerated depreciation, what you're doing is you're moving the depreciation up for tax purposes. 4 5 COMMISSIONER W. KENNEY: But in the 6 long run you're not going to be able to take those 7 depreciations in future years, correct? It's like we allow the solar rebates. We allow -- the 8 9 federal government says, oh, yeah, invest in some 10 solar and we'll let you accelerate your depreciation so you get your return back quicker. 11 12 MR. DOWNEY: Correct. 13 COMMISSIONER W. KENNEY: That's really what it is. 14 15 MR. DOWNEY: Exactly. And there's this disconnect between the books, book values and 16 tax values, and that's --17 COMMISSIONER W. KENNEY: So in this 18 instance, you prefer to change the way we've been 19 doing because of that loss that Ameren incurred; is 20 21 that correct? MR. DOWNEY: The substantial losses 22 that the consolidated group incurred actually 23 24 changed the calculation and the impact that -- the 25 way Ameren was doing it.

		Page 314
1	Ameren has a tax-sharing agreement	
2	among all its consolidated entities. And	
3	Mr. Brosch looked at that and said, that	
4	tax-sharing agreement for 2013 and 2014 is	
5	detrimental to Ameren Missouri and Ameren	
6	Missouri's ratepayers, and we believe good policy	
7	would indicate that the tax value, I guess the	
8	value of assets like net operating losses, that	
9	value shouldn't be transferred from Ameren Missouri	
10	to the consolidated group, and that's the effect of	
11	this tax agreement at least for the last two years,	
12	and I don't know if it will	
13	COMMISSIONER W. KENNEY: But has it	
14	been going on like that for a while?	
15	MR. DOWNEY: No. I think you'll	
16	the evidence you'll hear today	
17	COMMISSIONER W. KENNEY: They just	
18	changed it in 2013?	
19	MR. DOWNEY: Yes. I think the	
20	evidence you'll hear, and this is I don't want	
21	to be the one to give you Ameren's argument, but I	
22	guess I'm going to have to. Ameren is saying we've	
23	been doing this calculation this way for a long	
24	time, and now all of a sudden you want to switch,	
25	Mr. Brosch, and you're just you know, you're	

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Page 315 taking advantage of the situation. And Mr. Brosch 1 2 is saying, well, the affiliate transaction rules, 3 for one, say that you're not --COMMISSIONER W. KENNEY: That's your 4 5 interpretation. We'll discuss that later because I think that's an interpretation, how you look at 6 7 that. 8 MR. DOWNEY: Absolutely, it is. COMMISSIONER W. KENNEY: And I don't 9 know how everyone here sees it. So he's 10 interpreting it one way for his defense and 11 12 Ameren's going to interpret it one way for their defense? 13 14 MR. DOWNEY: Absolutely, and that's why at the beginning of my statement I said, the 15 facts are not in dispute. The application of the 16 17 facts to policy and law are what the Commission has to decide. 18 19 COMMISSIONER W. KENNEY: Okay. Thank 20 you. 21 JUDGE WOODRUFF: Thank you. Did 22 Consumers Council wish to make an opening? 23 MR. COFFMAN: No, thank you, your 24 Honor. 25 JUDGE WOODRUFF: We'll call the first

Page 316 witness then, which would be Mr. Warren. 1 2 (Witness sworn.) 3 JUDGE WOODRUFF: You may inquire when 4 you're ready. 5 JAMES WARREN testified as follows: DIRECT EXAMINATION BY MR. SELTZER: 6 7 Q. Please state your name and business 8 affiliation. 9 Α. My name is James I. Warren. I'm a member of the firm -- law firm of Miller and 10 Chevalier, Chartered in Washington, D.C. 11 12 Are you the same James Warren who Q. 13 filed surrebuttal testimony on tax issues in this 14 case? 15 A. It was rebuttal, I believe. Is that what you said, rebuttal? 16 17 Ο. I said surrebuttal. I think I filed rebuttal. 18 Α. 19 Do you have any corrections or Q. 20 additions to your testimony? 21 A. I do have one correction, and that is on page 26 in the table that we've already seen at 22 least once and probably will see several other 23 24 times. On page 26, the row that is labeled 2012 over on column 6, there is an incorrect number. 25

		Page 317
1	The incorrect number reads 182,070,603. It should	
2	read 177 thousand 559 and 061. Now, that correct	
3	number, I believe, was reflected properly in the	
4	schedule that was attached to Mr. Brosch's	
5	testimony. This is the only place it's wrong.	
6	Q. And it's the same the same	
7	schedule you just reviewed as the confidential	
8	exhibit attached to Mr. Brosch's testimony?	
9	A. Yes, but in that case, as I said, the	
10	number was corrected. I have no other corrections.	
11	Q. As corrected, is your testimony true,	
12	accurate and correct to the best of your knowledge?	
13	A. Yes, it is.	
14	Q. If I was to ask you the same	
15	questions today, would your answers be the same?	
16	A. Yes, they would.	
17	MR. SELTZER: Your Honor, I offer	
18	Exhibit 48 as corrected into evidence and tender	
19	Mr. Warren for cross-examination.	
20	JUDGE WOODRUFF: 48 has been offered.	
21	Any objection to it?	
22	MR. DOWNEY: I don't have an	
23	objection. I want to make sure I understand. I	
24	believe in his correction, he said 177,000, but I	
25	think	

Page 318 1 THE WITNESS: I'm sorry. Million. 2 Let me repeat that, if I may. 3 JUDGE WOODRUFF: Go ahead. THE WITNESS: The number should be 4 5 177,559,061. I apologize. Thank you. 6 JUDGE WOODRUFF: All right. Hearing 7 no objections, No. 48 will be received. (AMERENUE EXHIBIT NO. 48 WAS MARKED 8 AND RECEIVED INTO EVIDENCE.) 9 10 JUDGE WOODRUFF: And for cross-examination, we would begin with Consumers 11 12 Council. 13 MR. COFFMAN: No questions. 14 JUDGE WOODRUFF: Public Counsel? CROSS-EXAMINATION BY MS. BAKER: 15 16 Q. I guess I just have a couple of 17 clarifying questions. A. Sure. 18 19 Q. So for this particular issue, did 20 another Ameren affiliate in the consolidated group 21 pay less income tax as a result of this 22 consolidated filing? 23 A. There are two issues here. Q. Yes. 24 25 A. There is the allocation of the net

Page 319 operating loss carryforward, and there is the 1 Section 199 domestic production deduction. I 2 3 assume you're referring to the first? 4 Q. I'm referring to the first, yes. 5 Α. Okay. And would you repeat that question one more time? 6 7 Did another -- because there was a Q. 8 consolidated filing by Ameren Missouri, did another 9 Ameren affiliate in the consolidated group pay less income tax as a result of this consolidated filing? 10 11 Α. It depends on the year. Each year, 12 again, the effect of consolidated filing is that you add up all the income and all the losses of all 13 the companies in the group and you pay a -- and you 14 15 pay a single tax to the government, and then you allocate out the tax liability. It's -- in any 16 given year, a company may pay -- may have a 17 positive taxable income and another company may 18 19 have a tax loss. 20 So, yes, it's possible that another Q. 21 one paid more or paid less while Ameren paid more? Paid less than what? 22 Α. Just overall, because it is a 23 **Q**. consolidated amount. 24 25 You mean that it would have --Α.

Page 320 1 Q. Yes. 2 Α. -- had it filed on a stand-alone 3 basis? 4 Yes. Q. 5 A. That is always possible for any 6 company. 7 MS. BAKER: That's all the questions 8 I have. 9 JUDGE WOODRUFF: Anything for MIEC? 10 MR. DOWNEY: Yes. CROSS-EXAMINATION BY MR. DOWNEY: 11 12 Q. Good morning. 13 Α. Good morning. 14 Q. Do you have your rebuttal handy? 15 A. Yes, I do. 16 Q. I'd like you to turn to page 5, 17 line 12. Let me know when you're there. A. I am. I'm there. 18 19 Q. Okay. 20 JUDGE WOODRUFF: Mr. Downey, could 21 you get your microphone a little bit closer? 22 MR. DOWNEY: I'm sorry. BY MR. DOWNEY: 23 24 Okay. Starting there in your Q. rebuttal, you begin a discussion in this case of, 25

Page 321 1 quote, the four proposals with which I agree. Do 2 you see that heading? 3 Α. Yes, I do. 4 Q. Okay. And at line 16 you indicate 5 agreement with Mr. Brosch's income tax expense 6 adjustments for equity issuance costs, reducing the 7 company's cost of service by about 1 million; is 8 that correct? Α. I think we -- I think what we 9 agreed -- what I think I was agreeing to is that 10 whatever the amount of equity issuance costs were 11 12 ultimately reflected in ratemaking, the tax consequence of that should be the proportional tax 13 14 consequence. 15 So his -- his adjustment was premised on, I believe, no equity adjustment at all included 16 17 in ratemaking. If that were the case, then there should be no tax benefit or tax cost reflected. 18 19 There's a relationship between the two. Whatever ends up in cost of service has to be reflected, the 20 21 tax consequence of that has to be reflected. And that's what I agreed to. 22 23 0. All right. Thank you. Now, at 24 page 8 --25 Okay. I'm there. Α.

		Page 322
1	Q. Okay. Starting at line 14 and	
2	continuing to the next page, line 12, you indicate	
3	agreement with Mr. Brosch's proposed inclusion of	
4	ADIT balances included in FERC Account 281?	
5	A. That's correct.	
6	Q. Did that adjustment at least	
7	initially reduce rate base by \$78.8 million?	
8	A. Yes, it did.	
9	Q. Okay. Over on page 9, lines 5	
10	through 8, you talked about how the company, quote,	
11	uses or used the conventions including its	
12	convention to exclude Account No. 281 from its rate	
13	base calculation it has used in prior filings. Do	
14	you see that?	
15	A. I do see that.	
16	Q. Would you agree with that with regard	
17	to Account 281, deferred taxes, those deferred tax	
18	balances were not included in rate base in prior	
19	Missouri rate cases?	
20	A. All I can I don't know	
21	specifically, other than I was informed that the	
22	reason it was that they were not reflected in	
23	the current rate case is because that was the way	
24	they had done in prior rate cases.	
25	Q. Fair enough. If I ask you something	

Page 323 1 you don't know the answer to, feel free to respond 2 accordingly. 3 Α. I do that all the time. At line 7 and 8, you state that the 4 Q. 5 company, quote, did not specifically analyze the propriety of its prior practice with regard to data 6 7 count balance? Yes, I see that. 8 Α. 9 **Q**. Isn't it true that it was 10 Mr. Brosch's proposed adjustment on behalf of MIEC 11 that stimulated the company to, quote, specifically 12 analyze the propriety of approving Account 281 in 13 this rate case? 14 A. Yes, it was. 15 Now, with regard to Account 281 then, Q. 16 would you agree that Mr. Brosch has proposed a 17 change in past practice and Ameren has -- Ameren Missouri has agreed that the Commission's previous, 18 quote, conventions, as you called them, should be 19 20 changed to now include Account No. 281, deferred 21 tax balance rate base? Would you repeat that question? 22 Α. 23 I was afraid you were going to say Q. 24 that. Okay. It's hard with long questions, and I 25 apologize.

Page 324 1 With regard to Account 281 then, 2 would you agree with -- that Mr. Brosch has 3 proposed a change in past practice? I'm going to break it up. 4 5 Α. Yes, he has. 6 Okay. And Ameren Missouri has agreed Q. 7 that the Commission's previous conventions, as you 8 call them, should be changed? 9 Α. Well, it was the company's previous conventions, but the company agrees that it ought 10 to be corrected and what ought to be used going 11 12 forward is the correct conventions. 13 Q. I'm sorry. With that correction, the 14 answer is yes? 15 Α. Yes. 16 Q. Thank you. So you agree then that 17 past ratemaking practices should remain subject to change when and if new facts and circumstances 18 19 justify reconsideration of them? 20 Α. They were not new facts and 21 circumstances. It was just wrong previously and we corrected it. 22 23 **Q**. Thank you. Now, you've heard the 24 opening statement. You agree that there are only two issues left of the ones that Mr. Brosch 25

Page 325 1 proposed be the net operating loss carryforward 2 related ADIT balance issue being one. Do you 3 agree? 4 Α. Yes. 5 And the other being the domestic Q. production deduction, which is the Section 199 6 7 Internal Revenue code issue? Yes, and there is a little overlap 8 Α. between the two of them. 9 10 Q. Right. I'll get to that in a little 11 bit. Now, at page 31 of your rebuttal, if you 12 would turn to that. 13 Α. All right. I'm there. 14 Q. And I think starting on line 1, you 15 commence your discussion of the Section 199 16 domestic production deduction. Do you agree? 17 Α. Yes, I do. 18 And would you agree that Ameren Q. Missouri has included this tax deduction in several 19 20 recent rate cases based upon a separate tax return 21 calculation for Ameren Missouri? 22 Α. Separate tax return, no, not 23 necessarily. Okay. A separate tax return 24 Q. 25 calculation?

