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2 PUBLIC SERVICE COMMISSION
3 TRANSCRIPT OF PROCEEDINGS
4 Evidentiary Hearing
5 March 11, 2015
6 Jefferson City, MO
7 Volume No. 33
8
9

In the Matter of Union Electric)
10 Company, d/b/a Ameren Missouri's) File No.
Tariff To Increase Its Revenues) ER-2014-0258
11 For Electric Service)

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14

15 Morris L. Woodruff, Presiding
REGULATORY LAW JUDGE

16

ROBERT S. KENNEY, Chairman
17 WILLIAM P. KENNEY
DANIEL Y. HALL
18 SCOTT T. RUPP
COMMISSIONERS

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P R O C E E D I N G S

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(Whereupon, the hearing began at 8:24 a.m.)

4

JUDGE WOODRUFF: Let's come to order.

5

We're back for another day of the Ameren rate case

6

hearing, ER-2014-0258, and when we left off

7

yesterday Mr. Smith was on the stand and we're

8

about to commence with redirect.

9

Mr. Smith you can come forward.

10

MR. MALLIN: Thank you, Your Honor.

11

The vast majority of the redirect will be under

12

highly classified or HC. When I reach a point

13

where I can come off I'll alert Your Honor and the

14

attorneys present.

15

JUDGE WOODRUFF: So you want to begin

16

in HC?

17

MR. MALLIN: All right. We will

18

begin In camera.

19

JUDGE WOODRUFF: Before we get

20

started we've got some fans here if anyone wants

21

them out there.

22

Are we okay back here?

23

CHAIRMAN KENNEY: I'm okay so far.

24

JUDGE WOODRUFF: If anybody wants to

25

plug in a fan feel free.

1 MR. MALLIN: I'm going to have marked
2 the liquidity chart, I believe we're on 532 if I'm
3 correct and if I'm wrong I apologize, Your Honor.

4 JUDGE WOODRUFF: That is correct,
5 532.

6 MR. MALLIN: Thank you, Your Honor.

7 This is 532.

8 (REPORTER'S NOTE: An in-camera session was held,
9 which is contained in Volume 34, pages 2464-2476 of
10 the transcript.)

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JUDGE WOODRUFF: And we are back in
regular session.

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**Q. (BY MR. MALLIN) And again Mr. Smith
we're now on page 18 of Exhibit 533, is that true?**

5

6

A. Yes, it is.

7

**Q. What information is being conveyed
here with respect to the rod mill at the New Madrid
facility as part of Noranda's disclosures with the
SEC?**

10

11

A. First it indicates that we have
temporarily delayed the rod mill and this is in
response to our ongoing negotiations with Ameren,
and we note that there can be no certainty as to
when we will be able to complete the construction
of the rod mill.

12

13

14

15

16

17

**Q. Is there any discussion with regard
to whether, and what may happen if Noranda is
unable to complete the rod mill?**

18

19

20

A. Yes, there are.

21

Q. What is disclosed there?

22

A. Well, again I could read that as
well. There are a number of items that are listed.

23

24

Q. Can you give us a list?

25

A. Okay. And I'm sorry, could you just

1 repeat the question please?

2 Q. Sure, and I apologize, I understand
3 you had surgery on your eyes, perhaps that was
4 inappropriate for me to have -- let me do this this
5 way: In paragraph 2 of this particular paragraph,
6 Mr. Smith, does Noranda identify for the public and
7 Securities and Exchange Commission what may happen
8 if it does not complete the rod mill?

9 A. Yes, it does.

10 Q. In terms of what penalties may exist
11 and things of that nature, true?

12 A. Yes.

13 MR. MALLIN: Your Honor we would move
14 for the admission of Exhibit 533.

15 JUDGE WOODRUFF: 533 has been
16 offered. Any objection to its receipt?

17 MS. TATRO: Your Honor I note it's
18 not a complete copy of the 10K, just excerpts and
19 to the extent that MIEC would provide the entire
20 portion for the record, I appreciate not killing
21 trees unnecessarily, but --

22 MR. MALLIN: I would be more than
23 happy to do that, I know it was used yesterday and
24 I believe, I don't know if it was in its entirety
25 but I can substitute that.

1 And Your Honor I believe we need now
2 to remove the chart as well from the television
3 screen.

4 JUDGE WOODRUFF: It's not being web
5 cast.

6 MR. MALLIN: Okay.

7 JUDGE WOODRUFF: The camera was not
8 pointed at it but I appreciate that.

9 MR. MALLIN: Just trying to be very
10 careful. Thank you.

11 **Q. (BY MR. MALLIN) Let's talk a little**
12 **bit about this wholesale proposal --**

13 JUDGE WOODRUFF: I'm sorry, I don't
14 think I made a ruling. 533 will be admitted with
15 the substitution.

16 MR. MALLIN: Thank you, Your Honor, I
17 apologize.

18 **Q. (BY MR. MALLIN) Let's talk a little**
19 **bit Mr. Smith about the wholesale proposal. Do you**
20 **believe Noranda did everything it could to try to**
21 **get to a wholesale proposal agreement with Ameren?**

22 A. Yes, I do.

23 **Q. There seems to have been some**
24 **suggestion that somehow you may have reached a**
25 **fiduciary duty by not agreeing to one, do you**

1 **believe that to be the case?**

2 MS. TATRO: I'm just going to object
3 that is absolutely a mischaracterization of what I
4 stated. I did not state that anyone at Noranda
5 violated a fiduciary duty.

6 JUDGE WOODRUFF: Okay. That's what I
7 recollect as well.

8 You can go ahead and answer that
9 question about fiduciary duty --

10 MR. MALLIN: I'll restate it Judge.

11 **Q. (BY MR. MALLIN) Do you believe in**
12 **any way, sir, you breached any sort of fiduciary**
13 **duty as the CEO off Noranda in not reaching that**
14 **agreement with Ameren?**

15 A. Absolutely not.

16 **Q. Why not?**

17 A. First and foremost we entered into
18 good faith negotiations with Ameren. We, for a
19 number of reasons. First and foremost they're our
20 largest supplier and we felt, we've always in every
21 one of the rate cases we've always tried to get to
22 a global settlement and we became very passionately
23 committed to trying to get to a global settlement
24 in this case in part to address some of the
25 questions and directions from the Public Service

1 Commission itself. So we undertook these
2 negotiations in the best of faith and I can tell
3 you that I believe that Ameren did as well. Their
4 focus and their commitment of time, Michael Moehn
5 was very professional, we routinely met at the drop
6 of a hat, we had at least eight meetings face to
7 face, the first started with our teams and then
8 typically as we got later in the negotiations he
9 and I, well in all the negotiations he and I would
10 always have one-on-one time together and in many of
11 our later meetings it was just he and I meeting
12 together. We went through and looked at both
13 retail and wholesale structures, a wholesale
14 structure was proposed by Ameren to provide a rate.
15 We spent a lot of time on this and we ultimately
16 got to a point where we, there was risk created by
17 this structure that was, our principle had always
18 been if we could get the available value at the
19 same risk we were really quite indifferent to the
20 structure as long as our behaviors and the
21 behaviors that we wanted to exhibit could still, we
22 would still be participating in the process, things
23 like that, and we just got to a point where we had
24 an impasse because we weren't willing to take the
25 incremental risk associated with the wholesale

1 structure and nor was Ameren.

2 **Q. Mr. Smith, was it your opinion that**
3 **any party walked away from those negotiating**
4 **tables?**

5 A. No, not at all. In fact there was,
6 you know, I certainly left that last meeting very,
7 very disappointed and I obviously can't speak for
8 Mr. Moehn but there was no, nobody stormed away
9 from a negotiating table.

10 **Q. You mentioned the impasse. Was there**
11 **a particular issue?**

12 A. Yes. It was, and again it was just
13 the structure that was proposed by Ameren was a
14 wholesale structure. We worked in that vain and
15 when we got to the end we just realized that
16 although this type of risk was kind of inherent in
17 the structure it was, with the size of our purchase
18 neither party was willing to accept that risk.

19 **Q. Let's talk a little bit about the rod**
20 **mill.**

21 A. Sure.

22 **Q. Since June of 2014 has Noranda been**
23 **able to finance all or any part of that**
24 **construction?**

25 A. No, we have not.

1 **Q. Is it still the case that Noranda has**
2 **a customer willing to take all if not substantially**
3 **all of the product that would be made by that rod**
4 **mill?**

5 A. Yes, we do, and we're very blessed to
6 have a customer big enough to, you know, a single
7 customer to form the sufficient foundation for us
8 to commit to build it.

9 **Q. And in terms of dollars and cents how**
10 **much financing has Noranda sought with regard to**
11 **that rod mill?**

12 A. We were originally, well right now
13 we're seeking 15 million which is roughly a third
14 of the total cost of the rod mill.

15 **Q. And Noranda's been unable to get**
16 **that.**

17 A. That's correct. And we've started on
18 a much higher level and Mr. Boyles can give you the
19 specifics on that. We started out at a much higher
20 level trying to finance more of the rod mill but we
21 were, given our financial circumstance and the
22 concern about power we were unable to get financing
23 for a larger amount. We reduced the amount to \$15
24 million and to date we have been unable to get that
25 incremental financing.

1 **Q. Do you believe that that has any**
2 **impact with regard to the refinancing that Noranda**
3 **must do in 2017 and 2019?**

4 A. It's obviously a deep concern for me
5 because to have a circumstance where we have
6 literally an asset backed \$15 million loan that we,
7 that we can't get done I just have to ask the
8 question how are we going to get, you know, \$265
9 million asset back, you know, credit facility done
10 and then how are we going to refinance \$668 million
11 worth of long term debt.

12 **Q. Do you see a path to do that?**

13 A. Well, Mr. Boyles is probably a better
14 person to ask on that but I would tell you that I'm
15 deeply concerned because I don't see a path.

16 **Q. Let's talk a little bit about the**
17 **layoffs that one of the commissioners asked you**
18 **about. Did in fact Noranda send out layoff notices**
19 **after the last decision?**

20 A. We did.

21 **Q. Did subsequently Noranda return some**
22 **of those employees to work?**

23 A. We did.

24 **Q. Can you give me a little bit of**
25 **history on how that came about?**

1 A. Certainly. By the time we finished
2 with our, the first phases of our layoffs we had
3 reduced in total approximately 58, well not
4 approximately, we had reduced 58 people. When we
5 encountered our difficulties associated with the,
6 when we encountered our difficulties associated
7 with the pot lines and we had this surge of pot
8 lines that went out because we rebuilt so many at
9 one time because of the ice storm and then we had
10 some early pot failures the reality was we just
11 didn't have the manpower to get those lines back up
12 and running and if you run below a certain level of
13 pots you can actually have a pot line or more just
14 spontaneously go down so we had to rebuild these
15 pots. In order to rebuild the pots we were going
16 to have to bring specialized contractors to do so,
17 in order to do that we were going to have to get
18 the cooperation of the union because that's a
19 contracted for, that's a contracted for, it's a
20 contracting out and that requires approval from the
21 union. So what we agreed with the union in order
22 to be able to accommodate bringing in those
23 contractors was that we would delay, we would bring
24 additional Noranda employees into the system and
25 then we would delay the layoffs that, any

1 consideration of the layoffs that we had announced
2 in our previous rate case testimony until the end
3 of May.

4 **Q. May of 2015?**

5 A. That's correct.

6 **Q. And over that period of time, so May**
7 **of 2015, why was that date chosen?**

8 A. Well, first we expected to have a
9 determination of the rate case by then because we
10 communicated that look, if we had the rate we would
11 obviously honor the head count commitments and we
12 would be running the plant and taking the first
13 steps on our journey on sustainability. If we
14 didn't have the rate then all bets were off and I
15 had personal conversations with the union about
16 that, there was obviously, you know, that was a
17 direct communication by me to the union.

18 **Q. And just so that I understand, why**
19 **would Noranda be repairing or replacing a pot if it**
20 **was thinking about whether or not to curtail the**
21 **plant?**

22 A. Well, as I mentioned earlier the cost
23 of restarting these things can be, especially in
24 our circumstance, prohibitive. We have now made
25 the decision to shut down the plant yet we are

1 still very hopeful that we can work together to get
2 rate relief and to make the facility viable and so
3 we didn't want these things to shut themselves
4 down.

5 Q. Any safety issue associated with the
6 shutdown?

7 A. That's another huge issue for us,
8 when you put people into an environment where a
9 facility that large when each one of these pot
10 lines is over 2,000 feet long and if they go out of
11 control and start shutting themselves down then,
12 you know, obviously we have a concern. We know how
13 to run plants safely and frankly we know how to
14 deal with them when we have severe challenges but
15 you just don't want to expose your work force to
16 that kind of challenge.

17 MR. MALLIN: Your Honor this next
18 section will need to be In camera.

19 JUDGE WOODRUFF: Before we go In
20 camera how much more do you have?

21 MR. MALLIN: 15 minutes probably.

22 JUDGE WOODRUFF: The reason I ask is
23 because the people are here to fix the air
24 conditioning.

25 MR. MALLIN: Let's recess and let

1 them do that.

2 JUDGE WOODRUFF: We'll take a short
3 break before going In camera and we'll come back at
4 9:20.

5 MR. MALLIN: Thank you, Your Honor.

6 (RECESS TAKEN BY PARTIES)

7 JUDGE WOODRUFF: All right, we're
8 back from our break and ready to get started and
9 hopefully the air-conditioning is going to be
10 working a little bit. I see some thumbs up out
11 there so hopefully it will be a little bit cooler
12 at this point.

13 MR. MALLIN: Thank you, Your Honor.
14 Are we in HC at this point?

15 JUDGE WOODRUFF: We will go into HC
16 at this point.

17

18 (REPORTER'S NOTE: An in-camera session was held,
19 which is contained in Volume 34, pages 2488-2489 of
20 the transcript.)

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1

2 **Q. (BY MR. MALLIN) Yesterday you were**
3 **asked some questions about Apollo. Just so that**
4 **I'm perfectly clear what is the actual number of**
5 **directors on Noranda's board?**

6 A. There are 12 including myself.

7 **Q. 12 in total.**

8 A. Yes.

9 **Q. And of the 12 how many are**
10 **independent as reported to the SEC and others?**

11 A. There are four Apollo directors then
12 myself and then seven independents.

13 **Q. There were dividends paid in the past**
14 **to all shareholders, special dividends, is that not**
15 **right, sir?**

16 A. Yes, that's correct.

17 **Q. One of whom would have been Apollo.**

18 A. That's correct.

19 **Q. Do you believe that any of those**
20 **special dividends paid in the past affects**
21 **Noranda's ability today to be able to refinance its**
22 **debt in 2017 and 2019?**

23 MS. TATRO: I'm going to object that
24 this is beyond the scope of any cross that, recross
25 that I asked or commissioner questions. It may be

1 responsive to an opening statement but that's not
2 what redirect is for.

3 JUDGE WOODRUFF: I'm going to
4 overrule the objection, I think it's fair.

5 A. I think the issues associated with
6 Apollo in general and in whole are really old news.
7 The last dividend, special dividend that we did was
8 in 2012 and I would like, and that was actually a
9 question that was asked by Commissioner Kenney, I
10 would like to make one correction to the answer
11 that I gave.

12 Our first regular quarterly dividend
13 didn't start in 2013, it was actually the first
14 quarter of 2011 so it was actually a little bit
15 earlier than what I stated. Really what we're
16 talking about now when it comes to affordable
17 power, and this is really all about affordable
18 power and how we go forward is, you know, the
19 future of New Madrid so frankly I think the
20 discussion of Apollo is a bit of a red herring and
21 I think that the reason that, why we're here, is to
22 address the issue of us having an affordable and
23 sustainable power aid.

24 Q. Just one last question Mr. Smith so
25 that I'm clear. Are you employed in any capacity

1 **today by Apollo?**

2 A. I am not and never have been. I've
3 never received a paycheck from Apollo. I've always
4 been employed by the company that I run.

5 MR. MALLIN: Thank you, Your Honor.

6 JUDGE WOODRUFF: And Mr. Smith you
7 can step down.

8 A. Thank you. Thank you very much for
9 your time.

10 JUDGE WOODRUFF: And the next Noranda
11 witness then would be Mr. Boyles.

12 (Whereupon, the witness was sworn)

13 MR. MALLIN: Has the witness been
14 sworn?

15 JUDGE WOODRUFF: Yes.

16 MR. MALLIN: Okay. Thank you, Your
17 Honor.

18 DIRECT EXAMINATION

19 QUESTIONS MR. MALLIN:

20 **Q. Could you state your full name?**

21 A. Dale Wayne Boyles.

22 **Q. Mr. Boyles, by whom are you employed?**

23 A. Noranda Aluminum.

24 **Q. In what capacity?**

25 A. As chief financial officer.

1 Q. And did you cause to have prepared
2 and filed with the Public Service Commission
3 certain direct and surrebuttal testimony for this
4 case?

5 A. Yes, I did.

6 Q. And are those before you as Exhibit
7 600 with regard to your direct testimony and 601
8 with regard to your surrebuttal testimony?

9 A. Yes.

10 Q. And if I were to ask you the
11 questions that are posed in both of those
12 testimonies would your answers to those questions
13 be the same today?

14 A. Yes.

15 Q. Is there any changes that you wish to
16 make with regard to those testimonies other than
17 the start date that you had for Noranda?

18 A. No other changes other than the start
19 date.

20 Q. And in order to be complete for the
21 record what was your start date at Noranda?

22 A. It was November of 2013, not October
23 of 2013.

24 Q. And other than that change are all of
25 those answers still true and correct today?

1 A. Yes, they are.

2 MR. MALLIN: Your Honor I'd move for
3 the admission of Exhibits 600 and 601.

4 JUDGE WOODRUFF: 600 and 601 both HC
5 and NP have been offered, any objection to their
6 receipt?

7 Hearing none they would be received.

8 MR. MALLIN: I tender the witness
9 Your Honor.

10 JUDGE WOODRUFF: We'll begin with
11 Public Counsel.

12 MR. ALLISON: No questions.

13 JUDGE WOODRUFF: MECG?

14 MR. WOODSMALL: No questions.

15 JUDGE WOODRUFF: Then for United For
16 Missouri?

17 MR. LINTON: No questions.

18 JUDGE WOODRUFF: For Staff?

19 MR. THOMPSON: No questions. Thank
20 you, Judge.

21 JUDGE WOODRUFF: Ameren.

22 MR. NELSON: If it please the Court
23 I'm going to work from the podium because I'm going
24 to be back and forth from the Elmo quite a bit.

25 JUDGE WOODRUFF: That is helpful.

1

2

CROSS EXAMINATION

3

QUESTIONS BY MR. NELSON:

4

Q. Good morning Mr. Boyles.

5

A. Good morning.

6

Q. Nice to see you again, sir.

7

A. Nice to see you.

8

Q. I want to follow up little bit on

9

your experience and your job history. As you've

10

just mentioned you've been the CFO at Noranda since

11

November of 2013, correct?

12

A. That's correct.

13

Q. So a little over what, 16 months?

14

A. Approximately.

15

Q. There about. Before that, your job

16

before that you worked for an apparel company,

17

correct?

18

A. Correct.

19

Q. Hanes.

20

A. Hanes Brands.

21

Q. Would it be fair to say when you were

22

working with Hanes Brands you didn't have any

23

experience in the metal industry?

24

A. That would be fair.

25

Q. They do a lot of things but aluminum

1 **isn't one of them, correct?**

2 A. No, it's not.

3 **Q. Before that you worked at KPMG,**
4 **correct?**

5 A. That's correct.

6 **Q. They're an accounting firm.**

7 A. That's correct.

8 **Q. And likewise you didn't really do**
9 **anything with metals when you were with KPMG.**

10 A. I don't remember, I may have had some
11 clients that were metal producers or extruders but
12 I don't remember.

13 **Q. Nothing that sticks out in your mind.**

14 A. No.

15 **Q. Prior to that you worked at a company**
16 **called National Gypsum.**

17 A. Yes, approximately one year.

18 **Q. And National Gypsum, they produced**
19 **and mined gypsum and turned it into things like**
20 **wallboard.**

21 A. That's correct.

22 **Q. Not anything in the aluminum**
23 **industry.**

24 A. That's correct.

25 **Q. You didn't do any forecasting work at**

1 National Gypsum for example with respect to
2 aluminum prices.

3 A. No.

4 Q. Before that you worked at a company
5 called Collins and Aikman, correct?

6 A. That's correct.

7 Q. They did automotive trim products?

8 A. That was one of their segments.

9 Q. They didn't work in the aluminum
10 industry.

11 A. No. It was interior trim and
12 exterior trim type products.

13 Q. And you didn't do any work in terms
14 of metal, aluminum price forecasting, aluminum
15 price scenarios and things like that when you were
16 at Collins and Aikman, fair?

17 A. That's fair.

18 Q. And before that you worked at a
19 different accounting firm, Arthur Young, correct?

20 A. Yes, they became Ernst and Young.

21 Q. That was one of the big six and know
22 what are we down to, three or four I guess?

23 A. Four.

24 Q. Likewise no work on metals issues
25 that you can recall, correct?

1 A. Not that I can recall.

2 Q. So really the aluminum industry is
3 brand new to you as of 2013, fair?

4 A. It's fairly new, yes.

5 Q. Now, there's been some discussion in
6 this case about a company called Apollo. You're
7 familiar with Apollo.

8 A. Yes.

9 Q. And Apollo owned a pretty good chunk
10 of Noranda's stock, fair?

11 A. Yes, approximately 33, 34 percent.

12 Q. And as part of your work as CFO you
13 have to sign off on SEC documents from time to
14 time, correct?

15 A. That's correct.

16 MR. NELSON: Your Honor, may I
17 approach the witness?

18 JUDGE WOODRUFF: You may.

19 Q. (BY MR. NELSON) I'm going to hand
20 you a 10K from December 31, 2014, part of it's been
21 marked as 533 and I believe ultimately the entire
22 thing will be substituted in as 533. So looking at
23 that you see on the front cover, do you recognize
24 that as Noranda Aluminum Holding Corporation's 10K
25 filing with the United States Securities and

1 **Exchange Commission for the year ending December**
2 **31, 2014?**

3 A. That's correct.

4 Q. And if you turn to the very back of
5 that document, the very last, very, very last page
6 there's a Chief Financial Officer Certification,
7 correct?

8 A. Yes.

9 Q. And that's your signature.

10 A. That's correct.

11 Q. And you signed that saying that
12 everything in here is true to the best of your
13 knowledge and belief, correct?

14 A. That's correct, to the best of my
15 knowledge.

16 Q. If you turn, sir, to page 22 of the
17 document, right at the top of the page.

18 A. Okay. I'm sorry.

19 Q. We're here all day so don't worry
20 about it.

21 Right at the top of that page 22
22 there's a statement about Apollo, correct?

23 A. That's correct.

24 Q. If you read along with me, Apollo has
25 the ability to substantially influence our company

1 and the outcome of matters voted upon by our
2 shareholders and to prevent actions which a
3 shareholder may otherwise do favorably.

4 Did I read that correctly?

5 A. Yes.

6 Q. That's a statement to the Securities
7 and Exchange Commission about Apollo's continuing
8 influence over Noranda, fair?

9 A. It is a risk factor that we list in
10 our 10K.

11 Q. And the next paragraph down you talk
12 about Apollo owning a little over 33 percent of the
13 common stock, do you see that?

14 A. Yes.

15 Q. And that paragraph ends with the
16 sentence thus, Apollo has the ability to
17 significantly influence our decisions.

18 Did I read that correctly?

19 A. Yes.

20 Q. Likewise a true statement?

21 A. They do through being members of the
22 board of directors, yes.

23 Q. And the fact that they're a 33
24 percent shareholder of the company, correct?

25 A. Well, we have to have an independent

1 board per the Stock Exchange rules so they could
2 never be the majority of the board. So they can
3 influence decisions as members of the board of
4 directors.

5 Q. But you're not suggesting to us based
6 on your corporate history that if one company that
7 owns a third of a company you work for doesn't have
8 any influence, you're not telling us that, are you?

9 A. No, we list it as a risk factor.
10 They have influence as members of the board of
11 directors.

12 Q. Let's talk about CRU. You've heard
13 of them.

14 A. Yes.

15 Q. You'd agree with me they're an
16 intelligence firm that provides aluminum market
17 data and forecasts?

18 A. Yes.

19 Q. You consider them to be an expert in
20 the aluminum market, correct?

21 A. Yes.

22 Q. And in fact you use their data in
23 your operations.

24 A. Yes, we do.

25 Q. You communicate CRU data to others.

1 A. We do occasionally, yes.

2 Q. For example you communicate it to
3 your investors.

4 A. Yes.

5 Q. Communicate it to analysts, Wall
6 Street types.

7 A. That's correct.

8 Q. And you're familiar with Mr. Colin
9 Pratt.

10 A. Yes, I am.

11 Q. He works for CRU, doesn't he?

12 A. Yes, he does.

13 Q. And you in fact have read his direct
14 testimony.

15 A. Yes, I have.

16 Q. Didn't disagree with anything he said
17 in there, did you?

18 A. No.

19 Q. You've read his surrebuttal
20 testimony.

21 A. Yes, I have.

22 Q. You didn't disagree with anything you
23 read in there either.

24 A. No.

25 Q. You didn't question anything you read

1 in there.

2 A. I didn't question anything, I've
3 certainly looked at his observations and took them
4 into context of all scenarios that we prepared.

5 Q. In fact, you relied on some of Mr.
6 Pratt's testimony to do some of the work you did in
7 this case, correct?

8 A. That is correct. We work very
9 closely with CRU.

10 Q. And you're aware that CRU puts out
11 quarterly and annual forecasts of aluminum prices,
12 correct?

13 A. Yes.

14 Q. And those are forecasts that you rely
15 upon in your daily work?

16 A. Occasionally in preparing forecasts,
17 yes.

18 Q. And you did some scenarios, now you
19 also did some scenarios in this case of
20 hypothetical future aluminum prices, correct?

