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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Evidentiary Hearing
March 26, 2010
Jefferson City, Missouri
Volume 35

In the Matter of Union Electric)
Company d/b/a AmerenUE's Tariffs))
To Increase Its Annual Revenues)File No. ER-2010-0036
For Electric Service)

MORRIS L. WOODRUFF, Presiding,
CHIEF REGULATORY LAW JUDGE.

JEFF DAVIS,
TERRY JARRETT,

COMMISSIONERS.

REPORTED BY:
PAMELA FICK, RMR, CCR # 447, CSR
MIDWEST LITIGATION SERVICES

1 APPEARANCES:

2 THOMAS BYRNE, Attorney at Law
3 WENDY K. TATRO, Attorney at Law
4 P.O. Box 66149
5 1901 Chouteau Avenue
6 St. Louis, MO 63103
7 (314)554-2237

8 JAMES B. LOWERY, Attorney at Law
9 Smith Lewis, LLP
10 111 South 9th Street, Suite 200
11 P.O. Box 918
12 Columbia, MO 65205-0918
13 (573)443-3141
14 lowery@smithlewis.com

15 JAMES M. FISCHER, Attorney at Law
16 Fischer & Dority
17 101 Madison, Suite 400
18 Jefferson City, MO 65101
19 (573)636-6758
20 jfischerpc@aol.com

21 FOR: Union Electric Company,
22 d/b/a AmerenUE.

23 MARK W. COMLEY, Attorney at Law
24 Newman, Comley & Ruth
25 601 Monroe, Suite 301
P.O. Box 537
Jefferson City, MO 65102
(573)634-2266
comleym@ncrpc.com

FOR: Charter Communications, Inc.

20 SHELLEY A. WOODS, Assistant Attorney General
21 SARAH MANGELSDORF, Assistant Attorney General
22 P.O. Box 899
23 Supreme Court Building
24 Jefferson City, MO 65102
25 (573)751-3321
shelley.woods@ago.mo.gov
sarah.mangelsdorf@ago.mo.gov

FOR: Missouri Department of Natural
Resources.

1 DIANA VUYLSTEKE, Attorney at Law
2 MARK LEADLOVE, Attorney at Law
3 BRENT ROAM, Attorney at Law
4 CAROL ILES, Attorney at Law
5 Bryan Cave, LLP
6 211 North Broadway, Suite 3600
7 St. Louis, MO 63102
8 (314)259-2543
9 dmvuylsteke@bryancave.com

6 EDWARD F. DOWNEY, Attorney at Law
7 Bryan Cave, LLP
8 221 Bolivar Street, Suite 101
9 Jefferson City, MO 65101-1575
10 (573)556-6622

9 FOR: Missouri Industrial Energy
10 Consumers.

11 DAVID WOODSMALL, Attorney at Law
12 Finnegan, Conrad & Peterson
13 428 East Capitol, Suite 300
14 Jefferson City, MO 65101
15 (573) 635-2700
16 dwoodsmall@fcplaw.com

15 FOR: MEUA.

16 LELAND B. CURTIS, Attorney at Law
17 Curtis, Oetting, Heinz, Garrett &
18 O'Keefe
19 130 South Bemiston, Suite 200
20 Clayton, MO 63105-1913
21 (314)725-8788
22 clumley@lawfirmemail.com

20 FOR: Municipal Group.

21 MICHAEL C. PENDERGAST, Attorney at Law
22 Laclede Gas Company
23 720 Olive Street
24 St. Louis, MO 63101
25 (314)342-0532

24 FOR: Laclede Gas Company.

1 LISA C. LANGENECKERT, Attorney at Law
2 Sandberg, Phoenix & von Gontard
3 515 North 6th Street
4 St. Louis, MO 63101
5 (314)641-5158
6 Llangeneckert@sandbergphoenix.com

7 FOR: Missouri Energy Group.

8 JOHN COFFMAN, Attorney at Law
9 871 Tuxedo Boulevard
10 St. Louis, MO 63119
11 (573)424-6779

12 FOR: AARP. Consumers Council.

13 DOUGLAS HEALY, Attorney at Law
14 Healy & Healy
15 939 Boonville, Suite A
16 Springfield, MO 65802
17 (417)864-8800

18 FOR: Missouri Joint Municipal Electric
19 Utility Commission.

20 THOMAS R. SCHWARZ, JR., Attorney at Law
21 Blitz, Bardgett & Deutsch
22 308 East High Street, Suite 301
23 Jefferson City, MO 65101-3237
24 (573)634-2500

25 FOR: Missouri Retailers Association.

LEWIS R. MILLS, JR., Public Counsel
Office of the Public Counsel
P.O. Box 2230
200 Madison Street, Suite 650
Jefferson City, MO 65102-2230
(573)751-4857

FOR: Office of the Public Counsel
and the Public

1 KEVIN THOMPSON, Chief Staff Counsel
2 STEVEN DOTTHEIM, Chief Deputy Counsel
3 NATHAN WILLIAMS, Deputy Counsel/Electric
4 JENNIFER HERNANDEZ, Legal Counsel
5 SARAH KLIETHERMES, Legal Counsel
6 JAIME OTT, Legal Counsel
7 SAM RITCHIE, Legal Counsel
8 ERIC DEARMONT, Legal Counsel
9 Missouri Public Service Commission
10 P.O. Box 360
11 200 Madison Street
12 Jefferson City, MO 65102
13 (573)751-3234
14
15 FOR: Staff of the Missouri Public
16 Service Commission.
17
18
19
20
21
22
23
24
25

1 P R O C E E D I N G S

2 JUDGE WOODRUFF: Let's come to order,
3 please. Good morning, everyone. Welcome back for
4 what should be the final day of the AmerenUE rate
5 case hearing. When we left off last night, we were
6 ready to move on to the next MIEC witness which I
7 believe would be Mr. Fayne. Is that still the plan?

8 MR. LEADLOVE: That's correct, your
9 Honor.

10 JUDGE WOODRUFF: Okay.

11 MR. LEADLOVE: MIEC calls Henry Fayne,
12 please.

13 (The witness was sworn.)

14 JUDGE WOODRUFF: And before each witness
15 has been testifying, I've made a little announcement
16 that simply please answer the questions that are
17 asked and only the questions that are asked. If you
18 will do that, then we'll get along -- move along much
19 more smoothly and we won't spend a lot of time with
20 objections to nonresponsive answers.

21 THE WITNESS: That's fine. Thank you.

22 JUDGE WOODRUFF: You may inquire.

23 MR. LEADLOVE: Thank you, your Honor.

24 DIRECT EXAMINATION BY MR. LEADLOVE:

25 Q. Sir, would you state your full name for

1 the record, please.

2 A. My name is Henry Fayne.

3 Q. Mr. Fayne, what's your current address?

4 A. My address is one -- 1980 Hillside

5 Drive, Columbus, Ohio 43211.

6 Q. And are you appearing today on behalf of

7 the MIEC; is that correct?

8 A. Yes, I am.

9 (EXHIBIT NO. 421 WAS MARKED FOR
10 IDENTIFICATION BY THE COURT REPORTER.)

11 BY MR. LEADLOVE:

12 Q. Mr. Fayne, did you cause to be filed
13 direct testimony that's been marked as Exhibit 421 in
14 this matter?

15 A. Yes, sir.

16 Q. And do you have anything to add or
17 change or delete from that testimony?

18 A. No, I do not.

19 Q. And if I ask you the same questions that
20 were asked in that direct testimony, would your
21 responses still be the same?

22 A. Yes, they would.

23 MR. LEADLOVE: I would move for
24 admission into evidence of Exhibit 421.

25 JUDGE WOODRUFF: 421 has been offered.

1 Any objections to its receipt?

2 MR. WOODSMALL: Your Honor, just
3 briefly. I made an objection yesterday and I'm just
4 asking for clarification. I objected that it was
5 hearsay and you said you were going to allow it in,
6 but I don't under -- I want to get clarification.
7 Are you saying that it's not hearsay, that it falls
8 under a hearsay exception, that experts can rely on
9 hearsay? I just need to know in case we go to court.

10 JUDGE WOODRUFF: Yeah. My view is that
11 experts can rely on hearsay to offer their expert
12 opinion, so that's what the purpose of the
13 information is. Then you can inquire of him as to
14 the basis of the reliability of what he's relying on.

15 MR. WOODSMALL: Okay. So you're finding
16 that it is hearsay, but experts can rely on that
17 hearsay?

18 JUDGE WOODRUFF: I believe that's what
19 I'm finding, yes.

20 MR. WOODSMALL: Okay.

21 MR. LEADLOVE: In addition, Judge, I
22 think I mentioned yesterday, and as may or may not
23 become clear, it is obvious from the deposition that
24 Mr. Fayne has personal knowledge of some of the
25 matters that are listed on that chart, so it's not

1 all hearsay.

2 JUDGE WOODRUFF: All right. Well...

3 MR. LEADLOVE: Just to make the record
4 clear.

5 JUDGE WOODRUFF: I'm sure that will
6 come -- become clear through the process.

7 MR. LEADLOVE: Great. Given that, your
8 Honor, I tender Mr. Fayne for cross-examination.

9 JUDGE WOODRUFF: All right. For cross,
10 then, we begin with Missouri Retailers.

11 MR. SCHWARZ: No questions, Judge.

12 JUDGE WOODRUFF: Muni Group here?

13 (NO RESPONSE.)

14 JUDGE WOODRUFF: Public Counsel.

15 MR. MILLS: No questions.

16 JUDGE WOODRUFF: MEUA.

17 CROSS-EXAMINATION BY MR. WOODSMALL:

18 Q. Good morning, sir.

19 A. Good morning.

20 Q. Attached to your direct testimony is a
21 schedule entitled HWF 1. Do you have that?

22 A. Yes, I do.

23 Q. And as I understand it, that schedule
24 attempts to compare the cost of electricity for
25 various domestic aluminum smelters; is that correct?

1 A. That does compare electric costs of
2 aluminum smelters.

3 Q. So your answer is yes?

4 A. Yes.

5 Q. Can you tell me what date this C -- and
6 HWF 1 says it's based -- the source is CRU; is that
7 correct?

8 A. That is correct.

9 Q. Okay. And can you tell me what date the
10 CRU data was prepared?

11 A. This CRU data was prepared in September
12 of 2009.

13 Q. Do you know -- it was prepared in
14 September of 2009, but is it accurate through a
15 certain date, do you know?

16 A. I do not know.

17 Q. Okay. So you don't know if it was based
18 upon data yearend 2008?

19 A. I do not know that for a fact.

20 Q. Okay. Is alumina a significant cost for
21 aluminum smelters?

22 A. Yes, it is.

23 Q. Did you undertake an analysis to compare
24 the cost of alumina for various domestic aluminum
25 smelters?

1 A. No, I did not.

2 Q. Was the cost of alumina for domestic
3 smelters available through the CRU data?

4 A. I presume it is. I did not check.

5 MR. WOODSMALL: You did not check.

6 Okay. May I approach the witness, your Honor?

7 JUDGE WOODRUFF: You may.

8 BY MR. WOODSMALL:

9 Q. Hand you what I've printed off of a web
10 site of CRU. Tell me if you recognize that page.

11 A. No, I do not, though it does have the
12 CRU logo on it.

13 Q. But you don't --

14 MR. LEADLOVE: I'm sorry.

15 Mr. Woodsmall, do you have an extra copy of it?

16 MR. WOODSMALL: No, I -- I'll let you
17 see it. Sorry.

18 BY MR. WOODSMALL:

19 Q. Great. Thank you. You say you don't
20 recognize that page from the CRU web site?

21 A. No, I do not.

22 Q. Okay. Will you turn the page and tell
23 me if you recognize that page?

24 A. No, I do not.

25 Q. Okay. So in the database -- well, let

1 me ask you first, how did you get access to the CRU
2 database? Do you personally subscribe to that?

3 A. No, I do not.

4 Q. How did you get access to it?

5 A. I had asked Noranda to provide me with
6 the data.

7 Q. Noranda provided you with that data?

8 A. They did.

9 Q. And what -- what was the -- how was the
10 data formatted?

11 A. The data was an Excel spreadsheet.

12 Q. Okay. And that data only contained
13 power prices?

14 A. That data only contained power prices,
15 yes.

16 Q. Okay. You never asked for any data on
17 the cost of alumina; is that correct?

18 A. That is correct.

19 Q. And again -- I don't recall what your
20 answer was. Was the cost of alumina for domestic
21 smelters available through the CRU data?

22 A. I do not know.

23 Q. You've never checked that in your course
24 of working for any aluminum smelter?

25 A. No, I have not.

1 Q. Would it surprise you that that data is
2 available?

3 A. I would not be surprised if CRU
4 estimated the data. I do not know whether that data
5 is publicly available.

6 Q. Okay. Do you know if -- if CRU has a
7 product entitled aluminum smelters power tariffs?

8 A. I do not know.

9 Q. You never attempted to access that data?

10 A. No, I have not.

11 Q. Okay. Did -- did Noranda give you their
12 password to access the CRU web site?

13 A. No, they did not.

14 Q. Okay. So all they did was copy off the
15 data for you?

16 A. That is correct.

17 Q. Have you ever independently accessed the
18 CRU web site?

19 A. No, I have not.

20 Q. Okay. Just in the course of trying to
21 refresh yourself with who CRU is, what kind of
22 services they offer, you never looked at their web
23 site?

24 A. I have looked at the -- their cover page
25 on the web site, yes.

1 Q. And you've never clicked on any of the
2 links beyond that cover page?

3 A. No, I have not.

4 Q. Is labor a significant cost for aluminum
5 smelters?

6 A. Yes, it is.

7 Q. Did you undertake an analysis to compare
8 the cost of labor for various domestic smelters?

9 A. No, I did not.

10 Q. Would it surprise you to know that the
11 cost of labor for domestic smelters is available
12 through the CRU data?

13 A. No, it would not.

14 Q. Are carbon anodes a significant cost for
15 aluminum smelters?

16 A. Yes, they are.

17 Q. Did you undertake an analysis to compare
18 the cost of carbon anodes for the various domestic
19 smelters?

20 A. No, I did not.

21 Q. Would it surprise you to know that that
22 information is available on the CRU data?

23 A. It would not.

24 Q. Are freight costs a significant cost for
25 aluminum smelters?

1 A. That I do not know.

2 Q. Have you ever read a 10K for an aluminum
3 company?

4 A. No, I have not.

5 Q. Do you know if that information is
6 publicly available?

7 A. No, I do not.

8 Q. You don't know if 10Ks are publicly
9 available?

10 A. Oh, I'm sorry. I -- your reference to
11 that I thought was the information.

12 Q. Okay. Sorry. I should have been
13 clearer. Do you know if 10Ks are publicly available?

14 A. 10Ks are publicly available.

15 Q. And would you believe that reference to
16 the cost of various aluminum smelters may be
17 contained in those 10Ks?