		Page 326
1	A. Well, I think it's a calculation that	
2	is excludes everything else that goes on in the	
3	consolidated group, but it is a calculation by	
4	reference to the actual income and deductions	
5	incurred by Ameren Missouri, which may or may not	
6	be what his tax return looks like. But it looks to	
7	the actual operations of Ameren Missouri standing	
8	alone.	
9	Q. Hold on a second.	
10	MR. DOWNEY: May I approach, Judge?	
11	JUDGE WOODRUFF: You may.	
12	BY MR. DOWNEY:	
13	Q. I'd ask you to find Schedule MLB-12.	
14	A. Okay. That's the Data Request 27.7?	
15	Q. Correct.	
16	A. Yes.	
17	Q. And is that a data request from the	
18	MIEC to Ameren Missouri?	
19	A. It is.	
20	Q. Okay. And this shows Ameren	
21	Missouri's response?	
22	A. It does.	
23	Q. Okay. Do you see Question A there?	
24	A. I do.	
25	Q. Okay. And that's on page 1?	

Page 327 Α. Yes. 1 2 Does -- and I'm going to read it. **Q**. 3 You tell me if I read it correctly. Okay? Does Mr. Warren or Ameren Missouri believe that the 4 5 domestic production deduction, within parentheses, in quotes, DPD, has been calculated in prior 6 7 Missouri base rate cases using a separate tax 8 return basis of computation or, quote, DPD computed 9 on a consolidated basis, close quotes, as 10 referenced by Mr. Warren at page 31 of his 11 rebuttal? Did I correctly read that? 12 Α. Yes, that was correct. 13 Q. And the answer Ameren Missouri gives 14 on the second page of that schedule, I'm going to 15 read it and you tell me if I read it correctly. Ameren Missouri believes that the DPD has been 16 17 calculated in prior rate cases using a separate tax return basis, but without proper recognition of net 18 operating loss carryforward. Did I read that 19 20 correctly? 21 Α. Yes, you did. 22 Q. And I'm not suggesting that the 23 answer you gave me to the question earlier is 24 inconsistent with that. I think that you did 25 clarify it.

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Page 328 It's more precise. Because on a 1 Α. 2 consolidated basis, there is no DPD. 3 Q. I understand. Now, I take it you 4 have reviewed Mr. Brosch's surrebuttal testimony 5 with regard to the Section 199 DPD calculation? Yes, I have. 6 Α. 7 And I'd ask you to turn to Q. 8 Schedule MLB-4. Let me know when you're there. 9 I'm sorry. Schedule MLB-4 revised. 10 A. Yes, I have that. 11 Okay. And I'd ask you to turn to Q. 12 page 2. 13 Α. Okay. I have that. 14 Q. all right. Do you recognize the 15 amount shown on page 2, line 12 in Column C to be Ameren Missouri's stand-alone cumulative taxable 16 17 net operating loss at December 31, 2014? I'm sorry. Would you give me the 18 Α. reference again? 19 20 Sure. We're talking about page 2, Q. 21 line 12, Column C. 22 I don't know. I'm sorry. We must be Α. looking at different -- I may be looking at the 23 wrong schedule. 24 25 MR. DOWNEY: May I approach, Judge?

Page 329 1 JUDGE WOODRUFF: You may. 2 MR. DOWNEY: Make sure we're looking 3 at the same thing. BY MR. DOWNEY: 4 5 Q. Is that the same schedule, line 12, Column C? 6 7 Α. Yes. 8 Q. That figure. Okay. So I guess the 9 question -- I'll repeat the question, now that 10 we're focusing on the right number, the same number. 11 12 Α. The same number at least. 13 Q. Do you recognize that number to be Ameren Missouri's stand-alone cumulative taxable 14 15 net operating loss at December 31, 2014? 16 Α. I don't. 17 Q. Okay. I'd ask you to look at 18 Schedule MLB-10. Let me know when you're there. 19 Yes, I'm here. I'm there. Α. 20 And I correct this is a response by Q. 21 Ameren Missouri to a discovery request of the MIEC? 22 Α. Yes. 23 And then on page 2, there's a Q. 24 Table 7. Do you see that? 25 Α. Yes.

Page 330 1 **Q**. And in Column 2, under 2014 estimate, 2 the line that says 2014 estimate, do you see a 3 number there? Α. Yes, I do. 4 5 Q. And what is that number? 6 Α. It's 69,710,561. 7 And is that the exact same number Q. 8 that I just showed you on page 2, line 12 of the other schedule? 9 10 A. I believe so. I didn't recognize it as the NOL, but apparently it was. 11 12 Q. And just to follow up on that, the column is labeled -- what is it labeled on 13 14 Schedule MLB-10? A. What is Column 2 labeled? 15 16 Correct. Q. 17 A. Cumulative stand-alone Ameren Missouri NOLC. 18 19 Q. Thank you. And we agreed NOLC means 20 net operating loss carryforward? 21 Α. Yes, we do. 22 Q. And would you agree that this amount 23 equals the last entry in the table Mr. Brosch has included at page 17 of his surrebuttal? 24 25 Α. Yes. It appears to be the same.

Page 331 1 0. All right. Now, on that same page at 2 line 5 --3 Α. I'm sorry. Which page are we talking about? 4 5 Q. Page 17. Let me know when you're 6 there. 7 I am there. Α. 8 Q. Okay. Mr. Brosch states, quote, 9 Mr. Warren's proposed method employing the Ameren TAA results in a \$215.7 million NOLC amount for 10 11 Ameren Missouri as shown as page 26 of his 12 testimony, and then the sentence goes on. Did I 13 read that correctly? 14 A. Yes, you did. Is it true that you would include 15 Q. this larger amount of NOLC in the DPD calculation 16 17 rather than the Ameren Missouri stand-alone calculation advocated by Mr. Brosch? 18 I would include this amount because 19 Α. it's the real net operating loss carryforward that 20 21 Ameren Missouri has. 22 Q. That's what you propose to include, 23 correct? 24 A. Yes, it is. 25 Are you aware of any remaining Q.

	Page 332
1	dispute with respect to the DPD calculation, other
2	than whether a stand-alone or a consolidated group
3	allocated NOLC amount should be included in the
4	calculation?
5	A. Yes. I believe there's another area
6	of dispute.
7	Q. Okay. I'd like you to turn,
8	Mr. Warren, to your rebuttal.
9	A. Are we done with Mr. Brosch's?
10	Q. Just leave it up there. I'm not
11	sure.
12	A. Okay.
13	Q. And I'd like you to turn to page 23
14	of surrebuttal.
15	A. All right. I'm there.
16	Q. Okay. So on line 20, starting on
17	line 20, you state, Mr. Brosch has identified a
18	single point in time at which it appears that
19	Ameren Missouri was worse off having been included
20	in the Ameren consolidated income tax return than
21	it would have been if it had filed separate tax
22	returns?
23	A. Yes, that's what I testified.
24	Q. And I correctly read that?
25	A. Yes, you did.

Page 333 1 0. Okay. When you say it appears that 2 Ameren Missouri was worse off, what you really mean 3 is Ameren Missouri was worse off, don't you? Α. Not on a cumulative basis, but at a 4 5 point in time, they were worse off. If you look at the conduct of the methodology over the period from 6 7 2008 through 2013 and even estimated 2014, Ameren Missouri was clearly benefited by the consolidated 8 allocation methodology. 9 10 It was only -- as the Commissioner 11 recognized, it was only in 2013 that for the very 12 first time there was a turn so that, at that point in time they were not being benefited, but they had 13 been over an extended period of time. 14 15 All right. I understand that's your Q. 16 position, and I want to talk to you a little bit 17 about your single point in time. You used that term, did you not, on line 20, page 23? 18 19 Α. Yes, I did. 20 I want to -- I realize this is Q. 21 cumbersome turning back and forth between tables, 22 but again, if you have the Brosch surrebuttal still 23 up there --2.4 A. I do. 25 -- and this table that appears as Q.

		Page 334
1	part of Schedule MLB-9? You know what, I'm sorry.	
2	We have the same table in a different schedule, but	
3	for some reason one of the tables is public and one	
4	of them's highly confidential. So as far as I can	
5	tell, they're the same table. But I'm going to ask	
6	you again to look at Schedule MLB-10, page 2.	
7	A. Okay.	
8	Q. I understand that's the public	
9	version, and I'll represent that I think this is	
10	what I showed the Commission earlier in my opening	
11	statement.	
12	A. I believe so.	
13	Q. Okay. Would you agree, then, at year	
14	end 2013, the consolidated group approach using	
15	Ameren Missouri or excuse me Ameren	
16	Corporation tax allocation agreement would	
17	attribute 215 million of cumulative tax losses to	
18	Ameren Missouri and its ratepayers, while the	
19	stand-alone method in your Table 7 would produce	
20	only 124 million in cumulative tax losses to Ameren	
21	Missouri?	
22	A. Yes, that's what the table indicates.	
23	Q. So obviously in 2013 then it would	
24	have been a benefit to Ameren Missouri to use the	
25	stand-alone approach?	

Page 335 Α. At that point in time. 1 2 **Q**. At that point in time. Let's look at 3 another point in time. Do you see another point in time on that table? 4 5 Α. I see many points in time. Okay. Do you see one for 2014? 6 Ο. 7 Α. Yes, I do. 8 Q. Okay. So in this second point in 9 time, would you agree that the stand-alone approach was beneficial to Ameren Missouri versus the 10 11 consolidated approach? 12 Α. I would agree that those are the only 13 two points in time that of the seven years indicated on that schedule in which that would be 14 15 the case, but that would be the case in that year. So now we have on the schedule two 16 Q. 17 points in time, if you're going to call a year a point in time. 18 19 Α. Five to two, yes. 20 And it happens to be the last two Q. 21 points in time. 22 It does. That's correct. Α. 23 JUDGE WOODRUFF: Mr. Downey, we've 24 been going for about two hours now. Unless you're very close to finishing, we'll --25

Page 336 MR. DOWNEY: I'm real close. Well --1 2 JUDGE WOODRUFF: I don't want to 3 interrupt your thought here, so --4 MR. DOWNEY: I would say five 5 minutes. 6 JUDGE WOODRUFF: Let's finish it up 7 then. BY MR. DOWNEY: 8 9 0. All right. Are you still on that table that's Schedule MLB-10? 10 11 Α. Yes, I am. 12 Would you agree that looking at this Q. 13 table, that in 2013 something dramatic happened to Missouri's -- Ameren Missouri's taxable income 14 15 causing it to reduce the stand-alone cumulative losses from \$722 million the prior year to only 16 124 million after 2013? 17 18 That was not a good question, so if you're struggling with that, let me know and I'll 19 20 rephrase. In 2013, Ameren Missouri had 21 Α. significantly more taxable income than it had in 22 prior years, if that's what you mean. 23 24 Q. Yes, that's what I was getting at. 25 Do you explain anywhere in your rebuttal testimony

Page 337 1 why Ameren Missouri had such a large positive 2 taxable income in 2013? 3 Α. I don't know. Let me -- give me just a second. 4 5 Q. Take your time. 6 Α. No, I don't address that. I didn't 7 think the reason was relevant. 8 Q. Looking at this table, would you 9 agree that Ameren Missouri is not only worse off at 10 the single point in time you suggest in your 11 testimony, but in fact, is even more disadvantaged 12 in 2014 than in 2013 under the consolidated group 13 approach? 14 Α. I would say that, again, at those two 15 points in time, they are worse off. On a cumulative basis Ameren Missouri benefited from the 16 17 consolidated allocation methodology and benefited in an amount that is significantly in excess of the 18 19 detriment of these last two points in time. 20 Q. That really wasn't my question, 21 though, and I didn't define more disadvantaged. So 22 to be fair to you, I'll just define it as the 23 difference between the approaches, the detriment, 24 is greater in 2014 than it is in 2013, would you 25 agree?