21 A. That's right. As part of our risk
22 contingency plan.

23 Q. Let's talk about the scenarios you
24 put together.

25 I'm sorry, did you say you did that

1 **as part of your risk contingency plan?**

2 A. Yes. We did some, you know, these
3 scenarios as a way to demonstrate the likely
4 outcomes but we didn't have a way to analyze the
5 volatility of aluminum prices prior to my arriving
6 at the company, so we prepared a more robust
7 analysis now.

8 **Q. You did those scenarios for this**
9 **case, didn't you?**

10 A. Yes, but the company lacked that
11 capability to begin with and it was something I
12 believe that we needed as a company.

13 **Q. Now, you started your analysis, those**
14 **scenarios you put together, first thing you did was**
15 **said let's figure out a length of an aluminum price**
16 **cycle, correct?**

17 A. I believe that was one of the first
18 assumptions we looked at, yes.

19 **Q. Now, you didn't run a statistical**
20 **analysis to determine the length of an aluminum**
21 **price cycle, correct?**

22 A. No, I did not run a statistical
23 analysis but what I did do is look at the projected
24 average price that CRU was projecting over the next
25 10 years so we took that based on, along with other

1 information based on information I gathered from
2 internal resources that have been in the industry
3 for many years to develop a 10 year cycle.

4 Q. Maybe I wasn't real clear.

5 A. I just wanted to make sure, we didn't
6 pull it out of the air.

7 Q. You didn't run a statistical analysis
8 to determine the length of an aluminum price cycle,
9 assuming that that could even be done, fair?

10 A. No, we did not run a statistical
11 analysis.

12 Q. Now that would be one way you could
13 determine whether or not there was an aluminum
14 price cycle of a defined length, correct?

15 A. It would be one way of many ways.

16 Q. It would be a way that a scholar, an
17 economist or somebody who's trained in statistics
18 would do that, fair?

19 A. That's fair but we don't have the
20 ability to be able to afford a full-time economist
21 on staff so we have to make use of the best
22 resources and information available that we can.

23 Q. How much have you paid CRU in this
24 case?

25 A. I have no idea.

1 **Q. Another way to establish a cycle is**
2 **simply to assume one, correct?**

3 A. Yes. Another way is just to assume
4 one.

5 **Q. And that's what you chose to do, you**
6 **chose to assume the length of a price cycle?**

7 A. Based on the best information I had
8 available to make that decision. I didn't pull it
9 out of the air.

10 **Q. And let's talk for a minute about the**
11 **cycle length. The length of the cycle is important**
12 **to the rest of your analysis, isn't it?**

13 A. It is, but, you know we did start
14 with a 10 year cycle but as we, you know, submitted
15 our request we only show seven years so essentially
16 it's a 10 year cycle and we showed a seven year
17 cycle as well.

18 **Q. I'm not a statistician but I think I**
19 **understand this, see if you and I can agree on**
20 **this. If you have a cycle of 10 years you're going**
21 **to have some years that are going to be below sort**
22 **of the average line and some years that are going**
23 **to be above, correct?**

24 A. That's correct.

25 **Q. That's why you call it a cycle.**

1 A. Right.

2 Q. If you have a five year cycle you're
3 going to have some years below your average line
4 and some years above your average line, correct?

5 A. That's correct.

6 Q. But if you have a five year cycle the
7 down years and the up years all have to occur
8 within that five year time period, right?

9 A. Well, in any time period they all
10 have to occur.

11 Q. Right.

12 A. So it doesn't matter if it's five,
13 10, 15, 50, right?

14 Q. I was just using five as an example.
15 If we use six instead, the down years and the up
16 years would all have to occur within that six year
17 period, right?

18 A. That's correct.

19 Q. In the scenarios that you ultimately
20 chose, your scenarios A1, A2 and A3, you have down
21 years all the way year one to year seven, right?

22 A. I'm sorry, down years as of what?

23 Q. Well, years you're below the average.

24 A. Below the average of what?

25 Q. Below your average of your cycle for

1 **the entire 10 years.**

2 A. In my scenarios, in my exhibits what
3 I did was start with the mean and then we based,
4 you know, calculated the volatility based on
5 historical volatility ranges so then we calculated
6 the prices from there, we didn't just put in
7 prices.

8 **Q. Let me see if I can help you.**

9 A. Maybe I didn't understand your
10 question.

11 **Q. Were you here yesterday when we**
12 **talked to Dr. Humphreys?**

13 A. Yes, I was.

14 **Q. And you understand then that that**
15 **blue line, that's your prices in terms of the A2**
16 **average that you calculated, the A2 scenario?**

17 A. I don't know for sure. I don't know
18 the source of this data.

19 **Q. Looks about right now, doesn't it?**

20 A. Yes, this is I believe one scenario
21 that was picked so I don't know if it, it's, you
22 know, representative.

23 **Q. Okay. Well, we can answer that in a**
24 **minute. Let's stick with A2 here for a minute.**

25 A. Okay.

1 **Q.** **In the A2 scenario you have what,**
2 **years one through six or one through seven where**
3 **the price is pretty low?**

4 A. I would have to look at my testimony.

5 **Q.** **Well, just look at that red line,**
6 **that's the CRU average price of \$1.06. Does your**
7 **blue line look lower than the red line?**

8 A. Yes, the average was \$1.06 that we
9 started with, they computed the volatility, that's
10 correct.

11 **Q.** **And as we talk about with any cycle**
12 **the way you call it a cycle is you've got a whole**
13 **bunch of really high prices in the last two or**
14 **three years, right?**

15 A. Yes. You have peaks and you have
16 troughs.

17 **Q.** **Peaks and troughs.**

18 A. That's correct.

19 **Q.** **Exactly. If we were to draw that as**
20 **a five year cycle we'd have to have those high**
21 **prices in the first five years, correct?**

22 A. Maybe under this one, yes. Right.

23 **Q.** **That's again our definition of cycle?**

24 A. But you have to establish conditions
25 of where you are today to be able to assume the

1 right scenario.

2 Q. We'll get to that in a minute. But
3 the point is, would you believe me or do I need to
4 show you, if I put up your A1 graph and your A3
5 graph we're going to see those blue lines are going
6 to be below the average in the first five, six
7 years. Can we agree on that or do I need to show
8 you?

9 A. Well, I don't know, I didn't graph
10 them out, I just, you know, they're in my
11 testimony.

12 Q. Okay. So you took a 10 year cycle,
13 correct?

14 A. That's correct.

15 Q. But in fairness you'd acknowledge
16 that the actual cycle that might apply could be
17 more or less?

18 A. Could be more or less and I believe
19 Mr. Humphreys yesterday could not define an actual
20 cycle.

21 Q. In fact the reason he couldn't define
22 an actual cycle given his 37 years of experience
23 and his service on statistical boards and his
24 service as a chief economist is because he said
25 particularly with globalization there is no defined

1 **cycle. You heard that, correct?**

2 A. I heard his testimony, yes, but again
3 the best information I had to determine that 10
4 year cycle.

5 **Q. To assume a 10 year cycle, fair?**

6 A. Well, yes. There's all kinds of
7 assumptions in the model.

8 **Q. Now, you've never used this model
9 before at Noranda, have you?**

10 A. No. As I said we've recently
11 developed this more robust analysis, you know, to
12 use.

13 **Q. And you didn't generate an analysis
14 like this before this case sort of for ordinary
15 course work at Noranda, fair?**

16 A. That's fair.

17 **Q. When you did this cycle analysis you
18 generated 11 different what you call I think
19 volatility curves?**

20 A. Yes. Scenarios, uh-huh.

21 **Q. Scenarios. Now, you only took three
22 of those 11 scenarios in your direct testimony and
23 worked them through all the way to a final answer,
24 correct?**

25 A. That's correct.

1 **Q. You disregarded eight of them, you**
2 **picked three to study further, correct?**

3 A. That's correct. We eliminated
4 certain of those cycles because of the starting
5 conditions.

6 **Q. And you call those, the ones you**
7 **picked, you call those A1, A2 and A3.**

8 A. I believe those are exhibit numbers,
9 yes.

10 **Q. Okay. And in your surrebuttal you**
11 **told us the reason you picked these three was**
12 **because of some testimony by Mr. Pratt, correct?**

13 A. Yes, about beginning market
14 conditions. Because when you look at the scenarios
15 as Mr. Humphreys said yesterday it's difficult to
16 predict where you are in a cycle, I agree, but I
17 can't just throw up my arms and say I give up. You
18 know, for me as CFO I've got to evaluate the best
19 information I have at that time and make the best
20 judgments I can so I have to try to pick a place so
21 we work closely with CRU to determine that starting
22 point.

23 **Q. So you work closely with CRU.**

24 A. That's correct.

25 **Q. And this was before you put together**

1 your direct testimony?

2 A. During the preparation.

3 Q. Well, there was a date you filed your
4 direct testimony, right?

5 A. That's correct.

6 Q. And is it your testimony you worked
7 closely with CRU prior to that date?

8 A. We did have some discussions about
9 what were the right starting points and things like
10 that, various assumptions.

11 Q. You told us in your testimony, and I
12 think we heard in opening too, that you worked
13 closely with CRU.

14 A. Yes, we worked closely with.

15 Q. Did you work closely with CRU before
16 you filed your direct testimony?

17 A. We certainly had conversations, yes.

18 Q. You had some conversations.

19 A. Yes.

20 Q. You talked to them a little bit.

21 A. Yes.

22 Q. Okay. Now, in the testimony for Mr.
23 Pratt that you relied on in terms of picking which
24 of these 11 scenarios you wanted to talk about with
25 the Commission, that testimony was that the market

1 was not expected to be tight over the next several
2 years, correct?

3 A. That's correct. Meaning there did
4 not seem to be upward pressure on pricing to raise
5 prices.

6 Q. So you interpreted that testimony as
7 Mr. Pratt saying there would be no significant
8 upward or downward trends for 2016, correct?

9 A. That's correct. And I believe he
10 also added the year 2017 to that.

11 Q. And that was going to be my next
12 question, you understood his testimony to be no
13 significant upward or downward trends for 2017,
14 correct?

15 A. In the near term.

16 Q. And in fact if we look at your A2
17 case you are, you're pretty significantly under
18 CRU's forecast for 2016, 2017 and 2018, is that
19 fair?

20 A. No, I don't think it's significantly
21 different.

22 Q. You don't think the difference
23 between that green line, that green bar and that
24 blue line is significant?

25 A. It depends on what day you're talking

1 about too because prices have changed since we
2 started with the model and through, you know, the
3 most recent date of that as talked about yesterday.

4 Q. I'm sorry, I didn't ask you about
5 prices yesterday, I'm talking about the work you
6 did for your direct testimony, okay?

7 A. Okay.

8 Q. Let's stick with that for the time
9 being. Fair?

10 A. That's fair.

11 Q. Now, you believe that Mr. Pratt and
12 CRU actually had already factored in this no tight
13 market to their forecast, correct?

14 A. I'm not sure but I would assume so.

15 Q. You believe that to be the case.

16 A. Yes. I believe he stated that there
17 is volatility implicit in the near term forecast.

18 Q. So when we're looking at these green
19 bars which are CRU's forecast numbers, they already
20 have this no tight market condition built in best
21 of your belief, correct?

22 A. Best of my knowledge. But it doesn't
23 factor in all volatility.

24 Q. And you'd agree with me that Mr.
25 Pratt didn't testify and he didn't tell you that

1 prices were going down in 2015, 2016 or 2017,
2 correct?

3 A. That's correct.

4 Q. An in fact Noranda's internal
5 consensus when you talked to the other people in
6 the C suite offices, the other leaders, their
7 internal consensus was no different from Mr.
8 Pratt's observation, fair?

9 A. No, we didn't have anything to
10 dispute that information.

11 Q. Now, follow up a little bit more on
12 your discussions with Mr. Pratt and I want to focus
13 on the discussions you had with Mr. Pratt before
14 you gave your direct testimony. Okay?

15 A. Okay.

16 Q. And, but let's set a time line. You
17 gave your direct testimony, correct?

18 A. Yes.

19 Q. Let's fix that point in our mind.
20 And then Dr. Humphreys filed a rebuttal after your
21 direct testimony, correct?

22 A. Yes.

23 Q. And then after Dr. Humphreys filed a
24 rebuttal Mr. Pratt filed a surrebuttal, correct?

25 A. That's correct.

1 Q. And you've read that surrebuttal,
2 you've already told us that.

3 A. Yes.

4 Q. And so you saw in that surrebuttal
5 where Mr. Pratt said you can't predict peaks and
6 troughs in a cycle. You saw that, correct?

7 A. Yes.

8 Q. Peaks being things like this little
9 blue line that goes up and troughs being the one
10 right here that goes down, those are peaks and
11 troughs, correct?

12 A. That's correct.

13 Q. In fact Mr. Pratt said it would be the
14 lesser of two evils with a smooth line forecast,
15 correct?

16 A. I don't remember that statement.

17 Q. Did you read his deposition too, Mr.
18 Pratt's deposition?

19 A. No, I did not.

20 Q. Do you know if he used the word
21 misleading in talking about trying to predict peaks
22 and troughs?

23 A. No, I did not.

24 Q. Now in your surrebuttal you said that
25 the three cycles that you selected were not

1 sufficiently representative of potential price
2 cycles, you read that, right?

3 A. I did.

4 Q. You read in his surrebuttal when he
5 talked about you can't predict the timing of cycles
6 with accuracy, you saw that.

7 A. I don't remember those words, it
8 might be approximately true.

9 Q. Well, I don't want to misquote him,
10 so.

11 A. I just don't remember all of his
12 testimony right here.

13 Q. Sure.

14 I'm looking at page 2 of his
15 surrebuttal and if you'd like me to come over and
16 show it to you I can, but page 2 of his
17 surrebuttal, line 12, Mr. Pratt says I believe Dr.
18 Humphreys and I agree that the timing of these
19 cycles can not be predicted with any accuracy.

20 Does that refresh your memory?

21 A. Right. It's hard to predict what
22 we've tried to do with our scenario planning
23 because I can't just give up, I've got to do
24 something so --

25 Q. Sir, I'm not asking you about giving

1 up, I'm asking you about what Mr. Pratt said, okay?

2 A. Right.

3 Q. Thank you.

4 And Mr. Pratt said that you couldn't
5 predict these cycles, I'm sorry, Mr. Pratt also
6 was, said that these cycles were not potentially,
7 were not sufficiently receptive of potential price
8 citations also because each of the scenarios you
9 chose, each of those three, showed a long sequence
10 of negative deviations from trend in the first
11 years of the cycle, correct?

12 A. That's correct. So that's why we
13 provide additional data.

14 Q. Okay. So what we're talking about
15 here is the fact that this blue line is under the
16 green bars going out six, seven years into the
17 future, that's what we're talking about this long
18 negative deviation from trend.

19 A. Yes, but that's based on history.

20 Q. Well, again we're talking Mr. Pratt's
21 criticisms of your model.

22 A. But you were talking those particular
23 lines, that's based on history.

24 Q. That's what he's referring to though,
25 fair?

1 A. Right. Yes.

2 Q. Mr. Pratt also told us in his
3 surrebuttal that he thought you should have picked
4 a broader range of samples to show the Commission,
5 correct?

6 A. Yes. And we did in my surrebuttal.

7 Q. So when you were working and having
8 these conversations with Mr. Pratt provided by your
9 direct testimony did you just ignore all of these
10 points?

11 A. No, we didn't. We give them
12 consideration and that's why we provide the
13 different scenarios in this case but also to
14 understand, to give a visibility to the different
15 scenarios that we looked at.

16 Q. I'm sorry, again I'm referring to
17 your direct testimony. Let's focus on that time
18 frame.

19 A. Okay.

20 Q. Did you just ignore Mr. Pratt's
21 criticisms when you went ahead and filed your
22 direct testimony or had you not even heard it at
23 that point?

24 A. I'm not sure at what point I heard
25 him, I don't remember that exact date but I did

1 consider those models and we thought that the three
2 we filed were the most representative outcomes of
3 our scenario planning at that time.

4 Q. Now, the three scenarios that you
5 ran, let's be real clear, those are not price
6 forecasts.

7 A. No.

8 Q. You have not done a forecast of
9 aluminum prices in this case, correct?

10 A. No, we have not.

11 Q. And you're not presenting these to
12 the Commission as forecasts, correct?

13 A. That's correct.

14 Q. What these are are stress tests.

15 A. That would be an accurate statement,
16 yes.

17 Q. Another word for it would be a
18 sensitivity analysis.

19 A. Or scenarios, yes.

20 Q. Or scenario.

21 A. Uh-huh.

22 Q. Basically a what if, fair?

23 A. That's fair.

24 Q. Now, in order to run a stress test
25 you have to have a model or a formula or something

1 to run it through, correct?

2 A. That's correct.

3 Q. And in your case what you did is you
4 took these different prices that you calculated,
5 your blue lines on these kind of graphs, and you
6 put them into something called Noranda's enterprise
7 model, fair?

8 A. Yes. We did start with what the
9 actual projected mean, the CRU mean over the next
10 10 years being the \$1.06 and computed the
11 volatility based on history off of that and then
12 put those, and then converted those to nominal
13 values so that you reflect the change and then we
14 put those into the model, that's correct.

15 Q. Okay. And everything that you just
16 told us up until the last sentence, that was all
17 about these blue lines you were calculating,
18 correct? It's not about putting it in the
19 enterprise model, that's about how you got the
20 prices to begin with?

21 A. Yes. That's how we determined the
22 volatility, that's correct.

23 Q. And that's all the stuff that we just
24 went through, all of Mr. Pratt's criticisms, right?

25 A. Right. That's the math around the

1 volatility because no one can predict the
2 volatility.

3 Q. So let's talk now about the
4 enterprise model, let's move forward in your
5 analysis and talk about the enterprise model. Are
6 you with me?

7 A. Okay.

8 Q. And in that enterprise model you put
9 aluminum prices that you'd assumed into it,
10 correct?

11 A. That's correct.

12 Q. And then you had some other factors
13 for things like different kinds of costs that you
14 were assuming, correct?

15 A. That's correct.

16 Q. You had capital expenditures that you
17 assumed as part of all of this?

18 A. That's correct.

19 Q. And at the end of the day you came
20 out with some liquidity figures that you provided
21 the commission, fair?

22 A. That's correct.

23 Q. So you what you do is you put in some
24 inputs or assumptions and you see how that changes
25 the output, that's basically what we're talking

1 about when we're talking about a scenario or
2 sensitivity analysis.

3 A. It is but you have to take all those
4 assumptions of each other because they're all
5 highly correlated or related so you can't just
6 arbitrarily pick as an assumption and plug it into
7 the model.

8 Q. Well you could but the worse the
9 assumption the worse the output, correct?

10 A. Well, the math may work but you just
11 can't change one without giving consideration of
12 how this might impact the other assumptions.

13 Q. Now, I think you used the term
14 representative scenarios to describe these
15 scenarios in your direct testimony, do you recall
16 that?

17 A. Yes. Three, yes.

18 Q. Now, when you were using that term
19 representative scenarios what you meant was
20 receptive of the various scenarios that you ran,
21 correct?

22 A. Yes, receptive of what the most
23 likely starting points would be.

24 Q. And most likely, when you use the
25 term most likely that means the most likely of the

1 scenarios you ran, correct?

2 A. Of the 11, yes.

3 Q. So from a universe of 11 when you
4 said to the Commission when you say hey this
5 scenario or that scenario was most likely you mean
6 the most likely of the 11 you chose to run?

7 A. Yes, the most likely of those 11
8 scenarios, that's correct.

9 Q. Now, when you used the term likely in
10 describing your scenarios for the Commission you
11 weren't including any actual calculation of
12 probability, correct?

13 A. That's correct.

14 Q. You weren't applying some sort of
15 statistics to this to say oh, I got a plus or minus
16 margin of error, right?

17 A. That's correct. We did not apply
18 statistical analysis.

19 Q. You weren't saying this scenario is
20 more likely to occur than CRU's forecast, nothing
21 like that, correct?

22 A. Well, we did say that the three
23 scenarios were the most representative of the 11
24 that we ran which included some of the CRU
25 information.

1 **Q. Right. But you didn't run a**
2 **probability analysis of any sort to even suggest to**
3 **the Commission that it's somehow more likely that**
4 **one of your negative scenarios is going to occur**
5 **than CRU's best estimate forecast, correct?**

6 A. We did not run a statistical
7 analysis, that is correct.

8 **Q. You haven't done any calculation of**
9 **distribution probabilities around CRU's forecast?**

10 A. No, we did not. We relied on them as
11 an expert.

12 **Q. And you'd agree with me that the**
13 **three scenarios you chose have the most negative**
14 **cash flow events of any of the 11 scenarios,**
15 **correct?**

16 A. Those are the outcomes, that's not
17 what we, you know, we did not pick those outcomes,
18 that's a result of the analysis we prepared.

19 **Q. No, you picked the prices and that's**
20 **the outcomes you got, correct?**

21 A. We chose the mean as I said from CRU
22 over the next 10 years and then we computed the
23 volatility based on actual historical volatilities
24 so we did not compute or select arbitrarily the
25 prices into the model so it was a computation of

1 historical volatility.

2 **Q. You didn't run a single scenario**
3 **using CRU's forecast, correct?**

4 A. Their forecast is included, embedded
5 in the scenarios.

6 **Q. You don't have a single scenario that**
7 **you've run and shown to this Commission either on**
8 **direct or on surrebuttal where you plugged in as**
9 **the prices the CRU best estimate prices, correct?**

10 A. Sorry, that's rather broad. My 2015
11 price was the CRU price at the time.

12 **Q. I'll grant you that.**

13 A. And I used the CRU forecast of 10
14 year mean average, okay, so I did use portions of
15 the forecast so I'm not sure which particular part
16 you're referring to.

17 **Q. Sure. Let me be a little more**
18 **specific.**

19 A. Okay.

20 **Q. For 2017 there's a price that's well**
21 **above your blue line price, correct?**

22 A. For 2017? Are you talking about the
23 green part or which one are you talking about?
24 Could you ask that again, I'm sorry?

25 **Q. Yeah, sure. The green bar which is**

1 CRU's forecast price for 2017, that is above your
2 blue line, correct?

3 A. That's correct.

4 Q. Same is true for 2018.

5 A. That's correct.

6 Q. Same for 2019.

7 A. That's correct.

8 Q. Same for 2020.

9 A. That's correct.

10 Q. And you don't have a version of your
11 scenarios where you took CRU's price for 2017 and
12 plugged it in to see what you get, correct?

13 A. No, we did not take CRU's direct
14 forecast for those years and put those into the
15 model because they lacked the volatility analysis.

16 Q. Well, they had implicit volatility in
17 them, correct?

18 A. I believe in the near term, yes. But
19 that doesn't include all volatility as Mr. Pratt
20 points out that it's very difficult to sit here and
21 predict outcomes with absolute certainty.

22 Q. And the CRU forecast represents the
23 best prediction that you're aware of, correct?

24 A. The best information I did have
25 available at the time, yes.

1 **Q. The only people who've actually taken**
2 **the best forecast of a 2017 price that any of us**
3 **have and run it through your model is Ameren's**
4 **experts, correct?**

5 A. I'm not sure I would agree with it's
6 the best case, best forecast.

7 **Q. I thought we just established this.**
8 **You're not aware of a forecast that's better than**
9 **CRU's forecast, you just told us that.**

10 A. Maybe I misunderstood your questions.
11 If you're talking about the forecast of actual
12 prices I do believe they are expert in aluminum
13 intelligence and industry conditions and that their
14 near term forecasts appear to be more accurate than
15 their long term forecasts of aluminum prices.

16 **Q. In 2017 we can agree that's near**
17 **term, correct?**

18 A. I believe that would be in the near
19 term, yes.

20 **Q. Now, if we look at your surrebuttal**
21 **testimony you did include at the back of your**
22 **surrebuttal testimony five little graphs, correct?**

23 A. Is that the page you're referring to?

24 **Q. Yes. It's page, Schedule DB1.**

25 A. Yes.

1 Q. So --

2 MR. NELSON: Ken is this highly
3 confidential?

4 MR. MALLIN: If you're going to go
5 into the individual numbers, yes.

6 JUDGE WOODRUFF: Go into HC?

7 MR. NELSON: I guess so Your Honor.

8 MR. NELSON: Thank you, Your Honor.

9 JUDGE WOODRUFF: And we will go
10 in-camera.

11 (REPORTER'S NOTE: An in-camera session was held,
12 which is contained in Volume 34, pages 2531-2536 of
13 the transcript.)

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JUDGE WOODRUFF: We're back in

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regular session.

4

Q. (BY MR. NELSON) Now, we can agree

5

that Noranda is a U.S. producer of aluminum.

6

A. That's correct.

7

Q. And your markets are primarily in the

8

U.S.

9

A. Primarily.

10

Q. And U.S macroeconomic factors can

11

also have an impact on your price.

12

A. That's correct.

13

Q. And the factors that apply in the U.S

14

and the factors that apply more globally, they

15

don't always move in the same direction, do they?

16

A. No, they don't.

17

Q. And you're aware that all of these

18

factors get put into the CRU forecast, right?

19

A. I assume so.

20

Q. They have a team of researchers

21

that's looking at all of these different inputs and

22

coming up with their best estimate, correct?

23

A. I believe that would be the case.

24

Q. And the internal consensus among your

25

senior executives, they're not aware of anything

1 that would say they have a better forecast for 2015
2 or 2016 than CRU's forecast.

3 A. No, we don't have anything negative
4 to contradict that.

5 Q. Now, in your discussions with your
6 internal group you didn't even look out as far as
7 2018, correct?

8 A. No. We were looking at the near
9 term.

10 Q. And if you talk about 2017 you don't
11 recall what that suggestion was.

12 A. No, I don't.

13 Q. With respect to aluminum demand,
14 demand, you and I can agree that there's a positive
15 outcome for demand in the markets Noranda serves?