18 A. I would be surprised if it was very
19 explicit, but it may be.

20 Q. But you've never looked?

21 A. I have never looked.

22 Q. You haven't even looked at Noranda's
23 10K; is that true?

24 A. That is true.

25 Q. And you don't know if freight costs are

1 significant costs to aluminum smelters; is that
2 correct?

3 A. I do not believe they are significant in
4 the total scheme of things.

5 Q. Okay. Did you ever undertake an
6 analysis to compare the cost of freight for various
7 domestic smelters?

8 A. No, I have not.

9 Q. Did you hear Mr. Smith say yesterday
10 that freight costs are significant?

11 A. I did.

12 Q. Do you have any reason to doubt him?

13 A. No, I don't.

14 Q. Okay. Do you know -- would it surprise
15 you to know that freight costs for domestic smelters
16 are available through the CRU data?

17 A. No, it would not.

18 Q. Isn't it true that CRU provides data for
19 all cost components for aluminum smelters?

20 A. I believe they do.

21 Q. But you never looked?

22 A. I did not.

23 Q. And you never made a comparison of any
24 other costs except for electricity costs?

25 A. That is correct.

1 Q. And you never even checked to see if the
2 data provided to you by Noranda actually matched the
3 data that was on the CRU web site; is that correct?

4 A. I did not check personally, no.

5 Q. Okay. So some intermediary pulled that
6 off of the Internet and gave it to you; is that
7 correct?

8 A. That is correct.

9 Q. Do you know who that was?

10 A. That was Mr. Harris.

11 Q. What's his full name?

12 A. Thomas Harris.

13 Q. And he's employed by Noranda?

14 A. That is correct.

15 Q. Okay. In your schedule -- looking at
16 Exhibit HWF 1. Do you have that?

17 A. Yes, I do.

18 Q. You reference the Ferndale smelter. Do
19 you recall that?

20 A. I do.

21 Q. Can you tell me who owns that smelter?

22 A. That is owned by Alcoa.

23 Q. And it also goes by the name Intalco; is
24 that correct?

25 A. That is correct.

1 Q. Okay. Can you tell me who the electric
2 provider is for the Ferndale smelter?

3 A. I believe it is Bonneville, Bonneville
4 Power.

5 Q. Bonneville Power. And that's Bonneville
6 Power Administration; is that correct?

7 A. I don't recall whether it's Bonneville
8 Power Administration or Authority, but one or the
9 other, yes.

10 Q. Okay. Do you know if they are a
11 regulated public utility?

12 A. They are a public authority. I'm not
13 sure what your definition of regulated public utility
14 would be.

15 Q. Are their rates reviewed, approved by a
16 state utility commission?

17 A. I'm not certain.

18 Q. Okay. Would you agree that Bonneville
19 Power Administration is a government agency?

20 A. Yes, I would.

21 Q. Where did you get the figure for the
22 Ferndale smelter production?

23 A. The figures for the Ferndale smelter
24 production as well as all of the production figures
25 on HWF 1 are from the same CRU database.

1 Q. Did you ever attempt to independently
2 verify that data?

3 A. No, I did not.

4 Q. You never checked a 10K or any other
5 public records to verify that information; is that
6 correct?

7 A. That is correct.

8 Q. Where did you get the figure for the
9 Ferndale electric costs shown on schedule HWF 1?

10 A. As indicated at the footnote, all of
11 that data on that schedule is from the CRU database.

12 Q. And just so we can knock it all out, all
13 of the information, whether it's smelter production
14 or cost of electricity, you never independently
15 verified -- I know what your answer is gonna be.
16 We'll just deal with it one by one. For Ferndale,
17 you never independently verified either the cost of
18 electricity or the smelter production; is that
19 correct?

20 A. That is correct.

21 Q. You never attempted to make a Freedom of
22 Information request for the power purchase agreement
23 from the Bonneville Power Administration; is that
24 correct?

25 A. That is correct.

1 Q. If you were to independently calculate
2 the cost of electricity for a smelter, how would you
3 do that?

4 A. To calculate the cost of a smelter, the
5 cost of electricity would require having the actual
6 dollar cost of electricity and the kilowatt hours
7 consumed and dividing one by the other.

8 Q. And you never attempted to gather either
9 of those figures; is that correct?

10 A. For?

11 Q. For Ferndale.

12 A. No, I did not.

13 Q. Can you tell me if you know if the power
14 purchase agreement for the Ferndale smelter has been
15 overturned by the United States Court of Appeals?

16 A. I do not know.

17 Q. Okay. So you don't know if the cost of
18 electricity listed there is still accurate?

19 A. I do know it is no longer accurate.

20 Q. Okay. But you don't -- do you know
21 if -- well, let's just get it out of the way. You
22 say you know it's no longer accurate. What is your
23 understanding of the correct price of electricity?

24 A. My understanding is that a new contract
25 was just signed which would establish a price of

1 roughly \$35 a megawatt hour.

2 Q. And when you say it was just signed, can
3 you give me a date for that?

4 A. I do not have that with me today. It
5 occurred, I believe, early this year is my belief.

6 Q. Do you understand -- do you have any
7 understanding whether that contract has been
8 overturned by the United States Court of Appeals?

9 A. I have no idea.

10 Q. Okay. Do you have any independent
11 knowledge as to whether the contract you're
12 referencing is still in effect?

13 A. No, I do not.

14 Q. In your schedule you reference the
15 Mt. Holly smelter. Can you tell me who owns the
16 Mt. Holly smelter?

17 A. The Mt. Holly smelter is jointly owned
18 by Alcoa Aluminum and Century Aluminum.

19 Q. Do you know the relative breakdown of
20 who owns how much?

21 A. Yes. Alcoa owns 50.3 percent and the
22 balance is owned by Century.

23 Q. Thank you. Can you tell me who the
24 electrical provider is at Mt. Holly?

25 A. The electrical provider is Santee Cooper

1 Electric Cooperative.

2 Q. Would you agree that Santee Cooper is a
3 state-owned electric utility?

4 A. I do not know for certain if that's the
5 correct characterization.

6 Q. How would you character Santee Cooper?

7 A. Well, I thought it was an electric
8 cooperative owned by its members.

9 Q. So you don't know if it is actually
10 owned by the government of South Carolina?

11 A. No, I do not.

12 Q. Okay. Can you tell me where you got the
13 figure for the smelter production shown on HWF 1 for
14 Mt. Holly?

15 A. As I indicated earlier, all of the
16 smelter production numbers on this schedule came from
17 the CRU database.

18 Q. Do you have any independent knowledge
19 yourself of any of the smelter production numbers?

20 A. I didn't -- I did not verify any of the
21 smelter production numbers.

22 Q. Okay. And where did you get the
23 electric cost figure for a -- for Mt. Holly?

24 A. As I indicated, the electric cost
25 numbers are from the CRU database.

1 Q. Do you have any independent knowledge of
2 the electric cost figure for Mt. Holly?

3 A. Yes, I do.

4 Q. And tell me what the -- what your
5 knowledge is.

6 A. I am a consultant for Mt. Holly, I have
7 been negotiating the power contract for Mt. Holly and
8 I get regular reports from Century Aluminum related
9 to that cost.

10 Q. Okay. Can you tell me if the number
11 4,396 you have for dollars per megawatt for Mt. Holly
12 is correct?

13 A. I believe it is.

14 Q. Have you attempted to make a Freedom of
15 Information request to see the power purchase
16 agreement between Mt. Holly and Santee Cooper?

17 A. I have a copy of the contract. I did
18 not need to make a Freedom of Information request.

19 Q. Okay. In your schedule you reference
20 the Hannibal smelter. Can you tell me who owns the
21 Hannibal smelter?

22 A. The Hannibal smelter is owned by Ormet
23 Aluminum.

24 Q. And it is served by AEP Ohio; is that
25 correct?

1 A. That is correct.

2 Q. And you show a figure of \$38.43. Can
3 you tell me -- and that's based upon CRU data; is
4 that correct?

5 A. That is correct.

6 Q. And can you tell me what your
7 independent knowledge is of the Hannibal cost of
8 electricity?

9 A. Yes. I negotiated the Hannibal
10 electricity contract with AEP Ohio and I work for
11 Ormet Aluminum, so I have direct access to their cost
12 structure.

13 Q. Isn't it true that the price of
14 electricity for the Hannibal smelter is tied to the
15 London Metal Exchange, LME, price of aluminum?

16 A. That is true beginning in 2010. That is
17 not true for 2009.

18 Q. Okay. It's true as of today; is that
19 correct?

20 A. As of today it is true, yes.

21 Q. And isn't it true that the tariffed rate
22 for the Hannibal smelter is \$44.62?

23 A. That may be correct. That rate just
24 changed. I'm not for sure of the price, but it's in
25 the ball park.

1 Q. Isn't it true that if the LME price of
2 aluminum increases, the Hannibal smelter may have to
3 pay as much as \$46.85 per megawatt hour?

4 A. If the LME price --

5 Q. It's a yes-or-no question. Isn't it
6 true that if the LME price of aluminum increases, the
7 Hannibal smelter may have to pay as much as \$46.85
8 per megawatt?

9 A. It depends on the price of the LME.

10 Q. The -- the Hannibal smelter may have to
11 pay as much as \$46.85 per megawatt hour; is that
12 correct?

13 A. It is potentially correct.

14 Q. Your answer is yes?

15 A. Yes.

16 Q. Thank you. In your smelter you
17 reference the New Madrid -- the New Madrid smelter,
18 and again, the figure for smelter production is from
19 CRU data; is that correct?

20 A. Yes, it is.

21 Q. Where did you get the figure for the
22 cost of electricity for the New Madrid smelter?

23 A. That came from the same CRU database.

24 Q. Did you independently verify the cost of
25 electricity for the New Madrid smelter?

1 A. I verified it with personnel from
2 Noranda.

3 Q. But you never independently verified
4 through any records or other documents, official
5 records of Noranda; is that -- is that correct?

6 A. That is correct.

7 Q. In your smelt -- in your schedule you
8 reference the Tennessee smelter. Can you tell me who
9 owns the Tennessee smelter?

10 A. That is owned by Alcoa Aluminum.

11 Q. And who is the electric provider for
12 that smelter?

13 A. The electric provider is TBA or was TBA.

14 Q. Do you know whether the Tennessee
15 smelter self-generated any of their own electricity?

16 A. I do not believe that they did, but I do
17 not know for a fact.

18 Q. Hand you a document and ask you if you
19 recognize that document?

20 A. I have not read it. I see it as the
21 Alcoa 10K.

22 Q. Okay. You have no independent knowledge
23 of this document, you've never seen it before?

24 A. That is correct.

25 Q. So you wouldn't know if this document

1 says that Alcoa owns its own hydro dams on the
2 Tennessee River to provide power to the Alcoa
3 Tennessee facility; is that correct?

4 A. That is correct.

5 Q. Okay. You've never attempted to verify
6 whether they self-generate it; is that correct?

7 A. That is correct.

8 Q. Have you ever heard of Alcoa Power
9 Generation, Inc.?

10 A. No, sir.

11 Q. No. You don't know that Alcoa
12 independently generates 28 percent of their own power
13 worldwide?

14 A. I do know that they generate some of
15 their power. I did not know the specifics.

16 Q. And you don't know what smelters they
17 generate for?

18 A. I am only aware that they generate in
19 the U.S. for the Warrick smelter. I was not aware
20 that they generated for the Alcoa Tennessee.

21 Q. And you never attempted to verify that
22 either way?

23 A. No, I have not.

24 Q. Okay. Would you agree that TBA is
25 federally owned?

1 A. Yes.

2 Q. Where did you get the figure for the
3 Tennessee electric cost shown on HWF 1?

4 A. As I indicated earlier, that cost comes
5 from the CRU database.

6 Q. Have you independently verified that
7 cost?

8 A. No, I have not.

9 Q. Do you know if that cost of 34.95 is
10 based upon a tariff, a contract or on Alcoa's own
11 cost of self-generation?

12 A. I do not specifically know.

13 Q. In your schedule you reference the
14 Warrick smelter. Can you tell me who owns the
15 Warrick smelter?

16 A. The Warrick smelter is owned by Alcoa
17 Aluminum.

18 Q. Who is the electric provider at Warrick?

19 A. I believe that is a self-generation.
20 Also their supplier is Alcoa.

21 Q. Okay. Isn't it true that Warrick
22 generates its own electricity through a 750-megawatt
23 coal-burning generating station?

24 A. I do not know the specifics of the coal
25 generating station, but that would seem probable.

1 Q. Okay. You -- you never checked that
2 data?

3 A. No, I have not.

4 Q. And the cost of electricity that you
5 show of \$31.10, have you attempted to independently
6 verify that data?

7 A. No, I have not.

8 Q. And you don't know whether that's based
9 upon a coal-burning plant, a gas-burning plant, how
10 it's self-generated; is that --

11 A. No, that is not correct.

12 Q. Okay. Can you tell me what you know?

13 A. I believe it is a coal-burning plant.

14 Q. Okay. So you just don't know the size
15 of the coal-burning plant; is that --

16 A. That is correct.

17 Q. Gotcha. But it is owned by Alcoa and
18 they do self-generate; is that correct?

19 A. That is correct.

20 Q. Okay. And we've -- we've run through
21 six of them. Can you tell me if you know the annual
22 electric usage for any of the six smelters that we've
23 talked about?

24 A. I would -- I know the electric usage for
25 Mt. Holly, for Hannibal, for Ravenswood, for

1 Hawesville and for Sebree in general terms. I
2 probably could not quote the number precisely here.

3 Q. Okay. We'll come back around to that.
4 In your schedule you reference the Ravenswood
5 smelter. Who owns the Ravenswood smelter?

6 A. The Ravenswood smelter is owned by
7 Century Aluminum.

8 Q. And who is the electric provider at
9 Ravenswood?

10 A. That is -- AEP is a Appalachian Power
11 subsidiary.

12 Q. And I believe you show that that smelter
13 is closed; is that correct?

14 A. That is correct.

15 Q. Okay. In 2009 it only produced 15,000
16 tons of aluminum; is that correct?

17 A. According to the CRU database, that is
18 correct.

19 Q. You don't have any independent knowledge
20 of that?

21 A. I know that it shut down in -- early and
22 in the first quarter of 2009. I don't know the
23 precise production.

24 Q. Okay. And backing up a couple, you show
25 the Alcoa Tennessee smelter as being closed too; is

1 that correct?