Page 338 Slightly, yes. 1 Α. 2 Slightly being \$20 million? Q. 3 Α. Yes. MR. DOWNEY: Let's see. I think that 4 5 does it. Thank you very much. 6 JUDGE WOODRUFF: Thank you. And with 7 that, we'll take a break for lunch. Let's come back at 1:15. 8 9 (A BREAK WAS TAKEN.) 10 JUDGE WOODRUFF: We're back from lunch. 11 12 MR. THOMPSON: Judge, if I may? JUDGE WOODRUFF: Yes. 13 14 MR. THOMPSON: I have here a 15 reconciliation Staff has calculated reflecting the effect of yesterday's Stipulation & Agreement on 16 17 some revenue requirement issues. It does not reflect the currently pending weather normalization 18 Stipulation & Agreement. Staff was not going to 19 file it, but I've given you copies for the 20 21 Commission, and I'd like to hand out copies to the parties if any are interested, which probably would 22 be all of them. This is going to change, but you 23 24 can see where the numbers are today. 25 JUDGE WOODRUFF: While Mr. Thompson

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1	is handing out his paperwork there, I'll also let	
2	you know that we're going to be taking another	
3	break at about 2:15. We have a retirement ceremony	
4	for one of our employees. We're going to attend	
5	that. If we'll have to break in the middle of a	
6	examination, I apologize.	
7	MR. THOMPSON: Thank you, Judge.	
8	JUDGE WOODRUFF: All right. The	
9	witness is back on the stand, and we're ready	
10	Staff's cross-examination.	
11	CROSS-EXAMINATION BY MR. ANTAL:	
12	Q. Good afternoon, Mr. Warren.	
13	A. Good afternoon.	
14	Q. My name is Alex Antal. I'm Staff's	
15	attorney on this issue. I'll be asking you a few	
16	questions.	
17	A. Surely.	
18	Q. Mr. Warren, you're a paid consultant;	
19	is that correct?	
20	A. That's correct.	
21	Q. Okay. When were you retained by	
22	Ameren Missouri? If it makes it easier, were you	
23	retained before or after Ameren filed its direct	
24	testimony in this case?	
25	A. After, I believe.	

Page 340 1 **Q**. Okay. In preparing your rebuttal 2 testimony, did you review Ameren's direct filing? 3 Α. Not all of it. Parts of it, but not all of it, yes. 4 5 Q. Okay. In regards to the Section 199 production deduction, were you aware that when 6 7 Ameren filed their direct case, they calculated 8 this amount on a stand-alone basis? A. Not until after I was involved. 9 10 Q. Okay. 11 Α. On a stand-alone basis, yeah, not 12 until after I was involved, yes. 13 Q. But before you filed your rebuttal 14 testimony? 15 Α. Yes. 16 Q. Okay. And were you aware that in 17 Ameren's initial true-up numbers, they this calculation was done on a stand-alone basis? 18 19 A. I don't know when I knew that, but my understanding was that there was an internal 20 21 miscommunication. One of those two were just erroneously done. 22 23 Q. Okay. But at some point Ameren 24 changed its position from calculating the 199 25 deduction on a stand-alone to a consolidated basis;

## 1 is that correct?

2	A. I wouldn't characterize it that way.
3	I would say that because in prior years it
4	hadn't it hadn't recognized the net operating
5	loss carryforward at all. So what did happen was
6	there were some filings in this case in which it
7	computed or reflected a so-called stand-alone net
8	operating loss carryforward, but that was not
9	intentional. That was not supposed to be
10	indicative of their method. When they realized
11	that, they changed it.
12	Q. Okay. You said earlier when you were
13	being cross-examined by Mr. Downey that, I believe
14	you said on a consolidated basis there is no DPD.
14 15	you said on a consolidated basis there is no DPD. Is that am I paraphrasing that correctly?
15	Is that am I paraphrasing that correctly?
15 16	Is that am I paraphrasing that correctly? A. You're exactly correct, yes.
15 16 17	<pre>Is that am I paraphrasing that correctly? A. You're exactly correct, yes. Q. Okay. And in this case, what is the</pre>
15 16 17 18	<pre>Is that am I paraphrasing that correctly? A. You're exactly correct, yes. Q. Okay. And in this case, what is the monetary difference between calculating the DPD on</pre>
15 16 17 18 19	<pre>Is that am I paraphrasing that correctly?     A. You're exactly correct, yes.     Q. Okay. And in this case, what is the monetary difference between calculating the DPD on a stand-alone versus consolidated basis?</pre>
15 16 17 18 19 20	<pre>Is that am I paraphrasing that correctly? A. You're exactly correct, yes. Q. Okay. And in this case, what is the monetary difference between calculating the DPD on a stand-alone versus consolidated basis? A. Now, we're not addressing net</pre>
15 16 17 18 19 20 21	<pre>Is that am I paraphrasing that correctly?     A. You're exactly correct, yes.     Q. Okay. And in this case, what is the monetary difference between calculating the DPD on a stand-alone versus consolidated basis?     A. Now, we're not addressing net operating losses in that in this question, we're</pre>
15 16 17 18 19 20 21 22	<pre>Is that am I paraphrasing that correctly? A. You're exactly correct, yes. Q. Okay. And in this case, what is the monetary difference between calculating the DPD on a stand-alone versus consolidated basis? A. Now, we're not addressing net operating losses in that in this question, we're just talking about a computation of the DPD?</pre>

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Page 342 basis, the Ameren consolidated return will not and 1 2 has not, my understanding is, since 2008 reflected 3 a dollar of DPD deduction. 4 Q. Okay. 5 Α. So there has been no DPD deduction since -- since 2008, I believe. 6 7 So that was -- that's what has Q. 8 happened in the past, but in terms of this 9 particular case or this particular tax return, if 10 filed on a stand-alone basis, which it was filed in 11 its direct case, what would the deduction be? 12 Α. Now you're -- my comment, my answer 13 before was addressed to a consolidated DPD deduction, and Ameren and no subsidiary of Ameren 14 has had one since 2008, and they won't 15 prospectively. The only DPD deduction that exists 16 17 is for purposes of setting rates in this proceeding. 18 19 That's the -- and it's not going to be reflected on a tax return. There will be no 20 21 actual deduction for this. This is a -- I don't know what you want to call it -- a pro forma 22 23 deduction that Ameren computes to give customers 24 the benefit of a DPD deduction as if the only relevant financial data or tax data was Ameren 25

Page 343 Missouri's. 1 2 Q. Okay. But is it your understanding 3 that Ameren Missouri has given ratepayers the benefit of this deduction in past cases? 4 5 A. Yeah, they have. They have. They 6 have given the customers the benefit of a --7 effectively a nonexistent deduction in the past. 8 Q. Okay. Thank you. Turning gears to 9 the net operating loss carryforward related to 10 ADITS, will calculating net operating loss 11 carryforward on a consolidated basis increase 12 Ameren Missouri's rate base in this case? Versus -- what am I comparing it 13 Α. against? 14 15 Versus calculating it on a Q. stand-alone basis. 16 17 A. Rec-- I would characterize it as recognizing -- let's get on the same page. What 18 we're talking about is the level of cost-free 19 capital that Ameren has because cost-free capital 20 21 is what we reduce rate base by, deferred taxes or cost-free capital. 22 23 Q. That is correct. 24 A. So that's what we're trying to ascertain. The consolidated allocation of net 25

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		Page 344
1	operating loss represents the actual capital, the	
2	actual cost-free capital that Ameren Missouri has	
3	in its possession. That's those represent the	
4	losses that it was not paid for and for all the	
5	rest of the losses it generated it was paid for	
6	those. So there is a quantity of losses that it	
7	has for which it has not yet been paid.	
8	What Ameren has reflected in its	
9	filing is the actual level of losses for which it	
10	was paid, the actual cost-free capital that it has.	
11	Now, if you were to ignore that, ignore the real	
12	level of cost-free capital that Ameren has and	
13	delve into the possibility that they would have had	
14	more cost-free capital had they filed on a	
15	different basis, then that would equate to these	
16	single these separate company calculations	
17	because it doesn't have that cash.	
18	But if had filed on that basis, it	
19	would have had more cash as of the end of 2013 than	
20	it actually does.	
21	Q. And based on your calculation on that	
22	stand-alone company basis, that extra cash would	
23	increase the rate base?	
24	A. No. The extra cash would decrease	
25	the rate base. Remember, the cash when you get	

		Page 345
1	cash, that's cost-free capital. When you get cash	
2	attributable to tax deductions, it's cost-free	
3	capital. As Commissioner Kenney said, recognized,	
4	it cycles around, but for a while you get to hold a	
5	bunch of cash.	
6	Using a separate company calculation,	
7	the company would have had, I think it was well,	
8	it's on the chart over there. I can't recall.	
9	It's like \$31 million more cash than it actually	
10	has. And so it doesn't have the cash, but it would	
11	have had that much more cash, that much more	
12	cost-free capital, which would have meant that rate	
13	base would have been reduced by \$31 million more	
14	had it filed that way than, in fact, it had.	
15	Q. Thank you. That answered my	
16	question.	
17	You have an LLM in tax law, correct?	
18	A. That's correct.	
19	Q. And you've testified or been involved	
20	in numerous rate cases in various states?	
21	A. That's correct.	
22	Q. Okay. Based off your expert	
23	knowledge, are you aware of any laws prohibiting	
24	the Commission or any commission rather from	
25	treating Ameren Missouri's income tax obligation on	

	Page 346
1	a stand-alone basis when it files its taxes on a
2	consolidated basis?
3	A. No. The Commission the Commission
4	can no. The tax law I'm going to say the tax
5	law doesn't control the Commission, but the tax law
6	obviously, to the extent of the so-called
7	normalization rules, which we're not discussing
8	here, the tax normalization rules, there is a
9	penalty for certain types of ratemaking, but this
10	isn't one of them.
11	Okay. The point is that the
12	Commission, if it wants to, I know of nothing
13	certainly in the tax law that precludes the
14	Commission from from adopting a method that is
15	different than the tax method so long as it's
16	reasoned and equitable and not arbitrary and
17	capricious, whatever the thresholds are, the legal
18	thresholds for a commission's actions.
19	MR. ANTAL: Thank you, Mr. Warren. I
20	have no further questions.
21	JUDGE WOODRUFF: Thank you. Come up
22	for questions from the Bench. Mr. Chairman?
23	QUESTIONS BY CHAIRMAN KENNEY:
24	Q. Mr. Warren, thanks. I think I was
25	some things were clear and some things weren't. So

Page 347 1 just bear me if you wouldn't mind. 2 When you use the phrase cost-free 3 capital, is that the same as accumulated deferred income tax? 4 5 A. Yes. The cost-free capital is actually cash, and it's the accounting equivalent, 6 7 the way they reflect the deferral of tax that takes 8 place by virtue of taking, for instance, 9 accelerated depreciation. Tax is deferred, that gives you more cash. 10 11 Because you don't have to pay it out? Q. 12 Α. Because you don't have to pay it out to the government. You will eventually, but not 13 currently. It's reflected on the balance sheet as 14 a deferred tax. 15 So the ADIT is the accumulated 16 Ο. 17 deferred income taxes collected from ratepayers but not transferred to the government to pay your tax 18 19 bill? There are two ways of looking at it. 20 Α. 21 I don't want to pars words with you. But one way of looking at it is, you can look at it that way 22 because clearly there is cash that's received. 23 2.4 The other way of looking at it is, 25 and the way that I characterize it in my testimony,

		Page 348
1	is that the government Congress passes	
2	100 percent bonus depreciation. Okay. So the	
3	companies get a whole bunch of additional	
4	deductions that they wouldn't have had, and they	
5	pay less tax as a result. Rates don't change as a	
6	result of that. So what happens? They have more	
7	cash.	
8	Now, from a regulatory perspective,	
9	they've got that cash, you can the regulators	
10	can either take that additional cash that's been	
11	provided through tax legislation and pass it	
12	through to customers, which is referred to as flow	
13	through, or not, in which case the company keeps	
14	the money and will eventually pay it back to the	
15	government and in the interim has this fund of	
16	cost-free capital, which is reflected on its	
17	balance sheet as deferred taxes.	
18	Q. Okay. So this is so you're just	
19	saying the same thing different ways?	
20	A. Exactly.	
21	Q. All right. So it's this money that	
22	comes in from ratepayers that doesn't get paid out	
23	to the government?	
24	A. Or it comes in from the government	
25	that doesn't get passed through to ratepayers.	

Page 349 That's the flip. Same thing. You end up in the 1 2 same place. You have cash that doesn't cost you 3 anything --4 Q. Right. 5 A. -- and supports --6 But the government is not giving it Q. 7 to the company? Well, it is by -- when Congress 8 Α. passed in December --9 10 Q. They're not taking taxes from the 11 company? 12 Α. That's right. So it leaves them with 13 more cash. 14 So this accumulated deferred income Q. tax acts as a reduction to rate base? 15 16 A. Can and usually does. 17 Q. Okay. And then the net operating loss carryforward as an increase to rate base? 18 19 Α. Well, what it does, what that reflects is when you take all these deductions, if 20 21 you claimed a billion dollars of bonus depreciation and you only had \$10 million of taxable income to 22 23 offset, a whole bunch of those deductions didn't 24 produce any reduction in tax because you didn't 25 have enough tax.