16 A. Yes, there is.

17 Q. And that's true next year, correct?

18 A. I believe so.

19 Q. It's true over the next year after
20 that as well.

21 A. I'm not sure about the year after.

22 Q. Well, do you recall us discussing it
23 at your deposition?

24 A. I don't remember that particular
25 focus, no, on 2017.

1 Q. Well, let me ask the question a
2 little differently and see if maybe we can short
3 circuit this. You'd agree with me absent any
4 extraordinary events for the next year or two you
5 believe Noranda's demand outcome is positive.

6 A. Yes, we believe we have a good
7 demand.

8 Q. And there's positive changes in the
9 aluminum market which either directly or indirectly
10 impact Noranda, correct?

11 A. Yes.

12 Q. For example Ford has announced that
13 they're going to all aluminum bodies on their
14 trucks which is going to increase demand for
15 aluminum, correct?

16 A. That's correct.

17 Q. Industries are switching from copper
18 wire to aluminum wire, that's driving demand,
19 correct?

20 A. That is a trend in the industry, yes.

21 Q. And you and I can agree that demand
22 conditions in the U.S are more favorable to stable
23 or higher prices than conditions globally are,
24 correct?

25 A. They are favorable as one of the

1 components that affect prices.

2 **Q. And they're more favorable than**
3 **global conditions?**

4 A. I believe so but I'm not absolutely
5 sure there.

6 **Q. As best you can tell as you sit here**
7 **today I just made a true statement.**

8 A. Yes, best I know.

9 **Q. In fact Noranda, you really have**
10 **pretty limited knowledge about global conditions**
11 **other than what you read from CRU, correct?**

12 A. CRU and what we hear from customers
13 and other intelligence firms.

14 **Q. But mainly CRU.**

15 A. They would be one of the main ones,
16 yes.

17 **Q. So use that term that Mr. Pratt used,**
18 **tight or tighter, you and I can agree that market**
19 **conditions in the U.S are tighter than they are**
20 **globally.**

21 A. That was the forecast, yes. At that
22 particular time. But that's different after the
23 Merrill Lynch report that came out the other day,
24 last week.

25 **Q. The Merrill Lynch report about China?**

1 A. But it was talking about that, you
2 know, they were projecting a surplus rather than a
3 deficit.

4 **Q. And has that changed CRU's**
5 **fundamental forecast?**

6 A. I don't know yet if that has. I'm
7 not sure if it's been reflected in their most
8 recent report but the report that was reviewed
9 yesterday, yes, they did have a different opinion.

10 **Q. I'm sorry, I asked about forecasts.**

11 A. Okay.

12 **Q. CRU hasn't done a forecast since**
13 **January, correct?**

14 A. I believe they did one in February.

15 **Q. Do you have a copy of that forecast?**

16 A. I do not.

17 **Q. Okay. You haven't looked at it.**

18 A. I have not.

19 **Q. Because you're aware we've asked for**
20 **all CRU forecasts that you've got in your**
21 **possession, you know that, correct?**

22 A. Yes. I believe that is copyright
23 material that we weren't allowed to provide.

24 **Q. You don't know of any credible source**
25 **that's saying that there's greater tightness in the**

1 U.S. that's expected to change over the next couple
2 of years, correct?

3 A. I'm sorry, is that statement from the
4 CRU forecast?

5 Q. Are you aware of any credible source,
6 you're not aware, let me rephrase the question.

7 You're not aware of any credible
8 source, a source you would consider credible
9 whether it's internally, whether it's CRU, whether
10 it's somebody else who says they expect a greater
11 degree of tightness in the U.S market versus the
12 world market to change as we look over the next
13 several years. You're not aware of any such
14 statement by a credible source, correct?

15 A. I'm not aware of one at this point.

16 MR. NELSON: Your Honor I'm going to
17 mark four exhibits if I could ask the court for the
18 next four exhibit incomes.

19 JUDGE WOODRUFF: We'll start at 69.

20 MR. NELSON: For the record I'm going
21 to mark Exhibit 69 is a document that has been
22 previously marked in deposition as Boyles Exhibit
23 3.

24 JUDGE WOODRUFF: Okay.

25 MR. NELSON: Then Your Honor I'm

1 going to mark as Exhibit 70 a document which has
2 previously been marked as Boyles Exhibit 4.

3 Your Honor I'd like to mark as
4 Exhibit 71 what has previously been identified as
5 Boyles Exhibit 5 in deposition.

6 And finally Exhibit 72 previously
7 marked in deposition as Boyles Exhibit 6.

8 Q. (BY MR. NELSON) You should now have
9 in front of you Boyles Exhibits 69, 70, 71 and 72,
10 sir.

11 A. Yes, I do.

12 Q. You and I have looked at these
13 documents before, correct?

14 A. I think we did.

15 Q. In your deposition, right?

16 A. I think we did, some of these.

17 Q. Let's see if we can identify them for
18 the record.

19 Exhibit 69 of course you and I can
20 agree, can't we, that's an edited transcript of
21 Noranda's fourth quarter conference call with
22 analysts and investors?

23 A. That's what it appears to be, yes.

24 Q. You spoke at that event.

25 A. Yes.

1 Q. And you heard, Mr. Smith was there
2 with you, he spoke at that event, correct?

3 A. Yes. I think they had our comments
4 mixed up, but.

5 Q. I think Mr. Smith mentioned that.
6 But you talk at these events that somebody
7 transcribes it and then your folks take a look at
8 it, sounds like your investor folks and Mr. Smith
9 take a look at it and if they have any corrections
10 they call about those, correct?

11 A. That's correct.

12 MR. NELSON: Your Honor at this point
13 I would move for the admission of Exhibit 69 into
14 evidence.

15 JUDGE WOODRUFF: 69 has been offered,
16 any objection to its receipt?

17 MR. MALLIN: No objection, Your
18 Honor.

19 JUDGE WOODRUFF: Hearing none it will
20 be received.

21 Q. (BY MR. NELSON) Now when you do
22 these investor conference calls in addition to your
23 speaking part you also have some slides that you
24 show the investors and the analysts from Wall
25 Street, correct?

1 A. That's correct.

2 Q. So let's take a look at Exhibit 70.
3 Exhibit 70 is the slide deck, the slides that you
4 showed investors along with that earnings call that
5 we talked about in Exhibit 69, correct?

6 A. I believe so, correct.

7 MR. NELSON: Move for the admission
8 of Exhibit 70 into evidence.

9 JUDGE WOODRUFF: 70 has been offered,
10 any objections to its receipt?

11 MR. MALLIN: No objection, Your Honor.

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

14 Q. (BY MR. NELSON) Now, you had a
15 similar process for the third quarter of 2014,
16 after it was over and you'd gathered the results
17 through a call with Wall Street, somebody
18 transcribed it and you had some slides that went
19 along with your talk, correct?

20 A. That's correct.

21 Q. So let's look at Exhibit 71. Is that
22 the slide deck, the group of slides for your third
23 quarter conference call?

24 A. (Reviewing document). I believe it
25 is.

1 **Q. Okay.**

2 MR. NELSON: Move for the admission
3 of Exhibit 71.

4 JUDGE WOODRUFF: 71 has been offered,
5 any objections to its receipt?

6 MR. MALLIN: No objections Your
7 Honor.

8 JUDGE WOODRUFF: Hearing none it will
9 be received.

10 **Q. (BY MR. NELSON) And then finally**
11 **Exhibit 72, that's the transcript of what you and**
12 **Mr. Smith said and the questions that the analysts**
13 **from Wall Street asked on that third quarter**
14 **conference call, correct?**

15 A. Yes, I believe it is.

16 MR. NELSON: Move for the admission
17 of Exhibit 72 into evidence.

18 JUDGE WOODRUFF: 72 has been offered.
19 Any objections to its admittance?

20 MR. MALLIN: No, Your Honor.

21 JUDGE WOODRUFF: Hearing none it will
22 be received.

23 **Q. (BY MR. NELSON) Now, we've talked**
24 **about, we've had, sometimes we've had to go highly**
25 **confidential and come back out of confidential,**

1 **you've been there and seen that, correct?**

2 A. Yes, I have.

3 **Q. All right. We can agree that**
4 **anything you said in here is not highly**
5 **confidential, right?**

6 A. That would be correct.

7 MR. MALLIN: Just for clarity, you're
8 talking about the transcripts.

9 MR. NELSON: I'm sorry, yes, what's
10 in the transcripts.

11 **Q. (BY MR. NELSON) Exhibit 69.**

12 A. Yes.

13 **Q. This is what you were telling the**
14 **public.**

15 A. That's correct.

16 **Q. So let's look a little bit at some of**
17 **the things you were telling the public and let's**
18 **start by looking a little bit at demand. Let's**
19 **look at Exhibit 70 and if you could turn with me to**
20 **slide 4 please. And this is an analysis that you**
21 **put together for Wall Street talking about U.S**
22 **aluminum demand and in various kinds of markets,**
23 **correct?**

24 A. Yes, based on CRU forecasts.

25 **Q. And you wouldn't have put CRU's**

1 numbers in there if you weren't willing to
2 basically support them, correct?

3 A. That's correct.

4 Q. If you thought CRU was dead wrong you
5 wouldn't have put it in this document for
6 investors.

7 A. No, I wouldn't.

8 Q. So you're telling investors the
9 building and construction market four to seven
10 percent growth in demand projected, correct?

11 MR. MALLIN: I'm sorry Counsel,
12 you're on page 4?

13 MR. NELSON: I'm on slide 4.

14 MR. MALLIN: I apologize.

15 MR. NELSON: I was on slide 4 of
16 Exhibit 70.

17 MR. MALLIN: My only concern is just
18 so that you're clear if you're going to be asking
19 questions about the slides that are not reflected
20 in the transcripts you may in fact be going into HC
21 areas. If you're asking for some further
22 interpretation of what the slides say or don't say
23 we'll just have to be careful I guess is what I'm
24 trying to tell you up front.

25 MR. NELSON: Well, I would welcome

1 counsel any time, I certainly don't mean to step on
2 your highly confidential so please feel free
3 anybody to interrupt me. Okay?

4 MR. MALLIN: I just wanted to alert
5 you.

6 Q. (BY MR. NELSON) Building
7 construction, you were telling investors U.S demand
8 rose on the outlook of four to seven percent,
9 right?

10 A. What we did was provide what the CRU
11 forecast was, yes.

12 Q. Okay. And you don't have any reason
13 to disagree with that.

14 A. No, I don't.

15 Q. And that's good positive growth in
16 U.S demand in that market.

17 A. It is and that has brought sectors,
18 we don't participate in all portions of those
19 sectors.

20 Q. No. But overall if somebody takes
21 aluminum and uses it to make windows even if you
22 don't make windows that still helps your demand
23 because somebody else is going to have to take your
24 aluminum, correct?

25 A. Yes. It's possible, yes.

1 Q. And likewise in the electrical market
2 positive growth four to six percent, that's what
3 you put forward?

4 A. Yes.

5 Q. Same thing in consumer durables,
6 three to seven percent growth, that's pretty
7 healthy isn't it?

8 A. Yes.

9 Q. Transportation, eight to 11 percent
10 growth, that's outstanding, isn't it?

11 A. Yes.

12 Q. And then the worst of the bunch is
13 simply flat demand in foil and packaging, fair?

14 A. That's what it says, yes.

15 Q. In fact you told investors that
16 strong demand provides opportunities to grow with
17 our current customers and to follow the spread of
18 aluminum into new applications, correct?

19 A. That's correct.

20 Q. And you certainly didn't suggest to
21 investors that markets, any markets where Noranda's
22 demand would decline, did you?

23 A. No, we did not.

24 Q. And if we look at Boyles Exhibit 3,
25 I'm sorry, Trial Exhibit 69. If we go to page 3.

1 Page 3 is some comments by Mr. Smith, your CEO,
2 correct?

3 A. This is faded out. Okay. I think I
4 have it now. Which particular paragraph?

5 Q. I'm trying to find it myself, sir.
6 If you look down -- here, let me just put it up on
7 the board.

8 Do you see the paragraph that begins
9 with slide 4? It's about a little over halfway
10 down the page?

11 A. Yes, I do.

12 Q. Okay. And Mr. Smith says here slide
13 4 summarizes what we feel is favorable growth
14 outlook for a primary aluminum consumption in the
15 United States. You see that?

16 A. Yes.

17 Q. Besides driving our own order book we
18 believe strong demand is the key fundamental driver
19 of sustainability in aluminum prices over the
20 medium and long term.

21 Did I read that correctly?

22 A. Yes, you did.

23 Q. And when Mr. Smith was talking about
24 driving our own order book he meant that strong
25 demand was going to help Noranda's orders, correct?

1 A. Yes.

2 Q. And when he talks about
3 sustainability in aluminum prices over the median
4 to long term he's talking about prices that are at
5 least stable to positive, correct?

6 A. I don't know exactly what he meant
7 but I would assume that based on the comment, yes.

8 Q. Now going back to your scenarios we
9 can agree that your scenarios do not show
10 sustainable all-in prices over the medium and long
11 term, do they?

12 A. I would disagree, this only talks
13 about the consumption side so you have to factor in
14 the supply side on the all-in on aluminum prices.

15 Q. You and I got together, what, a week
16 and a half, two weeks ago and took your deposition?

17 A. Approximately, yes.

18 MR. NELSON: Approach the witness
19 Your Honor.

20 JUDGE WOODRUFF: You may.

21 Q. (BY MR. NELSON) I'm going to hand
22 you a copy of your deposition. Could you confirm
23 that please?

24 A. (Reviewing document). Yes, looks
25 like a copy of it.

1 Q. You were under oath, a court reporter
2 there, took it all down, correct?

3 A. Yes.

4 Q. If you look at page 137 of your
5 deposition. If you want to flip back to the prior
6 page you see we were talking about Mr. Smith's use
7 of the word sustainable and then we asked some
8 questions and answers, okay?

9 A. Okay. Let me find it first.

10 (Reviewing document).

11 Yes, okay. I follow.

12 Q. So I pointed out Mr. Smith said that
13 there's going to be sustainable prices in the
14 medium to long term and then I asked you the
15 following question: With respect to your '98, '99
16 and 2000 scenarios, and Counsel I'm starting at
17 line 16, do these reflect sustainable all-in prices
18 over the medium and long term?

19 Did I read the question correctly?

20 A. Is that on 136?

21 Q. 137, sir.

22 A. Sorry.

23 Q. I'm setting things up. You and I can
24 agree that --

25 A. Sorry, I was a little slow.

1 Q. That's okay.

2 You and I can agree that on pages 136
3 and 137 we're talking about Mr. Smith using the
4 word sustainable for all-in prices when he's
5 talking to investors, correct?

6 A. Yes.

7 Q. And then we turn and we look at your
8 '98, '99 and 2000 scenarios, that's some questions
9 on 137, correct?

10 A. Yes.

11 Q. And then I asked you do these,
12 meaning your '98, '99 and 2000 scenarios, do these
13 reflect sustainable all-in prices over the medium
14 and long term?

15 Do you see that question?

16 A. Yes. In those models, yes.

17 Q. Let me try my question again just to
18 stick to that. Did I ask you the following
19 question: Do those reflect sustainable all-in
20 prices over the medium and long term?

21 A. Again where is that question?

22 Q. Start at line 16, page 137.

23 A. Okay. I'm sorry.

24 Q. So again do those, meaning the '98,
25 '99 and 2000 scenarios, do they reflect sustainable

1 long-term prices over the medium and long term, did
2 I ask you that question?

3 A. Yes, you did.

4 Q. And the answer you gave was no,
5 they're not all sustainable, correct?

6 A. Yes. And referring to --

7 Q. I'm sorry, sir, I just want to make
8 sure we're clear. Did I read your answer
9 correctly?

10 A. You read it correctly but maybe not
11 in the context of my answer.

12 Q. You and I can agree the global
13 economy is becoming more aluminum intensive?

14 A. Yes, I believe so.

15 Q. You have stable demand for your
16 products.

17 A. Yes, we do.

18 Q. And your local supply and demand
19 fundamentals are positive?

20 A. We believe so, yes.

21 Q. Now let's talk a little bit about
22 your enterprise model and I want to start with
23 looking at a document that was in the opening
24 statement, I believe it's now been labeled as --

25 MR. DOWNEY: 532.

1 MR. NELSON: The chart?

2 MR. DOWNEY: The graph?

3 MR. NELSON: Yes, the graph.

4 MR. MALLIN: If you're going to ask
5 questions about this we're going to have to go into
6 HC.

7 MR. NELSON: That's fine, I'm going
8 to ask one or two.

9 JUDGE WOODRUFF: We'll go in-camera.

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11 (REPORTER'S NOTE: An in-camera session was held,
12 which is contained in Volume 34, pages 2556-2558 of
13 the transcript.)

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JUDGE WOODRUFF: And we're back in
regular session.

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Q. (BY MR. NELSON) Now, let's talk
about smelter closure. There's been a fair amount
of discussion about smelter closure here in this
room. You've heard it, correct?

5

6

7

8

A. Yes.

9

Q. In fact you have managed capital
spending in the past when you needed to to manage
your liquidity, correct?

10

11

12

A. Yes, it's one of the letters that we
use, yes.

13

14

Q. In fact you, for example you slowed
capital spending for a period of time on the rod
mill to manage cash.

15

16

17

A. That's correct.

18

Q. Now in your enterprise model to get
the liquidity assumptions you gave this Commission
you made an assumption that Noranda for every year
in your model --

19

20

21

22

MR. MALLIN: Before you ask the
question I think we're going to have to go HC
because that number is highly confidential.

23

24

25

MR. NELSON: Okay.

1 Q. We've been talking a lot about trend
2 lines, that's a positive trend line isn't it?

3 A. It is. Aluminum prices were up.

4 Q. And you've done that with existing
5 power rates, correct?

6 A. Yes, that's correct.

7 Q. And for that matter when you paid off
8 your line at the end of the third quarter that was
9 with the existing power rates, right?

10 A. That's correct.

11 Q. When you paid it off, your credit
12 card, your line off at the end of the fourth
13 quarter that was with existing power rates,
14 correct?

15 A. Yes.

16 MR. NELSON: Thank you, Your Honor, I
17 have nothing further.

18 JUDGE WOODRUFF: Okay. Open for
19 questions from the bench.

20 Mr. Chairman?

21 EXAMINATION

22 QUESTIONS BY CHAIRMAN KENNEY:

23 Q. Good morning Mr. Boyles.

24 A. Good morning.

25 Q. How are you?

1 So I can talk about the liquidity as
2 **long as I don't mention the number, right?**

3 A. I believe that's correct.

4 **Q. Without going in-camera. Is that**
5 **right?**

6 MR. NELSON: I would say that that's
7 right generally Judge, Commissioner, I'm sorry.

8 CHAIRMAN KENNEY: That's fine.
9 Either one is fine.

10 A. If we're going to talk about trends
11 or anything like that we may want to go in-camera.

12 **Q. (BY CHAIRMAN KENNEY) Yeah, I just**
13 **want to ask a question that I think was being**
14 **raised, that -- actually let's do go In camera**
15 **because I want to talk about the specific numbers.**

16 JUDGE WOODRUFF: Okay. Then we'll go
17 back in-camera.

18
19 (REPORTER'S NOTE: An in-camera session was held,
20 which is contained in Volume 34, pages 2587-2590 of
21 the transcript.)

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Q. (BY MR. CHAIRMAN) So then thereafter

3

comparison of the slides from the opening statement

4

to the transcripts of the fourth quarter earnings

5

calls, do you remember that line of questioning?

6

A. Yes, sir.

7

Q. Here's the question that didn't get

8

asked again, I'm not, I don't have to worry about

9

these things.

10

Is it, would you agree or disagree

11

with me that the picture that Noranda presents to

12

its investors on earning calls is that starkly

13

different and rosier than the picture that you all

14

present to us here in the hearing room, in this

15

case? You weren't around in the last case, but.

16

It's the same issue I think we had in the last

17

case, the picture that you guys present on the

18

earnings calls is different than the picture you

19

present here in the hearing room. Is that a fair

20

characterization?

21

A. I don't think so.

22

Q. Tell me why not.

23

A. We're fully transparent with what can

24

happen and we disclose that in our risk factors and

25

in our earnings call we talk about the improvements

1 quarter over quarter where we do make improvements
2 where we're making decisions to do everything
3 possible to keep the smelter open and that's what
4 we've represented here. What we've presented in my
5 testimony is the likely outcomes without a power
6 relief. You know, here's where we will go. We may
7 not be there today but I can't wait to step out in
8 front of the train before I come to the Commission
9 and ask for rate relief.

10 **Q. I mean in the testimony in here**
11 **Noranda makes definitive statements that if this**
12 **Commission doesn't provide the rate relief it's**
13 **requesting these other consequences will definitely**
14 **occur. That's what I was presented here. But then**
15 **when I read the transcripts of the earnings calls**
16 **it's a much more measured tone, and I think that**
17 **you just said it yourself, these are risk factors**
18 **of what may occur, not what definitely will occur.**
19 **How do you explain what is to me a cognitive**
20 **dissidence between what you're telling us and what**
21 **you're telling investors?**

22 **A. Well, I believe what we've prepared**
23 **is the scenarios of the likely outcomes. We don't**
24 **typically share those with third parties, we --**

25 **Q. Stop there for a minute just so I can**

1 understand that component.

2 So you disclose the risk factors to
3 the investors but you don't necessarily provide
4 them the conclusions or the consequences of those
5 risk factors.

6 A. No, I think we have in our previous
7 earnings calls where we did talk about, you know, a
8 sustainable power rate that we need to keep the
9 smelter open and we've talked about it in earnings
10 calls, in our decs, in our 10Qs and 10K so we have
11 discussed those things openly with investors. So
12 if we went back to prior scripts of transcripts of
13 calls there would be lots of discussion around
14 closure of the smelter.

15 Q. Okay. Thanks for your time.

16 A. Thank you.

17 JUDGE WOODRUFF: Commissioner Hall?

18 COMMISSIONER HALL: Yes.

19 EXAMINATION

20 QUESTIONS BY COMMISSIONER HALL:

21 Q. Good morning.

22 A. Good morning.

23 Q. I had a number of questions along the
24 same line from the Chairman and I'm going to, I
25 think it is without a doubt fact that there is a

1 difference between what you are telling investors
2 and what you are telling us here today. Now, I'm
3 not telling you that it is my belief that there is
4 not a way to find some consistency but the
5 verbiage, the definitive nature is different
6 between the two and what I'm asking for you, from
7 you, is to explain to me why there might be that
8 discrepancy. Now, you can say there's no
9 discrepancy, I'm telling you I don't believe that.
10 There is a difference. Now how can you explain
11 that difference?

12 A. Well, we may not use the exact same
13 words --

14 Q. Why?

15 A. Well, I may not remember the exact
16 same words the next time I talk about it but in the
17 same context we do talk about and we have talked
18 about closure of the smelter being a possibility.
19 I think we used the words a substantial likelihood
20 if we didn't get power rate relief so we have
21 discussed those things in our earnings calls, those
22 transcripts were presented here, but we have made
23 those disclosures in the past and again we're not
24 predicting absolute closure.

25 Q. But you are here. That is what you

1 are predicting here. Absent rate relief you're
2 telling us closure. You are not telling investors
3 absent rate relief, closure.

4 A. I think we are, we are in our risk
5 factor that was talked about earlier. We talk
6 about rate relief, we talk about how that is
7 dependent upon keeping that smelter open or not. I
8 think we use curtail the facility which is both a
9 shutting of lines as well as closure of the
10 facility.

11 Q. Okay. Let me try a different tact.
12 What would happen if you as a company took the
13 highly confidential statements that are in the
14 record in this case and put them open to public
15 disclosure?

16 MR. MALLIN: Well, Your Honor the
17 answer to that question in itself is HC.

18 A. Yes.

19 COMMISSIONER HALL: Okay. Well let's
20 go HC.

21

22 (REPORTER'S NOTE: An in-camera session was held,
23 which is contained in Volume 34, pages 2595-2621 of
24 the transcript.)

25

1

2 JUDGE WOODRUFF: We're back in the general
3 session and it's time to announce lunch break which
4 I see smiles in the audience for that. We have
5 agenda today at 12:30 so we'll come back at 1:30.

6 (Whereupon, a lunch recess was taken)

7 JUDGE WOODRUFF: Let's come to order
8 please. We're back from lunch and Mr. Chairman you
9 had a question you wanted ask counsel before we get
10 started.

11 CHAIRMAN KENNEY: This is for the
12 attorneys. So last week we settled, or we noted
13 that issue 22 was settled which is the low income
14 exemption from MEEIA.

15 Is that correct? Let's begin there.

16 MS. TATRO: Yes.

17 CHAIRMAN KENNEY: And I asked Mr.
18 Allison about \$.08 versus \$.11, is that right?

19 MR. ALLISON: Yes.

20 CHAIRMAN KENNEY: It's all allocated
21 to the residential consumers.

22 MR. ALLISON: Correct.

23 CHAIRMAN KENNEY: In which
24 stipulation and agreement will that appear?

25 MS. TATRO: That is the one I have

1 not drafted yet because I frankly forgot.

2 CHAIRMAN KENNEY: That's not a
3 problem, I just wanted to make sure I hadn't missed
4 it somewhere else.

5 MS. TATRO: It's that issue and
6 there's one other minor issue that had to be put in
7 with that stuff, I can't remember off the top of my
8 head.