2 A. That is correct.

3 Q. Can you tell me if that is still closed?

4 A. Yes, it is.

5 Q. Okay. And the Ravenswood plant is still
6 closed?

7 A. It is not in operation, that is correct.

8 Q. In your schedule you reference the
9 Hawesville smelter. Can you tell me who owns that?

10 A. That is owned by Century Aluminum.

11 Q. And who is the electrical -- electrical
12 provider at Hawesville?

13 A. The electrical provider is Big Rivers
14 Electric Cooperative.

15 Q. Would you agree that Big Rivers Electric
16 Cooperative is member-owned?

17 A. Yes, it is.

18 Q. Okay. So Century Aluminum would own
19 part of that company; is that correct?

20 A. No, it is not correct.

21 Q. Okay. Who are the members that own Big
22 Rivers Electric Cooperative?

23 A. Big Rivers Electric Cooperative are
24 owned by the members of three electric cooperatives
25 and Kenergy Energy is one of them, and I am blank on

1 the other two electric cooperative members at the
2 moment.

3 Q. Do you -- do you know who owns those
4 three electric cooperatives?

5 A. The members of the -- the customers --
6 members own that, but the two smelters that are
7 served, Sebree and Kenergy are not considered owners.

8 Q. Okay. Where did you get the figure for
9 the electrical cost for Hawesville?

10 A. That data comes from the CRU database.

11 Q. Okay. Have you independently verified
12 that data?

13 A. I have confirmed that it is accurate.

14 Q. Okay. How did you confirm that?

15 A. I -- I have worked for Century Aluminum
16 as a consultant, I negotiated the contract for Big
17 Rivers, and I am, as a result, aware of the cost
18 structure.

19 Q. And when was that negotiated?

20 A. That was negotiated over a five-year
21 period ending in July of 2009.

22 Q. Okay. So the negotiations were finished
23 in July of 2009; is that correct?

24 A. That is correct.

25 Q. And is it your understanding that the

1 2,932 figure is a set figure or can it change?

2 A. The figure for 2009 is a mix of data
3 because prior to July of 2009, the Hawesville smelter
4 as well as the Sebree smelter was served by E.ON, E,
5 period, O-N, Company for part of its load and market
6 purchases for the balance of its load.

7 So it is a combination of those two
8 events, a fixed number for the E.ON component, a
9 market number to agree they purchase power.
10 Beginning in July of 2009, they were served 100
11 percent by Big Rivers Electric.

12 Q. Okay. So the figure that we see is --
13 is for the 2009 mixture; is that correct?

14 A. That is correct.

15 Q. Can you tell me what the number is for
16 2010?

17 A. The number for 2010 is only an estimate,
18 but it would be in the neighborhood of \$27 a megawatt
19 hour.

20 Q. It's only an estimate on your part?

21 A. It is an estimate on my -- on Big
22 Rivers' part.

23 Q. Okay. And I -- your answer for
24 Hawesville also applies for Sebree; is that correct?

25 A. In terms of the electric cost, yes.

1 Q. And in terms of the electric provider?

2 A. In terms of the electric provider, that
3 is correct.

4 Q. Okay. Messena West is listed on your
5 HWF 1. Can you tell me who owns Messena West?

6 A. Messena West is owned by Alcoa Aluminum.

7 Q. Okay. Can you tell me who the electric
8 provider is there?

9 A. That is the New York Power Authority.

10 Q. And would you agree that the New York
11 Power Authority is a state-owned electric utility?

12 A. Yes.

13 Q. Have you independently verified the cost
14 for electric -- the electric costs for the Messena
15 West smelter?

16 A. No, I have not.

17 Q. You have no knowledge other than what
18 was given to you by Mr. Harris from CRU; is that
19 correct?

20 A. Mr. Harris is from Noranda.

21 Q. I'm sorry. Mr. Harris got the
22 information from CRU?

23 A. Correct.

24 Q. You have no independent knowledge other
25 than what he gave you; is that correct?

1 A. That is correct.

2 Q. You never attempted to do a Freedom of
3 Information request to the New York Power Authority
4 to get that power purchase agreement, have you?

5 A. No, I did not.

6 Q. In your schedule you reference the
7 Wenatchee smelter. Can you tell me who owns the
8 Wenatchee smelter?

9 A. That is owned by Alcoa Aluminum as well.

10 Q. Can you tell me who the electric
11 provider is of that smelter?

12 A. Yes. I believe that is Bonneville, but
13 let me just check that, please. I'm sorry. It is
14 the Chelan County Public Utility District.

15 Q. Would you agree that the Chelan County
16 Public Utility District is publicly owned?

17 A. Yes.

18 Q. Have you attempted to independently
19 verify in any way the \$22.01 cost figure for
20 Wenatchee?

21 A. No, I have not.

22 Q. And again, you never made any Freedom of
23 Information request to try and see that purchased
24 power agreement; is that correct?

25 A. That is correct.

1 Q. And the sole basis for your knowledge is
2 the information provided to you by Mr. Harris that he
3 took from CRU; is that correct?

4 A. That is correct.

5 Q. Okay. In your smelter -- in your
6 schedule, you reference the Messena East smelter.
7 Can you tell me who owns that smelter?

8 A. That is -- that is owned by Alcoa
9 Aluminum as well.

10 Q. And who is the electric provider at
11 Messena East?

12 A. The New York Power Authority.

13 Q. And again, they're state-owned; is that
14 correct?

15 A. Correct.

16 Q. Did you attempt to independently verify
17 the \$21.59 figure for the electric cost for Messena
18 East?

19 A. No, I did not.

20 Q. Okay. You never made any Freedom of
21 Information request; is that correct?

22 A. That is correct.

23 Q. And again, your only basis of your
24 knowledge is the information provided by Mr. Harris
25 that he took from CRU; is that correct?

1 A. That is correct.

2 Q. Did you watch Mr. Harris take this data
3 off the CRU?

4 A. No, I did not.

5 Q. Okay. Have you heard of the Columbia
6 Falls smelter?

7 A. I have.

8 Q. It's not listed on your schedule HWF 1;
9 is that correct?

10 A. That is correct.

11 Q. You included three closed smelters on
12 your schedule: Alcoa Tennessee, Ravenswood and
13 Messena East; is that correct?

14 A. That is correct.

15 Q. Okay. All three of those smelters were
16 closed in 2009; is that correct?

17 A. Yes, sir.

18 Q. Okay. And they're still closed today?

19 A. Yes, sir.

20 Q. Can you tell me when the Columbia Falls
21 smelter closed?

22 A. My understanding is -- excuse me -- it
23 closed on the third quarter of 2009.

24 Q. Okay. But you didn't include that in
25 your schedule; is that correct?

1 A. It was not in the CRU database,
2 therefore, it's not on the schedule.

3 Q. You're sure of that?

4 A. It was not -- if -- if I missed it, my
5 understanding -- it was unintentional, but I...

6 Q. I'll hand you a document.

7 A. I -- yep.

8 Q. Can you tell me if that information was
9 available to you for Columbia Falls?

10 A. Yes, it was, and it was omitted in
11 error.

12 Q. In error. Can you tell me what the cost
13 of electricity was for Columbia Falls?

14 A. The cost of electricity was \$47.56 per
15 megawatt hour based on the CRU database.

16 Q. And so that would have been high -- tied
17 for the highest price of any aluminum smelter; is
18 that correct?

19 A. Yes, sir.

20 Q. And it also closed in 2009, so it fit
21 the same criteria; is that correct?

22 A. That is correct.

23 Q. Okay. If you had included Columbia
24 Falls in your exhibit, it would have increased the
25 average smelter cost; is that true?

1 A. That is correct.

2 Q. You included -- you included three
3 smelters in HWF 1, is that -- three closed smelters
4 in HWF 1; is that correct?

5 A. That is correct.

6 Q. And all three of those smelters had a
7 cost of electricity that you show was cheaper than
8 Noranda; is that correct?

9 A. That is correct.

10 Q. I'm going to ask you to do a calculation
11 if you can. It may take a while. I've got a
12 calculator. Can you tell me what the domestic cost
13 of electricity -- you have there a total USA at
14 33.36. What would be the cost if you excluded the
15 closed smelters? Would you accept, subject to check,
16 33.75?

17 A. I would accept that subject to check,
18 yes.

19 Q. Okay. And you agree that the Warrick
20 smelter is self-generating for electricity; is that
21 correct?

22 A. Yes.

23 Q. And would you agree that if you took
24 that out as well as the closed smelters, the total
25 USA cost of electricity goes up to \$34.27; is that

1 correct?

2 A. Mechanically that might be correct, yes.

3 Q. Would you accept that subject to check?

4 A. I would.

5 Q. In your work papers you have a row, it's
6 row No. 1 entitled, "Power Cost in Dollars Per Ton of
7 Aluminum"; is that correct?

8 A. Yes.

9 Q. And let's just go through real quickly
10 the nine that are open -- the nine open smelters.
11 The first one is Ferndale. Can you tell me what the
12 power costs in tons -- dollars per ton of aluminum is
13 for Ferndale?

14 A. According to the CRU database, the power
15 cost for Ferndale is \$686.60 per ton.

16 Q. And the power cost for Hannibal is what?

17 A. \$624.46.

18 Q. And for Hawesville?

19 A. \$469.

20 Q. For Messena West?

21 A. \$347.68.

22 Q. For Mt. Holly?

23 A. \$606.88.

24 Q. For New Madrid?

25 A. \$505.69.

1 Q. For Sebree?

2 A. \$418.59.

3 Q. And finally for Warrick?

4 A. \$502.78.

5 Q. Would you agree that the -- that a
6 figure for dollars of power per ton of aluminum
7 reflects the smelter's ability to turn electricity
8 efficiently or inefficiently into aluminum?

9 A. Yes, sir.

10 Q. Okay. Would you agree that given the
11 nine numbers that you just gave me, that New Madrid
12 is right in the middle, four more expensive, four
13 cheaper?

14 A. I have eight smelters here as I was
15 writing it down if we hit it right, and I have three
16 more expensive and four cheaper, but I may have
17 missed one.

18 Q. I may have missed it too. Oh, we missed
19 the Wenatchee smelter. Do you know what the cost is
20 for the Wenatchee smelter?

21 A. Wenatchee smelter is 347.36, \$347.36,
22 which if I have this correctly, would make five
23 smelters less expensive and three more.

24 Q. And the one immediately in front of New
25 Madrid is Sebree which is essentially a tie, would

1 you agree, 505.69 to 502.78?

2 A. I believe that is Warrick that you're
3 referring to?

4 Q. Oh, I'm sorry. Yes, you're right.

5 A. And that is slightly less expensive,
6 that's correct.

7 Q. Okay. Do you believe the closed
8 smelters that you reflect on HWF 1 are competitors of
9 Noranda currently?

10 A. I'm not sure what you mean by
11 competitors currently.

12 Q. Do they produce aluminum into the
13 market?

14 A. They are not producing aluminum at the
15 moment, that is correct.

16 Q. And the only reason that you included
17 them in HWF 1 is because they produced in 2009; is
18 that correct?

19 A. That is correct.

20 Q. Okay. And again, you mistakenly omitted
21 Columbia Falls from HWF 1 even though they produced
22 in 2009; is that correct?

23 A. That is correct.

24 Q. You've heard of the Rockdale smelter?

25 A. I have.

1 Q. Can you tell me what the status of that
2 smelter is?

3 A. The Rockdale smelter was closed in the
4 fourth quarter of 2008.

5 Q. And you excluded it because it had no
6 production in 2009; is that correct?

7 A. That is correct.

8 Q. Do you know what the cost of electricity
9 was for that smelter?

10 A. My understanding is it was \$36 per
11 megawatt hour.

12 Q. And what's your basis of your
13 understanding?

14 A. That was a -- from CRU.

15 Q. In the same data that we looked at
16 before?

17 A. I do have that database which I provided
18 which is 2008 as well.

19 Q. You do have that -- you have that
20 database independently?

21 A. No. It is -- I have that database --
22 that database in the same form that I have the 2009.

23 Q. And how did you get that?

24 A. It was part of the same information that
25 I received for 2009.

1 Q. Okay. Do you know if that information
2 was provided to me?

3 A. I do not. It was not used in this
4 context, so there was no reason to provide it.

5 Q. But it was provided to you; is that
6 correct?

7 A. Yes.

8 MR. WOODSMALL: Your Honor, I don't know
9 the proper method right now, but I've been sandbagged
10 on discovery. I asked specifically if Noranda
11 intends to call Mr. Fayne as an expert, and to the
12 extent not -- not already provided, "please provide
13 all material given to Mr. Fayne." And as he just
14 indicated, he was provided material that wasn't
15 provided to me.

16 JUDGE WOODRUFF: Your response for MIEC?

17 MS. VUYLSTEKE: I'm not aware of the
18 information not having been provided to Mr. Woodsmall
19 so we'll have to go back through our responses in
20 discovery and if there's something that's missing,
21 immediately provide it to Mr. Woodsmall. I just
22 would have to go back through the package that was
23 provided.

24 JUDGE WOODRUFF: All right.

25 MS. VUYLSTEKE: It wouldn't take -- it

1 wouldn't take us very long to do that, I don't think.

2 MR. WOODSMALL: Can you tell me --

3 JUDGE WOODRUFF: Do you have that -- do
4 you have that here now?

5 MS. VUYLSTEKE: It's -- it's near --
6 nearby. It would just take us a little bit of time
7 to go through it.

8 BY MR. WOODSMALL:

9 Q. Before we start that, can I ask what
10 other information were you provided?

11 A. None.

12 Q. None. So the entirety of the
13 information that was provided to you is the 2008 and
14 2009 cost figures for -- from CRU for electric data
15 for the smelters contained therein; is that correct?

16 A. That is correct.

17 Q. Okay. Let me see if I can -- if I can
18 get around this. Would you agree that the -- that
19 the cost figures for the four smelters closed in 2009
20 are equally irrelevant as for smelters closed in 2008
21 and prior?

22 A. Irrelevant for what?

23 Q. For a comparison of costs of
24 electricity.

25 A. No.

1 Q. You find the ones that are available in
2 2009 to be somehow more relevant even though they're
3 equally closed?

4 A. The relevant information is the cost of
5 electricity for smelters that are either operating
6 currently or potentially operating currently.

7 Q. Okay.

8 A. And I believe that that would be the
9 relevant data. The actual data in 2008 is not
10 relevant at all.

11 Q. Okay. But you -- you mentioned smelters
12 that are potentially producing; is that correct?

13 A. Yes.

14 Q. Would you agree that the Rockdale
15 smelter in Texas is a potential producer?

16 A. Yes, it is.

17 Q. Okay. You didn't include that; is that
18 correct?

19 A. It was not operating in 2009. The
20 schedule I provided for HW 1 was simply what it
21 proposes to be, a cost structure of those that were
22 operating in 2009.