		Page 350
1	So what happens is you record the tax	
2	benefit of the whole billion dollars as a deferred	
3	tax, and then, in recognition of the fact that you	
4	actually only reduced your tax liability by the tax	
5	on \$10 million, you put up you reflect on your	
6	accounting records a deferred tax asset, it's	
7	called, that offsets.	
8	Q. The ADIT?	
9	A. Offsets the ADIT. So it's really	
10	you can do it two	
11	Q. It's not increasing rate base, it's	
12	reducing the amount of ADIT that's available	
13	A. Exactly.	
14	Q to reduce rates?	
15	A. Except to reflect the fact that you	
16	only reduce tax by that limited amount and that's	
17	all the cost-free capital you have.	
18	Q. And so if it's calculated on a	
19	stand-alone basis, this net operating loss	
20	carryforward, if it's calculated on a stand-alone	
21	basis, then the offset to ADIT is less than it	
22	would be if we calculated it on a consolidated	
23	basis?	
24	A. Yes.	
25	Q. Am I understanding that correctly?	

		Page 351
1	A. Yes. Exactly. That's why we have	
2	this dispute.	
3	Q. And so what I think I just understood	
4	from your discussion with Mr. Antal is there's no	
5	legal prohibition on this Commission deciding to	
6	calculate it on a stand-alone basis irrespective of	
7	how Ameren filed its taxes?	
8	A. There is no tax law restriction on	
9	doing that, and in some jurisdictions they, in	
10	fact, do compute, they look at taxes on a separate	
11	company, separate return basis, but they do it	
12	consistently. They do it all years, all the time.	
13	They don't bounce back and forth.	
14	Q. And the recommendation by MIEC and	
15	the Staff is to do it on a stand-alone basis	
16	because such a calculation would inure benefit to	
17	the ratepayers?	
18	A. No. Their proposal, as I understand	
19	it, is in this year to do it on a stand-alone	
20	basis, but if in another year it were beneficial,	
21	as it has been from 2008 through 2012, to do it on	
22	a consolidated basis, you would do it on a	
23	consolidated basis. So you could do it every	
24	year you could do it on a different basis.	
25	Q. Depending on how it benefits the	

Page 352 1 ratepayers? 2 Α. That's correct. 3 Q. All right. So just so I'm clear, there's no legal prohibition, there's nothing in 4 5 the Internal Revenue Code that would prohibit that, it's a policy decision for us? 6 7 Α. That's my understanding. CHAIRMAN KENNEY: Okay. Actually, 8 that's all I have. Thanks. 9 10 JUDGE WOODRUFF: Commissioner Stoll? QUESTIONS BY COMMISSIONER STOLL: 11 12 Q. Thank you. Good afternoon. Good afternoon. 13 Α. 14 I think my only question would be as Q. 15 a result of your conversation with the Chairman. So I think it was said earlier that -- or at least 16 17 I assume that maybe you couldn't go back and forth from a consolidated plan, return to a -- what's the 18 19 other one called? 20 Α. Separate company. 21 Separate company. But there's no Q. 22 prohibition against doing that; is that correct? 23 Α. No. Well --24 I mean in the tax code. Q. 25 It depends on what -- what level Α.

practice we're talking about.
 Q. Okay.

3 Α. The company has long ago determined, elected to file a consolidated return. It cannot 4 5 change that. It must file, continue to file on a consolidated return. Every company in the group 6 7 that's eligible must continue to file as part of a 8 consolidated group, unless the company gets 9 permission from the Internal Revenue Service to discontinue filing, and you have to -- it's a 10 11 process, and it involves showing good cause and 12 permission from the commissioner, in which case, if 13 granted, then you can't file consolidated again for another five years. There's a penalty for moving 14 15 out of a consolidated filing. So it is not -- the company doesn't 16 17 have the flexibility under the tax law to waft in and out of consolidated filing. 18 19 Q. Okay. So tell me, then, could --20 they couldn't just file on a separate company 21 basis? Explain that to me. Well, again, had they not filed on a 22 Α. consolidated -- elected to file on a consolidated 23 24 basis, they could have filed -- every single member company would have been required to file its own 25

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Page 354 1 tax return. 2 And if they -- and if they petition 3 the Service to dis-- having elected consolidated filing, if they petitioned the Internal Revenue 4 5 Service to allow them to discontinue and they showed good cause, the commission could allow --6 7 the Internal Revenue Service could permit them to cease filing and everybody would file on an 8 individual basis. 9 10 But the problem is, if you do that, 11 it would serve an interesting point here. If the 12 company always had filed on an individual basis in 2008, in 2009, in 2010 through 2012 when it was 13 beneficial for the company to file on a 14 15 consolidated return, based on Mr. Brosch's proposal, he could have come in and proposed that 16 17 you calculate the net operating loss on a consolidated basis even though they filed on a 18 separate company basis because it's the better of 19 the two. So the company is sort of damned if they 20 21 do and damned if we don't. COMMISSIONER STOLL: Okay. I think I 22 have a better understanding of that. Thank you. 23 24 JUDGE WOODRUFF: Commissioner Kenney? QUESTIONS BY COMMISSIONER W. KENNEY: 25

Page 355 1 Q. Good afternoon, Mr. Warren. 2 Α. Good afternoon. 3 Q. I have a couple questions for you. First off, when did Congress pass that law on 4 5 the -- that tax law we're talking about for the accelerated, I call it acc--6 7 Α. Bonus depreciation? There's been a 8 type of bonus depreciation in the law since 2001. 9 It was right after 9/11 that the first bonus depreciation came in. It was 30 percent for a 10 while and then it went up to 50 percent. 11 12 Remember, all economic motion came to a halt. In 2003 --13 **Q**. 14 Α. Yes. 15 Q. -- I decided I wanted -- my company 16 was going to buy a new vehicle, and Congress had 17 passed some laws. I was able to go buy a new Yukon 18 Denali that the sticker on it was about 55. I got 19 it under list. The government gave me a check for 20 \$4,000, and I wrote that thing off in 2003, the 21 entire thing. 22 In 2003? Α. 23 Q. 2003. That's when they -- they were 24 still having problems. 25 Yeah. It could have been --Α.

Page 356 2003. 1 **Q**. 2 Α. No, no. There's a code Section 179 3 that allows --4 Q. It was certain size vehicles, too. 5 Α. Yeah. There was special rules for -to help General Motors and --6 7 And even now, someone has a bonus Q. 8 income right now in 2014, a big loss, they can go 9 back to 2012 and offset it against income they had 10 in 2012. 11 A. You can have net operating loss carry 12 backs, yeah. Absolutely. Congress is always passing special rules. 13 14 Congress does a lot of these things Q. 15 in order to stimulate the economy or stimulate growth in certain sectors. 16 17 Α. Or General Motors, Ford, et cetera. You're exactly right. 18 19 I have a question for you regarding Q. 20 Mr. Brosch's table. We've gone over it several 21 times on MLB No. 10. 22 Yes. That's that table, yes. Α. 23 Q. So let me ask you a question. In 2008, '09, '10, '11 and '12, if you take those 24 25 approximate Ameren Missouri rate base

Page 357 1 decrease/increase due to the filing of 2 consolidated, comes up to 836 million plus? 3 Α. I'm sorry. What column are you talking? 4 5 Q. Column 6. 6 Α. Yes. 7 If you add up 2008 through '12, Q. 8 there's a positive over \$836 million? 9 Α. Yes. 10 What benefit did that have to Q. Missouri ratepayers? 11 12 Α. Okay. Each year, what Column 6 13 represents is the cash that Ameren Missouri got paid for for its losses in excess of the amount 14 15 that it would have gotten paid had it filed a separate company return. So it's a benefit of 16 filing consolidated. 17 18 Ο. So in 2008 it was a benefit --19 Α. \$127 million. So they were sitting with \$127 million more than they would have been 20 21 silting with had they filed a separate return as of 22 the end of 2008. 23 Q. That would, I imagine, have affected 24 the ratepayer --25 Well, if --Α.

	Page 35
1	Q the going forward in another rate
2	case?
3	A. When there's a rate case, and that's
4	what I was getting to. Each year what is shown in
5	Column 6 is the cumulative amount. The amount went
6	up in 2009. It went up more in 2010. It went up
7	more in 2011, and then it started 2012 it went
8	down a little bit.
9	The point is at any point any of
10	the rate cases that occurred during that time
11	period from 2008 through the year, 2008 through
12	2012, and I believe there were three rate cases,
13	would have reflected this incremental cash, which
14	is incremental cost-free capital which converts to
15	a lower rate base, a reduction in rate base in each
16	of those three rate proceedings.
17	Q. Now, when you were talking to
18	Commissioner Stoll, and I just wanted to clarify
19	something, the stand-alone has nothing to do with
20	how the company files their taxes, correct?
21	A. It files their taxes on a
22	consolidated basis. There's no question about
23	that.
24	Q. Can you not still allocate that
25	individually to individual companies, like is being

Page 359 1 suggested? You don't have to change the way you 2 file your taxes; am I right? 3 Α. No. You file your taxes on a consolidated basis. The allocation of losses you 4 5 have discretion over. 6 Yeah. That's what Commissioner ο. 7 Stoll -- it doesn't change the way you file taxes, it's just --8 9 Α. That's correct. 10 -- some of the parties would rather Q. 11 you allocate so much money to individual companies. 12 In this case it's more beneficial to some of our 13 industrials if we would allocate as a stand-alone 14 approach in 2013 and '14 where it would not have 15 been to their benefit in 2008, '09, '10, '11 and '12; is that correct? 16 17 Α. Yes. But again, you don't make a decision each year. 18 19 Oh, I know. I understand. Q. You elect -- you elect a methodology, 20 Α. 21 and it's self-executing every year. 22 0. But my question was, would it --23 doing what we're discussing today, if that were in 24 place in 2010, would that be a net benefit to say 25 the industrials or a ratepayer?

Page 360 1 Α. Would have been a detriment. 2 Net detriment? Q. 3 Α. Large net detriment. So if things switch back around in 4 Q. 5 2015, by making this change and keeping going 6 forward could be a net detriment to the ratepayers 7 going forward? It could be. It could switch. And 8 Α. again, this is evidence that it can switch because 9 10 it did. 11 COMMISSIONER W. KENNEY: Okay. Thank 12 you very much. 13 JUDGE WOODRUFF: Commissioner Hall? 14 COMMISSIONER HALL: I have no 15 questions. Thank you. 16 JUDGE WOODRUFF: Commissioner Rupp? 17 COMMISSIONER RUPP: Yes. Thank you. QUESTIONS BY COMMISSIONER RUPP: 18 19 Thank you very much, sir. What did Q. 20 you have for lunch? 21 Α. I don't know. What was it? I think it was supposed to be a hamburger. It was all 22 23 right. It was actually quite good. Will not go to that place again. 24 Q. 25 Α. No. It was good.

		Page 361
1	Q. From all the discussion today in your	
2	testimony, I think the Chairman hit on it, we're	
3	discussing a policy issue, not a taxation issue of	
4	how we want to what numbers we want to plug in	
5	to create rates. We have the ability to choose the	
6	numbers that we want based off whatever	
7	calculations, regardless of how the company files	
8	its taxes, of how we want to set the rates; is that	
9	fair?	
10	A. I think that's fair, with one one	
11	comment, and that is there were really two issues,	
12	two tax issues. One is the allocation of the net	
13	operating loss carryforward, and that goes to what	
14	we've been discussing here primarily, this chart	
15	that we've been discussing.	
16	And it also is relevant to the	
17	computation of the Section 199 deduction. But	
18	there's a secondary issue in the 199 deduction, a	
19	disagreement between MIEC and the company as to	
20	whether you need to reflect the net operating loss	
21	carryforward at all, and could the they're	
22	different in the sense that the net operating loss	
23	carryforward clearly is required by the tax law.	
24	The tax law doesn't compel the	
25	Commission to recognize that, but clearly there	

		Page 362
1	is there are not two ways to do it. There's	
2	only one way to do it, and that's under the tax	
3	law, and that's to include a net operating loss	
4	carryforward.	
5	But the allocation we can talk about	
6	could be could be different. It could be more	
7	than one allocation methodology.	
8	Q. Walk me through the process here. If	
9	commissions around the country started to go back	
10	and forth on are they going to use the consolidated	
11	figures, are they going to use the stand-alone	
12	figures on every rate case that comes before them,	
13	they don't have a set policy, they don't have a	
14	tradition, they just look at the numbers and say	
15	we're going to do this one because we think it's	
16	the best benefit to our ratepayers.	
17	Of all the companies or all the	
18	members of the consolidated tax filing for the	
19	company, if every single one of them when setting	
20	rates were to use the most advantageous way to set	
21	rates, what impact would that have on the company?	
22	A. Well, the sum of the parts would not	
23	equal the whole for sure. If everybody's taking	
24	the best, that means that nobody's taking the	
25	detriment, nobody's absorbing certainly not any	