9 CHAIRMAN KENNEY: That's fine.

10 MS. TATRO: We do owe you that.

11 MR. THOMPSON: LED lighting?

12 MS. TATRO: Yes.

13 CHAIRMAN KENNEY: Yes.

14 MS. TATRO: So that will be on a stip
15 that I'll probably work on this afternoon.

16 CHAIRMAN KENNEY: And then you all
17 filed an amended nonunanimous stipulation regarding
18 certain revenue requirements and you corrected the
19 language that I asked you all to correct.

20 MS. TATRO: Yes, I made an attempt to
21 make all those corrections that I believe you
22 pointed out.

23 CHAIRMAN KENNEY: And I believe it
24 was.

25 MS. TATRO: Thank you.

1 CHAIRMAN KENNEY: So back to the low
2 income MEEIA exemption, it hasn't been reduced to
3 writing and that was one that all the parties had
4 agreed upon, right?

5 MS. TATRO: Right.

6 CHAIRMAN KENNEY: Why does it appear
7 in the Nonunanimous Stipulation and Agreement
8 Regarding Economic Development, Class Cost of
9 Service, Revenue Allocation and Rate Design that
10 the consumer parties have agreed to?

11 MR. ALLISON: Because it hasn't been
12 filed yet and because it was dealing with rate
13 design, class cost of service. It was in that
14 package of issues that had not come in front of the
15 Commission yet.

16 CHAIRMAN KENNEY: But Ameren's not a
17 signatory to this.

18 MR. ALLISON: They are not and I
19 don't see that being necessarily preclusive of any
20 separate document that we would need, I think the
21 terms in there are mutually coexistent to what, a
22 much more narrow document I think that Ameren would
23 want to file.

24 CHAIRMAN KENNEY: I was just confused
25 because that was an issue around which all the

1 parties agreed, there is not a stipulation around
2 which all parties agreed.

3 MR. ALLISON: That is exactly right.

4 CHAIRMAN KENNEY: It struck me as out
5 of place.

6 MR. ALLISON: It was in that package,
7 in developing that stipulation it was in the
8 package of issues regarding rate design class cost
9 of service and all of those issues that we are
10 trying to put in one document.

11 CHAIRMAN KENNEY: Were you guys aware
12 that it was in here?

13 MS. TATRO: Since I wasn't aware of
14 that stipulation until after it was filed, no. I
15 do also find it odd but I don't think it's fatal.

16 CHAIRMAN KENNEY: Thanks. That's all
17 I wanted to know.

18 JUDGE WOODRUFF: Then we're back for
19 the witnesses and we had just completed questions
20 from the bench from Mr. Boyle. Is there anyone
21 wishes to recross?

22 I assume Ameren that Staff wanted to
23 go first.

24 MR. THOMPSON: Thank you.

25

1

2

CROSS EXAMINATION

3

QUESTIONS BY MR. THOMPSON:

4

Q. Good afternoon Mr. Boyle.

5

A. Good afternoon.

6

Q. The Chairman and Commissioner Hall

7

both asked you questions about liquidity and there

8

were questions about what would happen if your

9

liquidity was reduced beyond a critical point. Do

10

you recall that?

11

A. Yes, I do.

12

MR. THOMPSON: And I don't know

13

whether this needs to be In camera or not.

14

MR. MALLIN: Well, since I don't know

15

your question I'm going to have to assume yes.

16

Maybe after you ask your question I can say no.

17

JUDGE WOODRUFF: We'll go in-camera

18

at this point.

19

(REPORTER'S NOTE: An in-camera session was held,

20

which is contained in Volume 34, pages 2626 to 2629

21

of the transcript.)

22

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1
2 MR. NELSON: Your Honor I would ask
3 the Court to take judicial notice, there was some
4 questions about the level of dividends, I think
5 that was covered in case EC-2014-0024 in Exhibits
6 115 and Exhibit 116 which were the 10Ks for 2013
7 and 2012 and I believe that that, those documents
8 would have evidence that supplements what the
9 witness was able to do in terms of dividends paid
10 and I would ask the court to take judicial notice
11 of those.

12 JUDGE WOODRUFF: Any objection?

13 MR. MALLIN: As long as they're a
14 public filing I don't have a problem.

15 JUDGE WOODRUFF: It will be a filing
16 in the prior case.

17 MR. LOWERY: They're already in
18 evidence in the last case Judge, they're portions
19 of their 10Ks for those two years.

20 JUDGE WOODRUFF: And I'll assume you
21 will cite to them in your briefs.

22 MR. MALLIN: Which years?

23 MR. LOWERY: '12 and '13. Exhibits
24 115 and 116 from the last case.

25 MR. MALLIN: Got it.

1 MR. NELSON: Nothing further.

2 JUDGE WOODRUFF: All right.

3 Redirect?

4 MR. MALLIN: Yes, Your Honor. Thank
5 you.

6 REDIRECT EXAMINATION

7 QUESTIONS BY MR. MALLIN:

8 Q. Let's talk first a little bit about
9 the AVL, the revolver or the credit card. In
10 calendar year 2014 for what uses or purposes did
11 Noranda use those things?

12 A. We used it for various purposes to
13 fund normal operating expenses such as payroll, our
14 power bill, our natural gas bills, those type of
15 expenses. We also had unusual operational
16 disruptions that required additional cash as much
17 as I disclosed earlier around the weather impact in
18 2014 as well as another weather impact that shut
19 down our power facility for a day and a half.
20 Those are examples.

21 Q. Is it accurate to say that it was
22 used for day-to-day operations at Noranda?

23 A. Yes it is, during the month.

24 MR. MALLIN: We're going to have to
25 go HC at this point Your, Honor.

1 JUDGE WOODRUFF: We are back In

2 camera.

3

4 (REPORTER'S NOTE: An in-camera session was held,

5 which is contained in Volume 34, page 2632 of the

6 transcript.)

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Q. (BY MR. MALLIN) Let's talk a little

3

bit about capital expenditures. In 2012 how much

4

did Noranda spend on capital expenses or

5

expenditures?

6

A. That's in my 10K, I believe it was

7

approximately 88 million.

8

Q. How about in 2013?

9

A. Approximately 73 million.

10

Q. And in 2014?

11

A. Approximately 94 million.

12

Q. You indicated earlier or identified a

13

piece of equipment called a carbon baked furnace?

14

A. Yes.

15

Q. What does that do?

16

A. Those are the furnaces that are used

17

to take carbon and make anodes using the aluminum

18

making process. Those furnaces have a life that

19

you have to rebuild those furnaces and they're very

20

expensive, they could range up to approximately \$30

21

million to refurbish those furnaces and we have

22

three that are well beyond their normal life.

23

Q. So there's a total of three of such

24

furnaces down at New Madrid today?

25

A. That's correct.

1 Q. And all three of them are operating?

2 A. Yes.

3 Q. You also mentioned a pot.

4 A. Yes.

5 Q. Approximately how much does it cost
6 to refurbish, repair or replace a pot?

7 A. It ranges from approximately \$170,000
8 to \$200,000 per pot.

9 Q. As compared to a line of pots, how
10 many are in a line of pots?

11 A. Our first two lines are approximately
12 174 pots apiece, line 3 which is a different
13 technology, larger pots, approximately 162.

14 MR. MALLIN: Your Honor, this is HC
15 at this point.

16 JUDGE WOODRUFF: All right. We'll go
17 back in.

18 (REPORTER'S NOTE: An in-camera session was held,
19 which is contained in Volume 34, pages 2634-2635 of
20 the transcript.)

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MR. MALLIN: Sorry jumping around,

3

I'm trying to do it topically. I apologize.

4

JUDGE WOODRUFF: We're back to

5

general session.

6

Q. (BY MR. MALLIN) Do you have before

7

you the slides used during the earnings call for

8

the third quarter of 2014 and the fourth quarter of

9

2014? I believe that they are Exhibits 70 and 71.

10

A. Yes.

11

Q. Let's start with first from the third

12

quarter of 2014. Do you have that?

13

A. Yes.

14

Q. Page 2 of the slides did Noranda

15

provide all participants and anyone who wished to

16

read or view these slides information with regard

17

to how they should be considering any forward

18

looking statements?

19

A. Yes, we did.

20

Q. And what in general were you telling

21

those who attended the call or chose to look at

22

these slides they should be considering when any

23

forward looking statements were being made?

24

A. Well, that they could consider these

25

forward looking statements are about future, not

1 past events and while certain important risks and
2 uncertainties any of which could cause a company's
3 actual results to differ materially from those
4 expressed in the forward looking statements.

5 Q. There were certain risks that were
6 identified as part of this third quarter 2014 call,
7 were there not?

8 A. Yes.

9 Q. Can you give me a list of those?

10 A. Yes. We typically review our core
11 product activity program which is on page 7 of that
12 dec.

13 Q. Mr. Boyles I'm still on page 2,
14 forward looking statements?

15 A. I'm sorry, you're talking the forward
16 looking statements.

17 Q. Maybe I'm wrong, tell me if I'm right
18 or wrong here. Did the company, did Noranda, for
19 anyone who wished to participate or review these
20 slides tell those look, there are certain risks
21 that you ought to be aware of with regard to
22 forward looking statements?

23 A. Yes, we did.

24 Q. Was one of those the cyclical nature
25 of the aluminum industry?

1 A. I believe it's on this page, I can't
2 pick it up right off the top.

3 **Q. I'm looking down at the fifth line,**
4 **sir, if that helps you.**

5 A. Yes.

6 **Q. What other risks or information were**
7 **being provided to anyone who was listening in with**
8 **regard to forward looking statements?**

9 A. A downturn in general economic
10 conditions including changes in interest rates as
11 well as a downturn in the end use markets for
12 certain of the company products. Fluctuations in
13 the relative cost of certain raw materials and
14 energy compared to the price of primary aluminum
15 and aluminum rolled products.

16 **Q. Anything else?**

17 A. The effects of competition in
18 Noranda's business lines, Noranda's ability to
19 retain customers, a substantial number of which do
20 not have long term contractual arrangements with
21 the company. The ability to fulfill business,
22 business's substantial capital investment needs,
23 labor relations, i.e. disruptions, strikes or work
24 stoppages and labor costs, unexpected issues
25 arising in connection with Noranda's operations

1 outside of the United States, the ability to retain
2 key management personnel and Noranda's expectations
3 with respect to the acquisition, activity or
4 difficulties encountered in connection with
5 acquisitions, dispositions or similar transactions.

6 Q. Did Noranda as part of this third
7 quarter 2014 conference call also tell anyone who
8 was participating or viewing these slides that it
9 should go look to Noranda's 10K and its quarterly
10 reports?

11 A. Yes, we did.

12 Q. And for what reason or purpose did it
13 do so?

14 A. To look at the risk factors and the
15 disclosures in our 10K.

16 Q. Now, in the third quarter of 2014,
17 this dec, was there certain underlying assumptions
18 with regard to how Noranda may perform going
19 forward into the fourth quarter?

20 A. That's correct.

21 Q. And are they found somewhere in this
22 dec?

23 A. Yes, on slide 7.

24 Q. I'm on slide 7 that says productivity
25 compliments growth in creating value. Am I in the

1 right place?

2 A. Yes.

3 Q. Okay. What on this page tells me
4 what the assumptions were with regard to how well
5 or not Noranda might perform in the fourth quarter?

6 A. Well, this gives an update on the
7 step change and our cost structure that we talked
8 about and the \$85 million improvement in our
9 segment profit from 2014 to 2016 and we bridge
10 that --

11 Q. Hold on a second, you've got me all
12 confused.

13 A. Okay.

14 Q. What's a step change?

15 A. Meaning an increased level, a step
16 change being it could be an increase or decrease in
17 your run rate.

18 Q. And what do you mean by run rate?

19 A. Your historical profitability.

20 Q. Okay. And was one of these steps
21 with regard to power?

22 A. Yes.

23 Q. What is this telling me with regard
24 to the step change with regard to power?

25 A. We had included the expectation of

1 obtaining rate relief and achieving these
2 objectives of 50 million.

3 Q. So that was one of the assumptions
4 with regard to productivity -- you called it
5 segment profit?

6 A. Yeah, or profitability.

7 Q. So an assumption to that
8 profitability was how much in rate relief?

9 A. 50 million.

10 Q. From the Public Service Commission.

11 A. That's correct.

12 Q. Now, with regard to the earnings call
13 associated with this particular dec, that's Exhibit
14 No. 72. Do you have that before you, sir?

15 A. Yes, I do.

16 Q. The questions and answers here are
17 related to the dec we were just looking at, is that
18 correct?

19 A. That's correct.

20 Q. And the statements that you made and
21 Mr. Smith made, did they all assume this \$50
22 million of power savings?

23 A. Yes, they did.

24 Q. Did anyone on that call ask either
25 you or Mr. Smith I want you to assume for a second

1 that you don't get \$50 million in power savings,
2 what's going to happen to the smelter?

3 A. No. No one did.

4 Q. Did anyone ask you on the call if you
5 don't get \$50 million worth of power savings what's
6 going to happen with the company?

7 A. No, I don't think they did.

8 Q. Anyone ask you what's going to happen
9 to its liquidity?

10 A. No.

11 Q. To its cash flow?

12 A. No.

13 Q. Let's talk about the slides now from
14 the fourth quarter of 2014. Do you have those
15 before you?

16 A. Yes, I do.

17 Q. This is Exhibit 70, am I correct?

18 A. Yes.

19 Q. Is there a similar statement with
20 regard to forward looking statements to anyone who
21 participated on that call or chose to view these
22 slides?

23 A. Yes, it is, on page 2.

24 Q. I'm not going to have you go through
25 this list again but are the same risk factors

1 identified here again for anyone who was
2 participating on that call?

3 A. I believe they are.

4 Q. And they are found on page 2?

5 A. That's correct.

6 Q. And again is there a similar
7 paragraph indicating to anyone viewing these slides
8 or participating in the call that he or she should
9 go to the 10K and other quarterly reports filed by
10 Noranda?

11 A. Yes.

12 Q. For what purpose?

13 A. For discussion of additional risks
14 and uncertainties that may affect the future
15 results of Noranda.

16 Q. Like the third quarter slides was
17 there any underlying assumptions with regard to
18 power rate as part of this fourth quarter
19 conference call?

20 A. Yes. We had a similar update.

21 Q. Is it on one of the pages in this
22 dec?

23 A. Page 7.

24 Q. I'm on page 7, it's entitled Progress
25 On Transformational Pack. You see that?

1 A. Yes.

2 Q. Which of those particular items here
3 pertain to the power rate?

4 A. The second item where you see in the
5 left hand bubble New Madrid electricity rate
6 reduction, \$40 million per year. Even at impact.

7 Q. So what information was being
8 conveyed in this slide to anyone participating in
9 this call or viewing these slides?

10 A. That included in our transformation
11 of our cost structure the productivity improvements
12 that we include in that \$85 million that getting
13 rate relief was a key component of that \$85
14 million.

15 Q. In the amount of \$40 million per year
16 in terms of the EBITDA impact.

17 A. That's correct.

18 Q. Now let's turn to the transcript from
19 that call, that's Exhibit No. 69?

20 A. Okay.

21 Q. Do you have that before you?

22 A. Yes, I do.

23 Q. In the statements that were being
24 made in that call as well as the questions posed
25 and the answers provided was this particular item

1 with regard to \$40 million per year in energy cost
2 savings the underlying assumption to what was
3 provided to those participating?

4 A. Yes, it was.

5 Q. Did anyone in this call in the fourth
6 quarter of 2014 ask the question what would happen
7 if Noranda did not, Noranda did not get a \$40
8 million per year power rate reduction?

9 A. I don't believe so.

10 Q. Did anyone ask what would happen to
11 the plant, to the smelter if there wasn't a \$40
12 million reduction in power rate?

13 A. No, I don't think so.

14 Q. Did anyone ask what would happen to
15 Noranda's liquidity in that situation?

16 A. No.

17 Q. Did anyone ask what would happen to
18 its cash flow in that situation?

19 A. No.

20 Q. You were in the courtroom, the
21 hearing room earlier when Mr. Smith identified the
22 10K that was filed with regard to December 31, 2014
23 on behalf of Noranda, is that correct?

24 A. Yes.

25 Q. You were asked questions about it

1 **earlier?**

2 A. That's correct.

3 **Q. And the risk factors that are found**
4 **in there address both the smelter itself as well as**
5 **the rod mill, is that correct?**

6 A. That's correct.

7 **Q. Were you part of the decision making**
8 **group that decided those had to be included?**

9 A. Yes.

10 MR. MALLIN: This part does need to
11 go HC, Your Honor.

12 JUDGE WOODRUFF: All right.

13 MR. LOWERY: I just wanted to alert
14 you that the last two times you went into highly
15 confidential the microphone apparently was still on
16 even though the picture was still showing.

17 JUDGE WOODRUFF: Yes, there was a
18 problem particularly at the beginning of your
19 recross.

20 MR. LOWERY: Thank you, I appreciate
21 it.

22 JUDGE WOODRUFF: I apologize for
23 that.

24 (REPORTER'S NOTE: An in-camera session was held,
25 which is contained in Volume 34, pages 2646-2655 of

1 the transcript.)

2 JUDGE WOODRUFF: And we're out of the
3 In camera section and redirect is concluded so you
4 can step down.

5 A. Okay. Thank you very much.

6 JUDGE WOODRUFF: And I believe we
7 need to call Mr. Haslag next.

8 (Whereupon, the witness was sworn)

9 DIRECT EXAMINATION

10 QUESTIONS BY MS. ILES:

11 Q. Good morning. Could you state your
12 name for the record lease?

13 A. Joseph Haslag.

14 Q. And it's Dr. Haslag, correct?

15 A. Yes.

16 Q. Dr. Haslag where are you employed?

17 A. University of Missouri-Columbia.

18 Q. And what is your position there?

19 A. I'm a professor of economics.

20 Q. Do you hold another position with the
21 university as well as a professorship?

22 A. I also hold the position as the
23 director of the economic policy and analysis and
24 research center.

25 Q. Okay. And Dr. Haslag did you prepare

1 direct and sure, let's see. Direct and surrebuttal
2 testimony in this case that has been pre-filed?

3 A. Yes.

4 Q. And is that the testimony that I've
5 handed you?

6 A. It is.

7 Q. And could you tell us for the record
8 what the exhibit numbers for those documents are?

9 A. I would love to.
10 606 and 607.

11 Q. And are those documents marked 606,
12 606 HC and 607?

13 A. Yes.

14 Q. And if I were to ask you the
15 questions that are included in that testimony here
16 today would your answers be the same?

17 A. They would.

18 Q. Did you have any corrections to your
19 testimony?

20 A. No.

21 MS. ILES: Your Honor, I'd move for
22 the admission of the, Dr. Haslag's testimony and
23 tender the witness for cross examination.

24 JUDGE WOODRUFF: 606, HC and NP and
25 607 have been offered. Any objection to their

1 receipt?

2 Hearing none it will be received.

3 JUDGE WOODRUFF: Cross examination

4 beginning with Public Counsel.

5 MR. ALLISON: No cross. Thank you.

6 JUDGE WOODRUFF: MECG?

7 MR. WOODSMALL: No questions.

8 JUDGE WOODRUFF: Staff?

9 MR. THOMPSON: No questions. Thank
10 you.

11 JUDGE WOODRUFF: Ameren?

12 MR. MITTEN: No questions.

13 JUDGE WOODRUFF: Move for questions
14 from the bench then.

15 Commissioner Kenny?

16 CHAIRMAN KENNEY: No thank you.

17 JUDGE WOODRUFF: Mr. Hall?

18 COMMISSIONER HALL: No questions.

19 JUDGE WOODRUFF: All right.

20 There were no questions so there's no
21 need for recross or redirect and you can step down.

22 A. Thank you very much.

23 MS. ILES: Judge Woodruff we have a
24 request. Let me preface my request by explaining
25 that I was, understood your ruling yesterday that

1 you did not wish to hear an opening statement from
2 the MIEC in this matter. We do, however, have
3 available today to testify a representative from
4 the MIEC, he's the chair of the MIEC and he's from
5 Monsanto Corporation, his name is Steve Spinner,
6 he's available to provide testimony about the
7 stipulation which we think would be helpful to the
8 Commission in evaluating that stipulation.

9 JUDGE WOODRUFF: Are you anticipating
10 there will be questions from the commissioners?

11 MS. ILES: We would like to ask Mr.
12 Spinner some questions but if the commissioners, if
13 you'd rather do it that way, either way.

14 JUDGE WOODRUFF: Well I'll ask the
15 other parties.

16 Do you have any objection to bringing
17 Mr. Spinner on?

18 MR. LOWERY: Yes, we do have an
19 objection, it's completely out of order. This
20 person's not on the witness list, he didn't file
21 any testimony and the Commission can't consider the
22 stipulation. The stipulation is a position of
23 these parties, that's all it is, they can't
24 consider it, they can't approve it, they have to
25 decide this case based on the substantial and

1 competent evidence of record and based on the
2 contested issues that the parties agreed upon that
3 are before them. It's completely improper for MIEC
4 to simply try to bolster the position of giving
5 Noranda some kind of subsidy by bringing Mr.
6 Spinner in at this time so absolutely we object.

7 JUDGE WOODRUFF: Let me ask the
8 commissioners.

9 Do you have any questions you would
10 like to ask Mr. Spinner for MIEC?

11 CHAIRMAN KENNEY: That's a loaded
12 question. I mean so, I guess the other question is
13 do we have any questions about the nonunanimous
14 stipulation and agreement?

15 JUDGE WOODRUFF: Right.

16 CHAIRMAN KENNEY: Maybe. I don't
17 know if I have them today, but.

18 MS. ILES: Mr. Spinner is available
19 right now, he's here today. He is not available
20 tomorrow, he could come back on Friday.

21 CHAIRMAN KENNEY: Why does it have to
22 be him?

23 MS. ILES: He's the chairman of the
24 MIEC and he's just made time in his schedule to be
25 here Mr. Chairman. So he's here.

1 CHAIRMAN KENNEY: Let me ask a
2 question. MIEC is a party to the case, right?

3 MS. ILES: Yes. That's correct.

4 CHAIRMAN KENNEY: Why wasn't he
5 disclosed as a witness?

6 MS. ILES: Because what he's here to
7 talk about is something that hasn't happened before
8 the hearing started. He's here to talk about the
9 stipulation that was entered into after the hearing
10 already started and all the testimony had been
11 filed. And that's why he didn't provide pre-filed
12 testimony and it's my understanding that it is not
13 unusual, that it has happened in the past that
14 witnesses have testified about nonunanimous
15 stipulation and answered questions of the
16 commission on this topic.

17 JUDGE WOODRUFF: What we've typically
18 done is allowed extra questions at the beginning of
19 a witness's testimony who have already pre-filed
20 evidence. It would be unusual to bring in a new
21 witness to testify about that. I don't know that
22 it's unprecedented, I've just never seen it done.

23 MR. LOWERY: May I respond to one
24 comment? It's true that this particular
25 stipulation didn't exist until now but MIEC and

1 others filed a stipulation or at least supported a
2 stipulation back in I believe it was October that
3 had a price that was almost the same as the price
4 that is in this stipulation and many of the terms
5 of which are in many respects quite similar.
6 MIEC's had months if they wanted to put on a
7 witness to support rate relief for Noranda and they
8 chose not to do so and it's fundamentally unfair
9 and a violation of what the company's and any other
10 party's due process at this time to allow a witness
11 to get up without any preparation, without any
12 notes whatsoever and say whatever he wants to say
13 in support of stipulation that doesn't even mean
14 anything at this point. They could have filed a
15 brief in the case and said we support this relief.
16 It makes it no more important than the stipulation,
17 the stipulation is nothing more than an argument at
18 this point.

19 JUDGE WOODRUFF: Mr. Hall do you want
20 to weigh in?

21 COMMISSIONER HALL: I have a
22 question.

23 JUDGE WOODRUFF: Okay.

24 COMMISSIONER HALL: For Mr. Spinner.
25 So I would be fine with --

1 MS. ILES: I'd just like to point out
2 that in Ameren's opening statement they
3 specifically mentioned Monsanto and made the
4 statement that a company like Monsanto's likely to
5 come in. Mr. Spinner 'S from Monsanto, he can
6 certainly speak to that issue as well.

7 CHAIRMAN KENNEY: Let me ask another
8 question here th is for Mr. Lowery or whoever wants
9 to answer.

10 Was it contemplated that a corporate
11 -- I mean MIEC is an entity.

12 MS. ILES: MIEC is a nonprofit
13 corporation and it's members are corporations.

14 CHAIRMAN KENNEY: Was it contemplated
15 that there would be some corporate representative
16 of MIEC to testify?

17 MR. LOWERY: No it was not
18 contemplated. MIEC is a corporation that was
19 formed by attorneys at Bryan Cave and all of the
20 officers and directors at least according to the
21 annual report that's filed each year are also
22 attorneys at Bryan Cave. MIEC has filed testimony
23 of numerous witnesses in this case. This is my
24 sixth rate case in a row and I've probably been in
25 20 cases with MIEC, there's never been a corporate

1 representative of MIEC appear so this would be
2 unprecedented at least in my 15 years of practice
3 here at the Commission.

4 CHAIRMAN KENNEY: Mr. Spinner is the
5 president of the organization?

6 MS. ILES: He's the chair.

7 CHAIRMAN KENNEY: He's not listed on
8 any of the corporate documents?

9 MS. ILES: I don't think he's a
10 corporate officer but he's the current chair of the
11 organization.

12 JUDGE WOODRUFF: Mr. Thompson you
13 want to be heard?

14 MR. THOMPSON: I just wanted to
15 remind the judge that in the past it was the
16 practice to allow the public to testify at rate
17 case hearings when they were convened here in
18 Jefferson City and so in the nature of a local
19 public hearing almost and so perhaps the Commission
20 could take Mr. Spinner's testimony in the same way
21 that the testimony of participants at local public
22 hearings have been taken.