23 Q. But you didn't look at other potential
24 competitors that can enter the market?

25 A. No.

1 Q. Okay. You didn't look at the cost for
2 the Goldendale smelter; is that correct?

3 A. No, I did not.

4 Q. And it is a potential competitor?

5 A. Conceptually, yes.

6 Q. The Frederick smelter is a potential
7 competitor; is that correct?

8 A. Conceptually, yes.

9 Q. The Columbia Falls smelter is a
10 potential competitor; is that correct?

11 A. Yes, sir.

12 Q. The Baden smelter is a potential
13 competitor; is that correct?

14 A. Yes.

15 Q. The Troutdale smelter is a potential
16 smelter; is that correct?

17 A. Yes.

18 Q. They are all equally potential smelters
19 as Alcoa Tennessee, Ravenswood and Messena East; is
20 that correct?

21 A. I wouldn't say they were necessarily all
22 equal, but potentially, yes.

23 MR. WOODSMALL: Okay. I believe that's
24 all I'll have, your Honor.

25 JUDGE WOODRUFF: Okay.

1 MR. WOODSMALL: Let me check real
2 quickly.

3 BY MR. WOODSMALL:

4 Q. The information that was provided to
5 you -- you say you verified, I believe it was in
6 verbal fashion, some costs and production figures for
7 New Madrid; is that correct?

8 A. I verified the electric cost of data
9 with New Madrid, yes.

10 Q. And how did you do that? Was that just
11 verbally?

12 A. That was just verbally, yes, sir.

13 Q. Okay. There wasn't an e-mail or
14 anything?

15 A. No e-mail, no paper.

16 MR. WOODSMALL: Okay. I have no further
17 questions. Thank you.

18 JUDGE WOODRUFF: All right. Cross for
19 Staff.

20 MR. WILLIAMS: No questions.

21 JUDGE WOODRUFF: AmerenUE.

22 MR. FISCHER: No, thank you.

23 JUDGE WOODRUFF: All right. Come up for
24 questions from the bench. Commissioner Davis.

25 COMMISSIONER DAVIS: No questions.

1 JUDGE WOODRUFF: Commissioner Jarrett.

2 COMMISSIONER JARRETT: No questions,
3 thank you.

4 JUDGE WOODRUFF: All right. No
5 questions from the bench, so no need for recross.
6 Any redirect?

7 MR. LEADLOVE: Thank you, your Honor.

8 REDIRECT EXAMINATION BY MR. LEADLOVE:

9 Q. Mr. Fayne, I'm a little bit confused by
10 your cross-examination and perhaps the Commission is
11 as well. Can you explain which of the smelters on
12 your exhibit you have personal knowledge of and why
13 you have that personal knowledge or how you came to
14 that personal knowledge?

15 A. Yes. I have personal knowledge for
16 Mt. Holly, for Ravenswood, for Hawesville, for Sebree
17 and for Hannibal, and my personal knowledge related
18 to those five smelters is related to the fact that I
19 am a consultant for each of them, have negotiated
20 their current power contracts and currently help in
21 administering those power contracts for those
22 companies.

23 Q. And why or how did you become a
24 consultant to work with these various smelters?

25 A. I --

1 MR. WOODSMALL: Your Honor, I don't
2 believe that was anywhere near any of my
3 cross-examination, how he came to be retained by any
4 other smelter.

5 JUDGE WOODRUFF: Your response?

6 MR. LEADLOVE: I -- well, your Honor, I
7 certainly think it is within the scope of redirect
8 examination. He's asked this witness's understanding
9 and the data he relied on. I think he's certainly
10 able to explain how he has this relationship with
11 these smelters.

12 JUDGE WOODRUFF: I'll overrule the
13 objection.

14 THE WITNESS: I was an executive at
15 American Electric Power for 30 years, and as part of
16 my responsibilities in that capacity, I worked with
17 two of the smelters, the Hannibal smelter and the
18 Ravenswood smelter in terms of being their electric
19 provider at the time.

20 When I retired in 2004, I started
21 working with Century Aluminum at their request to
22 help them negotiate and administer their power
23 contracts with other providers, and that has
24 subsequently expanded to my working with Ormet
25 Aluminum and now currently with Noranda.

1 BY MR. LEADLOVE:

2 Q. As Mr. Woodsmall listed on
3 cross-examination, you relied on data from CRU in
4 your preparing your materials; is that correct?

5 A. That is correct.

6 Q. And why did you rely on the CRU
7 information?

8 A. With all of the companies that I've
9 worked for and essentially given some of the joint
10 ownership issues, I have worked with literally every
11 U.S. supplier. I have learned that each one of those
12 companies treats CRU as the authority in the industry
13 for the data, and I have been able to verify in some
14 of those numbers that the data is correct.

15 Q. And based upon your -- your work as a
16 consultant for these smelters, do you believe it's
17 reasonable to rely on the CRU data?

18 A. Yes, I do.

19 Q. Mr. Woodsmall asked you about your
20 analysis of the cost of power for these smelters as
21 opposed to analysis of the cost of alumina, labor,
22 carbon anodes and freight. Do you recall that line
23 of questions?

24 A. Yes, I do.

25 Q. Is there a reason why you only focused

1 on the cost of power?

2 A. Yes, I -- I did. The cost of power
3 has -- without exception, the cost of power is the
4 most significant cost variable among these smelters.
5 It is the basis upon which they're able to finance,
6 it is the basis upon which they're able to compete in
7 the marketplace.

8 Q. Mr. Woodsmall asked you about the
9 Hannibal smelter and its being tied to the LME price.
10 Do you recall that?

11 A. Yes, I do.

12 Q. And can you explain basically how -- how
13 the smelters' electric costs being tied to the London
14 Metal Exchange price for aluminum functions?

15 A. Yes. The -- it varies company by
16 company. For the Hannibal smelter, the cost is
17 adjusted each year to determine at what price the LME
18 needs to be for them to afford to be able to pay the
19 tariff structure.

20 As Mr. Woodsmall indicated, the tariff
21 structure for Hannibal is in the neighborhood of 43,
22 \$44 a megawatt hour. However, based on that LME
23 index for 2010, assuming that the price stays in this
24 \$2,200-a-ton range for the LME, Ormet will be paying
25 about \$26 a megawatt hour.

1 Q. Now, your chart attached to your written
2 testimony indicates three smelters closed in 2009,
3 correct?

4 A. That is correct.

5 Q. And through Mr. Woodsmall's
6 cross-examination, we identified a fourth that closed
7 in 2009; is that correct?

8 A. That is correct.

9 Q. Why did these smelters close?

10 A. The smelters closed -- and all I can
11 report or what was reported in the press, they have
12 indicated electric prices as the primary reason for
13 it. Clearly, in 2009, the depressed economy and the
14 LME price decline had an effect as well.

15 MR. LEADLOVE: I have no further
16 questions.

17 JUDGE WOODRUFF: All right. Mr. Fayne,
18 you can step down.

19 THE WITNESS: Thank you.

20 JUDGE WOODRUFF: We have a number of
21 other witnesses listed for MIEC. It's my
22 understanding they were not going to be standing
23 cross today; is that correct?

24 MR. WOODSMALL: That's correct, your
25 Honor.

1 MS. VUYLSTEKE: I'm sorry, Judge.
2 That's -- that's correct, your Honor. We have one
3 additional witness, and that's Maurice Brubaker.

4 JUDGE WOODRUFF: All right. Do you want
5 to offer the other testimony at this point?

6 MS. VUYLSTEKE: Sure, we can offer all
7 the other testimony into the record for the witnesses
8 for which cross has been waived.

9 JUDGE WOODRUFF: Okay.

10 MS. VUYLSTEKE: And the witnesses -- the
11 testimony that we'd like to offer is the testimony --
12 direct testimony and schedules of Paul Coomes which
13 is MIEC Exhibit 419; the direct testimony of Rick
14 Earnheart which is Exhibit 420; the direct testimony
15 of Keith Gregston which is Exhibit 422; the direct
16 testimony and schedules of Joe Haslag which is
17 Exhibit 423; the direct testimony of representative
18 Steve Hodges which is 424; the direct testimony of
19 Senator Rob Mayer which is 425 and the direct
20 testimony of Adonis Yatchew, which is Exhibit 432.

21 JUDGE WOODRUFF: 419, 420, 421, 422,
22 423, 424, 425 and 432 have been offered. Any
23 objections to their receipt?

24 MR. WOODSMALL: Yes, your Honor.
25 Briefly, on the direct testimony of Hodges, I don't

1 know what the exhibit number is on that.

2 JUDGE WOODRUFF: That would be 424.

3 MR. WOODSMALL: Mr. Hodges was not
4 offered as an expert witness, and so I have some
5 testimony I'd like to strike on page 3.

6 JUDGE WOODRUFF: Let me get that. This
7 is Hodges, you said?

8 MR. WOODSMALL: Yes.

9 JUDGE WOODRUFF: Okay. Which page?

10 MR. WOODSMALL: Page 3.

11 JUDGE WOODRUFF: All right.

12 MR. WOODSMALL: Lines 8 to 9 where he
13 says, "In my opinion," and the remainder of that
14 sentence, it's an opinion not allowed by a fact
15 witness. Similarly, lines 12 through 14 where he
16 starts, "In my opinion," his opinion is not
17 appropriate from a fact witness.

18 JUDGE WOODRUFF: All right. Any
19 response?

20 MS. VUYLSTEKE: I think he's stating
21 facts and he misphrased and said it was his opinion
22 and I would -- I would just strike the words "In my
23 opinion" and just let the record stand there.

24 MR. WOODSMALL: I don't think an
25 attorney can change the testimony of a witness, your

1 Honor. It is what it says it is.

2 JUDGE WOODRUFF: I'm going to sustain
3 the objection. Those provisions will be struck --
4 those sentences, I should say.

5 MR. WOODSMALL: And give me just a
6 second. I think that may be it. On Mr. Mayer's
7 testimony, your Honor --

8 JUDGE WOODRUFF: All right. I'll find
9 that one. Okay. I've got it.

10 MR. WOODSMALL: Page 3, lines 4 through
11 5 or the entire question starting on line 1 through
12 line 12 it says, "Do you have a sense," and then on
13 line 4, "I believe." Again, the witness is venturing
14 an opinion. He's not stating a fact, he's not being
15 offered as an expert witness, so it's not appropriate
16 testimony.

17 JUDGE WOODRUFF: And Mr. Mayer is a
18 state representative in the Missouri House.

19 MR. WOODSMALL: State senator.

20 JUDGE WOODRUFF: State senator. Okay.
21 MIEC's response?

22 MS. VUYLSTEKE: I think our argument
23 would be the same as before. I think it should stay
24 in the record because I think it's information about
25 what he believes are the facts of Noranda's

1 contributions to the state. If you want to strike it
2 because he says "I believe" or it's an opinion, then
3 he is stating an opinion. He's stating opinion about
4 the facts that he believes regarding Noranda's
5 contributions.

6 JUDGE WOODRUFF: Well, I do see this
7 one as a little bit different than the ones I
8 struck before in that he's offering his -- his
9 general beliefs about the situation, the economic
10 situation in the state of Missouri rather than the
11 previous case was offering his opinion about -- about
12 Noranda and its relationship with its employees, so I
13 do see this as different. I'm going to overrule the
14 objection to this testimony.

15 MR. WOODSMALL: That was all the
16 objections that I had, your Honor.

17 JUDGE WOODRUFF: Okay. Subject to those
18 objections, which have been ruled upon, 419, 420,
19 421, 422, 423, 424, 425 and 432 are admitted.

20 (EXHIBIT NOS. 419 THROUGH 425 AND 432
21 WERE RECEIVED INTO EVIDENCE AND MADE A PART OF THE
22 RECORD.)

23 JUDGE WOODRUFF: And the list of
24 witnesses I had would show that we were going to now
25 go to the Staff witnesses.

1 MR. WOODSMALL: Your Honor, we -- we
2 discussed earlier, and just as you decided yesterday
3 that the list of witnesses is no way --

4 JUDGE WOODRUFF: Correct.

5 MR. WOODSMALL: -- indicative of the
6 order. I requested that since MIEC is putting on
7 their testimony now, that Mr. Brubaker be next.
8 I don't think it's fair to have them go first and
9 last.

10 JUDGE WOODRUFF: That's -- I have no
11 problem with that. Does anyone have objections to
12 that?

13 MR. MILLS: Judge, I don't have any
14 particular objection to that. I would like to, as a
15 housekeeping matter, note that my witness Ryan Kind
16 has a doctor's appointment at 1:00 today, so we need
17 to get him done by noon if at all possible.

18 JUDGE WOODRUFF: Okay.

19 MR. MILLS: He actually had it yesterday
20 and rescheduled it for today, so --

21 JUDGE WOODRUFF: Would there be any
22 objection to going ahead and doing Mr. Kind now?

23 MR. MILLS: Okay. Mr. Woodsmall assures
24 me that he doesn't have very much for Mr. Brubaker,
25 so since Mr. Brubaker is here. Mr. Wood -- just

1 so the Court knows, Mr. Woodsmall is waiting for a
2 data request response from OPC which technically --
3 technically isn't due till the end of the day, but
4 we are trying to get it done before he does cross
5 so that it will make things go more smoothly, and
6 we're all about going smoothly. So we'll go ahead
7 with Mr. Brubaker and then -- then we'll pick up
8 Mr. Kind.

9 MR. WOODSMALL: I think the DR response
10 will make it much shorter and we'll get out of here
11 quicker.

12 JUDGE WOODRUFF: That's always the goal
13 on the last day of a two-day -- two-week hearing, so
14 we'll call Mr. Brubaker to the stand. Good morning,
15 Mr. Brubaker.

16 (The witness was previously sworn.)

17 DIRECT EXAMINATION BY MS. VUYLSTEKE:

18 Q. Good morning, Mr. Brubaker.

19 A. Good morning.

20 Q. Could you state your name and business
21 address for the record?

22 A. Yes, it's Maurice Brubaker. My business
23 address is 16690 Swingley Ridge Road, Chesterfield,
24 Missouri 63017.

25 Q. And are you the same Maurice Brubaker

1 that caused to be filed in this case direct
2 testimony, rebuttal testimony, surrebuttal testimony
3 and revised direct testimony and schedules regarding
4 cost allocation, revenue allocation and rate design
5 in this case?

6 A. Yes.

7 Q. And if I were to ask you the questions
8 that were contained in these testimonies today, would
9 your answers be the same?

10 A. They would with one correction, if you
11 ask me about that.

12 Q. Okay. Could you let me know your
13 correction to your testimony? And I believe this
14 would be your revised direct testimony.

15 A. Correct. Yes, Exhibit No. 429, the
16 revised direct testimony on cost of service on page
17 18. The numbers -- the data appearing in column one
18 and the data appearing in column two is correct. For
19 some reason, the data in column three, which is the
20 result of dividing column one by column two, did not
21 make it into the final product.