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Page 363 of the -- the regulated companies aren't absorbing 1 2 the detriment. 3 So what you pointed out is a feature of taking the lower of the consolidated or separate 4 5 company is if -- if it's good for Ameren Missouri, why isn't it good for every other company in the 6 7 group? Why wouldn't they say we want to be allocated based on the better of the two outcomes? 8 9 And if you do that, then you're not going to add up. It's not going -- it's never going to add up 10 to the consolidated tax liability. 11 12 ο. And then what is the financial impact 13 of the company if it does not add up? 14 Well, somebody is going to be left Α. 15 holding the proverbial bag. 16 Q. And would that be the shareholders, 17 the company itself? Would they have --Well, again, it will end up being --18 Α. if all the regulated companies elected to take the 19 better of the two, then ultimately it would be the 20 21 shareholders who will suffer the consequences of that -- the lack of the parts equaling the whole. 22 23 Q. Okay. And then -- thank you. That helped. And then just your earlier comment was it 24 25 is a general practice. Once you choose to file

		Page 364
1	consolidated, you can file you continue it for	
2	all of your organizations. So if we have a large	
3	company that's a member of the MIEC and they have	
4	subsidiaries as well, if they're choosing to file	
5	consolidated, then that's the way they're moving	
6	forward?	
7	A. And I would wager that every single	
8	one of them is filing consolidated.	
9	Q. But the only difference is we're	
10	using calculations to figure out how much they can	
11	charge, whereas they're in a free market and the	
12	market prices are set by everything, whereas we are	
13	setting the prices, so we have the opportunity to,	
14	in theory, cherry pick what's best for the	
15	ratepayers, whereas they if they choose to file	
16	consolidated, then the market prices for their	
17	products are set and has no impact on what	
18	calculations they do on their taxation?	
19	A. Yeah. I mean, that's generally	
20	right, but I mean, the issue I mean, here we	
21	have I don't think there's any disagreement	
22	about what the level of cost-free capital Ameren	
23	Missouri possesses. We know what that is.	
24	The policy issue is whether you ought	
25	to ignore that and import a fictional computation	

Page 365 for some -- presumably some policy reason that 1 2 you -- that you identified that would -- that would 3 justify overriding what is economic reality. COMMISSIONER RUPP: Thank you. 4 5 THE WITNESS: You're welcome. OUESTIONS BY JUDGE WOODRUFF: 6 7 I just have one question. As I Q. 8 understand your testimony, before 2012 ratepayers 9 benefited from using the consolidated approach? 10 A. That's correct. 11 And in the last two years they would Q. 12 benefit if we were to use the stand-alone? 13 Α. They would benefit prospectively, 14 yes. 15 Q. Any predictions on what's going to happen in the future for 2015, 2016? Is there any 16 17 way of knowing? You know, I don't know that. 18 Α. Ultimately when the consolidated net operating loss 19 is used up, everything goes back to zero. You 20 21 don't have to worry about this issue anymore. It 22 goes away. But until that happens, it can vary 23 from year to year. So I can't answer that, I'm 2.4 afraid. 25 JUDGE WOODRUFF: Thank you.

Page 366 1 THE WITNESS: You're welcome, Judge. 2 JUDGE WOODRUFF: So recross based on 3 questions from the Bench, beginning with Consumers Council. 4 5 MR. COFFMAN: No questions, your 6 Honor. 7 JUDGE WOODRUFF: Public Counsel? MS. BAKER: No questions. Thank you. 8 JUDGE WOODRUFF: MIEC? 9 10 MR. DOWNEY: Just a couple. RECROSS-EXAMINATION BY MR. DOWNEY: 11 12 Q. I want to be clear about something. 13 The adjustment that Mr. Brosch is proposing, that 14 affects all ratepayers, doesn't it, not just MIEC, 15 not just industrial customers? 16 A. I would presume so. Every customer 17 that is impacted by the level of rate base would be 18 impacted. 19 Q. Okay. And this is not really just an 20 issue between the MIEC and the company. The Staff 21 also opposes the company on this issue; would you 22 agree? 23 A. That seems to be the case, yes. I 24 would agree. 25 MR. DOWNEY: No further questions.

Page 367 1 JUDGE WOODRUFF: For Staff? 2 MR. ANTAL: No questions, your Honor. 3 JUDGE WOODRUFF: Redirect? 4 MR. SELTZER: Thank you. 5 REDIRECT EXAMINATION BY MR. SELTZER: 6 Mr. Warren, you've been asked a lot Q. 7 of questions about this consolidated versus 8 separate return basis, and you explained, I think, 9 the principal reason in support of your position is economic reality. Could you just delve into that a 10 little bit further for us? 11 12 Α. Well, as I tried to describe to the 13 Commissioners, the -- what we're dealing with here is rate base, obviously, and what is relevant to 14 15 rate base is the deferred tax balance because that is an element of the rate base calculation. It's a 16 17 reduction in rate base. And the reason it's a reduction in rate base is because it's a -- it 18 represents an amount of cash that the company has 19 20 available to support its rate base with respect to 21 which there is no cost. You file a tax return, claim the 22 23 deduction, and then 20 years from now you file 24 another tax return and you get back the deduction. 25 In the interim, you've got the cash and there's no

Page 368 interest charge because the way you pay it back is 1 2 by filing a subsequent tax return. 3 So that's -- I mean, it's a benefit. It's a clear benefit. So the -- that's why --4 5 that's the premise for reducing rate base is you have this cash that is available to support rate 6 7 base. 8 Economic reality is that the company 9 actually received cash attributable to its tax deductions that is reflected by the consolidated 10 allocation, consolidated net operating loss 11 12 calculation. That represents the true level of 13 cash that the company has. Anything else is fictional. You can do it, but it's not real. 14 15 And so I advocate the hewing to economic reality because, number one, it is 16 17 economic reality. Number two, it is a generally accepted methodology that's used by most companies 18 of which I'm aware, and the companies used it 19 20 consistently when it helped them and when it hurt 21 them over a long period of time, and all the companies in the group are treated precisely the 22 23 same. 24 So I don't see any compelling reason 25 to throw economic reality out the window and

Page 369 replace it with a fictional -- a fictional status, 1 2 economic status simply because it produces a better 3 answer. In my mind, simply producing a better answer isn't sufficient justification for that. 4 5 Q. So you mentioned that the vast majority of companies that you're aware of have 6 7 used the consolidated approach? 8 Α. To my knowledge, yes. The vast 9 preponderance of companies with which I am 10 familiar, yes. 11 **Q**. In those cases where commissions, 12 notwithstanding the filing of consolidated returns, 13 utilized the stand-alone approach, is that policy 14 that's implemented consistently from year to year, rate case to rate case? 15 I have only seen it where it is --16 Α. 17 where it is -- let me take a step back. 18 In some instances it's the company's choice, some instances -- and the Commission has 19 accepted it. I'm unaware of a situation where the 20 21 Commission has imposed a separate company, but they 22 may have somewhere. But usually it's the company makes the selection and they use it consistently 23 24 year after year after year, again, where it helps, 25 where it hurts, but consistently.

		Page 370
1	Q. So just to be clear, you're not aware	
2	of any commission or jurisdiction that adopts the	
3	back and forth lesser of approach to whether the	
4	consolidated benefit is greater or the stand-alone	
5	benefit is greater in a given rate case?	
6	A. I have not seen any I have not	
7	seen that approach adopted or even proposed with	
8	respect to taxes in any jurisdiction.	
9	Q. Thank you. I think you were asked	
10	earlier about what happened in 2013. Do you have	
11	any insights as to what changed in 2013?	
12	A. You mean the reason for	
13	Q. For the flip?	
14	A. If you look at the chart, there was	
15	a 2013 in Column 1, Ameren Missouri had a lot	
16	more taxable income than it had ever had before,	
17	and the primary reason for that was a change in its	
18	tax accounting method for repairs which was	
19	required by a change in the IRS regulations. So	
20	that was not it was not a transaction or didn't	
21	all of a sudden sell a lot more electricity or	
22	incur a lot fewer expenses. It was again a	
23	technical change in an accounting method under the	
24	tax law that was required.	
25	Q. Switch over. You were asked earlier	

		Page 371
1	about the relationship between the company's	
2	acquiescence in the treatment of the 281 account	
3	and the correction we're proposing on the domestic	
4	production deduction. What do you see as the	
5	relationship between those two?	
6	A. I think they're the same. You're	
7	referring to the aspect of the domestic production	
8	deduction where we in prior rate cases we didn't	
9	consider a net operating loss carryforward and now	
10	we do. Never mind what the amount is, in prior	
11	rate cases we didn't even consider a net operating	
12	loss carryforward at all. That was wrong. It was	
13	technically wrong, just as ignoring the deferred	
14	taxes related to the 281 account was wrong, and we	
15	corrected both of those in the current rate. There	
16	were no circumstantial changes. We just corrected	
17	the errors.	
18	Q. Thank you. Now, in your view, why	
19	should the Commission not continue to apply the	
20	historical method of calculating the 199 deduction?	
21	A. Again, you mean ignoring the	
22	Q. Ignoring it, correct.	
23	A. It's technically unsupportable. I	
24	mean, the in a ratemaking, the intersection of	
25	ratemaking and taxes is you have to figure out how	

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		Page 372
1	ratemaking should reflect taxes, tax expense, which	
2	is a cost. You don't get to change what the tax	
3	law does. Tax law creates tax expense. If the tax	
4	law says the applicable tax rate is 35 percent, I'm	
5	not saying you couldn't say you couldn't for	
6	policy reasons say it's 33 percent, but the fact is	
7	it's 35 percent and that's the cost.	
8	In terms of the Section 199	
9	deduction, the tax law says you offset net	
10	operating loss carryforward against it. Commission	
11	can't change that, and I think the task of the	
12	Commission is to accurately reflect the application	
13	of the tax law to the operations of the regulated	
14	company. And ignoring the net operating loss	
15	carryforward for the 199 deduction I don't think is	
16	a viable option.	
17	MR. SELTZER: We're done. Thank you.	
18	JUDGE WOODRUFF: All right. Thank	
19	you. You may step down.	
20	THE WITNESS: Okay. Thank you.	
21	(Witness excused.)	
22	JUDGE WOODRUFF: Next would be Lisa	
23	Hanneken for Staff.	
24	(Witness sworn.)	
25	JUDGE WOODRUFF: You may inquire.	

Page 373 LISA HANNEKEN testified as follows: 1 2 DIRECT EXAMINATION BY MR. ANTAL: 3 Q. Ms. Hanneken, would you please say 4 your name and spell it for the court reporter. Lisa Hanneken, L-i-s-a, 5 Α. H-a-n-n-e-k-e-n. 6 7 Ms. Hanneken, are you the same Q. 8 Ms. Lisa Hanneken who prepared or caused to have 9 prepared sections of Staff's Revenue Requirement 10 Cost of Service Report? 11 Α. Yes, I am. 12 Q. And do you have any corrections or additions to those sections at this time? 13 14 No, I do not. Α. 15 Are those sections true and accurate Q. to the best of your knowledge and belief? 16 17 Α. Yes. Ms. Hanneken, are you the same Lisa 18 Q. 19 Hanneken who prepared or caused to have prepared 20 sections of rebuttal and surrebuttal testimony? 21 Α. Yes. 22 Q. Do you have any corrections or additions to those testimonies at this time? 23 A. No, I do not. 24 25 If I were to ask you the same Q.

Page 374 1 questions in those testimonies, would your answers 2 be the same or similar? 3 Α. Yes, they would. 4 Q. And were your answers in those 5 testimonies true and accurate to the best of your knowledge and belief? 6 7 Α. Yes. MR. ANTAL: Okay. Your Honor, we 8 offer the rebuttal and surrebuttal testimonies of 9 Ms. Lisa Hanneken and tender the witness for cross. 10 JUDGE WOODRUFF: That would be 217 11 12 and 218, HC and NP on both of those. I believe 13 Ms. Hanneken will be back on other issues; is that right? 14 15 MR. THOMPSON: She'll be back twice more, Judge. 16 17 JUDGE WOODRUFF: We'll defer ruling on admission until those issues come up. 18 19 And for cross, beginning with Public 20 Counsel -- excuse me, with MIEC. 21 MR. DOWNEY: No questions. 22 JUDGE WOODRUFF: Public Counsel? 23 MS. BAKER: No questions. Thank you. JUDGE WOODRUFF: Consumers Council? 2.4 25 MR. COFFMAN: No questions.