23 JUDGE WOODRUFF: That hasn't been the
24 practice in the last 15 years. At least that I've
25 been here.

1 CHAIRMAN KENNEY: Can I say I think
2 the issue is kind of disposed of, the commissioner
3 said he wants to question him, I think we're going
4 to bring him up and swear him, I guess I'm just
5 trying to figure out what's fair. Do you want to
6 take a recess after he testifies to have an
7 opportunity to cross examine him?

8 JUDGE WOODRUFF: What I anticipated
9 doing if we do it we bring him up, ask questions
10 from the bench then we can have cross based on that
11 and the final chance for redirect based on the
12 questions from the bench.

13 MS. ILES: So no direct by me?

14 JUDGE WOODRUFF: No direct by you.

15 MS. ILES: All right. That would be
16 fine.

17 MR. LOWERY: And I lodge my objection
18 and I certainly respect the right of the
19 commissioners to allow him to testify, I've lodged
20 my objection.

21 JUDGE WOODRUFF: Your objection is
22 noted.

23 MR. LOWERY: There's probably nothing
24 more to say about it.

25 JUDGE WOODRUFF: Bring him forward.

1 (Whereupon, the witness was sworn)

2 JUDGE WOODRUFF: And for the record
3 can you identify who you are?

4 A. Sure. My name is Steven Spinner, I
5 am the chair for the MIEC and I understand that
6 just recently I was also added to the corporate
7 documents as the vice-president of the MIEC also.
8 That's a recent development. I am the category
9 lead for energy procurement for Monsanto, I am
10 responsible for energy and utility services
11 throughout the United States for the company. In a
12 prior position with Anheuser Busch I had the same
13 position there and prior to that position with
14 Anheuser Busch I was also responsible, part of a
15 team that was responsible for buying over 1.3
16 billion pounds of aluminum every year and so we
17 spent a lot of time studying aluminum smelters and
18 understanding what their cost structures were and
19 so while my knowledge of aluminum markets is a bit
20 dated the process and the inputs to the process I'm
21 sure haven't changed in that approximately 10 years
22 since I was doing that.

23 JUDGE WOODRUFF: Okay.

24 Mr. Chairman did you want to go
25 first?

1 CHAIRMAN KENNEY: Yeah, actually I
2 just have a couple questions.

3 EXAMINATION

4 QUESTIONS BY CHAIRMAN KENNEY:

5 Q. Are you familiar with the document
6 that's titled Nonunanimous Stipulation and
7 Agreement Regarding Economic Development, Class
8 Cost of Service, Revenue Allocation and Rate
9 Design?

10 A. Yes, sir.

11 Q. What was your involvement in the
12 preparation of the document?

13 A. I got involved some time about 14
14 months ago in negotiating this deal and trying to
15 get all the consumers together in one group to sign
16 on to the stipulation.

17 Q. Hold on a second.

18 A. Yes, sir.

19 Q. I'm talking a document that was
20 e-mailed to the parties in the case on the 9th of
21 March, 2015.

22 A. That's the nonunanimous stipulation.

23 CHAIRMAN KENNEY: May I hand this to
24 him?

25 JUDGE WOODRUFF: Sure.

1 A. Yes, sir.

2 Q. (BY CHAIRMAN KENNEY) You're familiar
3 with this?

4 A. Yes, I am.

5 Q. And you're saying the process of
6 developing this document came about 14 months ago?

7 A. Well, we started negotiating that
8 document that was filed last year asking for rate
9 relief which was since then denied. What we have
10 here is an outcropping of that, that was the basis
11 of it and then we built from there. But I have
12 been involved in negotiations for some 14 months
13 that finally arrived at that document.

14 Q. And when you say you were involved
15 with negotiations, with whom were you involved with
16 these negotiations?

17 A. Other consumer parties, the Office of
18 Public Counsel, well, most every, all of the
19 signators of that document listed at the bottom
20 were involved in the negotiations. Along with the
21 two that, Wal-Mart and MECG I believe is the name
22 of the group that are not members of that, were
23 also deeply involved in the negotiations of that
24 document.

25 Q. Okay. There was a nonunanimous

1 stipulation and agreement that was filed back in
2 October of 2014. Is that the document you would
3 have been talking about?

4 A. Yes, sir.

5 Q. That was this other one?

6 A. That was.

7 Q. Right. And this was on outgrowth of
8 that and some other things added to it.

9 A. Right.

10 CHAIRMAN KENNEY: I don't have any
11 other questions just yet. I may but I can't think
12 of any right now.

13 EXAMINATION

14 QUESTIONS BY COMMISSIONER KENNEY:

15 Q. Hello Mr. Spinner.

16 A. Hi, how are you?

17 Q. Good.

18 Does Monsanto have any type of
19 financial or business affiliation with Noranda?

20 A. No.

21 Q. Does Monsanto buy supplies from
22 Noranda?

23 A. No.

24 Q. So why is Monsanto interested in
25 Noranda having lower energy rates?

1 A. Well, it's important to us to have
2 Noranda on Ameren's system to help cover, their
3 huge amount of volume helps cover the fixed cost.
4 If Ameren, or I'm sorry, if Noranda were to go off
5 the system I would have to pick up those
6 additional, I, my company, the MIEC members would
7 have to pick up that additional fixed charge
8 coverage and we would see our rates estimated to go
9 up about 2.1 percent.

10 **Q. So this is just the lessor of two**
11 **evils?**

12 A. That's correct, yes.

13 **Q. So your rate would increase by what?**
14 **1.1 --**

15 A. Well, residential I believe are
16 1.15, the industrials are about 1.5 percent, we
17 would be taking a bigger hit than the residential
18 would be taking.

19 **Q. That would save you six-tenths of a**
20 **percent.**

21 A. That is correct. Additionally the
22 whole idea of having them there to provide the
23 security to the system and provide the, the system
24 just works more efficiently when you have large
25 users on the system that you can depend to be there

1 24 hours a day seven days a week.

2 Q. Okay. Thank you.

3 JUDGE WOODRUFF: Commissioner Hall?

4 EXAMINATION

5 QUESTIONS BY COMMISSIONER HALL:

6 Q. Good afternoon. Commissioner Kenney
7 asked the majority of the questions I was going to
8 ask but I will turn to one other issue and that is
9 the economic development rider which is Exhibit A
10 to the nonunanimous stip. Are you familiar with
11 that?

12 A. Slightly familiar with it but I'm not
13 a lawyer and so I haven't gone myself into looking
14 at this alternative to the stipulation.

15 Q. So you are not involved in the
16 drafting or negotiation of this modified economic
17 development rider.

18 A. No, sir.

19 Q. So you wouldn't be able to answer any
20 questions about how this could apply to any
21 particular Ameren customer.

22 A. No, sir.

23 Q. Okay.

24 COMMISSIONER HALL: I have no further
25 questions.

1 JUDGE WOODRUFF: Cross based on those
2 questions from the bench?

3 Ameren?

4 MR. LOWERY: I assume I can ask cross
5 about testimony he gave to a question you asked
6 initially about his position?

7 JUDGE WOODRUFF: Yes.

8 CROSS EXAMINATION

9 QUESTIONS BY MR. LOWERY:

10 **Q. Is it your testimony under oath that**
11 **documents have been filed with the Missouri**
12 **Secretary of State making you an officer of MIEC?**

13 A. I believe that to be correct, I was
14 e-mailed a document for my signature last week
15 which I signed and e-mailed back to Bryan Cave, I'm
16 not sure if it's been filed yet or not.

17 **Q. So your testimony is you don't know**
18 **if it's been filed.**

19 A. No, sir. I know I signed it.

20 **Q. Would it surprise you that in fact it**
21 **has not been filed?**

22 A. It would not surprise me, no. It was
23 a very short time ago.

24 **Q. So in fact no change has been made**
25 **with the Secretary of State, isn't that true?**

1 A. I don't know that, sir.

2 MR. LOWERY: I don't have any other
3 questions Your Honor.

4 JUDGE WOODRUFF: Any redirect based
5 on those questions from the bench?

6 Thank you, sir, you can step down.

7 MS. ILES: Thank you Your Honor, I
8 appreciate that.

9 JUDGE WOODRUFF: And then I believe
10 we would be ready for Mr. Pratt.

11 MR. MALLIN: Yes, Your Honor.

12 (Whereupon, the witness was sworn)

13 JUDGE WOODRUFF: You may inquire.

14 MR. MALLIN: Thank you, Your Honor.

15 EXAMINATION

16 QUESTIONS BY MR. MALLIN:

17 Q. **Could you state your full name for**
18 **the record?**

19 A. Colin Ronald Pratt.

20 Q. **Mr. Pratt by whom are you employed?**

21 A. CRU International.

22 Q. **And is that C-R-U, CRU?**

23 A. That's correct.

24 Q. **And in what position or capacity?**

25 A. Management consultant and CRU

1 consultant.

2 Q. Did you cause to prepare and have
3 filed with the Public Service Commission certain
4 direct testimony as well as surrebuttal testimony?

5 A. Yes, I did.

6 Q. And are those before you in Exhibits
7 608 and 609?

8 A. No, they're not.

9 Q. Well, let me get those for you.
10 I'm sorry Mr. Pratt, do you now have
11 them before you?

12 A. Yes, I do.

13 Q. Let me ask my question again. Do you
14 have now before you Exhibit 608 and 609?

15 A. Yes, I do.

16 Q. And is 608 your direct testimony in
17 this case?

18 A. Yes.

19 Q. And is 609 your surrebuttal testimony
20 in this case?

21 A. It is.

22 Q. And if I were to ask you the same
23 questions today would you provide the same answers
24 that are found in both your direct as well as
25 surrebuttal testimony?

1 A. Yes, I would.

2 Q. Is there any changes that you wish to
3 make to any of that testimony?

4 A. No.

5 MR. MALLIN: Your Honor, I'd move for
6 the admission of Exhibits 608 and 609.

7 JUDGE WOODRUFF: 608 and 609 are
8 offered, any objection to their receipt?

9 Hearing none they will be received.

10 MR. MALLIN: Thank you, Your Honor.
11 I'll tender the witness.

12 JUDGE WOODRUFF: For cross begin with
13 Public Counsel?

14 MR. ALLISON: No questions.

15 JUDGE WOODRUFF: MECG?

16 MR. WOODSMALL: No questions.

17 JUDGE WOODRUFF: United for Missouri?

18 MR. LINTON: No questions.

19 JUDGE WOODRUFF: Staff?

20 MR. THOMPSON: No questions. Thank
21 you.

22 JUDGE WOODRUFF: Ameren?

23 MR. NELSON: No questions.

24 JUDGE WOODRUFF: Questions from the
25 bench?

1 Mr. Chairman?

2 CHAIRMAN KENNEY: No questions.

3 Thank you Mr. Pratt.

4 JUDGE WOODRUFF: Mr. Hall?

5 EXAMINATION

6 QUESTIONS BY COMMISSIONER HALL:

7 Q. Good afternoon.

8 A. Good afternoon.

9 Q. You had a comment in your direct
10 testimony that I hope you could elaborate on. You
11 said on page 11 it is often said that an economic
12 forecaster is driving a car with only a rear-view
13 mirror and with a substantial blind spot. I
14 thought it was kind of funny, but also seems
15 abundantly accurate but I was wondering if you
16 could just comment on that for a second.

17 A. What it means is that when we make a
18 full cusp we're using only information we have at
19 present and there's a lag in the receipt of that
20 information so that's the blind spot, so in other
21 words what's happened in the last two or three
22 months may not be apparent because the statistics
23 haven't yet been published or they're going to be
24 revised and we're driving a car with only a
25 rear-view mirror because we know what's happened in

1 the past but we don't know what's going to happen
2 in the future.

3 Q. Okay.

4 COMMISSIONER HALL: I have no further
5 questions.

6 JUDGE WOODRUFF: Mr. Rupp?

7 Anyone wish To recross based on those
8 questions from the bench?

9 Redirect?

10 MR. MALLIN: No, Your Honor.

11 JUDGE WOODRUFF: All right. Then Mr.
12 Pratt you can step down.

13 A. Thank you.

14 I believe Mr. Schwartz will be next.

15 MR. MALLIN: Your Honor I'm told Mr.
16 Schwartz apparently caught the flu, unbeknownst to
17 me.

18 JUDGE WOODRUFF: Did anyone have any
19 cross examination for Mr. Schwartz?

20 MR. MALLIN: If I could have two
21 minutes to figure out where we are on that.

22 JUDGE WOODRUFF: All right.

23 MR. MALLIN: I think we have another
24 witness back there we can bring out. Just give me
25 a second if you wouldn't mind Your Honor.

1 JUDGE WOODRUFF: Okay.

2 (DISCUSSION HELD OFF THE RECORD)

3 MR. MALLIN: Your Honor just to give
4 you an update Mr. Schwartz was having GI cramps and
5 he has gone back to the hotel, I'm hoping to hear
6 back from him later this afternoon but we are going
7 to bring forward Mr. Harris.

8 JUDGE WOODRUFF: Let me ask the
9 parties about Mr. Schwartz.

10 Did anyone have any cross examination
11 for him?

12 MR. MALLIN: That's fine, Your Honor.

13 MR. NELSON: Your Honor we would have
14 a small amount of cross examination. Now I offer
15 this as an alternative. My cross examination would
16 be premised upon questions I asked him in
17 deposition and to not further inconvenience Dr.
18 Schwartz the court is inclined to let his direct
19 testimony in under these circumstances. We can
20 certainly submit our cross examination questions
21 and answers by reference to page and line of
22 deposition transcript as an alternative to pulling
23 the poor man in here live.

24 MR. MALLIN: I appreciate the offer,
25 I may accept the offer but the reality is I really

1 need to talk to Mr. Schwartz. As Your Honor is
2 aware I didn't ask any followup questions at his
3 deposition because there wasn't a need at the time
4 so I think it would be prudent on my part to talk
5 to Mr. Schwartz when we're on our next break to see
6 where we are and then I'll address the offer from
7 there.

8 JUDGE WOODRUFF: That's fine. Got
9 plenty of other witnesses to get through today, so.
10 I expect we'll be here tomorrow as well so
11 hopefully he can feel better tomorrow.

12 MR. MALLIN: He did report late
13 yesterday he wasn't feeling well.

14 JUDGE WOODRUFF: That's going around.

15 MR. MALLIN: I appreciate it Your
16 Honor, thank you.

17 JUDGE WOODRUFF: You're welcome.

18 (Whereupon, the witness was sworn)

19 JUDGE WOODRUFF: You may inquire,

20 DIRECT EXAMINATION

21 QUESTIONS BY MS. ILES:

22 Q. Will you please state your full name
23 for the record?

24 A. Thomas Harris.

25 Q. Mr. Harris where are you employed?

1 A. Silicon Valley Bank.

2 **Q. And what is your position there?**

3 A. I am managing director there now. A
4 slight change from when I gave my testimony.

5 **Q. Okay. That's different from what's**
6 **in your testimony you said?**

7 A. Just a promotion. Same place.

8 **Q. Congratulations.**

9 A. Thanks.

10 **Q. And did you prepare pre-filed**
11 **testimony in this case which is, there are copies**
12 **of it, I've handed to you which is marked Exhibits**
13 **604 and 605?**

14 A. I did.

15 **Q. And if I were to ask you the**
16 **questions that are included in that testimony today**
17 **would your answers be the same?**

18 A. Yes.

19 MS. ILES: Your Honor I offer
20 Exhibits 604 and 605 and tender the witness for
21 cross examination.

22 JUDGE WOODRUFF: 604 and 605 have
23 been offered, any objection to their receipt?

24 Hearing none they will be received.

25 And for cross examination beginning

1 with Public Counsel?

2 MR. ALLISON: No questions. Thank
3 you.

4 JUDGE WOODRUFF: MEGG?

5 MR. WOODSMALL: No questions.

6 JUDGE WOODRUFF: United for Missouri?

7 MR. LINTON: No questions.

8 JUDGE WOODRUFF: Staff?

9 MR. THOMPSON: No questions.

10 JUDGE WOODRUFF: Ameren?

11 MR. NELSON: No questions.

12 JUDGE WOODRUFF: All right.

13 Questions from the bench. Mr. Chairman?

14 CHAIRMAN KENNEY: No questions.

15 JUDGE WOODRUFF: Mr. Kenney?

16 COMMISSIONER KENNEY: No questions.

17 JUDGE WOODRUFF: Mr. Hall.

18 COMMISSIONER HALL: No questions.

19 Thank you.

20 JUDGE WOODRUFF: Mr. Rupp?

21 COMMISSIONER RUPP: No questions.

22 JUDGE WOODRUFF: There were no
23 questions from the bench or from other parties so
24 there's no need for recross or redirect and you can
25 step down.

1 A. Thank you.

2 Would Mr. Fayne be next then?

3 MR. DOWNEY: Yes.

4 (Whereupon, the witness was sworn)

5 DIRECT EXAMINATION

6 QUESTIONS BY MS. ILES:

7 Q. Would you please state your name for
8 the record?

9 A. My name is Henry Fayne.

10 Q. Mr. Fayne, where are you employed?

11 A. I'm self employed.

12 Q. What is the, do you have a company or
13 a consulting business that you work with?

14 A. I am a self employed consultant.

15 Q. And Mr. Fayne did you prepare
16 testimony that was pre-filed in this case, a copy
17 of which I've handed you which has been marked as
18 Exhibits 602 and 603?

19 A. Yes, I did.

20 Q. And if I were to ask you the
21 questions that are included in that testimony here
22 today would your answers be the same?

23 A. Yes, they would.

24 MS. ILES: Your Honor, I move for the
25 admission of Exhibits 602 and 603 and tender the

1 witness for cross examination.

2 JUDGE WOODRUFF: 602 and 603 have
3 been offered. Any objections to their receipt?

4 Hearing none they will be received.

5 And cross examination beginning with
6 Public Counsel.

7 MR. ALLISON: No questions.

8 JUDGE WOODRUFF: MECG?

9 MR. WOODSMALL: Yes, Your Honor.

10 CROSS EXAMINATION

11 QUESTIONS BY MR. WOODSMALL:

12 Q. Good afternoon Mr. Fayne.

13 A. Good afternoon.

14 Q. Just refresh my memory, you have
15 testified on behalf of Noranda at the Missouri
16 Public Service Commission this is your fourth time,
17 is that correct?

18 A. I have testified before, I'll take
19 your word that it's the fourth time.

20 Q. Okay. And in each of those pieces of
21 testimony you provided a comparison of Noranda's
22 cost of electricity to other domestic smelters, is
23 that correct?

24 A. That is correct.

25 Q. And you're familiar with the smelters

1 **you have on your list?**

2 A. With most of them, yes.

3 **Q. Okay. And the cost of electricity**
4 **that you talk about is available at Schedule HWF-1**
5 **to your testimony, is that correct?**

6 A. That is correct.

7 **Q. Okay. I'd like to ask you about a**
8 **couple of those. The first one is the word**
9 **smelter, are you familiar with that?**

10 A. The word smelter, just generally,
11 yes, the outgoing smelter.

12 **Q. Is it your understanding that the**
13 **work smelter is served electricity by a self-owned**
14 **coal burning power plant?**

15 A. Yes, it's a fully integrated system,
16 coal mine plant and then the smelter.

17 **Q. Okay. You're a former AEP executive.**
18 **Would you agree that the costs to build a coal**
19 **fired plant would be hundreds of millions if not**
20 **billions of dollars?**

21 A. To build a new one?

22 **Q. Yes.**

23 A. Yes, that would be true.

24 **Q. And do you know if Noranda has**
25 **explored such an option?**

1 A. I would hope not.

2 Q. Okay. A couple of others. The
3 Hawesville plant, is it your understanding that
4 Hawesville takes service, gets electric service via
5 the wholesale market?

6 A. Yes. As of I think the beginning of
7 2014.

8 Q. Okay.

9 A. Or thereabouts.

10 Q. I'm going to ask you, let me talk
11 with your counsel real quick.

12 (DISCUSSION HELD OFF THE RECORD)

13 Q. (BY MR. WOODSMALL) What I'm going to
14 ask you to do, if you go back to your 2010
15 testimony, he provided the same information, a
16 comparison and the information there in HWF-1 that
17 I'll pass out was a public document. Now the same
18 information is highly confidential, I don't
19 understand the distinction for being highly
20 confidential here and I'm trying to avoid going In
21 camera for this.

22 JUDGE WOODRUFF: Okay.

23 MS. ILES: Your Honor, it should have
24 been highly confidential in the last because of the
25 source of the information is proprietary and that's

1 why it couldn't be disclosed.

2 MR. WOODSMALL: Well, they released
3 it 2010 and 2012 now suddenly the information is
4 highly confidential.

5 MS. ILES: It's actually not
6 Noranda's interest that we're protecting of that,
7 it's the source and we should have protected it in
8 the other case.

9 JUDGE WOODRUFF: Is it the same
10 information or is it updated information?

11 MR. WOODSMALL: It's updated.

12 JUDGE WOODRUFF: Okay. You can
13 certainly explore that, I'm inclined to go ahead.

14 MR. WOODSMALL: Okay. We need to go
15 In camera then.

16 JUDGE WOODRUFF: Okay.

17 MR. WOODSMALL: Hold on a second, let
18 me get a foundation established and then we'll go
19 In camera.

20 JUDGE WOODRUFF: Okay.

21 MR. WOODSMALL: 979 Your Honor?

22 JUDGE WOODRUFF: Correct.

23 Q. (BY MR. WOODSMALL) Mr. Fayne, do you
24 recognize Exhibit 979?

25 A. Yes, sir.

1 Q. And would you agree that that is the
2 comparison cost of electricity for the domestic
3 smelters that you filed in ER-2010 dash 0036?

4 A. I can't recall the rate case number
5 but yes, it represents the 2009 data.

6 Q. Okay.

7 MR. WOODSMALL: Now I believe we need
8 to go In camera Your Honor.

9 JUDGE WOODRUFF: All right. We will
10 go In camera.

11

12 (REPORTER'S NOTE: An in-camera session was held,
13 which is contained in Volume 34, pages 2687-2688 of
14 the transcript.)

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JUDGE WOODRUFF: All right. While we were in closed session Counsel offered Exhibit 979 which would be, let's see,-- would the exhibit itself be HC?

MR. WOODSMALL: No, the exhibit was never marked --

MS. ILES: Well, if I could just explain Your Honor. The source of the information is CRU and Noranda is able to access that information because they pay a subscription fee in my understanding and so we had asked CRU if we would be able to provide this information generally without making it confidential, I guess we must have asked after we prepared this in the last case but they did tell us no, they considered it proprietary, it's not available to the general public without a subscription and that's why we marked it HC to protect their proprietary information, it's not really a Noranda secret.

JUDGE WOODRUFF: All right.

Mr. Woodsmall any response?

MR. WOODSMALL: Given the state policy for releasing information this has already been released, to try to unring the bell this is

1 going back to the 2010 case, so five years ago.
2 The second point is the company, Noranda, has
3 released CRU information repeatedly as we've seen
4 in the various SEC filings, they include CRU
5 information in the decs that we've seen attached to
6 investor meetings they released CRU information so
7 the release of CRU information isn't absolute. Or
8 the protection of it is not absolute.

9 JUDGE WOODRUFF: We'll go ahead and
10 market it as HC understanding that if somebody
11 wants to get creative they can go back and find it
12 in the earlier case. But for this case we'll
13 market it as HC. It's 979 HC, any objections to
14 its receipt?

15 Hearing none it will be received.

16 Any other cross?

17 MR. WOODSMALL: No.

18 JUDGE WOODRUFF: Ameren Missouri?

19 MR. MITTEN: No.

20 JUDGE WOODRUFF: United For Missouri?

21 Mr. Linton?

22 MR. LINTON: No questions, Your

23 Honor.

24 JUDGE WOODRUFF: Staff?

25 MR. THOMPSON: Thank you.

1 CROSS EXAMINATION

2 QUESTIONS BY MR. THOMPSON:

3 Q. Dr. Fayne, good afternoon.

4 A. I wish it was Dr. but it's not.

5 Q. Mr. Fayne, excuse me. I'm glad I
6 accidentally promoted you rather than accidentally
7 demoted you.

8 I understand you're an expert in the
9 power industry through years of experience, is that
10 correct?

11 A. Yes, sir.

12 Q. And particularly the provision of
13 power to aluminum smelters, is that correct?

14 A. Yes, sir.

15 Q. Okay. Based on your experience in
16 the power industry would you agree with me that
17 there is a point on any given day at which it is
18 more beneficial for the other ratepayers of Ameren
19 Missouri a point below cost at which it's better to
20 have Noranda on the system than to have them off
21 the system?

22 A. Yes.

23 Q. Okay. And would you agree with me
24 that that point necessarily will change over time?

25 A. Yes.

1 Q. As conditions change.

2 A. Correct.

3 Q. Now, do you think that point could be
4 calculated for a period of a week?

5 A. Yes.

6 Q. How about a period of a month?

7 A. Yes.

8 Q. A period of a quarter?

9 A. Yes.

10 Q. A period of a year?

11 A. Yes.

12 Q. A period of approximately 18 months,
13 the average interval between Ameren Missouri rate
14 cases?

15 A. Yes, I do.

16 Q. Thank you.

17 MR. THOMPSON: No further questions.

18 JUDGE WOODRUFF: For Ameren?

19 CROSS EXAMINATION

20 QUESTIONS BY MR. MITTEN:

21 Q. Continuing Mr. Thompson's line do you
22 think that that number could be calculated for five
23 years?

24 A. There could be, one could calculate a
25 number for five years, it would be a forecast, it

1 would not be an absolute.

2 **Q. How about seven years or 10 years?**

3 A. I believe that is all doable.

4 **Q. But it would be forecasts and not**
5 **absolute?**

6 A. It depends on the rate making
7 structure quite frankly. It's been done in other
8 states where rates have been set or discounts have
9 been provided for 10 year periods where it has been
10 determined that other ratepayers are better off for
11 that whole period of time.