22 So I'd like to change the numbers in
23 column three. In column three the first line,
24 instead of "8.62," should be "8.06."

25 In the second line, "6.46" should be

1 changed to "6.65." "4.38" should be changed to
2 "4.81."

3 On the next line, "3.74" should be
4 replaced with "3.92."

5 And on the next line, "2.55" should be
6 replaced with "2.85." The total value "5.86" is
7 correct.

8 All the underlying data in the other
9 schedules and testimony are correct. This is just a
10 failure to pick up the final change in producing the
11 final product.

12 Q. And is that your only correction or
13 change, Mr. Brubaker?

14 A. It is.

15 MS. VUYLSTEKE: At this point I would
16 like to move for the admission of MIEC Exhibits 414
17 428, 429, 430 and 431.

18 JUDGE WOODRUFF: All right. I note that
19 411 and 412 are also Mr. Brubaker's -- Brubaker's
20 direct on revenue requirement. Do you want to offer
21 them?

22 MS. VUYLSTEKE: We can offer them and
23 have those admitted at this time.

24 (EXHIBIT NOS. 411, 412, 414, 428, 429,
25 430 AND 431 WERE MARKED FOR IDENTIFICATION BY THE

1 COURT REPORTER.)

2 JUDGE WOODRUFF: 411, 412, 414, 428,
3 429, 430 and 431 have been offered. Any objection to
4 their receipt?

5 MR. WOODSMALL: Only subject to the
6 motion to strike that you ruled on yesterday.

7 JUDGE WOODRUFF: Okay. Hearing no other
8 objections, then these are admitted.

9 (EXHIBIT NOS. 411, 412, 414, 428, 429,
10 430 AND 431 WERE RECEIVED INTO EVIDENCE AND MADE A
11 PART OF THE RECORD.)

12 JUDGE WOODRUFF: And for the record I'll
13 reaffirm the ruling that I made yesterday.

14 MS. VUYLSTEKE: And at this point I
15 would tender Mr. Brubaker for cross-examination.

16 JUDGE WOODRUFF: Okay. For cross, begin
17 with Missouri Retailers.

18 MR. SCHWARZ: No questions, your Honor.

19 JUDGE WOODRUFF: Okay. For Public
20 Counsel.

21 MR. MILLS: Just briefly.

22 CROSS-EXAMINATION BY MR. MILLS:

23 Q. Mr. Brubaker, are you familiar with the
24 nonunanimous stipulation and agreement on rate design
25 and class cost of service that was filed in this

1 case?

2 A. Yes, I am.

3 MR. WOODSMALL: Your Honor, I'm going to
4 object. I'm baffled because this is reeking of
5 friendly cross given that they have the same position
6 as reflected in the nonunanimous stipulation. I
7 think he's trying to garner evidence to support the
8 stipulation that you ruled yesterday -- yesterday
9 couldn't be done.

10 JUDGE WOODRUFF: Well, the question at
11 this point was are you familiar.

12 MR. WOODSMALL: Okay.

13 JUDGE WOODRUFF: So I'll overrule at
14 this time.

15 BY MR. MILLS:

16 Q. Okay. Mr. Brubaker, are you also
17 familiar with the addendum to the -- to that same
18 stipulation and agreement that was filed earlier this
19 morning?

20 A. I am.

21 Q. Now, with respect to the original
22 nonunanimous stipulation and agreement, does that
23 reflect a change to your filed position in this case?

24 A. For -- for purposes of resolving the
25 issues, it would, yes. I continue to believe that my

1 filed position represents the class cost of service
2 and revenue allocation most appropriate.

3 Q. But is the resolution as embodied in
4 either the original stipulation and agreement or the
5 addendum to the stipulation and agreement a
6 reasonable resolution --

7 MR. WOODSMALL: Your Honor, I'd object.
8 This is exactly what I was talking about. He's
9 attempting to elicit testimony -- I've had no
10 opportunity to do any discovery. He's attempting to
11 elicit testimony to support the stipulation and
12 agreement. And as we ruled yesterday, the
13 stipulation would -- would be based upon the evidence
14 in the record that they had a chance to develop.

15 MR. MILLS: May I respond?

16 JUDGE WOODRUFF: Sure.

17 MR. MILLS: Judge, this witness filed
18 testimony which is almost entirely adverse to the
19 testimony that my witness has filed. I'm simply
20 trying to explore where he stands now in terms of the
21 proper class cost of service and what is a reasonable
22 resolution of this issue. It's -- there's nothing
23 unduly repetitious about this, there's no improper
24 bolstering of direct testimony. I don't -- I don't
25 know what Mr. Woodsmall's objection is, so I'm a

1 little at a loss as to how to -- how to respond to
2 it. This is a proper question for cross-examination.

3 JUDGE WOODRUFF: I'm going to overrule
4 the objection. You can proceed.

5 MR. WOODSMALL: Well, let me ask, if I
6 can, he was mentioning an addendum to a stipulation.
7 I've never seen that, so to the extent --

8 JUDGE WOODRUFF: It was filed on EFIS
9 last night.

10 MR. WOODSMALL: It was filed last night?

11 MS. VUYLSTEKE: It was filed this
12 morning.

13 MR. WOODSMALL: Filed this morning.

14 Thanks.

15 BY MR. MILLS:

16 Q. Do you recall the question?

17 A. I believe the question was did I believe
18 that the stipulations reflected a reasonable
19 resolution of the issues in this proceeding, and my
20 answer to that is yes, I do.

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

23 JUDGE WOODRUFF: All right. And MEUA.

24 MR. WOODSMALL: Yes. Just a second,
25 your Honor. I'm flipping through this addendum.

1 JUDGE WOODRUFF: Sure.

2 MR. WOODSMALL: And I would note this --
3 this hasn't been served on parties yet to my
4 knowledge.

5 MR. WILLIAMS: I got a service.

6 MR. WOODSMALL: Did you?

7 MR. FISCHER: I think I got one in
8 e-mail.

9 MR. WOODSMALL: Well, I haven't gotten
10 it yet. It might be in my e-mail.

11 CROSS-EXAMINATION BY MR. WOODSMALL:

12 Q. Mr. Brubaker, you -- you testified in
13 Case No. ER-2007-0002 on class cost of service; is
14 that correct?

15 A. That is correct.

16 Q. You testified on behalf of MIEC in that
17 case; is that correct?

18 A. Yes.

19 Q. And you prepared a class cost of service
20 study in that case; is that correct?

21 A. I did.

22 Q. That class cost of service study was
23 reflected in your direct testimony, is that correct,
24 your direct testimony in ER-2007-0002?

25 A. I'm sure it was. I'm trying to recall

1 if there were any subsequent modifications in
2 rebuttal or surrebuttal. I don't recall if there
3 were.

4 Q. Okay.

5 A. You have different?

6 Q. No, no. I'm going to hand you a
7 document and ask you if you can identify that.

8 A. It appears to be my direct testimony on
9 class cost of service, revenue allocation and rate
10 design filed in ER-2007-0002.

11 Q. Okay. Would you turn to schedule
12 MEB COS 4 and MEB COS 5?

13 A. Yes.

14 Q. Can you tell me what the different --
15 well, what does MEB COS 4 represent?

16 A. I believe it represents my primary
17 position on class cost of service, I believe, at what
18 were then the present rates, present revenues in that
19 case.

20 Q. And the only difference between
21 MEB COS 4 and 5 is the method for allocation of
22 off-system sales margin; is that correct?

23 A. Yes.

24 Q. Okay. MEB COS 4 is your preferred --
25 was your preferred position; is that correct?

1 A. Correct.

2 Q. And it is still your position that
3 off-system sales margins should be allocated in a
4 manner similar to MEB COS 4; is that correct?

5 A. Correct. My methodologies have not
6 changed.

7 Q. Okay. Can you tell me on line 27, you
8 see it's entitled, "Revenue Change to Equal COS"; is
9 that correct?

10 A. Yes.

11 Q. Can you tell me what the result is for
12 the residential column?

13 A. For the residential class, the indicated
14 revenue-neutral increase was 4.1 percent.

15 Q. Can you tell me what that is in nominal
16 dollars?

17 A. \$120 million.

18 Q. And the results for the small general
19 service class, can you give me that, please?

20 A. A decrease of \$6.7 million or 3 percent.

21 Q. 3 percent decrease; is that correct?

22 A. Correct.

23 Q. Okay. And what is the result for large
24 general service class?

25 A. \$49 million decrease or 11.6 percent

1 decrease.

2 Q. And the result for the small primary
3 class?

4 A. \$23 million decrease or 12.8 percent
5 decrease.

6 Q. The result for the large primary class?

7 A. \$4.8 million decrease or 3.1 percent
8 decrease.

9 Q. And the result for the large
10 transmission class?

11 A. \$36 million decrease or 27 percent
12 decrease.

13 Q. And would you agree that in this case
14 the large general service and the small primary were
15 treated as separate classes?

16 A. That is true.

17 Q. And currently we treat those as a
18 combined class for purposes of class cost of service;
19 is that correct?

20 A. Yes, that is correct.

21 Q. I'm going to hand you another document.
22 First off, can you tell me if you testified in Case
23 No. ER-2008-0318?

24 A. I did.

25 Q. And you presented a class cost of

1 service study in that case; is that correct?

2 A. Correct.

3 Q. And that class cost of service study was
4 reflected in your direct testimony in that case; is
5 that correct?

6 A. It was.

7 Q. Can you identify the document that I've
8 handed you?

9 A. It appears to be a copy of my direct
10 testimony on cost of service, revenue allocation and
11 rate design from ER-2008-0318.

12 Q. And can you turn to the schedule where
13 it shows your results?

14 A. I have it.

15 Q. And which schedule is that?

16 A. COS-4.

17 Q. And that is -- that methodology
18 reflected in that schedule allocates off-system sales
19 margins in a manner similar to how you've done it in
20 this case; is that correct?

21 A. It does.

22 Q. Can you tell me the results in that case
23 for the residential class?

24 A. An indicated revenue-neutral increase of
25 \$144 million or 16.2 percent.

1 Q. And for the small general service class?

2 A. An indicated decrease -- revenue-neutral
3 decrease in both cases of \$9.5 million or 3.9 percent
4 decrease.

5 Q. And in that class -- in that case the
6 large general service and small primary were treated
7 together; is that correct?

8 A. They were.

9 Q. And can you tell me the results for that
10 combined class?

11 A. Revenue-neutral decrease of \$83 million
12 or 13.3 percent.

13 Q. 13.3 percent decrease?

14 A. Yes.

15 Q. And the large power class results?

16 A. Large primary?

17 Q. Large primary, I'm sorry.

18 A. Would be \$16 million decrease or
19 9.9 percent decrease.

20 Q. Finally, the results for the LTS class?

21 A. Decrease of \$36 million or 28.1 percent.

22 Q. 28.1 percent decrease?

23 A. Decrease, yes.

24 Q. Can you tell me in Case No. ER-2008-0318,
25 I believe it's reflected there, how did you recommend

1 to implement your class cost of service study?

2 A. If I'm remembering correctly, it was
3 first a revenue-neutral adjustment to move all
4 classes, I believe, 25 percent of the way from their
5 current position toward cost of service with whatever
6 revenue increase was found appropriate to be
7 allocated on an equal percentage on top of that.

8 Q. And in this case MIEC has recommended
9 first step, a 20 percent shift; is that correct?

10 A. Correct.

11 Q. In addition, MIEC recommends a second
12 step whereby the large transmission class would move
13 entirely to cost of service; is that correct?

14 A. That is correct.

15 Q. Do you recall a data request in which
16 you said that the second step, the movement of the
17 LTS class to cost of service was, quote, a policy
18 decision, unquote, by MIEC?

19 A. I do.

20 Q. Okay. And that is correct?

21 A. That -- that is correct.

22 Q. Okay. Can you tell me what your
23 compensation for your firm has been thus far in this
24 case?

25 A. About \$340,000.

1 Q. Is that greater than the amount that you
2 billed in the last case?

3 A. It is not.

4 Q. It is not?

5 A. It is not.

6 Q. Would you agree that the efficiencies
7 associated with higher load factor are reflected in
8 your class cost of service study?

9 A. Yes.

10 Q. So any differences -- any efficiencies
11 associated with the increased load factor of Noranda
12 compared to other customers will be reflected in your
13 class cost of service study; is that correct?

14 A. All of the differences that are
15 pertinent to differences in cost of service should be
16 reflected in that cost of service study, yes.

17 Q. And one of those is load factor; is that
18 correct?

19 A. It is.

20 MR. WOODSMALL: I have no further
21 questions. Thank you.

22 JUDGE WOODRUFF: All right. Staff.

23 MR. WILLIAMS: No questions.

24 JUDGE WOODRUFF: Ameren.

25 MR. FISCHER: No, thank you.

1 JUDGE WOODRUFF: All right. We'll come
2 up for questions from the bench, then. Commissioner
3 Davis.

4 QUESTIONS BY COMMISSIONER DAVIS:

5 Q. Good morning, Mr. Brubaker.

6 A. Good morning, Commissioner.

7 Q. In response to Mr. Woodsmall's question
8 just a minute ago, I mean, you said that your -- your
9 firm's compensation hasn't changed much from -- from
10 this case to the last rate case, and I'm just -- I'm
11 going to express a little disbelief and you tell me
12 where I'm wrong, in that it seems like you've got
13 more witnesses participating in this case filing more
14 testimony and you've had more witnesses from your
15 firm on the stand. I mean -- and to me, that would
16 translate into more money; is that not correct?

17 A. At the end of the case, it will be
18 correct. I believe Mr. Woodsmall's comparison was
19 between what we had billed so far and what we had
20 billed in the last case.

21 Q. Okay. All right.

22 A. I believe that was an accurate response
23 to the question that he posed to me.

24 Q. Okay. All right.

25 A. But you are correct -- you are correct

1 in your assessment.

2 Q. All right. But I congratulate you for
3 answering the question that was asked.

4 A. Mr. Woodsmall taught me that a long time
5 ago.

6 MR. WOODSMALL: I'm not that old.

7 BY COMMISSIONER DAVIS:

8 Q. Okay. In the -- looking at AmerenUE's
9 methodology and the -- the MIEC methodology --

10 A. Yes.

11 Q. -- it looks like you both used the --
12 the four NCP A&E methods, but yet came out with some
13 widely different results. And that gets into the
14 assumptions that you plug into the -- to the formula,
15 correct?

16 A. It gets into the other assumptions that
17 are critical to the outcome, so yes, in that sense.

18 Q. Okay.

19 A. There are other factors than just that
20 allocator.

21 Q. Okay. So describe for me the difference
22 in the -- between the AmerenUE methodology -- the
23 difference in the assumptions, I guess, between
24 AmerenUE and MIEC, how, for instance, with regard to
25 the -- the LTS class, how Ameren could come out with

1 a 1.6 percent increase, roughly, and MIEC could come
2 out with a 15 percent reduction.