Page 375 JUDGE WOODRUFF: Then we'll skip down 1 2 to Ameren. 3 CROSS-EXAMINATION BY MR. SELTZER: Ms. Hanneken, I just have a couple of 4 Q. 5 questions for you. Do you agree that the Section 199 deduction is limited by taxable income? 6 7 Α. Yes. 8 Q. Do you agree that net operating 9 losses are properly taken into account in computing taxable income? 10 11 Α. Yes. 12 In your -- so is it your position 0. 13 that the Section 199 deduction for ratemaking 14 purposes should take into account -- putting aside 15 how we compute the net operating loss, should take into account the net operating loss? 16 17 Α. I believe I stated in my testimony that I did not -- did not understand why we would 18 need to deviate from the prior methodology employed 19 by all parties in previous cases. But if we did 20 21 that, then the stand-alone method would be preferred to include the NOLC. 22 23 **Q**. Is it your belief that whatever 24 methodology is chosen, whether it be consolidated 25 or stand-alone, with respect to the primary

Page 376 1 position of the rate base, that the same 2 methodology ought to be used for the purposes of 3 the 199 calculation? A. Yes, I believe you would have to 4 5 match them. 6 MR. SELTZER: No further questions. 7 JUDGE WOODRUFF: Come up for 8 questions from the Bench. 9 COMMISSIONER KENNEY: No, thank you. 10 JUDGE WOODRUFF: Commissioner Stoll? COMMISSIONER STOLL: No questions. 11 12 Thank you. 13 JUDGE WOODRUFF: Commissioner Kenney? 14 COMMISSIONER W. KENNEY: No questions. Thank you, Ms. Hanneken. 15 16 JUDGE WOODRUFF: Commissioner Hall? 17 COMMISSIONER HALL: I have no 18 questions either. 19 JUDGE WOODRUFF: Commissioner Rupp? QUESTIONS BY COMMISSIONER RUPP: 20 21 Q. I just want to make sure I heard you 22 correctly. You said that the two issues are tied, 23 if you use one you should use the same for the 24 other, is that what you --25 A. I would -- they are essentially the

		Page 377
1	same number. Mechanically, they are the same	
2	number. I mean, you take the same number and	
3	derive different numbers from them, but you have	
4	the same starting place. So I believe to be	
5	consistent you would want to apply the same	
6	methodology, either stand-alone or consolidated,	
7	for both of the issues in this case.	
8	COMMISSIONER RUPP: Thank you.	
9	JUDGE WOODRUFF: Any recross based on	
10	questions from the Bench? Hearing none. Any	
11	redirect?	
12	MR. ANTAL: No, your Honor.	
13	JUDGE WOODRUFF: Ms. Hanneken, you	
14	may step down.	
15	(Witness excused.)	
16	JUDGE WOODRUFF: And we'll call	
17	Mr. Brosch.	
18	MR. DOWNEY: Judge, did you say you	
19	had to break at 2:15?	
20	JUDGE WOODRUFF: Yes.	
21	(Witness sworn.)	
22	MICHAEL L. BROSCH testified as follows:	
23	DIRECT EXAMINATION BY MR. DOWNEY:	
24	Q. Please state your name and your	
25	business address.	

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Page 378 Α. Michael L. Brosch, B-r-o-s-c-h, 1 2 P.O. Box 481934, Kansas City, Missouri. 3 Q. And, Mr. Brosch, did you prepare testimony in this case? 4 5 A. I did. 6 Is that testimony up at the witness Q. 7 stand with you? A. Yes, it is. 8 9 Q. I'm talking about the official 10 exhibits. Mine are probably not official. 11 Α. MR. DOWNEY: Judge, may I approach? 12 BY MR. DOWNEY: 13 14 All right. Do you see Exhibit 501, Q. 15 NP and HC? 16 A. I do. 17 Q. Is that your direct testimony? Α. Yes. 18 19 Q. And it's broken into two different 20 documents, one is public and one is highly 21 confidential? 22 A. Yes, testimony and Schedules MLB-1 23 through MLB-8. 24 Q. Do you also see an Exhibit 502? 25 A. I do.

Page 379 1 **Q**. What is that? 2 A. That is my surrebuttal testimony, 3 along with Schedules MLB-4 revised and MLB-8 revised and Schedules MLB-10, 11 and 12. 4 5 Now, is there a separate document up Q. there for a highly confidential schedule? 6 7 Α. There is. There's a highly confidential version of Schedule MLB-9. 8 9 All right. Do you have any Q. 10 corrections to the testimony and those exhibits? A. Yes. I'm aware of two corrections 11 12 needed to my surrebuttal. The first is at page 13, line 3. I would change the word lower at the end 13 of the line to the word better so that it matches 14 use of the word better at line 9. 15 16 And then at page 17, line 6, I would 17 change the word amounts to amount without an S on the end. That's all. 18 19 Q. If I were to ask you the questions in 20 those testimonies today, would you give the same 21 answers? 22 Α. Yes. 23 MR. DOWNEY: Judge, I offer Exhibits 501 and 502. 24 25 JUDGE WOODRUFF: 501 and 502, which

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Page 380 are both HC and NP, have been offered. Any 1 2 objections to their receipt? 3 (No response.) JUDGE WOODRUFF: I think this is the 4 5 only time Mr. Brosch is going to testify? 6 MR. DOWNEY: It is. 7 JUDGE WOODRUFF: Hearing no objections, both are received. 8 (MIEC EXHIBIT NOS, 501, 501HC, 502 9 AND 502HC WERE RECEIVED INTO EVIDENCE.) 10 JUDGE WOODRUFF: For 11 12 cross-examination, we begin with Public Counsel. MS. BAKER: No questions. Thank you. 13 14 JUDGE WOODRUFF: Consumers Council? 15 MR. COFFMAN: No questions. 16 JUDGE WOODRUFF: Staff? 17 MR. ANTAL: Yes, your Honor. CROSS-EXAMINATION BY MR. ANTAL: 18 19 Q. Hello, Mr. Brosch. A. Good afternoon. 20 21 Have you testified before other Q. 22 public service commissions? 23 Yes, this and numerous others. Α. 24 Q. Okay. And in your experience, have 25 you encountered public service commissions that

Page 381 1 have employed the stand-alone calculation of net 2 operating loss carryforward balances for taxable 3 income to utilities that have a consolidated tax 4 return? 5 A. I have, yes. And what are those instances? 6 Ο. 7 Α. Well, the one that I explained in 8 some detail in my testimony is set forth in some responses to discovery. It is Southwestern Public 9 Service Company, SPS, a subsidiary of Xcel 10 11 Corporation, and SPS calculates its net operating 12 loss carryforward deferred tax asset that's included in rate base on a stand-alone basis. In 13 fact, it calculates it on a ratemaking basis of 14 accounting on a stand-alone basis. 15 16 Q. Okay. And in that case, do you 17 recall the rationale that that commission gave for adopting that methodology? 18 19 I don't recall a rationale stated by Α. the commission. The utility commenced calculating 20 21 stand-alone, and we have agreed with that calculation. In the past the Texas Commission 22 required consideration of consolidated tax losses 23 24 as part of the revenue requirement computation, and they no longer do that. 25

		Page 382
1	Q. Okay. Thank you. Earlier when	
2	Mr. Warren was on the stand, he was discussing with	
3	Commissioner Rupp that if a utility company files	
4	its income taxes on a consolidated basis but for	
5	terms of ratemaking that income tax obligation is	
6	calculated on a stand-alone basis, that somebody	
7	has to eat the difference. Would you agree with	
8	that statement?	
9	A. I would say that there are two	
10	distinct steps to the analysis required. The	
11	first step is, what is the utility holding company	
12	as a taxpayer filing? What is the basis for that	
13	filing? And then the second step is, once we have	
14	that status established, what is the allocation	
15	regime for attributing responsibility for income	
16	taxes among the subsidiaries, the entities	
17	controlled by the parent?	
18	To that second question, I think the	
19	Commission should look to the guidance they have in	
20	dealing will affiliate transactions, and here the	
21	Commission has a rule that establishes a better of	
22	policy that I explain in my testimony that prevents	
23	affiliate abuse, that avoids concerns by the	
24	regulator as to what else is going on within the	
25	holding company that might cause the utility entity	

		Page 383
1	and its ratepayers to be disadvantaged by	
2	transactions that occur outside the utility or the	
3	allocation procedures themselves.	
4	Q. Okay. And Ameren has criticized	
5	your, I guess, chosen methodology as saying that	
6	it's, to use a phrase that I believe Commissioner	
7	Rupp used earlier, of cherry picking methodologies	
8	to the benefit of ratepayers. Would you	
9	characterize that as cherry picking and, if so,	
10	why?	
11	A. I would not. It's not cherry picking	
12	because it's one change that has been recommended	
13	in many years. The chart before us all displays a	
14	number of years. In prior years the consolidated	
15	group method and the affiliate contract in place	
16	that Ameren used to attribute the consolidated tax	
17	liability among its subsidiaries produced	
18	reasonable results for Ameren Missouri and its	
19	ratepayers.	
20	Starting in 2013, despite a	
21	tremendous growth in Ameren Missouri's own taxable	
22	income, the parent company's decision to divest its	
23	generating resources, its merchant generating	
24	business created extremely large tax losses that	
25	precluded Ameren Missouri ratepayers from	

		Page 384
1	benefiting from the stand-alone method, and in	
2	particular the change in tax accounting that caused	
3	that large taxable income amount in 2013 to not be	
4	available to reduce Ameren Missouri's own	
5	stand-alone NOLC balance.	
6	Q. Okay. Then would you say that	
7	there's no detriment, policy reason or otherwise	
8	for picking the better methodology in a given rate	
9	case for NOLC?	
10	A. I agree with a regulatory policy that	
11	addresses affiliate transactions by insisting that	
12	a utility and its ratepayers not be disadvantaged	
13	by the structure of those transactions, and that's	
14	entirely consistent with this Commission's	
15	affiliate transaction rule that was referenced	
16	earlier, and it's consistent with policy and other	
17	places, that lower of or better of cost or market	
18	policy in my experience goes all the way back to	
19	the Federal Communications Commission when it	
20	regulated telephone companies and applied that same	
21	rule where the regulated business should always get	
22	the better of, the lower of cost or market when	
23	buying from an affiliate and the higher of cost or	
24	market when selling to an affiliate.	
25	Q. And going along those lines, absent	

		Page 385
1	this Commission's rule on affiliate transactions,	
2	is what why is there an overall policy concern	
3	or policy guidance in other jurisdictions for	
4	giving the ratepayer the benefits of one tax	
5	treatment or another, whichever one benefits them	
6	better?	
7	A. In general, I would say utility	
8	holding companies have many opportunities to	
9	structure transactions and relationships between	
10	the utility and its unregulated affiliates in a way	
11	that can increase revenue requirements to the	
12	detriment of ratepayers. That's the thinking	
13	behind the policy as far back as I can recall.	
14	MR. ANTAL: All right. Thank you,	
15	Mr. Brosch. No further questions.	
16	JUDGE WOODRUFF: All right. Unless	
17	you have more than one minute less than one	
18	minute of cross, we'll take a break now. We'll	
19	take a break. We'll come back at 2:45.	
20	(A BREAK WAS TAKEN.)	
21	JUDGE WOODRUFF: Let's come back to	
22	order. We're back from our break, and we're ready	
23	to start with cross-examination by Ameren.	
24	MR. SELTZER: Thank you.	
25	CROSS-EXAMINATION BY MR. SELTZER:	

Page 386 1 **Q**. Good afternoon, Mr. Brosch. 2 Α. Good afternoon. 3 Ο. We've heard a lot of discussion of the consolidated method versus the stand-alone 4 5 method over the course of the last few hours. Do you agree that the company has been consistently 6 7 utilizing the consolidated method for many years? 8 Α. For purposes -- yes, for purposes of 9 allocating its consolidated tax liability amongst subsidiaries, yes. 10 11 In rejecting the company's continued Q. 12 use of that method in this rate case, are you now 13 advocating consistent adherence to the stand-alone 14 method going forward? 15 I'm recommending that the Commission Α. evaluate the facts and circumstances before it in 16 17 future cases. I anticipate that the changes, if any, in the future would occur as a result of 18 19 changed facts and circumstances. 20 Okay. Are you aware of any utility Q. 21 that uses this lesser of method that you're 22 advocating here? 23 A. For? 24 Q. For purposes of allocating the NOL. 25 Α. I mentioned in my testimony that the

		Page 387
1	consolidated group method in Texas would produce a	
2	higher number than the stand-alone, and	
3	Southwestern Public Service Company recalculates	
4	the lower stand-alone method so as to not	
5	disadvantage ratepayers.	
6	I think in deposition I discussed	
7	with you the Hawaii Public Utilities Commission and	
8	its treatment of net operating loss, deferred tax	
9	assets that do not adopt those those policies do	
10	not adopt the recorded NOL deferred tax assets for	
11	the Hawaiian electric companies for ratemaking	
12	purposes, but instead recognize that an affiliated	
13	bank creates the opportunity to realize those	
14	losses and essentially imputes a different	
15	treatment than book treatment for those NOLs.	
16	Q. So I just want to be clear. So just	
17	to be clear, the SPS itself is the one that is	
18	proffering stand-alone calculation in the Texas	
19	case?	
20	A. Yes, even though they have a	
21	corporate tax allocation agreement that would	
22	charge a higher NOL deferred tax asset to the	
23	regulated business.	
24	Q. Correct. In this particular case,	
25	but has it not always filed on a stand-alone basis?	