12 **Q. But I'm getting to the accuracy of**
13 **the estimate as to what that point would be seven**
14 **years or 10 years into the future.**

15 A. That could be more difficult but I'm
16 not saying impossible.

17 **Q. And would you agree that the farther**
18 **out you go the less confidence you would have in**
19 **that estimate?**

20 A. The potential is that you might hit a
21 brief period where it was incorrect and the
22 customer might not have been better off for a
23 specific period but I think you could probably
24 determine a number where it could be concluded the
25 customer is better off over the entire period.

1 Q. But again how much confidence would
2 you have in that number?

3 A. I think that could be done with great
4 confidence.

5 Q. Mr. Woodsmall noted that this is the
6 fourth time that you've testified on behalf of
7 Noranda before this Commission. Do you recall
8 that?

9 A. Yes, I do.

10 Q. But this, Missouri's not the only
11 state in which you have testified in support of a
12 special rate for an aluminum smelter, is that
13 correct?

14 A. That is correct.

15 Q. You've previously testified in
16 Kentucky, West Virginia and Ohio, is that correct?

17 A. That is correct.

18 Q. Now, could you please turn to page 4
19 of your direct testimony, and I want to focus on
20 the question that begins on line 19. The question
21 says that you conclude that the rate treatment
22 requested by Noranda in this proceeding is
23 consistent with rate treatment provided by
24 regulatory commissions in other states.

25 Did I correctly characterize the

1 testimony?

2 A. That's the answer on page 5, yes.

3 Q. And your conclusion is that it is
4 consistent?

5 A. Yes, I do believe it is.

6 Q. In the Kentucky case that you
7 testified, that was on behalf of the Hawesville
8 smelter, is that correct?

9 A. Both Hawesville and Sebree smelters.

10 Q. And in that proceeding the Kentucky
11 commission authorized the smelter to break a
12 contract where it was receiving service as a retail
13 customer and begin to acquire service in the
14 market, is that correct?

15 A. No, that's not. Their testimony with
16 the Sebree and Hawesville smelters was related to
17 the contract that, with Big Rivers that basically
18 established the relationship with Big Rivers when
19 Louisville Gas and Electric transferred ownership
20 back to Big Rivers. The latest case where those
21 smelters each were permitted --

22 Q. Mr. Fayne, I don't think you're
23 really answering my question. Could you turn to
24 page 6 of your direct testimony?

25 A. Yes.

1 Q. And beginning on line 7 doesn't that
2 testimony say the Kentucky PSC approved Century
3 Aluminum's request to terminate the Hawesville
4 contract with Big Rivers before the end of the
5 contractual term allowing Century Aluminum to
6 purchase power from the market instead?

7 A. I understand --

8 Q. Isn't that what it says?

9 A. That's what it says but I did not
10 testify in that case.

11 Q. Thank you Mr. Fayne, that's the only
12 question I had for you.

13 And beginning at page 6 of your
14 direct testimony you also describe two cases in
15 Ohio, one in 2009 and one in 2013 that dealt with a
16 special rate arrangement for the Ormet Aluminum's
17 Hannibal smelter. Did you testify in support of
18 the smelter's special rate proposal in each of
19 those cases?

20 A. Yes.

21 Q. The special rate arrangement for
22 Ormet's Hannibal smelter that the Ohio Commission
23 approved based rates for the smelter on the LME
24 price of aluminum, is that correct?

25 A. Yes.

1 Q. And as the LME price of aluminum
2 increased so did the rates the smelter paid for
3 electricity, is that correct?

4 A. Correct.

5 Q. The Ohio Commission also kept the
6 amount of rate subsidies that a smelter could
7 refuse in any given year, is that correct?

8 A. Yes.

9 Q. And the Ohio Commission tied the rate
10 subsidies provided in the 2009 order to the
11 smelter's commitment to maintain certain minimum
12 levels of employment, isn't that correct?

13 A. Yes.

14 Q. And if the smelter failed to honor
15 that equipment and reduced employment below the
16 minimum level the amount of the rate subsidy
17 decreased, is that correct?

18 A. Yes.

19 Q. The Ohio Commission also required the
20 smelter to pay rates in excess of the electric
21 co-op's normal tariff rate if the LME price of
22 aluminum exceeded a certain target price, is that
23 correct?

24 A. Yes.

25 Q. At page 7 of your direct testimony

1 you mention a 2013 case in West Virginia that
2 involved a special rate arrangement for the
3 Ravenswood smelter. Did you testify in support of
4 the smelter's special rate arrangement in that
5 case?

6 A. Yes.

7 MR. MITTEN: Your Honor, I'd like to
8 have an exhibit marked.

9 JUDGE WOODRUFF: All right. It's
10 number 73.

11 Q. (BY MR. MITTEN) Mr. Fayne if you
12 could take a moment to look at Exhibit 73 and tell
13 me if that's a copy of the West Virginia
14 Commission's final order in the 2013 case involving
15 the Ravenswood smelter's request for special rate?

16 A. Does appear to be, yes, sir.

17 MR. MITTEN: Your Honor, I move for
18 the admission of Exhibit 73.

19 JUDGE WOODRUFF: 73 has been offered,
20 any objections to its receipt?

21 Hearing none it will be received.

22 Q. (BY MR. MITTEN) The special rate
23 arrangement the West Virginia Public Service
24 Commission approved based rates for the Ravenswood
25 smelter on the LME price of aluminum, is that

1 right?

2 A. That's correct.

3 Q. And like the Ohio Commission decision
4 we discussed a moment ago the West Virginia
5 Commission required the smelter to pay a premium
6 above the utility's tariff rate if the LME price of
7 aluminum exceeded a certain level, is that correct?

8 A. With a cap, yes.

9 Q. The West Virginia Commission required
10 the corporate parent of the Ravenswood smelter to
11 provide a written guarantee that it would pay back
12 a portion of the subsidies provided under the
13 special rate arrangement in the event the smelter
14 went out of business or was otherwise able to pay
15 back those amounts, is that correct?

16 A. Only to the extent that the subsidies
17 exceeded the base amount.

18 Q. And the West Virginia Commission also
19 required Ravenswood to make commitments to invest
20 additional capital in the smelter, is that correct?

21 A. That is correct.

22 Q. Before we leave West Virginia the
23 special rate arrangement the West Virginia
24 Commission approved for that smelter used up to \$20
25 million in coal service tax revenues to fund the

1 rate subsidies provided to the smelter, is that
2 correct?

3 A. That is correct.

4 Q. And that is an annual amount?

5 A. Yes, sir.

6 Q. And those subsidies were provided by
7 legislation passed by the West Virginia
8 legislature?

9 A. They were not specifically for the
10 smelter but they were available to any group of
11 energy intensive customers.

12 Q. Has Noranda gone to Missouri's
13 general assembly to seek any kind of public support
14 to help the company avoid closure of the New Madrid
15 smelter?

16 A. I believe Mr. Smith testified that
17 they have not.

18 Q. Indeed Mr. Smith indicated that
19 Noranda made a conscientious decision not to seek
20 relief for the New Madrid smelter from Missouri's
21 general assembly because Noranda believes this
22 Commission is the appropriate place to seek that
23 relief. Do you recall that testimony?

24 A. I do believe that was the case, yes.

25 Q. Did Mr. Smith or anyone from Noranda

1 consult with you about that decision?

2 A. No, sir.

3 Q. So you've never had any conversation
4 with Mr. Smith or anyone from Noranda about its
5 decision not to go to the Missouri general
6 assembly?

7 A. No, sir.

8 Q. Do you agree with that decision?

9 A. I have to defer to Mr. Smith's
10 judgment, I am not familiar with the politics in
11 Missouri.

12 Q. At pages 5 and 6 of your direct
13 testimony in this case you describe a special rate
14 arrangement between Alcoa's Massena smelters and
15 the New York Power Authority sometimes referred to
16 as NYPA, N-Y-P-A, is that correct?

17 A. Yes.

18 Q. NYPA is not a regulatory commission
19 similar to the Missouri Commission but instead it's
20 a public power authority that sells hydroelectric
21 and nuclear power on a wholesale basis, is that
22 correct?

23 A. Yes, sir.

24 Q. Under the agreement between NYPA and
25 Alcoa the rate discount that was provided is tied

1 to the LME price of aluminum, is that correct?

2 A. It is, first of all it's not a rate
3 discount, it is a rate and then it is a rate that
4 is adjusted based on the LME.

5 Q. And Alcoa under that arrangement is
6 obligated to maintain a minimum number of jobs at
7 the smelter, is that correct?

8 A. That is correct.

9 Q. An Alcoa also is obligated to invest
10 hundreds of millions of dollars to overhaul the
11 Massena smelter, is that correct?

12 A. That was the contract, that's
13 correct.

14 Q. Now, at the time Noranda filed its
15 direct testimony in this case, in December 2014,
16 proposing a special rate for the New Madrid smelter
17 both you and Noranda were aware of the conditions
18 imposed in Ohio, West Virginia and New York to the
19 special rate arrangements for aluminum smelters in
20 each of those states, is that right?

21 A. I was aware.

22 Q. Did you not talk to Noranda about
23 that?

24 A. About what the arrangements were in
25 the other states? No, because we had, Noranda had

1 provided commitments in the earlier case 0224, and
2 the intent was to provide those same commitments
3 here so there was no reason to discuss it.

4 Q. Again my question was did you discuss
5 with Noranda any of the commitments or obligations
6 that were put on the special rate arrangements in
7 Ohio, West Virginia or New York?

8 A. I don't recall having that
9 discussion.

10 Q. But as set out in the direct
11 testimony that was filed for Noranda on December
12 19th, 2014 Noranda's special rate proposal does not
13 base the price of electricity provided to the New
14 Madrid smelter on the LME price of alumina, is that
15 correct?

16 A. Those commitments were provided in
17 surrebuttal.

18 Q. The commitment in surrebuttal based
19 the price on the LME price of alumina?

20 A. No. I'm sorry, there was no LME
21 adjustment.

22 Q. Again Mr. Fayne my question is
23 limited to the testimony that was filed in December
24 2014.

25 A. I understand that.

1 Q. And that particular proposal does not
2 cap the amount of rate subsidies Noranda could
3 receive in any given year, does it?

4 A. No, it does not.

5 Q. And it also does not include any
6 commitment from Noranda to maintain any minimum
7 level of employment at the New Madrid smelter.

8 A. Explicitly in the testimony it does
9 not.

10 Q. And it would not obligate Noranda to
11 pay a premium above Ameren Missouri's tariff rate
12 if the LME price of aluminum exceeds a certain
13 level.

14 A. We already determined it was not
15 based on the LME.

16 Q. So the answer to my specific question
17 would be no, it doesn't include that.

18 A. It does not include that.

19 Q. And it does not obligate Noranda to
20 make any amount of additional investment in the New
21 Madrid smelter, is that correct?

22 A. That is correct.

23 Q. And it doesn't obligate Noranda's
24 corporate parent or anyone else to pay back to
25 Ameren Missouri or its ratepayers any rate

1 **subsidies that the New Madrid smelter receives.**

2 A. There's no question it's for that, no
3 it does not.

4 Q. **Now, as you indicated Noranda revised**
5 **its special rate proposal in surrebuttal testimony**
6 **that was filed earlier, or excuse me, in January,**
7 **by Kip Smith, Noranda's CEO, is that correct?**

8 A. I would not use the term revised but
9 the commitments were explicitly identified in that
10 testimony.

11 Q. **Mr. Fayne, do you know why Mr. Smith**
12 **waited until surrebuttal when no party had an**
13 **opportunity to respond to his testimony to propose**
14 **possible employment and investment commitments?**

15 A. As you may recall Mr. Smith was, had
16 had some medical issues when direct testimony was
17 filed and I can only assume that that was the
18 reason why it was not reflected initially. The
19 intent from the start was to show those
20 commitments.

21 Q. **Mr. Boyle is Noranda's CFO, isn't he?**

22 A. Yes, he is.

23 Q. **Could he have included those**
24 **commitments in his testimony?**

25 A. I have no reason why he could not

1 have.

2 Q. But he didn't.

3 A. But he did not.

4 Q. But even as revised by Mr. Smith's
5 testimony Noranda's proposal still is not tied to
6 the LME price of aluminum.

7 A. That is correct.

8 Q. And it still doesn't include any
9 written guarantee from Noranda that it will live up
10 to its employment or capital investment commitment.

11 A. I know of no contract that would
12 provide for that and no it does not.

13 Q. And it doesn't propose to convert New
14 Madrid from a retail electric customer to a
15 customer who procures its power in the wholesale
16 market, do you agree?

17 A. I can't imagine why it would but yes,
18 I agree with you.

19 Q. On page 2 of your direct testimony
20 you state that generally electricity accounts for
21 approximately one-third of the production costs of
22 an aluminum smelter.

23 A. That's correct.

24 Q. So that means that two-thirds of the
25 smelter's costs are not related to the cost of

1 electricity?

2 A. These are the costs of production and
3 yes, that would be correct.

4 Q. Would you agree that if Noranda was
5 able to reduce some of the two-thirds of its costs
6 that are not related to the price of electricity
7 that those reductions would have a positive effect
8 on Noranda's ongoing success or viability?

9 A. I believe they've already done that
10 but mechanically you are correct.

11 Q. Now, in its response to some data
12 requests that we submitted to Noranda in the 0225
13 complaint case Noranda identified alumina as the
14 second largest cost of producing aluminum at the
15 New Madrid smelter and during your deposition in
16 this case you told me you believe that's still
17 true, is that correct?

18 A. Yes.

19 Q. Assuming all other costs at the
20 smelter remain static reducing the cost of alumina
21 would help Noranda improve its cash position, do
22 you agree?

23 A. Mechanically, yes.

24 Q. But during your deposition you
25 couldn't tell me any steps Noranda has taken in the

1 last 12 months to reduce its cost of alumina, isn't
2 that correct?

3 A. I was not privy to any of those
4 adjustments, that would be a question for Mr.
5 Boyles.

6 Q. And in those previous data request
7 responses Noranda identified labor as its third
8 largest cost of producing aluminum at the New
9 Madrid smelter and during your deposition you told
10 me you think that's still true, is that correct?

11 A. Yes.

12 Q. Assuming all other costs at the
13 smelter remain static reducing the cost of labor
14 would help Noranda improve its cash position, do
15 you agree?

16 A. Yes, if they were permitted to reduce
17 the staffing level.

18 Q. Well they could reduce the wages paid
19 to hourly employees, couldn't they?

20 A. I'm not sure that's even possible
21 given union contracts.

22 Q. Unions can renegotiate contracts.

23 A. They could and mechanically you're
24 absolutely correct.

25 Q. And they could reduce the amounts

1 that are paid to management employees who aren't
2 subject to collective bargaining agreements, is
3 that correct?

4 A. That is correct.

5 Q. And if they did all or both of those
6 things and all other costs at the smelter remained
7 static would that help improve Noranda's cash
8 position?

9 A. As a mechanic yes, as a true
10 viability, debatable.

11 Q. But during your deposition you
12 couldn't tell me any steps Noranda has taken in the
13 last 12 months to reduce its labor costs, is that
14 correct?

15 A. I do not know what they have done.

16 Q. I do not have any further questions.
17 Thank you Mr. Fayne.

18 JUDGE WOODRUFF: Questions from the
19 bench.

20 Mr. Chairman?

21 CHAIRMAN KENNEY: Mr. Fayne nice to
22 see you again.

23 A. Nice to see you, sir.

24 CHAIRMAN KENNEY: I don't have any
25 questions. Thanks.

1 JUDGE WOODRUFF: Mr. Kenney?

2 COMMISSIONER KENNEY: I have no
3 questions. Thank you.

4 JUDGE WOODRUFF: Mr. Hall?

5 COMMISSIONER HALL: Just a few.

6 EXAMINATION

7 QUESTIONS BY COMMISSIONER HALL:

8 Q. Good afternoon Mr. Fayne.

9 A. Good afternoon.

10 Q. On page 4 of your surrebuttal on
11 lines 3 and 4 taking a part of a sentence there you
12 say that the actual performance and success of a
13 smelter depends on the price of aluminum and it's
14 overall cost.

15 A. Yes, sir.

16 Q. That's correct?

17 A. Yes.

18 Q. Now, you focus on the cost of
19 electricity because that is the most significant
20 expense that a smelter incurs.

21 A. Partly. I focus on electricity, one,
22 because it is the largest cost, yes, that's
23 correct, but I also focus on electricity because
24 that tends to be the differentiator amongst
25 smelters.

1 Q. Because the other costs are fairly
2 comparable?

3 A. They vary somewhat from smelter to
4 smelter but they don't have the same, they're not
5 as significant as impact on the differentiation.

6 Q. So they're rather constant smelter to
7 smelter.

8 A. As a group of numbers, yes.

9 Q. Okay. And you don't provide any
10 testimony as to Noranda's overall cost of
11 production compared to other smelters, correct?

12 A. That is correct.

13 Q. In your direct testimony you describe
14 efforts by state commissions in New York, Kentucky,
15 Ohio and West Virginia to either approve or to set
16 rates designed to keep a smelter viable.

17 A. Yes, sir.

18 Q. In any of those states -- strike
19 that.

20 Did, are you familiar with the
21 statutory authority that those commissions had or
22 did not have to either establish or approve such
23 rates?

24 A. In general, yes, and I can give you
25 description state by state if that would help.

1 **Q. Well, in any of those states did the**
2 **commissions lack that authority?**

3 A. The, clearly New York is not a
4 commission --

5 **Q. Pardon me?**

6 A. The New York, New York Power
7 Authority is not a commission and their, they have
8 the authority on their own, it is, clearly the
9 contract there was done in conjunction with the
10 governor but there was statutory authority for them
11 to do what they did.

12 **Q. Okay.**

13 A. In Ohio the commission believed and
14 it was confirmed that they had the statutory
15 authority to do that and they basically approved
16 the special contracts absent any legislation, any
17 legislation related.

18 **Q. Just based upon their inherent**
19 **authority to establish just and reasonable rates?**

20 A. Correct.

21 **Q. Okay.**

22 A. And there was, as a side bar there
23 were some legislative review in Ohio about whether
24 the commission could approve special contracts and
25 the thrust of that review was really around the

1 fact that many of the special contracts that were
2 in place were never made public so that that
3 legislative review really confirmed that the
4 commission had the authority to do it but insisted
5 that it all be in the public domain. In West
6 Virginia it was a little less clear. The
7 commission approved the original contract for the
8 Ravenswood smelter on its own authority. The staff
9 of the commission was the only one who objected
10 claiming that the commission did not have the
11 statutory authority so that when the Ravenswood
12 smelter went back for this latest order, latest
13 review, as a, in order to ensure that there was no
14 court appeal, a renewed contract, there was a
15 movement to get the legislature to pass legislation
16 at that point in time which did confirm that the
17 commission had the authority and established some
18 parameters. But the initial efforts in both West
19 Virginia and Ohio, well, the only effort in Ohio
20 basically was done at the regulatory commission
21 without any additional authority.

22 **Q. So those are the four states with**
23 **which you are familiar?**

24 **A.** Kentucky, the Kentucky issue was not
25 really a special rate, it was approving a contract

1 with a utility. I'm not sure if falls quite in the
2 same category. The authority for that commission
3 which is an interesting outcome, there is no
4 customer choice in Kentucky yet the commission
5 authorized the two smelters to go out, that there
6 is a work around because they technically still buy
7 their power through a distribution co-op so that
8 all that the commission did in that case was to
9 allow them to break the contract.

10 **Q. So looking at Exhibit 1 for your**
11 **direct testimony, and I'm not going to reference**
12 **specific numbers so we can stay in open session,**
13 **you mention four of the states. What about the**
14 **others?**

15 A. Well, Warwick as we discussed earlier
16 is self generation so there is no regulatory
17 authority over the price that they pay, they just
18 help generate. If we look at, let's see, Mt. Holly
19 is served by Sante Cooper which is an electric
20 cooperative which is self-governing, there is no
21 regulatory oversight over Sante Cooper, they are
22 certainly composed of a board of their members and
23 that they determine the rate that they will charge
24 the smelter. They do, they are giving the smelter
25 special rates compared to a full tariff, obviously

1 it's not a very great rate but it is a discount
2 from what their full rate would be.

3 **Q. And what is the financial status of**
4 **Mt. Holy?**

5 A. Mt. Holly is probably precarious. I
6 think it's important to understand that the
7 difference among smelters is not only their cost of
8 production and whether they can generate cash from
9 operations it's a question of their basic liquidity
10 position too and how much they can sustain the Mt.
11 Holly smelter is probably not performing any better
12 than the New Madrid smelter but they are owned by
13 Alcoa and Century both of which have multiple
14 smelters so they are much larger organizations and
15 therefore have some more financial capability to
16 basically withstand those temporary downturns.

17 **Q. So if Noranda had 2 or \$300 million**
18 **more in the bank we might not be here today?**

19 A. Or if Noranda was a multi smelter,
20 multi, you know, global owner of smelters they
21 would have some diversity which might help them in
22 that regard.

23 **Q. Thank you.**

24 **I think you were going down the list.**

25 A. I'm sorry. I think the only one I

1 left out, well we have Ferndale and Wanachi who are
2 both served by hydro facilities out west and they
3 are served at, I don't know how to describe them,
4 they're served at tariff rates essentially or full
5 cost of service but they're all hydro based which
6 makes the costs lower.

7 **Q. Through a comment in your testimony,**
8 **I'm not finding it right now -- oh, here. So page**
9 **3 of your direct where you say that on line 2 in**
10 **the U.S in 1980 there were 32 smelters, today there**
11 **are only eight and then in every instance the**
12 **smelter shut down because of high power costs.**

13 **I want to give you a chance to**
14 **qualify that or that's 100 percent the reason why**
15 **every single, those 24 smelters shut down? That**
16 **seems like a pretty strong statement.**

17 **A. Well, it's a strong statement and one**
18 **could argue it's somewhat exaggerated but basically**
19 **in all of those cases the press reports indicated**
20 **that they were shutting down because the cost of**
21 **electricity relative to the global cost of**
22 **electricity was too high and therefore the smelter**
23 **was not profitable over the long term.**

24 **Q. So you base that assertion on press**
25 **accounts.**

1 A. In most of those cases. I think in
2 terms of more recent ones, for example the Ormet
3 smelter I can tell that you is true firsthand and
4 in terms of the Ravenswood one I can tell you that
5 is true firsthand.

6 **Q. Which one is the Ohio?**

7 A. Hannibal. It's Ormet Aluminum
8 Hannibal smelter.

9 **Q. And that's the one that shut down?**

10 A. That shut down just in the last year.

11 **Q. And is it, if you know, is the plant**
12 **currently mothballed?**

13 A. The plant has been scrapped, sold for
14 scrap.

15 **Q. What did they get for it?**

16 A. I have no idea but it's purely scrap
17 metal. They did put it up for sale prior to
18 shutting it down, because of the power rate that
19 was available there were no buyers, they put, the
20 only one that bid on it was the scrap metal buyer
21 and it was sold and it is, I think it has been
22 dismantled.

23 **Q. Thanks.**

24 COMMISSIONER HALL: No further
25 questions.

1 JUDGE WOODRUFF: Mr. Rupp.

2 EXAMINATION

3 QUESTIONS BY COMMISSIONER RUPP:

4 Q. I just have a generic question, it's
5 about your HC direct exhibit that you had filed on
6 your direct testimony but I'm not going to ask you
7 any questions about numbers. But are you familiar
8 with the table that I'm referring to?

9 A. Page F-1?

10 Q. Yes, the aluminum smelter. In the
11 far column the cost of electricity.

12 A. Yes.

13 Q. Is that factoring in all costs to the
14 smelter?

15 A. It is the cost of electricity
16 delivered to the smelter.

17 Q. Delivered. So all costs are factored
18 in, all charges and everything.

19 A. Yes.

20 Q. Thank you.

21 JUDGE WOODRUFF: Any redirect based
22 on questions from the bench?

23 We'll go back to MEGG first.

24 MR. WOODSMALL: Just a couple
25 questions but I think we need to go In camera.

1 JUDGE WOODRUFF: Okay. All right.

2

3 (REPORTER'S NOTE: An in-camera session was held,
4 which is contained in Volume 34, pages 2719-2721 of
5 the transcript.)

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2 **Q.** **(BY MR. THOMPSON) I want to inquire**
3 **further about the arrangement paid by the New York**
4 **Power Authority.**

5 A. Yes, sir.

6 **Q.** **Now when Mr. Mitten was inquiring he**
7 **characterized that as a wholesale supplier of power**
8 **and you agreed with him. Is it in fact true that**
9 **the New York Power Authority only sells power at**
10 **wholesale?**

11 A. No, I think I missed that wholesale
12 number, they do provide power directly to the
13 smelters.

14 **Q.** **So are those sales to the smelters,**
15 **are those on retail tariffs?**

16 A. I'm not sure what the precise
17 structure is of the New York Power Authority
18 tariffs.

19 **Q.** **Okay.**

20 A. So I can't answer the question.

21 **Q.** **Are you aware that there's a statute**
22 **in Missouri that might allow Noranda to take power**
23 **on a wholesale basis?**

24 A. I understand that, with the caveat
25 that they have a contract with Ameren, yes, I am

1 aware of that.

2 Q. Okay. Well let's just set that
3 contract aside for the moment with respect to these
4 questions. Is it your opinion if it exercised that
5 option, is it your opinion that it would have to
6 take power subject to FERC rates?

7 A. That I believe would be the case but
8 I am not an attorney so I certainly won't opine on
9 that.

10 Q. Okay. Thank you very much,
11 MR. THOMPSON: No further questions.

12 JUDGE WOODRUFF: For Ameren?

13 EXAMINATION

14 QUESTIONS BY MR. MITTEN:

15 Q. Mr. Fayne I'd like to follow up on
16 some questions from Commissioner Hall regarding
17 statutory schemes in other states. specifically
18 West Virginia. You still have a copy of Exhibit 73
19 in front of you?