3 A. There are, I believe, about four
4 differences in the study. Two are quite minor. The
5 minor ones are the allocation of general plant and
6 the allocation of transmission plant. That might
7 account for 5 or 10 percent of difference.

8 The two largest differences are these:
9 First, the allocation of the margin on off-system
10 sales is different. Ameren allocates that margin on
11 demand. I allocated using the energy allocator. The
12 energy allocator that I used is identical to the
13 method the Commission adopted in the Kansas City
14 Power & Light Company rate case in finding how it was
15 appropriate to allocate margin -- margins between
16 Kansas and Missouri for purposes of the
17 jurisdictional allocation.

18 The other difference that we have is the
19 classification of nonfuel-related generation,
20 operation and maintenance expense. Ameren treats a
21 portion of those costs as variable. I treat them
22 as -- as a fixed cost and associated with the
23 operation of the plant, a methodology sometimes
24 called expenses follow plant and a method which OPC
25 has also used in this case. Those two differences

1 account for the 90 percent or so difference in the
2 results that you're seeing.

3 Q. Okay. Can you tell me a little bit more
4 about this expenses-follow-the-plant methodology?

5 A. It's my -- my view, and I think I'm not
6 alone in this, that a large part or nearly all of the
7 nonfuel costs on the production system occur because
8 of the passage of time and the existence of the
9 facilities --

10 Q. Uh-huh.

11 A. -- more so than just the generation of
12 kilowatt hours. The maintenance intervals are
13 time -- time-related --

14 Q. Uh-huh.

15 A. -- and a lot of the costs that you incur
16 are fixed and relate to the investment in plant more
17 so than to the generation of energy.

18 Q. Uh-huh. And so --

19 A. It's more appropriate to allocate them
20 as we allocate other fixed costs which is on the
21 demand factor rather than on a energy factor.

22 Q. Okay. We'll go back to the demand and
23 the energy factor here in just a second. Okay. With
24 regard to this expenses-follow-the-plant concept, I
25 mean, you'd agree with me that that's more or less in

1 harmony with Mr. Meyer's theory on the plant
2 maintenance outages for the coal plants, would you
3 not?

4 A. I'd have to replug into his concepts and
5 the testimony to be sure I was answering you
6 correctly. I'm not -- if you can give me a little
7 more --

8 Q. Well, I mean, you talk about the
9 expenses follow the plant, it's for -- my impression
10 of Mr. Meyer's testimony as he revised it in his
11 surrebuttal was that he took a plant-by-plant
12 approach to maintenance outages for -- for fossil
13 fuel plants. And so having the expenses follow the
14 plant -- these nonfuel generation operating expenses
15 that you were discussing, that would sort of be
16 consistent with that methodology, wouldn't it?

17 A. Well, I think it is. On the other hand,
18 I want to be clear that I think Mr. Meyer's goal was
19 to get a normalized level of costs --

20 Q. Right.

21 A. -- to put into test year as a revenue
22 requirement. So mine -- mine is a little different
23 how to appropriately allocate that. But at the end
24 of the day, I hope I'm allocating the costs that he's
25 put in there as normalized.

1 Q. Okay.

2 A. And in that sense it's both follow,
3 expenses follow the plant.

4 Q. Okay. Now, when -- when you say -- when
5 we use the phrase "expenses follow the plant,"
6 doesn't that also lend itself to the lifespan
7 depreciation model as opposed to the mass property
8 approach?

9 A. No, sir, I don't think so.

10 Q. You don't think so?

11 A. I don't believe there is a connection
12 between how we allocate expenses that are incurred in
13 a test year or normalize expenses in a test year in
14 how you would choose to recognize depreciation over
15 the life of a property. I think they're just two
16 totally different concepts.

17 Q. Okay. All right. Going back to the
18 allocation of the off-system sales margin, you've got
19 the demand/energy allocator and you said that you
20 followed the KCP&L decision. Do you recall which
21 decision that was?

22 A. Yes. Give me a second here, I've got
23 it. Yes, sir, it was ER-2006-0314.

24 Q. I'm sorry. 214 or 314?

25 A. 314. I'm sorry if I misspoke. Issued

1 December 21st, 2006, and the discussion begins at
2 page 37 of the order.

3 Q. All right. And you're saying that you
4 did it exactly like we said in that order?

5 A. I did.

6 Q. Okay. And to your recollection, is MIEC
7 the only party that did it like that? And I know
8 Staff used a different methodology and so did OPC.

9 A. We are the only ones that did it in this
10 case.

11 Q. Okay.

12 A. Staff -- Staff, I think, did the same
13 thing for jurisdictional in the KCPL case that we
14 referenced, but in this case, I think we're the only
15 ones that did that.

16 Q. Okay. And can you explain to me the
17 difference between using a -- and if I get this
18 wrong, I'm going to have to ask you to correct me,
19 Mr. Brubaker, because I am not a rate design guru.
20 But for instance, what's the difference between
21 coincident peak and noncoincident peak? Let's --
22 let's start there.

23 A. Coincident peak would be the demand of a
24 class or one or more classes at a particular point in
25 time. Usually when we refer to coincident peak, we

1 refer to an hour in which the system peaked and we
2 could say what's the coincident peak each month or we
3 could say what is it for the whole year or what is it
4 in the four highest months. So it's usually a point
5 in time, and then you look at what each class is
6 doing at that point in time to contribute to that
7 total peak.

8 Noncoincident would be the highest
9 demand of a defined class or group of customers at
10 any time regardless of when it occurred.

11 Q. Okay. And you used the noncoincident
12 peak method, correct?

13 A. We used the noncoincident peak version
14 of the average and excess --

15 Q. Okay.

16 A. -- method. The noncoincident peaks are
17 used in that method to reflect diversity and to
18 allocate the difference between average loads and
19 peak loads across classes. In other words, it's a
20 way of allocating the total cost responsibility that
21 looks not only at the maximum demands of each class,
22 but also considers their average usage.

23 Q. Okay. Now, in one of their runs, Staff
24 used a 12 NCP.

25 A. Yes, they did.

1 Q. I mean, it seems to me that using a
2 12 NCP method would give you superior results than
3 a -- than a 4 NCP method, correct? I mean, that's --
4 that's my impression. You'd have more data points,
5 so I mean -- so tell me -- tell me why you used the
6 4 NCP as opposed to 12 NCP.

7 A. Sure. Well, there are more differences
8 than just that with the Staff method.

9 Q. Okay.

10 A. The Staff method uses 12 NCP and then
11 looks at some allocation of those costs across
12 months. I've explained in my testimony why I
13 disagree with that. If you want to visit about that,
14 I'm happy to, but --

15 Q. Well, I mean, I'm trying -- I'm just
16 trying to -- I'm trying to sort of summarize these
17 things here.

18 A. Okay. Let me just directly answer your
19 question.

20 Q. Yeah, and that would -- that would -- if
21 you could briefly.

22 A. Yeah. Well, I think the 12 CP concept
23 suggests that each month is equally important --

24 Q. Right.

25 A. -- in capacity planning. And I don't

1 think that's the case on summer peaking utilities,
2 strong summer peaking utilities like we have here in
3 the Midwest including Ameren and including Kansas
4 City Power & Light Company that have a very
5 predominant summer peak. And I think -- I think that
6 conclusion is consistent with the company's planning
7 analysis and the reserve margin requirement results.

8 Q. Right. I mean, utilities here either
9 traditionally have -- have one peak or two, don't
10 they?

11 A. Correct.

12 Q. And if the utility had two peaks, say,
13 they had a lot of space heating, you know, 4 -- 4
14 would catch that as well, wouldn't it?

15 A. It could. It -- you know, if it's the
16 right 4.

17 Q. Okay. And then briefly, could you
18 explain to me the difference between the -- the
19 average and excess, you know, portions of the study
20 that were used by yourself and by Ameren as opposed
21 to the A&P used by Staff and both of their runs as
22 well as OPC and one of their runs?

23 A. Okay. I think I have an exhibit that
24 might be helpful.

25 Q. Rebuttal or surrebuttal, Mr. Brubaker?

1 A. Well, I'm sorry. I'm fumbling here to
2 find it. I think it may have been -- well, give me
3 just a second if you don't mind.

4 Q. Oh, it's -- you're fine.

5 A. Well, I can't find it, so let me just
6 talk.

7 Q. Okay. But if it's an attachment to one
8 of your exhibits or your rebuttal or surrebuttal,
9 I've got them. Let's see. Because I've got --

10 A. Well, I think -- yeah.

11 Q. -- hourly assignment of generation
12 costs, I got --

13 A. I got it. It turned out to be inside
14 the testimony.

15 Q. Okay.

16 A. So it's Exhibit 430, rebuttal testimony,
17 on page 13.

18 Q. I'm here.

19 A. Okay. It really was put in there to try
20 to explain the question that you just asked, and it
21 does it by illustrating load patterns of two
22 different classes.

23 Q. Uh-huh.

24 A. And the average and excess -- or the
25 average and peak, really. Let's start with that

1 because that's what -- what this is showing. The
2 average and peak averages the class average demand
3 and the class demand at time of system peak. And
4 what -- by doing that -- because the average demand
5 is a subset, a component of the contribution to
6 system peak, the average demand gets double-counted.
7 In fact, the Commission made note of it in its most
8 recent AmerenUE rate order.

9 The average and excess, on the other
10 hand, deals with the average of each class as one
11 component, and then the difference between the
12 class's average and the class's maximum as the other.
13 So it's not double-counting, it's only allocated the
14 difference between average demand and the system peak
15 and using the difference between each class's maximum
16 demand or NCP and its average demand to do that.

17 So it's two steps instead of -- instead
18 of one that averages in the average demand and the
19 contribution to system peak, and therefore, it
20 double -- double-counts the average demand. In both
21 case we're trying to allocate system peak. That's
22 the basic difference.

23 One, you know, average and excess takes
24 account of the diversity between classes and does not
25 double-count the average demand; whereas, the average

1 and peak demand double-counts the average demand and
2 puts excess of costs on high load factor customers.

3 Q. Okay. Thank you, Mr. Brubaker.

4 That's -- I mean, we read this material and sometimes
5 I understand -- I mean, I read it and I see what it
6 says, but I still need to know what it says.

7 A. Understand.

8 COMMISSIONER DAVIS: So thank you.

9 JUDGE WOODRUFF: Commissioner Jarrett.

10 COMMISSIONER JARRETT: Good morning,
11 Mr. Brubaker.

12 THE WITNESS: Good morning,
13 Commissioner.

14 COMMISSIONER JARRETT: I don't have any
15 questions. Thank you.

16 JUDGE WOODRUFF: All right. Anyone wish
17 to recross based on questions from the bench?

18 MR. WOODSMALL: Yes, your Honor. Go
19 ahead. Did you --

20 MR. MILLS: Yeah.

21 MR. WOODSMALL: I'm not sure --

22 JUDGE WOODRUFF: Public Counsel goes
23 before.

24 MR. MILLS: Okay.

25 RE-CROSS-EXAMINATION BY MR. MILLS:

1 Q. Mr. Brubaker, you had some discussion
2 with Commissioner Davis about 12 peaks versus
3 4 peaks, right?

4 A. I did, yes.

5 Q. And a nonleap year has 8,760 hours,
6 doesn't it?

7 A. I think so, yes.

8 Q. From your client's perspective, are any
9 of those hours better than others to lose
10 electricity?

11 A. There's never a good time to lose
12 electricity, no.

13 Q. But from your client's perspective, it
14 doesn't matter if they lose it on a peak or on an off
15 peak, right?

16 A. Correct.

17 MR. MILLS: No further questions.

18 JUDGE WOODRUFF: All right. MEUA.

19 MR. WOODSMALL: Yes.

20 RE-CROSS-EXAMINATION BY MR. WOODSMALL:

21 Q. Mr. Brubaker, you were asked by
22 Commissioner Davis about your compensation. Do you
23 recall that?

24 A. Yes.

25 Q. And you indicated that it's \$330,000 as

1 of what point in time was that?

2 A. I think it was the end of January.

3 Q. Okay. And you will continue to do work
4 through the end of this case; is that correct?

5 A. Yes.

6 Q. Okay. Can you tell me how much more you
7 have budgeted for this case?

8 A. I would anticipate a total cost of
9 \$500,000, plus or minus.

10 Q. Okay. And that would be approximately
11 50 percent greater than what you billed in the last
12 case; is that correct?

13 A. No.

14 Q. You said you billed \$330,000 in the last
15 case?

16 A. No. I billed \$330,000 so far in this
17 case.

18 Q. Okay. How much did you bill in the last
19 case?

20 A. A little over 400,000.

21 MR. WOODSMALL: Okay. That's all I
22 have.

23 JUDGE WOODRUFF: Okay. Staff or Ameren?

24 MR. WILLIAMS: No questions.

25 JUDGE WOODRUFF: Okay. Redirect?

1 MS. VUYLSTEKE: No redirect. Thank you.

2 JUDGE WOODRUFF: Mr. Brubaker, you can
3 step down.

4 THE WITNESS: Thank you.

5 JUDGE WOODRUFF: Let's go ahead and take
6 a break. We'll come back at 10:30.

7 (A RECESS WAS TAKEN.)

8 JUDGE WOODRUFF: All right. We're back
9 from break. Mr. Williams, during the break we had a
10 discussion about another exhibit from Staff. Do you
11 want to explain that?

12 MR. WILLIAMS: Yes, thank you, Judge.
13 It's my understanding that Mr. Rackers in testimony
14 indicated he would provide the Commission with some
15 updated numbers relating to the vegetation management
16 infrastructure replacement tracker, updating numbers
17 that he'd provided in his surrebuttal testimony. I'd
18 like to reserve Exhibit No. -- I believe it would be
19 240 for purposes of providing an -- those updated
20 numbers.

21 JUDGE WOODRUFF: That number will be
22 reserved. Mr. Williams, I believe you also indicated
23 that that connected with this document that was filed
24 in EFIS last night or this morning.

25 MR. WILLIAMS: There was a filing that

1 was made the other day that indicated there was an
2 amendment to Mr. Rackers' surrebuttal testimony.
3 That testimony will not be offered -- that amendment
4 won't -- the amendment is what this exhibit number --
5 was for purposes of this Exhibit No. 240, but will --
6 what will actually be provided is -- I anticipate is
7 going to be a two-page exhibit with numbers and
8 basically a schedule.

9 JUDGE WOODRUFF: Okay. Thank you.

10 MR. WILLIAMS: Thank you.

11 JUDGE WOODRUFF: And while we were on
12 break, Ms. Meisenheimer has taken the stand, so I
13 assume that's who we'll be crossing next.