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1	A. Its rate case filings as far back as	
2	I can recall for calculating the NOL deferred tax	
3	asset in rate base has adopted a lower calculated	
4	result than resulted from its own tax allocation	
5	agreement. A separate adjustment was made	
6	historically to account for consolidated tax	
7	savings.	
8	Q. Has the Commission yet adopted the	
9	calculation proffered by SPS?	
10	A. They have approved settlements.	
11	There hasn't been a litigated SPS rate case in many	
12	years, but the approved settlements contained	
13	agreement on the method used to calculate the NOL	
14	deferred tax asset at least amongst all the parties	
15	I had communications with.	
16	There was no dispute I have ever seen	
17	raised by the utility or anyone else arguing for	
18	use of the higher tax allocation agreement	
19	resulting NOL deferred tax asset.	
20	Q. Do you agree that in the course of	
21	the rate cases between 2008 and 2012, Ameren	
22	Missouri's ratepayers benefited from consistent	
23	utilization of the consolidated group allocation	
24	method for NOLs?	
25	A. For rate cases occurring within the	

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1	2008 to 2012 years on the chart I think in front of
2	and behind me, the consolidated tax allocation
3	agreement produced a reasonable outcome that was
4	beneficial to ratepayers. The world changed in
5	2013.
6	Q. Do you agree with Mr. Warren that
7	Column 6 represents the actual additional amount of
8	cash in cost-free capital received by Ameren
9	Missouri on account of its allocated NOL?
10	A. I would say it a little differently
11	than he did. It represents the amount of cash that
12	the affiliate agreement put on Ameren Missouri's
13	balance sheet as a result of that agreement's
14	treatment of the net operating loss calculations,
15	recognizing affiliate agreement apportions among
16	subsidiaries the consolidated liability.
17	Q. You're aware of the tax regulations
18	that preclude Ameren Missouri from filing its
19	income tax returns on a separate return basis once
20	it has joined in the filing of a consolidated
21	return absent consent from the IRS with good cause
22	shown?
23	A. I understand there are restrictions,
24	yes.
25	Q. Just to make sure we understand your

	Page 390	)
1	proposal, would it contemplate potentially	
2	repeatedly switching back and forth from	
3	consolidated to stand-alone and back again from	
4	test year to test year even though Ameren Missouri	
5	can't change its actual tax return filing	
6	methodology?	
7	A. Probably not back and forth from year	
8	to year. As I said before, you would look at the	
9	facts and circumstances. Fairly profound changes	
10	in 2013 caused the change we're now arguing about.	
11	I don't know if it's fair to assume that additional	
12	profound changes will be experienced in future	
13	years or not.	
14	I would note that Ameren Missouri has	
15	had stand-alone taxable income in Column 1 of that	
16	table for each of the last two years, years that	
17	both had bonus depreciation in effect. So it could	
18	be reasonable to assume that on a stand-alone basis	
19	Ameren Missouri would continue to have positive	
20	taxable income, and if it does, ratepayers should	
21	enjoy the benefit of that by seeing a decline in	
22	the NOL deferred tax asset included in rate base.	
23	Q. Are you aware of some of the primary	
24	causes of the large increase in taxable income in	
25	2013?	

		Page 391
1	A. I know that there was a 41A	
2	adjustment, a cumulative change to tax accounting	
3	method in that year that caused a significant	
4	increase in Ameren Missouri's taxable income in	
5	that year.	
6	Q. So that's not likely an item that	
7	would repeat itself in subsequent years?	
8	A. I wouldn't expect that particular	
9	adjustment to repeat itself. There have from time	
10	to time in the past been significant impacts from	
11	tax accounting changes. It's difficult to predict	
12	that phenomena or whether Congress will extend	
13	bonus from year to year.	
14	Q. That I would agree with. What if	
15	Ameren Missouri had filed on a separate return	
16	basis since inception and we were to come along and	
17	hypothesize that had it filed on a consolidated	
18	basis, which was its option, it would have been	
19	better off in terms of its ability to use operating	
20	losses, would you believe it would be appropriate	
21	to impute a consolidated return election as if they	
22	had filed consolidated on the theory that	
23	ratepayers would have been better off had the	
24	Commission had the company adopted and filed on	
25	a consolidated basis?	

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1	A. Possibly. I would be very interested	
2	in the facts and circumstances surrounding the	
3	decisions made or not made. I would encourage the	
4	Commission to consider the reality of what	
5	transpired and what decisions were made and why	
6	they were made, and then whether the effect was	
7	beneficial only to Ameren Corporation as a	
8	consolidated taxpayer or also reasonably beneficial	
9	to Ameren Missouri as a regulated utility.	
10	Q. So you cited the rules regarding	
11	lower of cost or market and affiliate transaction	
12	rules as justifying or supporting the position you	
13	espouse here, but the notion of lower of cost or	
14	market applies in a transactional or sale sense	
15	where you actually have a conscious choice of what	
16	to charge an affiliate. You can charge them	
17	anything you want. There is a transaction by	
18	transaction basis.	
19	How does that apply here where you	
20	made a one-time election to file a consolidated	
21	return many years ago and you're not making any	
22	transaction by transaction decisions?	
23	A. I would apply the Commission's	
24	affiliate rule to the tax allocation agreement, not	
25	the company's election to file a return on any	

		Page
1	particular basis. And under that agreement, there	
2	is a transfer amongst Ameren subsidiaries of the	
3	consolidated tax results of the consolidated	
4	taxpayer.	
5	The result is the recording of an NOL	
6	deferred tax asset. So there is a transfer among	
7	affiliates that affects an asset.	
8	Q. Could you explain the transfer to us?	
9	A. Yes. The tax allocation agreement	
10	results in the transfer among affiliates of a	
11	specific amount. You called it cash. I called it	
12	responsibility for the consolidated tax liability.	
13	That affiliate agreement controls how that happens	
14	and what gets recorded on the books.	
15	Q. So if Ameren Missouri has a net	
16	operating loss, either utilizes that loss or it	
17	gets paid for this loss if it's used elsewhere. So	
18	how is it what is I'm struggling with the	
19	notion of what is being transferred.	
20	A. What's being transferred is the	
21	Ameren Missouri allocated share of the consolidated	
22	tax liability. The tax allocation agreement	
23	accomplishes that apportionment. That's an	
24	affiliate contract that produces a result on Ameren	
25	Missouri's books. Historically that result has	

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1	been reasonable. It has been favorable, in fact,
2	from ratepayers' perspective.
3	But because of fairly profound
4	changes in 2013 that have been discussed in my
5	testimony and by others, that's no longer the case.
6	And the standard in the Commission's affiliate rule
7	has as its stated purpose to prevent regulated
8	utilities from subsidizing their non-regulated
9	operations and to not provide a financial advantage
10	to an affiliated entity.
11	And if Ameren Missouri would be
12	better off on a stand-alone basis calculating its
13	NOL deferred tax asset, there could be a tax
14	allocation agreement that accomplishes that result,
15	but Ameren's does not.
16	Q. So do the affiliate transaction rules
17	address taxes?
18	A. Well, they say what they say. I have
19	searched and not found any specific reference to
20	income taxes or tax allocation agreements.
21	Q. Or net operating loss?
22	A. Correct. They're fairly broadly
23	worded, as I spoke to the purpose and standard.
24	Q. Switch gears a little bit. Do you
25	agree that the Section 199 deduction is limited by

Page 395 taxable income? 1 2 Α. Yes, among other things. 3 Q. Do you agree that net operating 4 losses are properly taken into account in computing 5 taxable income? 6 Α. In general, yes. 7 Q. Do you agree that they're properly 8 taken into account in computing the taxable income 9 limitation for purposes of the 199 deduction? 10 Not as that calculation is performed Α. 11 for ratemaking purposes in Missouri. 12 My question was posited with the term Q. 13 properly. So if -- is it a proper way to calculate the 199 deduction which has a taxable income 14 15 limitation to not take into account a net operating loss? 16 17 Α. Let me see if I can explain. We have consistently calculated the DPD or Section 199 18 deduction for ratemaking purposes by reflecting the 19 pro forma level of revenues and all test year 20 21 adjusted operating expenses allocated to the production part of the business, including all of 22 Ameren Missouri's tax deductions, its Schedule M 23 amounts where tax deductions exceed book income. 24 Calculated on that basis consistently rate case 25

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1	after rate case, there's no NOL. There has been no
2	loss. There has consistently been a positive
3	deduction amount, which under that methodology
4	creates no NOL that requires recognition.
5	Q. So the maybe I'll try this in a
6	different way. Do you agree that what you're
7	trying to do for ratemaking purposes is to
8	replicate the 199 deduction for tax purposes?
9	A. Not for tax purposes. For ratemaking
10	purposes. We apply the rules associated with that
11	deduction to test year adjusted expenses and pro
12	forma revenues at new rates, as well as the test
13	year tax deductions and a synchronized interest
14	offset, all allocated to production activities, and
15	the resulting amount has consistently been treated
16	as the amount eligible for that deduction, and it's
17	been positive year after year.
18	Q. But I don't view that as responsive.
19	You keep telling me what you consistently did. I'm
20	trying to ask you the proper way to compute a 199
21	deduction.
22	A. I think that is the proper way. I
23	was trying to be responsive.
24	Q. Assuming the Commission rejects the
25	perpetuation of the prior methodology of not taking

		Page 397
1	into account an NOL, do you agree that the same	
2	method of calculating NOLs ultimately approved by	
3	the Commission on the rate base issue should be the	
4	same method used for purposes of the 199	
5	calculation?	
6	A. Yes. That's the alternative	
7	calculation that I have set forth in my surrebuttal	
8	testimony.	
9	MR. SELTZER: I believe with that	
10	we're done.	
11	JUDGE WOODRUFF: Okay. Questions	
12	from the Bench, Mr. Chairman?	
13	QUESTIONS BY CHAIRMAN KENNEY:	
14	Q. Good afternoon.	
15	A. Good afternoon.	
16	Q. Thanks for being here. I want to go	
17	back to the Southern Public Service.	
18	A. Southwestern.	
19	Q. Southwestern Public Service that you	
20	mentioned.	
21	A. Yes, sir.	
22	Q. You said they calculate their net	
23	operating loss carryover on a stand-alone basis,	
24	correct?	
25	A. Yes. They look at the actually,	

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1	they look at ratemaking inputs for each year and
2	determine whether on a ratemaking basis of
3	accounting there would be a tax loss or not. And
4	where there is a tax loss, it carries forward and
5	is replicated and recalculated in subsequent rate
6	cases.
7	Q. And then SPS is a subsidiary of some
8	parent?
9	A. Yes, Xcel Energy Corp.
10	Q. So Xcel files a consolidated tax
11	return?
12	A. They do. And their consolidated tax
13	allocation agreement is part of one of my exhibits
14	attached to my testimony.
15	Q. Is it the same as the consolidated
16	tax agreement that exists between Ameren Corp and
17	its affiliates?
18	A. The same? Probably not the same. I
19	think it's similar. I've not done a line-by-line
20	comparison.
21	Q. And has SPS has the public service
22	commission that regulates SPS always calculated its
23	net operating loss carryover on a stand-alone
24	basis, or they just do that differently each year?
25	A. The utility has done it consistently

		Page 399
1	that way for as long as I can recall that there has	
2	been an NOL. Part of the challenge with this issue	
3	is it took a number of years with bonus	
4	depreciation and tax accounting changes to push	
5	utilities that are usually persistently taxable,	
6	positive taxable income into a loss position, and	
7	it took another period of time for those losses to	
8	no longer be able to be carried back and start to	
9	result in this NOL deferred tax asset as a	
10	potential addition to rate base.	
11	In SPS's case, there was a history of	
12	looking at consolidated tax benefits, calculating	
13	those and imputing them to ratepayers whenever the	
14	utility created taxable income that was a tax	
15	shield enabling non-regulated affiliates to more	
16	rapidly realize their tax losses.	
17	In a more current regime, the utility	
18	itself has tax losses, just like the non-regulated	
19	affiliates, and we've resorted to this stand-alone	
20	calculation. But the Commission hasn't yet weighed	
21	in on that issue because, as I mentioned	
22	previously, the rate cases have been settled,	
23	settled with acceptance of the utility's prefiled	
24	position, as far as I know. They're black box	
25	settlements, so it's difficult to tell.	