20 A. Yes.

21 Q. Could you please turn to page 16?

22 A. Yes, sir.

23 Q. The second full paragraph from the
24 bottom of that page states in the statute relating
25 to the determination of a special rate for energy

1 intensive industrial consumers the legislature
2 specifically approved the concept of a level and
3 structure of rates based not solely on cost and not
4 absolutely without some level of differentiation
5 from traditionally set rates.

6 Did I read that correctly?

7 A. You did.

8 Q. Do you know if the Missouri general
9 assembly has approached the concept that is
10 described in the paragraph I just read?

11 A. I do not know.

12 Q. Let's move down to the next paragraph
13 that describes West Virginia code section 24 dash 2
14 dash 1J paren lower case a, close paren, paren 6,
15 close paren which says permits the imposition of a
16 special rate that in the judgment of the commission
17 is required for continued new or expanded operation
18 of energy intensive industrial consumers and can
19 reasonably expected to support the long term
20 operation of energy intensive industrial customers.

21 Do you see that?

22 A. I do.

23 Q. Do you know if Missouri has a statute
24 like that?

25 A. I do not.

1 Q. Let's move to the next paragraph
2 which describes West Virginia, code section 24 dash
3 2 dash 1J paren lower case C, close paren, which
4 according to the order authorizes the commission to
5 consider in addition to all factors which the
6 commission may consider in setting rates for
7 consumers of electric power a rate that may take
8 into consideration fluctuations in the market
9 prices for goods and products produced or other
10 variables or factors which may be relevant to or
11 affect the continuing vitality of the energy
12 intensive industrial customers.

13 Do you see that?

14 A. I do.

15 Q. Do you know if Missouri has a statute
16 that's similar to that?

17 A. I do not.

18 Q. And let's go down to the next
19 paragraph which describes West Virginia code
20 section 24 dash 2 dash 1 J paren lower case E,
21 close paren, and according to the order that price
22 that in order to qualify for the special rate the
23 energy intensive industrial customer must provide
24 information and data demonstrating how the special
25 rate advances the legislative policy goals and

1 findings set forth in the legislation.

2 Do you know if Missouri has a statute
3 similar to that?

4 A. I do not.

5 Q. And finally we'll go down to the next
6 paragraph which describes West Virginia code
7 section 24 dash 2 dash 1J paren lower case F, close
8 paren which according to the order authorizes the
9 commission to determine whether any excess revenue
10 or revenues shortfall created by a special rate
11 should be allocated among any other customers of
12 the utility and whether the determination of how
13 that revenue shortfall or excess revenue should be
14 allocated is just, reasonable and fairly balances
15 the interests of other consumers, the utility and
16 the customers receiving the special rate.

17 Do you see that?

18 A. I do.

19 Q. Do you know if Missouri has a statute
20 similar to that?

21 A. I do not know.

22 Q. No further questions, thank you.

23 JUDGE WOODRUFF: All right. Then
24 redirect.

25

1

2

REDIRECT EXAMINATION

3

QUESTIONS BY MS. ILES:

4

Q. Mr. Fayne counsel for Ameren asked

5

you some questions about special rate relief that

6

was offered to various other smelters around the

7

country and I wanted to follow up on some of those

8

questions.

9

First he asked you about the Kentucky

10

case that involves Sebree in Hawesville that

11

involved the, a contract that the smelters were

12

authorized to break, do you remember those

13

questions?

14

A. I do.

15

Q. And I think you started to tell us

16

something about your testimony in that case and he

17

cut you off. I just want to give you the

18

opportunity to explain what your role in that case

19

was.

20

A. I had no role in the case that

21

allowed the smelters to break the contract, I was

22

not involved at all. I was involved several years

23

prior in the case that established the contract to

24

begin with.

25

Q. Okay. And does that have any

1 **relevance to the situation with Noranda in this**
2 **case?**

3 A. I'm not sure what many of these, what
4 relevance they have.

5 **Q. All right. Then you, he asked about**
6 **a special rate that was set for Ormet?**

7 A. Yes.

8 **Q. And this is the smelter that**
9 **Commissioner Hall asked you some questions you**
10 **explained has been sold for scrap.**

11 A. That's right.

12 **Q. So what happened? They got a special**
13 **rate and Mr. Mitten went through the conditions on**
14 **that special rate but apparently that did not**
15 **provide sufficient relief to keep the smelter in**
16 **business?**

17 A. They had a special rate, they had
18 some equity support, the special rate had a
19 declining discount over time. As it approached
20 toward the end of the contract it was an
21 insufficient discount, the company asked for an
22 acceleration of the remainder of the discount as
23 well as for an incremental discount for one year at
24 which time they had intended to self generate the
25 commission concluded that they did not want to give

1 the additional amount. The one potential buyer of
2 the plant, of the smelter basically determined that
3 with that power rate there was no way to keep it
4 viable more than 12 months and therefore chose not
5 to exercise its option.

6 **Q. Did the conditions that Mr. Mitten**
7 **went through that were placed on their special**
8 **rate, did they come into play at all?**

9 A. Never.

10 **Q. Okay. And then you also mentioned**
11 **Ravenswood which received a special rate and also**
12 **went out of business.**

13 A. Ravenswood had a special rate back in
14 2006 and this was prior to any legislation in West
15 Virginia, it lasted for about four years and it was
16 based on an LME index. The design was such that it
17 didn't provide sufficient flexibility to get
18 through the peaks and troughs of the LME cycle and
19 as a result when the LME fell dramatically the
20 company became cash poor, it's liquidity went down
21 to zero and it was forced to shut down. It has
22 been shut down since 2009, the special rate that we
23 were talking about in 2013 was their request for a
24 special rate intended to restart the smelter, the
25 company concluded that the rate relief provided in

1 that case was insufficient to support a restart.

2 Q. Okay. Mr. Mitten and Mr. Thompson
3 both asked you about a wholesale contract for
4 Noranda, do you remember those questions?

5 A. I do.

6 Q. Do you know whether Noranda has
7 considered a possible wholesale contract with
8 Ameren?

9 A. My understanding is there were
10 discussions regarding a potential for transforming
11 the current relationship to a wholesale one versus
12 a retail one.

13 Q. Do you know why Noranda has not
14 agreed to this wholesale option?

15 A. I was not directly involved in the
16 latter part of those negotiations but I understand
17 that the, it was unclear who would bear the risk if
18 the rate was not supported.

19 Q. It was unclear who would bear the
20 risk?

21 A. My understanding is that it was a
22 risk that was intended to be imposed on Noranda but
23 it was never settled where that risk would reside.

24 Q. Okay. Do you know whether or not
25 part of the risk had to do with whether or not the

1 **contract would be upheld as legal?**

2 A. I'm not sure whether that was an
3 issue or not.

4 MS. ILES: No further questions.

5 JUDGE WOODRUFF: Okay. Then you can
6 step down. Thank you, sir.

7 And we'll take a break before the
8 next witness which I believe will be Mr. Brubaker.

9 (RECESS TAKEN BY PARTIES)

10 JUDGE WOODRUFF: All right, let's go
11 back on the record. We're back from our break and
12 Mr. Brubaker has taken the stand.

13 Did you testify earlier?

14 A. I did, yes, sir.

15 JUDGE WOODRUFF: You are still under
16 oath then.

17 A. I am.

18 MR. DOWNEY: Judge, did I not get a
19 ruling yet on introducing Exhibits 503, 504 or 505,
20 Mr. Brubaker's direct, rebuttal and surrebuttal but
21 he has a modification to one of the schedules in
22 his testimony based on the stipulation that the
23 nonunanimous stipulation that was filed and what I
24 did was I provided that schedule to all counsel and
25 to the commissioners and I had it marked as Exhibit

1 534 in anticipation that there would be questions
2 about how a \$34 rate would impact other classes.
3 So I thought I'd bring that to your attention now.

4 JUDGE WOODRUFF: Okay. What you gave
5 me is 534 has multiple pages with Schedules 6, 7, 8
6 and 9, is that correct?

7 MR. DOWNEY: I believe that is
8 correct.

9 JUDGE WOODRUFF: Okay. Are you going
10 to just go ahead and offer this?

11 MR. DOWNEY: I'll offer them all now,
12 I know there'll be an objection to Exhibit 534.

13 JUDGE WOODRUFF: All right.

14 All right. Brubaker's direct 503,
15 rebuttal 504 and 505 have been offered, any
16 objections to those documents? I'll deal with the
17 other one later.

18 Okay, 503, 504 and 505 are admitted,
19 534 also has been offered, any objection to its
20 receipt?

21 MR. LOWERY: Your Honor I do object.
22 As I understand it this is a recalculation of an
23 exhibit to one of Mr. Brubaker's testimonies,
24 represented to be based upon the rate reflected in
25 the nonunanimous stipulation, again that

1 nonunanimous stipulation is nothing really more
2 than a brief at this point and I don't think that
3 it's appropriate that witnesses can take the
4 witness stand, put a bunch of new numbers in the
5 record just because they are advocating a different
6 result.

7 JUDGE WOODRUFF: Anyone else wish to
8 respond?

9 MR. DOWNEY: I can respond to the
10 objection.

11 JUDGE WOODRUFF: Go ahead Mr. Downey.

12 MR. DOWNEY: I can withhold offering
13 that until I see if there are any questions about
14 the \$34 rate and if there are then I can introduce
15 it at that time.

16 JUDGE WOODRUFF: All right. We'll
17 defer ruling on that until we go through the cross
18 examination questions and questions from the bench.
19 Okay.

20 So are you offering for cross at this
21 point?

22 MR. DOWNEY: I am.

23 JUDGE WOODRUFF: All right. Public
24 Counsel?

25 MR. ALLISON: No cross, thank you.

1 JUDGE WOODRUFF: MECG?

2 MR. WOODSMALL: Thank you, Your
3 Honor.

4 CROSS EXAMINATION

5 QUESTIONS BY MR. WOODSMALL:

6 Q. Yes, a couple questions.

7 Were you involved in Ameren's last
8 case, case number ER-2012-0166?

9 A. Yes.

10 Q. And do you recall in the context of
11 that case the parties signed and filed a
12 stipulation regarding how to handle revenue
13 allocation?

14 A. I believe that's correct. I don't
15 know if it was unanimous or not but something was
16 filed.

17 Q. Okay. Do you recall under that --
18 and do you know under that stipulation did MIEC and
19 Noranda sign that stipulation?

20 A. Yes. They did.

21 Q. Do you recall under that stipulation
22 whether MIEC and Noranda agreed to an equal percent
23 across the board of the rate increase?

24 A. That's my recollection.

25 Q. Okay.

1 A. For that part of the rate increase
2 other than what was dealing with the MEEIA charges
3 which were handled separately.

4 Q. Okay. And do you recall in the last
5 case that Noranda, or Ameren received a 10.1
6 percent rate increase?

7 A. I don't recall the total number, it
8 sounds about right.

9 Q. And if you need to see the report and
10 order I can provide it to you.

11 Would you accept that the report and
12 order in that case was issued on December 12th,
13 2012?

14 A. Yes.

15 Q. Turning to your direct testimony,
16 your schedules MEB-COS 6 through 9.

17 A. Okay.

18 Q. First off would you agree that these
19 numbers that you calculated were based upon revenue
20 neutral, they're based upon current rates, is that
21 correct?

22 A. Yes.

23 Q. Okay. And you do not consider the
24 impact of any revenue requirement increase
25 authorized by this Commission in this case, is that

1 correct?

2 A. These schedules do not.

3 Q. Okay. Turn to MEB-COS dash 9. Let
4 me know when you're there.

5 A. Okay.

6 Q. As I read this the impact of
7 Noranda's rate proposal, and that's the 32.50 rate
8 and elimination of the FAC would be an impact on my
9 clients, the large primary service, of 1.81
10 percent, is that correct?

11 A. Based on a \$23.50 rate and for those
12 of your clients here in the LPS class the average
13 would be 1.81 percent.

14 Q. Okay. And turning to the schedule
15 before that, MEB-COS dash 8. Let me know when
16 you're there.

17 A. I'm there.

18 Q. This is the calculation of the impact
19 if the smelter shut down, is that correct?

20 A. Correct.

21 Q. And under this calculation the 48
22 month average the impact to all customers would be
23 1.64 percent, is that correct?

24 A. Yes. It is.

25 Q. Okay. So at least under your

1 **proposal for the large primary service customers**
2 **they would be better off with Noranda closing down**
3 **by point 17 percent, is that correct?**

4 A. If you believe the 48 month average
5 which we do not and which Mr. Dauphinais can
6 address. We believe the relevant calculations are
7 the first two columns, the 36 month average
8 consistent with how the, everybody in the case that
9 did fuel runs had looked at the fuel issue so it
10 was 2.01 to 2.22 percent.

11 Q. But if the Commission accepts I
12 believe it's Staff's methodology, the 48 month
13 average, the large primary customers would be
14 better off with Noranda shutting down than
15 accepting Noranda's proposal in this case, is that
16 correct?

17 A. It would be on the edge.

18 Q. It's a yes or no question. They
19 would be point 17 percent better off with Noranda
20 shutting down?

21 A. Yeah, if you look at the absolute
22 value of the numbers and don't consider the
23 competency or the relevance of the underlying
24 number in that file.

25 Q. I may have to get you a heavier coat.

1 A. That's okay, I'm doing all right.

2 Q. The customers, the large primary
3 customers would be point 17 percent better off with
4 Noranda shutting down than the Noranda proposal in
5 this case, is that correct, yes or no?

6 MR. ALLISON: Can I just lodge a
7 clarifying objection.

8 This was the proposal that was
9 originally filed as opposed to the stipulated
10 proposal, is it not? What are we talking when
11 we're talking about proposal, I'm sorry?

12 MR. WOODSMALL: The Noranda proposal
13 in this case.

14 MR. ALLISON: So the 32.50 rate which
15 is not their position now.

16 MR. WOODSMALL: The 32.50 is all that
17 is in evidence now, correct.

18 MR. ALLISON: Okay. I just want to
19 make clear what position Noranda has taken and
20 when.

21 Q. (BY MR. WOODSMALL) So under the
22 32.50 proposal large primary customers would be
23 better off with Noranda shutting down, yes or no?

24 A. Only under one of the three
25 calculations presented.

1 **Q. Yes or no, under the 48 month**
2 **average.**

3 A. Under the 48 month average which is
4 one of the three the answer is yes.

5 **Q. Okay. And would you agree that under**
6 **the Noranda proposal as presented in your direct**
7 **testimony this would exclude any FAC, foot FAC**
8 **adjustments, is that correct?**

9 A. When you say this what do you mean?

10 **Q. The Noranda proposal is to exclude**
11 **future FAC adjustments, is that correct?**

12 A. Future adjustments, yes. The impact
13 of the current FAC is reflected in MEB-COS 9 at its
14 current level of \$4.40 for megawatt hours.

15 **Q. The Noranda proposal is to exempt**
16 **themselves from the application of the FSC, is that**
17 **correct?**

18 A. Yes. For the future.

19 **Q. And so the differential of point 1,**
20 **if the FAC has a positive adjustment the**
21 **differential would be greater than point 17, is**
22 **that correct?**

23 A. Already that would not be true
24 because the fuel adjustment has already decreased
25 from 4.4 roughly to 3.96 so that already would not

1 be true.

2 Q. Okay. The Noranda proposal in this
3 case is to have a limited future escalator, is that
4 correct?

5 A. The file proposal in my testimony,
6 yes.

7 Q. And can you tell me what that is,
8 what that escalator is?

9 A. Sure. One percent annually on the
10 dollar, on the 12 month anniversary of the
11 effective date of the rates from this case.

12 Q. So the differential between large
13 primary customers, the impact to large primary
14 customers associated with the Noranda proposal and
15 then shutting down will grow as a result of that
16 limited escalator, is that correct?

17 A. I need to hear that again. Not sure
18 I understand what the premise is.

19 Q. The current differential as we
20 discussed using the 48 month average, and all my
21 questions are about the 48 month average, the
22 current differential is point 17 percent, is that
23 correct?

24 A. Under those assumptions, yes.

25 Q. Okay. And will that differential

1 **grow because of the limited escalator that you have**
2 **proposed in your testimony?**

3 A. It will depend on what happens with
4 the net actual voided energy costs but likely it
5 will.

6 **Q. Okay.**

7 MR. WOODSMALL: I have no further
8 questions. Thank you.

9 JUDGE WOODRUFF: Staff?

10 MR. THOMPSON: Thank you, Judge.

11 CROSS EXAMINATION

12 QUESTIONS BY MR. THOMPSON:

13 **Q. Do you have Exhibit 534 in front of**
14 **you?**

15 A. Yes, sir, I do.

16 **Q. Can you tell me what that is?**

17 A. I can. This is, I would call it
18 supplemental information based on the \$34 rate
19 contained in the nonunanimous stipulation and
20 agreement.

21 **Q. Did you calculate this?**

22 A. I did.

23 **Q. And you prepared this document?**

24 A. I did.

25 **Q. Now, I think you said in your answer**

1 that there was a \$34 rate that had been proposed?

2 A. That's correct.

3 Q. And how was that proposed?

4 A. In the nonunanimous stipulation and
5 agreement.

6 Q. Now you understand there's been an
7 objection to that.

8 A. I do.

9 Q. Okay.

10 Mr. Brubaker, were you in the room
11 when I was inquiring of Mr. Fayne?

12 A. I was.

13 Q. So would you agree that there is a
14 point that you could calculate today, there is a
15 rate at which Noranda's ratepayers, or excuse me,
16 Ameren Missouri's ratepayers other than Noranda
17 would be better off with Noranda on the system than
18 off the system?

19 A. I would.

20 Q. A rate below cost.

21 A. A rate below any embedded allocated
22 cost.

23 Q. Costs of service.

24 A. Any allocated embedded costs.

25 Q. Correct. And do you have an opinion

1 as to what that number is for today?

2 A. I haven't looked for what it is
3 today.

4 Q. Okay. Do you have an opinion as to
5 what that number would be for any particular day?

6 A. I haven't looked.

7 Q. Okay.

8 A. I do not.

9 Q. But you are confident you could
10 calculate it?

11 A. One could make a determination based
12 on available market data.

13 Q. And how much confidence would you
14 have in that calculation?

15 A. Not as much as knowing what it was
16 last week or the week before.

17 Q. Okay. Now I'm just talking a
18 particular day.

19 Now, if you calculated that rate for
20 today could you calculate it for a week?

21 A. I believe the market information is
22 available to do so.

23 Q. How about a month?

24 A. I think so, yes.

25 Q. A quarter?

1 A. Yes.

2 Q. A year?

3 A. Yes.

4 Q. How about an 18 month period such as
5 the average interval between Ameren Missouri rate
6 cases?

7 A. I think a determination, a reasonable
8 estimate could be made based upon current
9 information.

10 Q. Thank you.

11 I have no further questions.

12 JUDGE WOODRUFF: All right. For
13 Ameren.

14 CROSS EXAMINATION

15 QUESTIONS BY MR. LOWERY:

16 Q. Following up on Mr. Thompson's
17 questions. You calculated for example a forecast
18 of what the voided cost would be with Noranda on
19 the system versus off the system on an 18 month
20 basis that would be a forecast, right?

21 A. It would be, it could either be a
22 fundamental forecast or it could be based on market
23 indexes.

24 Q. But in any event it's a prediction of
25 the future.

1 A. It's looking forward, you could lock
2 in a price, that's my point.

3 Q. I didn't ask whether you could
4 contract and lock in a price. Let's imagine we're
5 not contracting, we're not locking in a price,
6 we're not hedging anything, okay?

7 A. Okay.

8 Q. All we're doing is we're trying to
9 say I'm trying to predict over the next 18 months
10 whether or not Ameren Missouri's customers will be
11 better off with Noranda on the system or off the
12 system. Do you understand that assumption?

13 A. I do.

14 Q. And if you were doing that you would
15 be making an estimate or a forecast of whether or
16 not that would be true because you wouldn't know
17 whether it will be true or not, would you?

18 A. Right. We don't know for sure about
19 the future.

20 Q. It's a lot like what Mr. Pratt said
21 when he said driving with a blind spot and only
22 with a rear-view mirror, right, you cannot see
23 forward, can you?

24 A. Can not be absolutely certain.

25 Q. And if you prepared such a forecast

1 and you were to say, let's imagine the number was
2 35 and Noranda would be contributing \$40 if they
3 were paying retail rates on the system, just as a
4 hypothetical, okay, you understand that? You
5 understand those assumptions?

6 A. I think so, yes.

7 Q. And so your forecast was going to be
8 35 but if it turned out that the actual turned out
9 to be 41 or 42 then the forecast that said the
10 customer would be better off with Noranda on the
11 system actually would turn out to be incorrect,
12 isn't that right?

13 A. For that period of time, yes.

14 Q. And isn't it true the farther out you
15 go the less reliable such a forecast would become,
16 isn't that true?

17 A. That is correct.

18 Q. There isn't really a whole lot of
19 viability in the markets beyond what, two years,
20 three years at best?

21 A. Two or three years, yes.

22 Q. The calculations that are reflected
23 in Exhibit 534, and I'm not asking you to identify
24 them, but I'm asking you simply when did you
25 perform these calculations?

1 confidentiality agreements. I think I can say it
2 was my view that there were substantial potential
3 risks of going to that kind of a structure.

4 **Q. And what was the risk?**

5 A. The risk that I saw, the main risk
6 was in the first place being able to get that
7 structure approved. That was a risk. Were it to
8 be approved then I felt that there were the
9 potential for a court appeal that would invalidate
10 that rate and perhaps, perhaps create a retroactive
11 increased requirement under what I understand to be
12 the current statutes, my non-legal understanding of
13 that, or if it were approved and there was a
14 subsequent fuel adjustment proceeding that raised
15 the question of prudence of flowing the costs
16 associated with serving the wholesale customer of
17 this magnitude through the FAC I thought there was
18 a potential for a disallowance and perhaps a
19 retractive refund. Those were the risks that we
20 outlined to Noranda. Now what other risks they may
21 have taken into account or how they may have
22 appraised that in their interface with Ameren I do
23 not know, I was not present for those discussions.

24 **Q. Okay.**

25 **That's all I have thank you. Thanks**

1 for your time.

2 COMMISSIONER KENNEY: No questions.

3 Thank you.

4 JUDGE WOODRUFF: Mr. Hall?

5 EXAMINATION

6 QUESTIONS BY COMMISSIONER HALL:

7 Q. Good afternoon Mr. Brubaker.

8 A. Good afternoon.

9 Q. Let me start with probably a pretty
10 easy question and maybe one that -- well. Why does
11 Noranda recommend the creation of a new rate class,
12 the SAS rate class? Why not just change the rate
13 design on the existing LTS?

14 A. Certainly you could do that. The
15 basis for the recommendation was to have a place to
16 go back to at the end of the contract period.

17 Q. Okay. Exhibit 534, you show, this
18 is, contains your computations, correct?

19 A. Yes, sir.

20 Q. This shows the amount of adjustment
21 at the \$34 rate as being 16.584 million, is that
22 correct?

23 A. That is correct, yes.

24 Q. Okay. So if you combined that with
25 the elimination of the FAC what we are essentially

1 talking about is a 35.1 million subsidy, is that
2 correct?

3 A. The difference is 33.2 million on
4 page 1 of schedule 9.

5 Q. Pardon me?

6 A. Page 1 of schedule 9 it's 33.2
7 million, or 1.2 percent overall.

8 Q. Well the, in your direct testimony
9 you said that the elimination of the FAC would be
10 18.5 million.

11 Q. And that was correct at that time.
12 The fuel adjustment has subsequently decreased so
13 just to set the predicate there are two differences
14 in 534 from the filed testimony, one is the level
15 of the rate, the \$34 dollars versus 32.50 and the
16 other is to reflect the decrease in the FAC from
17 what it was at the time the testimony was filed to
18 today.

19 Q. So the total subsidy you said would
20 be 33.2 as shown on, I guess this is page 9?

21 A. Page 2 of schedule MEB dash COS dash
22 9. Actually page 1. Pardon me.

23 Q. Page 1. 33.2.

24 A. 33.2. That's the deviation below the
25 any allocated embedded cost of service.

1 **Q.** **Okay. On page 43 of your direct**
2 **testimony you discuss the justification for a load**
3 **retention rate and you say on line 6 the basis for**
4 **such a rate is typically a price at or above**
5 **incremental costs. What is the incremental cost?**

6 **A.** In this context the costs that we
7 have evaluated are test year costs and my colleague
8 Mr. Dauphinais who appears next can give you all
9 the details for how he got those numbers but we
10 believe they range from \$28.03 a megawatt hour to
11 \$39.39 a megawatt hour.

12 **Q.** **All right.**

13 **A.** It's really the change in what
14 happens at the margin if the load were not served.
15 It's a combination of what the power would fetch in
16 the open market were it sold on the open market
17 rather than to Noranda plus any savings in the
18 transmission and other charges that would be
19 voided.

20 **Q.** **Later on that same page you calculate**
21 **at lines 12 and 13 you calculate the net revenue**
22 **loss if the smelter were not served to be**
23 **approximately 54 to 60 million per year. That**
24 **would be a reduction in revenues to Ameren.**

25 **A.** You could look at it that way. It's

1 the, reflects the loss of what they would get --

2 Q. The reduction in some of their costs,
3 there's a greater reduction if their revenues, the
4 difference is between 54 and 60 million.

5 A. That's right, yes.

6 Q. Okay. What are you assuming would
7 happen in that calculation to the electricity that
8 Ameren was selling Noranda?

9 A. The assumption is that it would be
10 sold in the MSO market.

11 Q. And what would happen to the revenues
12 from those sales in this calculation?

13 A. They would flow ultimately through
14 the fuel adjustment clause.

15 Q. Back to customers.

16 A. Back to customers, right.

17 Q. So when you are determining what the
18 percentage increase to customers 2.1 to 2.22 you
19 are assuming that 95 percent of all those, of those
20 offsets in sales are going back to customers and
21 they're still getting a two percent rate increase?