14 MR. MILLS: Judge, if that's all right.
15 As we discussed earlier, Mr. Kind has got a doctor
16 appointment this afternoon and Ms. Meisenheimer's
17 role in this case was really to basically just
18 develop an allocator.

19 So I think to the extent that there are
20 a lot of detailed questions about the cost of service
21 study result, she will defer those to Mr. Kind, so we
22 thought it would be better to put her on first so
23 that we don't end up having the deferee as the -- as
24 the first witness, so --

25 JUDGE WOODRUFF: Okay. If that's

1 acceptable to all the other parties, it's fine with
2 me. And I don't hear any objections to it. So
3 Ms. Meisenheimer, if you'd please raise your right
4 hand.

5 (The witness was sworn.)

6 JUDGE WOODRUFF: Thank you. And I'll
7 give you my little speech also that you probably
8 heard a dozen times already. Just answer the
9 questions that are asked. Thank you. You may
10 inquire.

11 DIRECT EXAMINATION BY MR. MILLS:

12 Q. Ms. Meisenheimer, can you state your
13 name for the record, please.

14 A. Barbara Meisenheimer.

15 Q. And by whom are you employed and in what
16 capacity?

17 A. I am a chief utility economist with the
18 Office of Public Counsel.

19 Q. And have you caused to be filed in this
20 case -- well, let's -- let's kind of do it by
21 category -- direct testimony on production allocators
22 filed on January 6th, 2010?

23 A. Yes.

24 Q. Rebuttal testimony on production cost
25 allocators filed on February 11th, 2010?

1 A. Yes.

2 Q. And supplemental surrebuttal testimony
3 on production cost allocators filed on March 12th,
4 2010?

5 A. Yes.

6 Q. Okay. And just focusing on those
7 particular exhibits, if I were to ask you the same
8 questions that are contained therein, would your
9 answers be the same today?

10 A. Yes.

11 Q. And do you have any additions or
12 corrections to those pieces of testimony?

13 A. No.

14 Q. Okay. And are the answers true and
15 correct to the best of your knowledge, information
16 and belief?

17 A. Yes.

18 MR. MILLS: Okay. Judge, we also have
19 filed by Ms. Meisenheimer testimony on low income
20 issues which is a settled issue, and I would like
21 to -- if -- either take her through the same
22 questions with respect to those or simply offer those
23 at the same time as I offer --

24 JUDGE WOODRUFF: Why don't you just
25 offer them with the others.

1 MR. MILLS: Okay.

2 JUDGE WOODRUFF: That's what everybody
3 else has been doing.

4 MR. MILLS: Okay. Then with that, I
5 will offer the direct testimony of production cost
6 allocators, rebuttal testimony of production cost
7 allocators and supplemental surrebuttal testimony on
8 production cost allocators as well as the direct
9 testimony on -- of Ms. Meisenheimer on low income
10 affordability, rebuttal testimony of Ms. Meisenheimer
11 on low income affordability and the surrebuttal
12 testimony of Ms. Meisenheimer on low income
13 affordability and tender the witness for
14 cross-examination.

15 JUDGE WOODRUFF: And I -- I want to be
16 clear on what numbers we're talking about here
17 because I...

18 MR. MILLS: Judge -- and I apologize. I
19 do not have my -- my exhibit list here and I think I
20 may have left out one of the --

21 JUDGE WOODRUFF: That's what I was about
22 to say.

23 MR. MILLS: Yes. There is also
24 surrebuttal testimony on production cost allocators.

25 JUDGE WOODRUFF: All right. What I've

1 got is the Meisenheimer direct is 307, Meisenheimer
2 direct low income is 308, Meisenheimer rebuttal is
3 309, Meisenheimer supplemental rebuttal on low income
4 is 310 and Meisenheimer surrebuttal is 311, and you
5 indicated there would also be Meisenheimer
6 supplemental surrebuttal; is that correct?

7 MR. MILLS: That's correct.

8 JUDGE WOODRUFF: All right. We'll give
9 that 315.

10 (EXHIBIT NOS. 307, 308, 309, 310, 311
11 AND 315 WERE MARKED FOR IDENTIFICATION BY THE COURT
12 REPORTER.)

13 MR. MILLS: And I would like to offer
14 all of those exhibits at this time and tender the
15 witness for cross-examination.

16 JUDGE WOODRUFF: Okay. 307, 308, 309,
17 310, 311 and 315 have been offered. Any objection to
18 their receipt?

19 (NO RESPONSE.)

20 JUDGE WOODRUFF: Hearing none, they will
21 be received.

22 (EXHIBIT NOS. 307, 308, 309, 310, 311
23 AND 315 WERE RECEIVED INTO EVIDENCE AND MADE A PART
24 OF THE RECORD.)

25 JUDGE WOODRUFF: All right. For

1 cross-examination we begin with the Retailers.

2 (NO RESPONSE.)

3 JUDGE WOODRUFF: MIEC.

4 MS. VUYLSTEKE: No questions.

5 JUDGE WOODRUFF: MEUA.

6 MR. WOODSMALL: One question, your
7 Honor.

8 CROSS-EXAMINATION BY MR. WOODSMALL:

9 Q. Ms. Meisenheimer, has OPC in the past
10 argued that it is inequitable for a particular class
11 to receive a rate decrease when other classes have
12 received a rate increase?

13 A. Yes.

14 MR. WOODSMALL: Thank you. No other
15 questions.

16 JUDGE WOODRUFF: All right. For Staff.

17 MR. WILLIAMS: No questions.

18 JUDGE WOODRUFF: For Ameren.

19 MR. FISCHER: Just briefly.

20 CROSS-EXAMINATION BY MR. FISCHER:

21 Q. Ms. Meisenheimer, I wanted to ask you
22 about your surrebuttal testimony, Exhibit 311 on
23 page 8. There's a table two that I believe shows
24 results from different allocation methods; is that
25 correct?

1 A. Yes.

2 Q. And the very last line on that shows
3 pure energy allocation results; is that correct?

4 A. Yes.

5 Q. Now, is a pure energy allocator an
6 allocator that would -- that would allocate the cost
7 of power plants only on the basis of pro rata energy
8 usage, is that what that does?

9 A. Yes.

10 Q. Okay. And then your OPC TOU, that's the
11 time of use method; is that correct?

12 A. Yes.

13 Q. That line would have the results from
14 the Public Counsel's time of use allocator for the
15 different classes; is that right?

16 A. Yes.

17 Q. If I compared the pure energy allocation
18 and that time of use allocation for the LTS class, it
19 looks like there would be a difference of .12
20 percent; is that right? If I just subtracted the
21 10.43 and subtracted the 10.13 from the 10.43,
22 there's only a difference of 1.2 percent?

23 A. Of .12 --

24 Q. Yes.

25 A. -- percent? Yes.

1 Q. And then if I looked at the LPS and made
2 that same subtraction, I would get a difference of
3 .61 percent?

4 A. Yes.

5 Q. And if I looked at the LGS SPS, the
6 difference would be .53 percent; is that right?

7 A. And the reason I'm hesitating is I
8 updated that table in supplemental --

9 Q. You did? Okay. Well --

10 A. -- surrebuttal, but the numbers are the
11 same for those columns.

12 Q. The numbers will still speak for
13 themselves, I guess. The -- and the LGS, we won't --
14 don't need to go through it if the numbers are
15 exactly correct, but that's .05; is that right?

16 A. For LGS SPS?

17 Q. SGS, small general.

18 A. Oh. And what number?

19 Q. I came up with .05 percent.

20 A. Yes.

21 Q. So -- and then I guess if you go to
22 residential, it's just slightly more than 1 percent,
23 1.22 percent?

24 A. Yes.

25 Q. So would it be correct to say that with

1 the exception of that residential class, all of the
2 differences between the two results of an energy
3 allocator and a time of use are less than a percent?

4 A. Yes.

5 MR. FISCHER: Okay. Thank you.

6 JUDGE WOODRUFF: Come up for questions
7 from the bench, then. Commissioner Jarrett.

8 COMMISSIONER JARRETT: Good morning,
9 Ms. Meisenheimer.

10 THE WITNESS: Good morning.

11 COMMISSIONER JARRETT: I don't have any
12 questions. Thank you.

13 JUDGE WOODRUFF: No questions from the
14 bench, so no recross. Any redirect?

15 MR. MILLS: Yes, please.

16 REDIRECT EXAMINATION BY MR. MILLS:

17 Q. Ms. Meisenheimer, Mr. Fischer asked you
18 some questions about the table two in your
19 surrebuttal testimony, and I believe you indicated
20 that you had revised that at page 3 of your
21 supplemental surrebuttal testimony?

22 A. Yes.

23 Q. And the numbers in your supplemental
24 surrebuttal testimony are intended to replace the
25 ones in your surrebuttal testimony; is that correct?

1 A. Yes.

2 Q. And can you explain what the purpose of
3 that table is and what it shows?

4 A. The -- the table in my testimony as
5 updated in supplemental surrebuttal was intended to
6 show the array of allocations produced by the various
7 parties in this case regarding the production
8 allocator.

9 MR. MILLS: That's all I have.

10 JUDGE WOODRUFF: Okay. You may step
11 down. Are we ready for Mr. Kind, then?

12 MR. MILLS: Yes, I believe so.

13 JUDGE WOODRUFF: Good morning, Mr. Kind.

14 THE WITNESS: Good morning.

15 JUDGE WOODRUFF: I believe you have also
16 testified earlier --

17 THE WITNESS: That's correct.

18 JUDGE WOODRUFF: -- so you're still
19 under oath.

20 (The witness was previously sworn.)

21 JUDGE WOODRUFF: You may inquire.

22 DIRECT EXAMINATION BY MR. MILLS:

23 Q. Could you state your name for the
24 record, please.

25 A. My name is Ryan Kind.

1 Q. And by whom are you employed and in what
2 capacity?

3 A. I'm employed by the Missouri Office of
4 the Public Counsel as chief utility economist.

5 Q. And have you caused to be filed in this
6 case certain pieces of testimony, specifically direct
7 testimony on class cost of service, rate design,
8 rebuttal testimony on class cost of service, rate
9 design and surrebuttal testimony on class cost of
10 service, rate design?

11 A. Yes, I have. That surrebuttal testimony
12 also addressed the fuel adjustment clause.

13 Q. And do you have any corrections to make
14 to any of that testimony?

15 A. No, I do not.

16 Q. Okay. And if I were to ask you the same
17 questions that are contained in that testimony here
18 today, would your answers be the same?

19 A. Yes.

20 Q. And are those answers true and correct
21 to the best of your knowledge, information and
22 belief?

23 A. Yes, they are.

24 MR. MILLS: Okay. Judge, with that, I
25 will offer Mr. Kind's direct testimony, his rebuttal

1 testimony which has both HC and NP versions and his
2 surrebuttal testimony which has both HC and NP
3 versions. And I'll tender the witness for
4 cross-examination.

5 (EXHIBIT NOS. 300, 302 HC AND NP, AND
6 303 HC AND NP WERE MARKED FOR IDENTIFICATION BY THE
7 COURT REPORTER.)

8 JUDGE WOODRUFF: All right. Exhibits --
9 300 is his direct, 302 HC and NP would be his
10 rebuttal and 303 is his HC and NP. Those have all
11 been offered. Any objections to their receipt?

12 (NO RESPONSE.)

13 JUDGE WOODRUFF: Hearing none, they will
14 be received.

15 (EXHIBIT NOS. 300, 302 HC AND 302 NP,
16 303 HC AND 303 NP WERE RECEIVED INTO EVIDENCE AND
17 MADE A PART OF THE RECORD.)

18 JUDGE WOODRUFF: For cross-examination
19 beginning with MIEC.

20 CROSS-EXAMINATION BY MS. VUYLSTEKE:

21 Q. Good morning, Mr. Kind.

22 A. Good morning.

23 Q. Am I correct that you are the OPC
24 witness that's responsible for making a
25 recommendation on how to collect revenues from the

1 various customer classes in this case?

2 A. Yes, that's correct.

3 Q. And is it also correct that the
4 recommendation in your direct, rebuttal and
5 surrebuttal testimonies was an equal percentage,
6 across-the-board increase to all classes?

7 A. That's correct.

8 Q. Do you support the stipulation that's
9 been entered into in this case as a reasonable
10 allocation of any rate increase among the customer
11 classes?

12 A. Yes, I believe that it is a reasonable
13 allocation of the rate increase and will result in
14 just and reasonable rates.

15 MS. VUYLSTEKE: No further questions.

16 Thank you.

17 JUDGE WOODRUFF: All right. MEUA.

18 CROSS-EXAMINATION BY MR. WOODSMALL:

19 Q. Good morning, sir.

20 A. Good morning.

21 Q. Do you know if Public Counsel filed a
22 class cost of service study in Case No. ER-2007-0002?

23 A. Yes, we did.

24 MR. WOODSMALL: Okay. Hand you a data
25 request and I want to make it an exhibit.

1 (EXHIBIT NO. 552 WAS MARKED FOR
2 IDENTIFICATION BY THE COURT REPORTER.)
3 BY MR. WOODSMALL:

4 Q. Do you have what's been marked as
5 Exhibit 552 before you?

6 A. Yes, I do.

7 Q. Can you tell me if that indicates the
8 results of the OPC class cost of service study in
9 Case No. ER-2007-0002?

10 A. Yes. The response to the DR No. 2.1.
11 Well, actually, I'm sorry. It's -- it's 2.2.

12 Q. Thank you for the clarification.

13 A. 2.2, yes, has that information.

14 Q. Thank you. And did OPC file a class
15 cost of service study in Case No. ER-2008-0318?

16 A. Yes, that's correct.

17 Q. And can you tell me if the answer to DR
18 MEUA-2.4 on page 4 of Exhibit 552 reflects the
19 results of that class cost of service study?

20 A. It does reflect those results.

21 Q. And OPC filed a class cost of service
22 study in this case; is that true?

23 A. Yes.

24 Q. And the results -- the final results,
25 there's been some modifications over the course of

1 the case, but the final results are reflected in
2 response to MEUA-2.5 of Exhibit -- of Exhibit 552; is
3 that correct?

4 A. Yes, it is.

5 Q. In looking at the results of MEUA-2.5,
6 the results of your time of use study indicate what
7 for the large transmission service class?

8 A. They indicate a revenue-neutral shift of
9 15.27 percent of an increase, and you may see more of
10 the actual number.

11 Q. What is that on a nominal dollar basis?

12 A. The nominal dollar basis, the
13 revenue-neutral shift in nominal dollars is
14 21,246,229.

15 Q. Okay. And can you tell me for the same
16 time of use study what the results are for the large
17 general service small primary class?