		Page 400
1	Q. Sure. And this hasn't been an issue	
2	here heretofore because the utility didn't have a	
3	net operating loss to be carried forward; is that	
4	right?	
5	A. No. The utility had a net operating	
6	loss on its books for a number of years calculated	
7	under the consolidated group method.	
8	Q. Yeah.	
9	A. And that method produced a reasonable	
10	result, a result not worse than would have occurred	
11	on a stand-alone basis.	
12	Q. So it wasn't until there was a result	
13	that inured to the benefit of the ratepayers that	
14	this became an issue?	
15	A. That's right. In 2013 the world	
16	changed in a couple of fairly profound ways. The	
17	transaction that caused Ameren to divest its	
18	merchant generating business contributed to very	
19	large losses at the parent company level that	
20	effectively blocked Ameren Missouri's ability to	
21	realize losses even under the consolidated group	
22	approach.	
23	At the same time, Ameren Missouri in	
24	2013 had extremely large positive taxable income	
25	that did two things. It took a lot of ADIT credits	

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		Page 401
1	out of rate base, and it also would have on a	
2	stand-alone basis allowed the realization of prior	
3	years' NOL carryforwards. But because of the	
4	consolidated method, none of those benefits accrued	
5	to Ameren Missouri or Ameren Missouri ratepayers.	
6	Q. Now, as I understand your position,	
7	your position is that our affiliate transaction	
8	rules compel us to calculate this on a stand-alone	
9	basis as opposed to a consolidated basis because it	
10	inures to the benefit of ratepayers if we calculate	
11	it that way?	
12	A. I think it's good policy to adopt the	
13	most advantageous calculation result in dealing	
14	with utility affiliates. And beyond that, your	
15	rules support that policy.	
16	Q. Okay. That's I understood the	
17	first part of your answer to my question. Do you	
18	think our rules compel it, though?	
19	A. I'm probably not enough schooled in	
20	the legal niceties to give you any advice about	
21	what your rules compel.	
22	Q. Fair enough. So then I'll ask the	
23	question I think asked Mr. Downey the same	
24	question can we do it in the absence of our	
25	affiliate transaction rules?	

Page 402 A. Yes. I think there's agreement that 1 2 this is a policy decision. Whether to defer to the 3 Ameren tax allocation agreement or allocate tax losses some other way is at your discretion. 4 5 Q. And we could do it a different way if in the future circumstances change and it's more 6 7 advantageous to calculate it on a consolidated 8 basis? 9 Α. You could, and I submit you should if the facts and circumstances justify that outcome. 10 11 CHAIRMAN KENNEY: All right. Thanks 12 for your opinions. I'm finished. JUDGE WOODRUFF: Commissioner Stoll? 13 14 COMMISSIONER STOLL: I have no 15 questions. Thank you for your testimony. 16 THE WITNESS: Thank you. 17 JUDGE WOODRUFF: Commissioner Kenney? COMMISSIONER W. KENNEY: I do have 18 19 just a couple. QUESTIONS BY COMMISSIONER W. KENNEY: 20 21 On your direct testimony, page 26, Q. 22 now, it says HC, but I don't know that -- lines 13 23 to 18, can anybody look at that and let me know? 24 Direct testimony, page 26. I don't -- there's no 25 numbers or anything there. I don't think that it's

		Page 403
1	highly classified. I'm asking anybody.	
2	MR. DOWNEY: Commissioner, the	
3	witness has the NP version. It should be up there.	
4	BY COMMISSIONER W. KENNEY:	
5	Q. On line 13 you make the statement,	
6	Schedule MLB-8 eliminates the entire amount of NOL	
7	deferred tax asset, deferred tax credits that the	
8	company has included in its rate base. Ameren	
9	Missouri should not be allowed to include in rate	
10	base any federal or state NOL deferred tax asset	
11	carryforward amounts or federal tax credit	
12	carryforward balances that exceed what would have	
13	occurred if the company's income taxes were	
14	calculated on a stand-alone basis in each	
15	applicable year through calendar 2014. Why?	
16	A. At that time we didn't know whether	
17	Ameren Missouri would be able to and Ameren	
18	Corporation would be able to avail itself of bonus	
19	depreciation in 2014. It was very difficult to	
20	anticipate what the true-up in this case might tell	
21	us about taxable income or ADIT balances because	
22	Congress didn't act until December 19th, I think,	
23	of 2014 to extend bonus throughout 2014.	
24	So all the numbers that you see	
25	attached to my direct testimony were a bit soft	

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Page 404 because we didn't know whether --1 2 You couldn't speculate what was going Q. 3 to take place, so you just -- that was your statement at that time? 4 5 Α. That was all I could say at that time given what was known, yes, sir. 6 7 I think I understand where you come Q. 8 from and why you say. If Ameren files in 2016 for 9 a rate case and we're sitting here two years from today, 2017, and the numbers have all swapped, 10 11 switched, it would benefit the ratepayer if we did 12 a cumulative consolidated. Would you advocate 13 that, that we make that change? 14 Α. Possibly. 15 Let's say it was \$100 million or Q. \$50 million, \$20 million. 16 17 Α. I would want to be aware of why and be able to explain that to you, but yes. 18 19 Q. If it benefited -- so you're really 20 here, if it benefits the ratepayers, that's what we 21 should look to do; is that right? As a general matter with respect to 22 Α. 23 affiliate transactions, yes. 24 And it was beneficial to our **Q**. 25 ratepayers up until 2013 when we had that dramatic

Page 405 1 change? 2 Α. Yes. From 2008 through 2012, and 3 then the world changed. 4 Q. If we have another dramatic change, 5 the world changes again -- when the world changes 6 again, maybe that's a better word, then we should 7 change with it because it would benefit our 8 ratepayers? 9 Α. I think you should hear that presented to you, and you'll hear Ameren's 10 arguments at that time and hopefully make an 11 12 informed determination, yes, sir. 13 0. But now would it have been in Ameren's best interest to do a stand-alone back 14 2008 to 2012? 15 16 A. For ratemaking purposes only? 17 Ο. Yeah. Ratemaking purposes only for Ameren Missouri. 18 19 Α. It could have been, yes, unless someone observed that that's an unreasonable 20 21 outcome. Understand that in that period of time, the reality was Ameren's non-regulated businesses 22 were generally profitable and enabled the 23 24 consolidated taxpayer to realize losses of other entities, including Ameren Missouri, more quickly 25

Page 406 1 than otherwise. 2 That was a good thing? Q. 3 Α. That was a good thing. It's not a good thing now? 4 Q. 5 A. Not recently, yes, sir. 6 Thank you very much. I appreciate Q. 7 your testimony and Mr. Warren and Ms. Hanneken's. 8 It's -- I understand that much, but I understand a 9 little more than I used to. 10 A. It's a challenge to describe. Thank 11 you. 12 COMMISSIONER W. KENNEY: Thank you. 13 JUDGE WOODRUFF: Commissioner Rupp, 14 do you have anything? 15 COMMISSIONER RUPP: I have no questions at this time. 16 17 JUDGE WOODRUFF: Thank you. All right. Any recross based on questions from the 18 19 Bench? Don't see anybody stepping forward. Redirect. 20 21 MR. DOWNEY: Yes, your Honor. 22 REDIRECT EXAMINATION BY MR. DOWNEY: 23 Q. Mr. Brosch, I'm going to ask you some questions, and for purposes of my questions, please 24 25 assume I'm not asking you any questions about how

Page 407 1 Ameren should file tax returns. Okay? 2 Α. All right. 3 Q. Just simply talking about ratemaking. 4 You were asked multiple -- you were asked many 5 times about the prior years when the consolidated 6 group method produced results favorable to Ameren 7 Missouri ratepayers. Do you recall that? 8 Α. Yes. 9 0. Does this history mean that the consolidated group method must always be used? 10 It does not. 11 Α. 12 Q. And explain -- I think it may be a 13 little bit duplicative, but please explain again. 14 Α. Well, the tax allocation agreement is an affiliate contract that was entered into by 15 Ameren officials as their intended way internally 16 17 to apportion consolidated income tax responsibility among subsidiaries. 18 19 I think because it's an affiliate agreement and because of the potential for it to 20 21 create unreasonable results from time to time for the regulated business and its ratepayers, it needs 22 to be carefully scrutinized and, when necessary, 23 24 changes should be made to correct for unreasonable 25 outcomes.

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Page 408 1 **Q**. Now, there's been a lot of discussion 2 about swapping or switching back and forth between 3 methods. Do you recall that? Α. I do. 4 5 Are you recommending to the Q. Commission that it flip back and forth between 6 7 methods from rate case to rate case? No. We've recommended one change in 8 Α. 9 all the years on the chart behind me for what I think are very good reasons. 10 You were asked whether Ameren 11 **Q**. 12 Missouri and Ameren -- and the Ameren group's tax 13 returns included any Section 199 or DPD deduction 14 in 2008 or other more recent years. Do you recall that? 15 A. I believe so. 16 17 0. Does the treatment of the DPD on prior tax returns have anything to do with test 18 19 year DPD amounts? 20 Α. No, I don't believe it does. The 21 test year DPD calculation has always been a ratemaking calculation employing the rules 22 prescribed by the taxing regulations to ratemaking 23 24 inputs, test year expenses, test year Schedule M deduction amounts, synchronized interest rather 25

Page 409 than book interest, revenues with the effect of the 1 2 proposed rate increase rather than recorded 3 revenues. It's a ratemaking calculation that 4 5 has consistently produced for Ameren Missouri a positive taxable income that did not imply NOLs or 6 reduce the calculated result. 7 8 Q. You were asked if using the 9 stand-alone method of computing NOLs s has the 10 effect of, and I believe the word was imputing a 11 benefit to Ameren Missouri that is not available to 12 American Corporation. Do you recall those 13 questions? 14 Α. I do. 15 Q. Is use of a stand-alone net operating 16 loss carryforward NOLC calculation an imputation of 17 fictional benefits? No, it's not. It's a calculated Α. 18 outcome different than the calculated outcome that 19 results from Ameren's tax allocation agreement, the 20 21 affiliate contract that governs how tax liabilities 22 are apportioned on the company's books. 23 0. Would you tell the Commission how the DPD issue even came up in this case? 24 25 Α. The dispute over the NOL amount and

		Page 410
1	whether it should be included in the calculation of	
2	the DPD deduction first became apparent to me when	
3	I noticed an inconsistent work paper supporting	
4	what previously had been a tax deduction input	
5	amount.	
6	When asked for the support for that	
7	deduction, the response I received was a	
8	stand-alone NOL calculation for Ameren Missouri,	
9	3/20/13. When I inquired further about that, came	
10	to understand that this was the first time the	
11	company had injected an NOL number of any variety	
12	into the calculation. I was told what it was, and	
13	then later informed that Ameren did not intend to	
14	include the stand-alone NOL but had, in fact,	
15	changed its advocacy to now seek inclusion of the	
16	consolidated group method calculation of the NOL.	
17	Q. And would you please explain why	
18	and I'm not going to say this is just your approach	
19	because Staff has adopted this, too, but why the	
20	approach that you and Staff have advocated for	
21	calculating the DPD effect is correct and why the	
22	approach Ameren offers is incorrect?	
23	A. Well, I won't repeat what I said	
24	before. It's correct because it's been applied	
25	consistently and has not indicated any Ameren	

		Page 411
1	Missouri NOL in the years previously calculated.	
2	There's another reason why it's	
3	correct, and that other reason is we really can't	
4	anticipate with any accuracy whether during the	
5	period rates are in effect Ameren Missouri will	
6	have an NOL. In fact, Ameren Missouri has had a	
7	positive taxable income recently, including the	
8	last two years when there was bonus depreciation	
9	allowed as a deduction.	
10	And I think one could assume,	
11	extrapolating from that, the possibility at least	
12	of enough positive income in the future for Ameren	
13	Missouri to realize its stand-alone NOL in the near	
14	future.	
15	MR. DOWNEY: I think you anticipated	
16	my next question. That's all I have. Thank you	
17	very much.	
18	JUDGE WOODRUFF: All right. Then you	
19	can stand down.	
20	THE WITNESS: Thank you.	
21	(Witness excused.)	
22	JUDGE WOODRUFF: And that concludes	
23	the income tax issue and concludes our proceedings	
24	for today. We'll start again tomorrow morning with	
25	the amortization and the Noranda AAO issues.	

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Page 412 MR. THOMPSON: Ten o'clock tomorrow, Judge? JUDGE WOODRUFF: I don't think so because we have agenda. We'll have to probably take a long break. I can give you nine o'clock. Nine o'clock tomorrow. (WHEREUPON, the hearing was recessed at 3:17 p.m.) 

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1		
2	CERTIFICATE	
3	STATE OF MISSOURI)	
	) ss.	
4	COUNTY OF COLE )	
5	I, Kellene K. Feddersen, Certified	
6	Shorthand Reporter with the firm of Midwest	
7	Litigation Services, do hereby certify that I was	
8	personally present at the proceedings had in the	
9	above-entitled cause at the time and place set	
10	forth in the caption sheet thereof; that I then and	
11	there took down in Stenotype the proceedings had;	
12	and that the foregoing is a full, true and correct	
13	transcript of such Stenotype notes so made at such	
14	time and place.	
15	Given at my office in the City of	
16	Jefferson, County of Cole, State of Missouri.	
17		
18		
19		
20	Kellene K. Feddersen, RPR, CSR, CCR	
21		
22		
23		
24		
25		

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