22 A. That's correct.

23 Q. Your, what is your understanding of
24 the N factor and whether or not those off system
25 sales proceeds would in fact go back to Ameren

1 **customers? Under the current FAC.**

2 A. I'm trying to remember how that is
3 worded. I think, I guess it depends on when it
4 happens, whether it happens, it's accounted for in
5 a rate case or whether it happens in between rate
6 cases.

7 **Q. Exactly. Explain both to me.**

8 A. Okay. If it happens in a rate case
9 you approve a new rate and then I think what you
10 see on schedule a COS 8 is what you would get.

11 **Q. If it happened prior to a rate case.**

12 A. Then I think Ameren would be
13 permitted to retain part of the lost revenues under
14 the N factor provision of the FAC.

15 **Q. So the impact on customers would be
16 higher than this.**

17 A. It would be, yes.

18 **Q. Any idea how much, ball park?**

19 A. No.

20 **Q. On page 35 of your direct you give a
21 full throated argument in support of cost of
22 service rate making. I was wondering if you could
23 explain why you believe the cost of service rate
24 making is the, is the appropriate way to set rates.**

25 **Q. Yeah, that's always been pretty much**

1 my outcome and my philosophy and my testimony, I
2 think it sums up as equity, conservation and
3 engineering efficiency are the primary bases,
4 primary reasons for going to cost of service under
5 normal circumstances.

6 Q. Under normal circumstances.

7 A. Right.

8 Q. Have you performed a calculation on
9 the cost of, on the cost to serve Noranda or is
10 that a different witness?

11 A. No, that would be me.

12 Q. Okay. Where is that calculation in
13 here?

14 A. I think it's in the data response.

15 Q. So it's not in your testimony?

16 A. No, we see the rate of return in the
17 testimony as to the, well I did the rate of return
18 at present rates. The calculation that I did make
19 said that Noranda was about four percent below full
20 embedded cost to service currently.

21 Q. And so do you know what that rate is,
22 four percent below the current rate, do you know
23 what that is?

24 A. Current rate is about --

25 Q. 37?

1 A. 37.95, say \$38, so four percent of 38
2 is what, \$1.60.

3 **Q. All right.**

4 COMMISSIONER HALL: No further
5 questions. Thank you.

6 JUDGE WOODRUFF: Mr. Rupp?

7 EXAMINATION

8 QUESTIONS BY MR. RUPP:

9 **Q. Good afternoon.**

10 A. Good afternoon.

11 **Q. Following up on a question that the**
12 **Chairman had about the risks that you identified**
13 **with going to the wholesale market, the risks of**
14 **being a court challenge, you know, to the contract**
15 **and everything, if the general assembly were to**
16 **pass some type of legislation that would**
17 **specifically allow the Commission and parties to**
18 **enter into those types of contracts would that**
19 **mitigate that risk of a court challenge?**

20 A. I presume that it would.

21 **Q. Was there any considerations to your**
22 **knowledge between the parties of Ameren and Noranda**
23 **on this issue of if they came to an agreement on a**
24 **contract and dollar amount of presenting a unified**
25 **front to the legislature and asking for some type**

1 of legislation that would provide them more comfort
2 with mitigating that risk?

3 A. I don't know.

4 Q. Thank you.

5 JUDGE WOODRUFF: All right. Any
6 recross based on questions from the bench?

7 Begin with Public Counsel.

8 RECROSS EXAMINATION

9 QUESTIONS BY MR. ALLISON:

10 Q. Mr. Brubaker, how are you?

11 A. Good, thanks.

12 Q. Commission Hall asked you some
13 questions about Exhibit 534. I'm wondering on
14 page, well it's I guess schedule 9, page 1, I just
15 want to make sure I'm reading this correctly and if
16 you can confirm this for me. So the total overall,
17 or average, I guess I should say the total average
18 impact 1.32 percent, is that correct?

19 A. Correct.

20 Q. Okay. And just going through this
21 classified class if you can confirm for me based
22 upon your calculations the residential class impact
23 would be 1.15 percent, is that correct?

24 A. That's correct.

25 Q. And then the small general service

1 impact goes up to 1.18 percent, is that correct?

2 A. That is correct.

3 Q. Large general service impact then
4 goes up to 1.29 percent, is that correct?

5 A. Yes.

6 Q. And that's an increase of 11/10ths of
7 one percent, is that not right?

8 A. I'm sorry?

9 Q. 11/100ths of one percent I guess, not
10 1/10ths, that's ridiculous. 11 points, it goes up
11 11 points between 1.18 and 1.29, correct?

12 A. 11/10ths of one percent.

13 Q. Thank you.

14 Small primary service 1.39 percent.

15 A. 1.38 percent.

16 Q. Or 38 percent, I'm sorry.

17 A. Yes.

18 Q. And that would be an increase over
19 large general service, is that correct?

20 A. It would.

21 Q. And then large primary service is 1.5
22 percent, is that correct?

23 A. That's correct.

24 Q. And help me understand the classes
25 for a second. The large primary service class is

1 **generally composed of what type of customer?**

2 A. Medium to large manufacturing with
3 demands in excess of 5,000 kilowatts of load.

4 Q. Okay. And then the lighting class is
5 point 92 percent?

6 A. That's right.

7 Q. And then there's a de minimis impact,
8 what I would characterize as a de minimis impact on
9 the Metropolitan Sewer District, is that correct?

10 A. That's correct.

11 Q. Let me just take one second and look
12 here.

13 The FAC, again your original direct
14 testimony had calculated the FAC impact of
15 Noranda's request at being as I recall somewhere
16 around 18 million, is that correct?

17 A. That's right. 18, almost 18.5
18 million.

19 Q. 18.5 million. And because of a
20 normal, I won't say normal but a periodic
21 adjustment in the FAC the impact is now reduced to
22 16.6 million, is that right?

23 A. That's right.

24 Q. Okay.

25 MR. ALLISON: I don't have any

1 further questions. Thank you.

2 JUDGE WOODRUFF: MEGC?

3 MR. WOODSMALL: Yes Your Honor.

4 RECROSS EXAMINATION

5 QUESTIONS BY MR. WOODSMALL:

6 Q. Since it sounds like Exhibit 54 is
7 going to be put into evidence I will ask some
8 questions about that. And I'll try to be brief.

9 Looking at page 1 of your COS 9 of
10 Exhibit 534, do you have that?

11 A. Yes, I do.

12 Q. And column H you identify, you
13 quantify the total subsidy is 33.21 million, is
14 that correct?

15 MR. DOWNEY: Where are you David?

16 MR. WOODSMALL: Page 1 of MEB-COS
17 dash 9, column 6.

18 MR. DOWNEY: I thought you said
19 column 8.

20 MR. WOODSMALL: I'm sorry.

21 Q. (BY MR. WOODSMALL) Column 6 the
22 total subsidy is 33.21 million, is that correct?

23 A. Right. Current difference from
24 current rates.

25 Q. Okay. And just to clarify you said

1 previously in response to a question from
2 Commissioner Hall that that was quote, the
3 deviation below any allocated embedded cost of
4 service. That's not correct, is it?

5 A. I can't, any embedded cost of service
6 would be about four percent higher.

7 Q. Okay.

8 A. On the base rate revenue column.
9 Thank you.

10 Q. So this is \$33 million below that
11 four percent, is that correct?

12 A. That's correct.

13 Q. Okay. Now that 33 million is the
14 impact of the nonunanimous stipulation, is that
15 correct?

16 A. That's right. It would be about 34
17 million with the four percent adjustment, but yes,
18 that's right.

19 Q. Okay. Now, going to the page before
20 that, MEB-COS dash 8, again looking at column 3,
21 the 48 month average that staff proposed, you would
22 agree that the impact on customers if Noranda
23 closed is 42.698 million, is that correct?

24 A. If that's the number I would disagree
25 with your characterization of that number being

1 what staff proposed in this case. That's the
2 number that staff proposed in a prior case and I
3 believe staff has a different number in this case.

4 Q. Okay.

5 A. Although like other parties all of
6 it's put in several different numbers.

7 Q. Okay. Would you agree subject to
8 check that the difference between that 42.698 and
9 33.21 million is \$9.5 millions?

10 A. Sounds about right.

11 Q. Okay. Now, again that is without any
12 consideration of a revenue requirement increase in
13 this case, is that correct?

14 A. It is.

15 Q. Okay. Can you tell me if a revenue,
16 if the revenue requirement is increased in this
17 case and applied equal percentage across the board
18 what percent would Noranda get? I believe it's
19 five and a half percent, is that correct?

20 A. You're talking Noranda's base rate
21 revenue in percentage of the total.

22 Q. Right.

23 A. That's about right.

24 Q. Five and a half percent. So, and I
25 believe that according to the fuel stipulation that

1 was filed earlier that calls for an increase in
2 fuel costs of 103 million, is that correct?

3 A. Sounds about right.

4 Q. Okay. 103 million and that doesn't
5 count any other increase they may get in base
6 rates, is that correct?

7 A. Or decreases, some parties I believe
8 are suggesting that the overall increase should be
9 less than the amount that's attributable to fuel.

10 Q. Okay. Just for purposes of my
11 calculation assuming Ameren was to receive \$150
12 million rate increase.

13 A. You're generous.

14 Q. I hope you're right, yes. But it
15 makes for a nice round number. And you gave five
16 and a half percent is what you said earlier would
17 be Noranda's share, would you accept that that is
18 \$8.25 million?

19 A. Yes.

20 Q. Okay. So you said earlier that the
21 difference between the 42.7 million and 33 million
22 is \$9 million, is that correct?

23 A. It is.

24 Q. Okay. So that \$9 million
25 differential will be reduced if not eliminated as a

1 **result of the revenue requirement increase**

2 **authorized in this case, is that correct?**

3 A. If you focus your numbers on the 48
4 month average which I've suggested is not the right
5 number that would be true.

6 Q. Okay.

7 **No further questions, thank you.**

8 JUDGE WOODRUFF: Staff?

9 MR. THOMPSON: Thank you Judge.

10 CROSS EXAMINATION QUESTIONS BY MR. THOMPSON:

11 Q. You may have answered this but you
12 were asked questions about Exhibit 534 by
13 Commissioner Hall looking at the first page, line
14 5, that number 16.584, that doesn't take account of
15 any revenue requirement increase in this case,
16 correct?

17 A. Correct.

18 Q. Okay. So in reality it would be
19 higher.

20 A. As a function of whatever increase
21 the company may get.

22 Q. Now, you were asked questions about
23 risks by Commissioner Rupp, do you recall? And was
24 the risk that Noranda was trying to avoid the risk
25 that it would have to pay the difference between a

1 **wholesale rate and Ameren Missouri's wholesale**
2 **costs of power?**

3 A. I don't know how that would have come
4 out looking at the structure though there was a
5 perceived risk not only of nonimplementation of the
6 rate, there was a wholesale rate that also as I
7 discussed with Commissioner Rupp. What might
8 happen later on and what the outcome of that would
9 be I don't know.

10 **Q. Okay.**

11 A. But there was definitely a perception
12 of risk.

13 **Q. Under your FAC proposal would 95**
14 **percent of that risk go to ratepayers?**

15 A. No, I don't know that it would. It
16 really depends on the circumstances of what kind of
17 disallowance or adjustment might be ordered.

18 **Q. Okay. Now, your proposal, both the**
19 **one that you originally filed and the one in the**
20 **stipulation and agreement, both of those include or**
21 **both of them provide do they not that Noranda will**
22 **not be subject to the FAC.**

23 A. That's correct.

24 **Q. And isn't it true that the FAC is**
25 **adjusted every six months?**

1 A. Four months I think. Every four.

2 Q. Okay. Every four months, thank you.
3 I stand corrected. So how many four month periods
4 are there in 10 years?

5 A. 30.

6 Q. Would you agree there are 30? So
7 there would be 30 FSC rate adjustments that Noranda
8 would be exempted from.

9 A. Yes. Unless the rate is, the rate is
10 subject to continuous review by the Commission in
11 each rate case so unless, and it could be that the
12 Commission would make some change in that in some
13 future rate case, so, you know, whether that would
14 extend for a 10 year period of time I think is, may
15 not.

16 Q. Okay. Would you agree with me that
17 the costs that go through the FAC are real costs
18 that Ameren has to pay?

19 A. I think they're hard dollar costs,
20 yes. I don't know that there's anything other than
21 that that's in there.

22 Q. Okay. And --

23 A. There are some revenues that offsets
24 a net number but they're all hard costs.

25 Q. I understand. Taking into account

1 the fact that it's a net number if Noranda is
2 exempt from the FAC then who, if you know or have
3 an opinion, who will be picking up those costs that
4 Noranda's not paying?

5 A. Other customers.

6 Q. Thank you. No further questions.

7 JUDGE WOODRUFF: For Ameren.

8 CROSS EXAMINATION

9 QUESTIONS BY MR. LOWERY:

10 Q. Mr. Brubaker you may have already
11 said this but I wanted to expand on it a little
12 bit. All of the these figures, this \$33 million
13 figure which actually if you want to look at it on
14 a, even a current cost of service, current rates
15 are as I see four percent too low but \$33 million
16 figure, this 1.23 percent, all of the percentages
17 for each of the rate classes none of them take into
18 account any increase that might be granted in this
19 case or in any future case, isn't that right?

20 A. That's correct.

21 Q. And in fact all of these analyses,
22 they don't take into account or make any attempt to
23 predict what the opportunity cost of having Noranda
24 on the system versus off the system in the future
25 will actually be, isn't that right?

1 A. My colleague Mr. Dauphinais who
2 appears next has taken that into consideration in
3 ways that you can ask him about in coming up with
4 the 28 and \$29 numbers for the near term.

5 Q. Well I'm going to ask you a few
6 questions about it and if you know you can tell me
7 and if you don't know then you'll have to tell me
8 this too. But I suspect you know something about
9 this. Mr. Dauphinais' 28 or \$29 figures that you
10 cited, he calculated those using historical
11 information, he may have adjusted the historical
12 information in certain ways but he used historical
13 information, isn't that right?

14 A. He use historical, that's correct.

15 Q. He didn't use forward energy prices
16 or forward capacity prices or other forecasts in
17 order to calculate those numbers, isn't that right?

18 A. I think when you read his testimony
19 you'd see that he considered that and addressed
20 that, has addressed that issue.

21 Q. He considered it but he didn't
22 actually take any dollar figure for any of those
23 parameters from the future and perform calculations
24 to come up with that 28 or \$29 that you mentioned,
25 did he?

1 A. He considered it and he doesn't
2 adjust them for reasons he has explained in his
3 testimony.

4 **Q. But my simple question is he may have**
5 **considered using future information, he may have**
6 **reasons for why he didn't actually use those**
7 **dollars in the future but he didn't actually use**
8 **any future dollars in calculating the 28 or \$29,**
9 **isn't that right?**

10 A. And my response to you would be yes
11 because he didn't think it was necessary.

12 **Q. I understand I didn't think it was**
13 **necessary. But as we just discussed none of us**
14 **know what the future's going to bring, do we?**

15 A. We do not.

16 MR. LOWERY: I don't have any further
17 questions Your Honor.

18 JUDGE WOODRUFF: Redirect?

19 REDIRECT EXAMINATION

20 QUESTIONS BY MR. DOWNEY:

21 **Q. Let's just work backwards Mr.**
22 **Brubaker.**

23 **Do you know why Mr. Dauphinais didn't**
24 **think it was necessary?**

25 A. I would have to try to summarize his

1 testimony.

2 **Q. That's fine. But Mr. Dauphinais did**
3 **also consider future forward energy prices?**

4 A. It's my understanding he considered
5 those in arriving at his recommendations.

6 **Q. Okay. And would you explain to the**
7 **Commission how the base rates rebase fuel costs in**
8 **a rate case?**

9 A. Typically when you have a rate case
10 there's some increase or decrease, lately it's been
11 an increase in fuel costs and that gets folded into
12 the new base rate so I think Mr. Thompson
13 mentioned 100 million, or Mr. Woodsmall perhaps
14 mentioned \$100 million fuel cost that will be
15 folded into base rates in this case and in
16 subsequent cases as well. So it's not all hanging
17 out of the FAC, it gets somewhat escalated each
18 time there's a rate case.

19 **Q. Okay. Do you happen to know in the**
20 **nonunanimous stip whether the proposal is for**
21 **Noranda to pay a certain percentage of base rate**
22 **increases?**

23 A. Yes, I do. It's 50 percent of the
24 otherwise applicable system average increase.

25 **Q. So if fuel costs go up between rate**

1 cases what would happen then in terms of rebasing
2 and its impact on Noranda? Under the stipulation.

3 A. In part it would be reflected in
4 increase of the base revenue, base rates for
5 Noranda.

6 Q. So if I understand correctly Noranda
7 would pay increased costs of fuel once they're, the
8 increased costs are rebased. In base rates.

9 A. They would pay 50 percent of whatever
10 the increase is including fuel and non fuel.

11 Q. Okay. I'm sorry, 50 percent of that.
12 Now, you understand the Commission
13 retains control over rates?

14 A. That's my understanding, yes.

15 Q. And one commission can not bind
16 future commissions?

17 A. I've been told that, yes.

18 Q. Do you think that's true?

19 A. I believe it is.

20 Q. Now, it's my understanding that your
21 testimony supported a rate of \$32.50 for Noranda?

22 A. It did.

23 Q. And was that, it was your testimony
24 that that rate was better for the other ratepayers
25 than if Noranda shut down?

1 A. Yes.

2 **Q. And would you explain why?**

3 A. Based on the analysis, the comparison
4 between what they had gotten for the power if it
5 were sold in the wholesale market plus any savings
6 and costs that number was bigger than the reduction
7 in rates for Noranda versus their current rates.
8 So it was a question of which way are you better
9 off, how much, how many dollars of increase would
10 the other customers face with Noranda at a lower
11 rate versus no Noranda and in our evaluation
12 ratepayers would see a higher rate without Noranda
13 than they would under the Noranda served at a lower
14 price.

15 **Q. And if the Commission were to adopt**
16 **the \$34 proposal would your opinion be the same as**
17 **far as it benefits ratepayers versus Noranda**
18 **leaving the system?**

19 A. It would be a larger benefit.

20 **Q. And if the Commission adopted a rate**
21 **that is even higher than \$34 would the benefit also**
22 **increase?**

23 A. Yes.

24 **Q. In your opinion as an expert is the**
25 **stipulated rate a just and reasonable rate and**

1 **benefit to ratepayers versus Noranda shutting down?**

2 MR. LOWERY: I'm going to object as
3 these questions are beyond the scope of any
4 questions that came from any cross examination.

5 JUDGE WOODRUFF: I'll overrule the
6 objection. You can answer.

7 A. Yeah, I think it's a fair, would be a
8 fair and reasonable outcome.

9 Q. (BY MR. DOWNEY) Okay. And -- never
10 mind.

11 **And you're familiar with the**
12 **conditions in the stipulation, are you not?**

13 A. Yes, generally.

14 Q. **Is there a condition on liquidity?**

15 A. There are conditions on liquidity.

16 Q. **Is there a condition on retaining**
17 **employees?**

18 A. Yes.

19 Q. **Is there a condition on capital**
20 **expenditures?**

21 A. There is.

22 Q. **Is there a condition on special**
23 **dividends?**

24 A. There is.

25 Q. **And what is that condition?**

1 A. That there won't be any.

2 Q. Did you see my opening statement
3 earlier this week?

4 A. I did.

5 Q. There was a slide where I, a couple
6 of slides where I set out the conditions, do you
7 recall that?

8 A. I do.

9 Q. And was that slide accurate to the
10 conditions? I'm asking you because I may have
11 forgotten some.

12 A. As I remember it was. I don't
13 remember all the lines on it but there were a
14 number of conditions and I believe that they were
15 all reflected.

16 Q. Do you know whether those conditions
17 were negotiated to protect ratepayers?

18 A. That was the purpose of them, yes.

19 Q. All right. And do you believe that
20 stipulated rate with those conditions is a just and
21 reasonable rate?

22 A. I think the rate is just and
23 reasonable, I did not participate in negotiated
24 conditions.

25 Q. And again that's with the assumption

1 that Noranda would close the smelter without a
2 reduced rate.

3 A. That's the comparison, that's
4 correct.

5 Q. Now, you had some questions from Mr.
6 Thompson on the risk of the wholesale deal. Do you
7 recall that?

8 A. I do.

9 Q. And you may have had discussion with
10 other either commissioners or lawyers but does part
11 of that risk have to do with having Ameren Missouri
12 build the costs, the fixed costs of providing power
13 under that wholesale rate in base rates to
14 ratepayers?

15 A. I mean I think that got to some of
16 the issues, this was a departure from normal
17 practices and we were concerned about that.

18 Q. And did you happen to read the
19 testimony of OPC witnesses and Staff witnesses on
20 the wholesale proposal?

21 A. I did.

22 Q. And is it fair to say they opposed
23 the wholesale deal?

24 A. That's fair to say, they certainly
25 did.

1 **Q.** **Though there was a lot of discussion**
2 **I think with Mr. Woodsmall about page MEB-COS 8 in**
3 **Exhibit 534 regarding this 48 month average?**

4 **A.** **Yes.**

5 **Q.** **And I believe you testified that you**
6 **don't believe that is a good way to determine**
7 **incremental costs, paraphrasing. Do you recall**
8 **that?**

9 **A.** **Yes, I do.**

10 **Q.** **Would you explain to the Commission**
11 **why?**

12 **A.** **We thought it was not representative**
13 **to have the polar vortex in there and use a four**
14 **year average. In calculating test year data in**
15 **this case every party that did it including Staff**
16 **and Ameren and MIEC removed the effects of the**
17 **polar vortex just because they're abnormal and we**
18 **thought why should we evaluate our rate proposal on**
19 **something that everybody else has already concluded**
20 **isn't representative so for that reason I don't**
21 **think that column is the primary basis that should**
22 **be used for evaluation.**

23 **Q.** **Now, you were asked some questions**
24 **about I believe page 35 of your direct testimony.**

25 **Q.** **Yes.**

1 A. And I believe you stated that under
2 normal circumstances you are in favor of cost of
3 service rate making, do you recall that?

4 A. Embedded cost of service rate making,
5 that's right.

6 **Q. And I know you keep correcting the**
7 **lawyers on our use of cost of service and you say**
8 **embedded cost of service, what's the difference?**

9 A. Well, embedded cost of service is
10 just an allocation of all the elements that are
11 added together to get the utility's total revenue
12 requirement. And the other cost of service is the
13 incremental analysis which says given two options
14 what are the outcomes of the two options looking
15 just at the costs involved in the two options.

16 **Q. Thank you.**

17 **Would you, what is your opinion on**
18 **whether this request of Noranda Aluminum would be**
19 **considered normal circumstance?**

20 A. I think it's not, it's unusual.
21 Compared to the normal embedded cost rate making
22 but certainly when you look around the country
23 there are a lot of rates of this kind that are set
24 lower than any fully embedded costs but above
25 incremental costs for the same reason we're

1 suggesting it makes sense here, it's better off to
2 keep the customer at a lower rate than to lose the
3 customer and have all the power that otherwise
4 would have been sold to the customer sold in the
5 wholesale market at a lower price which would
6 thereby cause the rates of the other customers to
7 increase more than they would increase under the
8 special incremental costs based rate for Noranda.

9 **Q. Is the size of the Noranda load one**
10 **factor in your opinion that it's not a normal**
11 **circumstance?**

12 A. It's certainly a very large load and
13 has to be looked at I think on its own differently
14 than perhaps we look at other loads.

15 **Q. Do you have an opinion whether the**
16 **incremental cost to serve Noranda between now and**
17 **the time, the likely time of the next rate case,**
18 **assume that to be three years or less will be below**
19 **\$32.50 per megawatt hour?**

20 A. I would have to rely on Mr.
21 Dauphinais for that judgment.

22 **Q. And do you respect his opinion?**

23 A. I do.

24 **Q. And is his opinion that it is less**
25 **than 32.50?**

1 A. It is.

2 Q. Is his opinion also that it's less
3 than \$34 per megawatt hour?

4 A. If it's less than 32.50 it's less
5 than 34.

6 Q. I asked for that. And thank you for
7 giving it to me.

8 A. I appreciate the obvious questions.

9 Q. Have you any explained Exhibit 534
10 and its calculations?

11 A. I think so.

12 MR. DOWNEY: Judge I would offer
13 Exhibit 534.

14 JUDGE WOODRUFF: 534 has been
15 offered. Any objections?

16 Hearing no objections it will be
17 received.

18 MR. DOWNEY: I'm not quite finished
19 Judge, give me just a second.

20 That's all we have. Thank you.

21 A. Thank you.

22 JUDGE WOODRUFF: Then you can step
23 down Mr. Brubaker.

24 A. Thank you.

25 JUDGE WOODRUFF: And it's nearly

1 5 o'clock so we'll go ahead and stop for tonight,
2 we'll resume tomorrow morning at 8:30 hopefully
3 with the air-conditioning working.

4

5

6 (Whereupon, the hearing concluded at 4:50 p.m.)

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REPORTER CERTIFICATE

I, SUZANNE BENOIST, Certified Shorthand Reporter, do hereby certify that there came before me at the Missouri Public Service Commission, 200 Madison Street, Jefferson City, MO 65102, the above-referenced parties, that the proceeding was translated and proofread using computer-aided transcription, and the above transcript of proceedings is a true and accurate transcript of my notes as taken at the time of said event.

I further certify that I am neither attorney nor counsel for nor related nor employed by any of the parties to the action in which this examination is taken; further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in this action.

SUZANNE BENOIST, RPR, CCR, CSR-IL

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