18 A. Yes. The results there would be a
19 revenue-neutral shift of negative \$24,388,151.

20 Q. And that's equivalent to a negative
21 reduction of 3.77 percent; is that correct?

22 A. Yes, on a revenue-neutral basis.

23 Q. Okay. And your other study is called
24 the average in 4 CP method; is that correct?

25 A. That's correct.

1 Q. And can you tell me what the results for
2 the large -- or the LTS class under that study is?

3 A. The results under that study for the LTS
4 class is an increase of \$4,960,193 on a
5 revenue-neutral basis.

6 Q. And that's an increase of 3.56 percent;
7 is that correct?

8 A. Yes.

9 Q. And what is the result for the large
10 general service small primary class?

11 A. The result is on a revenue-neutral basis
12 a shift of a negative 30,320,328.

13 Q. Okay. And that's equivalent to a
14 reduction of 4.69 percent; is that correct?

15 A. Yes.

16 MR. WOODSMALL: I'd move for the
17 admission of Exhibit 552, your Honor.

18 JUDGE WOODRUFF: 552 has been offered.
19 Any objections to its receipt?

20 MR. MILLS: No objection.

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

23 (EXHIBIT NO. 552 WAS RECEIVED INTO
24 EVIDENCE AND MADE A PART OF THE RECORD.)

25 BY MR. WOODSMALL:

1 Q. Mr. Kind, are you familiar with the
2 stipulation that's been filed in this case regarding
3 class cost of service rate design?

4 A. Yes, I am.

5 Q. Is it true that that -- the stipulation
6 would provide the LTS class a rate increase that is
7 12.22 percent below system average increase?

8 A. If you'll hold on just a minute, I need
9 to review -- to review that.

10 MR. WILLIAMS: Judge, I'm going to
11 object to that question for vagueness because I
12 believe there have been two rate design stipulation
13 and agreements offered in this case, one of which was
14 objected to and then the second through the addendum.
15 I want a clarification at least as to which agreement
16 Mr. Woodsmall's inquiring.

17 JUDGE WOODRUFF: I think clarification
18 would be appropriate.

19 MR. WOODSMALL: I can do that. And to
20 the extent -- I've never thought about this until we
21 mentioned it. To the extent I need to object to the
22 addendum separately, I am objecting to that, so it
23 doesn't become unanimous.

24 JUDGE WOODRUFF: Okay.

25 BY MR. WOODSMALL:

1 Q. I'm referring to the stipulation and
2 agreement, not the addendum at this point.

3 A. Okay. And is there a certain page in
4 that stipulation and agreement or schedule that
5 you're referring to?

6 Q. Let's -- let's look at page 15,
7 \$175 million increase. Would you agree that the
8 overall system increase, then, would be 7.93 percent?

9 A. Yes, that is correct.

10 Q. And in that scenario, the LTS class
11 would receive a reduction of 3.54 percent; is that
12 correct?

13 A. Yes, I believe that is correct.

14 Q. Okay. So the LTS class would be
15 receiving relative to system average a reduction of
16 11.47 percent, is that correct, if my math is
17 correct?

18 A. Well, I'm not sure that it's a simple
19 addition of those two numbers. That probably
20 wouldn't be too far off, but --

21 Q. Okay. Then if I -- if I change my
22 question to approximately 11.47 percent, would that
23 be correct?

24 A. I would agree that it would be
25 approximately in the range of 11 or 12 percent.

1 Q. Okay. And just to cover us on two data
2 points, let's look at page 18, an allocation of
3 \$100 million increase. Do you have that?

4 A. Yes, I do.

5 Q. Okay.

6 A. I'm sorry.

7 Q. Under that scenario, the system average
8 increase would be 4.53 percent; is that correct?

9 A. That's correct.

10 Q. And the LTS class would receive in that
11 scenario a reduction of 6.55 percent; is that
12 correct?

13 A. That's correct.

14 Q. And would you agree in that scenario,
15 then, that LTS would receive approximately a
16 reduction of 11.08 percent relative to system
17 average?

18 A. Relative to what the LTS class revenue
19 requirement would be if all rates were -- all class
20 revenue requirements were increased on an equal
21 percentage basis, yes.

22 Q. Thank you. Can you tell me what the
23 class -- class revenues are currently for the LTS
24 class? Would you accept 139 million, subject to
25 check?

1 A. Yes, I would.

2 Q. Okay. So then an 11 percent reduction
3 would be \$15 million approximately; is that correct,
4 16 million?

5 A. Well, it's not 11 percent from the 139.
6 It's 11 percent relative to if you had increased the
7 139 by 4.53 percent and -- and then looked at the
8 resulting difference.

9 Q. Okay. Thank you. Again, your cost of
10 service study shows under two different methodologies
11 LTS receiving an increase of either 15.3 percent or
12 3.6 percent; is that correct?

13 A. Let's see. Our class cost of service
14 study indicates that those would be the -- the shifts
15 required to equalize the class rate of return for all
16 the various customer classes.

17 Q. Okay. And just so I know this for
18 future cases, you generally file class cost of -- OPC
19 generally files class cost of service studies in
20 electric cases; is that correct?

21 A. We certainly try to. It's one of our
22 core functions, and if we have the resources
23 available, we certainly attempt to accomplish that.

24 Q. And would you believe as an expert, is
25 it your opinion, then, that a stipulation that

1 provides for a 12 percent reduction where your cost
2 of service study show a 15 percent increase leads to
3 just and reasonable rates?

4 MR. MILLS: I'm going to object to that
5 question unless it's phrased as a hypothetical;
6 otherwise, it assumes facts not in evidence.

7 MR. WOODSMALL: I'll phrase it as a
8 hypothetical and the record will prove it to be true
9 or false.

10 THE WITNESS: Yes, if you're, you know,
11 asking me the same question that Ms. Vuylsteke asked
12 me earlier about whether or not the stipulation and
13 agreement would result in just and reasonable rates,
14 I would agree.

15 BY MR. WOODSMALL:

16 Q. Okay. And you're familiar with the OPC
17 policy in the past that it is inequitable for a
18 particular class to receive a rate decrease when
19 other classes are receiving a rate increase, you're
20 familiar with that policy?

21 A. I would not characterize it as a policy,
22 so no, I couldn't -- I couldn't agree with that.

23 Q. How would you characterize it?

24 A. I would characterize that as one of many
25 considerations in determining rate design and what

1 reasonable shifts should be, and -- and a
2 consideration so it can vary case by case. It
3 certainly is a consideration that we have raised in
4 past cases.

5 Q. Do you know of a case in which OPC has
6 deviated from that policy?

7 A. In terms of our recommendations?

8 Q. In terms of your recommendation first,
9 yes.

10 A. Well, I know that that -- again, I
11 wouldn't call it a policy, but that consideration is
12 something that's certainly -- we had a lot of
13 discussion about, oh, in the time period of, say,
14 between five years ago and ten years ago.

15 Prior to then, I was also involved in
16 rate design for OPC, and I don't recall us placing as
17 much of an emphasis on that consideration. And so I
18 really couldn't be certain one way or the other if
19 there were exceptions in particular rate design
20 recommendations that we'd made in specific cases.

21 Q. Since the point in time in which you've
22 played -- OPC has placed a higher emphasis on that
23 consideration, since that point in time, do you know
24 of OPC ever recommending a class get a rate reduction
25 when other classes are receiving a rate increase?

1 A. I assume you mean other than in this
2 particular case?

3 Q. Yes.

4 A. Yeah, it's -- it's quite possible
5 because we're involved in so many cases that that has
6 occurred, and particularly with respect to some of
7 the gas and water cases where there's a large number
8 of different districts. And sometimes there's issues
9 of equalizing district rates and the considerations
10 become very complex. That may have occurred.
11 However, I can't point you to a specific case where
12 that has occurred.

13 Q. Let me try and be more specific. To
14 your knowledge, since the point in time when that
15 consideration became of increased emphasis, do you
16 know of any time when the Office of Public Counsel
17 has made a recommendation that an electric
18 utility's -- a certain electric utility class gets a
19 rate increase when all other class -- or a rate
20 decrease when all other classes get a rate increase?

21 A. I cannot recall one, no.

22 Q. Okay. Are you familiar with the -- are
23 you generally familiar with the stipulation -- the
24 rate design stipulations from the last two Ameren
25 cases?

1 A. I'm not sure if you go two cases ago. I
2 really wasn't involved in rate design in that
3 particular case. There were so many other issues,
4 important issues related to revenue requirement and
5 just the particular allocation of resources within
6 our office. I didn't get involved in the -- in the
7 rate design issue, but I did get involved in it in
8 the last case.

9 Q. Do you know in general whether in the
10 stipulation in ER-2007-0002 Noranda received a less
11 than system average increase?

12 A. And that's two cases ago?

13 Q. Right.

14 A. No, I -- I really don't know.

15 Q. Okay. Do you know if the stipulation in
16 Case No. ER-2008-0318 Noranda received a less than
17 system average increase?

18 A. Is -- I know that I could say -- all I
19 can say, really, is it's possible, but I couldn't say
20 with certainty that that occurred. So I guess that's
21 an I don't know.

22 Q. If I showed you the stipulation, would
23 you be able to review that and refresh your
24 recollection?

25 A. Depending on, you know, how the numbers

1 that were agreed to are reflected in there, I might
2 be able to.

3 Q. Show you a stipulation from that case
4 and I just turn your attention --

5 A. Okay.

6 Q. -- maybe we can cut through this easy if
7 you look at the bottom line.

8 A. Uh-huh.

9 Q. It says relative -- "Relative to system
10 average." Can you tell me whether the LTS class
11 received an increase -- a lesser increase relative --
12 relative to system average than the other classes?

13 A. Well, I'd like to take just a minute to
14 review this.

15 Q. Sure.

16 A. I'm really not prepared to answer, you
17 know, one way or another. This piece of paper shows
18 the potential revenue -- overall revenue requirement
19 increases at various levels and it sort of shows the
20 formulas that were applied, but you'd have to, I
21 think, plug in the actual numbers of the -- of what
22 the overall rate increase was.

23 Q. Okay. Handing you an excerpt of Report
24 and Order in that case.

25 A. Okay.

1 Q. Can you read for me what is listed under
2 "Step 1"? And you can familiarize yourself with the
3 rest of the document if you want to.

4 A. Step 1 is the increment directed to the
5 large transmission service class will be one half of
6 the system average percentage increase.

7 Q. Okay. Would that indicate to you that
8 the LTS class received less of a reduction than other
9 classes?

10 A. Do you mean less of an increase --

11 Q. Yes.

12 A. -- than other classes?

13 Q. Yes.

14 A. Okay. I just want to clarify you're not
15 saying that they got a decrease in the last case.

16 Q. No.

17 A. But less of an increase, less than
18 system average increase, yes, I would agree with
19 that.

20 Q. And if I -- if I made the same question
21 for ER-2007-0002, would you know the answer to that
22 now?

23 A. No, I would not.

24 Q. Okay. Does Public Counsel value the
25 work that Noranda has done in the legislature?

1 A. I don't know that I'm really in a
2 position to make a general assessment of that. I
3 mean, they began their work in the legislature, I
4 guess, by -- you know, there was some change in the
5 law that allowed them to -- allowed them to take
6 service from their choice of providers at -- you
7 know, basically, you know, the best wholesale rate
8 that they could get. And I just -- I don't think I'm
9 in a position to say pros and cons --

10 Q. Okay. Let me --

11 A. -- what they may have done.

12 Q. Let me be more specific. Did Public
13 Counsel value the work that Noranda did lobbying
14 against the CWIP legislation last year?

15 A. I can't say I'm in a position to be
16 really that familiar specifically with what -- with
17 what work that they did apart from that they were --
18 I know they were part of a group that included Public
19 Counsel that had lots of problems with that proposed
20 legislation.

21 Q. How long have you been with the Office
22 of Public Counsel?

23 A. Since 1991.

24 Q. In 19 years are you familiar with Public
25 Counsel's view towards CWIP?

1 A. Yes. You know, I mean, I've heard a lot
2 of people in our office, in particular our
3 accountants talk about that issue as it's arisen in
4 rate cases or things like that.

5 Q. And what is Public Counsel's view
6 towards CWIP?

7 A. Well, I think our view is that it would
8 raise rates above the level that's -- that's
9 necessary in general to achieve its intended purpose.
10 And the intended purpose is often to -- to assist
11 utilities in terms -- the -- the asserted intended
12 purpose by utilities is often that it will assist
13 utilities in being able to finance their needed
14 investments.

15 Q. So Public Counsel was against the CWIP
16 legislation last year; is that correct?

17 MR. MILLS: Judge, I'm going to have to
18 object here. I'm willing to allow Mr. Woodsmall some
19 leeway, but really, CWIP has got nothing to do with
20 this issue, so I'm going to object on the grounds of
21 relevance.

22 JUDGE WOODRUFF: What response?

23 MR. WOODSMALL: Your Honor, I agree that
24 CWIP specifically has nothing to do with this issue.
25 Noranda, the positions they take to assist Public

1 Counsel in the legislature has everything to do with
2 this issue. As we've seen from their -- from their
3 cost of service studies, this stipulation is not
4 based on cost of service, it's based on other
5 considerations. And I believe that Noranda's
6 assistance of Public Counsel in the legislature has
7 everything to do with why Public Counsel was settling
8 on this case.

9 JUDGE WOODRUFF: I'll overrule the
10 objection. You can explore this.

11 BY MR. WOODSMALL:

12 Q. Can you tell me was Public Counsel
13 against the CWIP legislation last year?

14 MR. MILLS: Well -- and I'm going to
15 have to object to the form of that question because
16 there was a lot more to that legislation than CWIP,
17 and to just call it CWIP legislation severely
18 minimizes the damage that that piece of legislation
19 would have done to the regulatory process.

20 So if we want to sort of refer to that
21 as some legislation last year that had as part of its
22 aspect reducing or eliminating the prohibition
23 against CWIP, then maybe we can talk about that. But
24 to call it CWIP legislation, I think is perhaps a
25 misnomer.

1 MR. FISCHER: Judge, I think I need to
2 weigh in too and suggest that we're going way far
3 afield here talking about the merits of that -- any
4 legislation and getting into any details of
5 legislation or any previous proposals on CWIP. I
6 think we need to stay focused on this issue. I
7 understand where Mr. Woodsmall's going, but to get
8 into the merits of a particular piece of legislation
9 and allow him to debate here in the hearing room
10 about that I think is improper.

11 MR. WOODSMALL: I'm not --

12 JUDGE WOODRUFF: All right. I assume
13 that's not where you're going?

14 MR. WOODSMALL: I'm not going to go into
15 the merits. I'm initially attempting to just show
16 that OPC and Noranda's positions were aligned.

17 MR. MILLS: And we're certainly willing
18 to stipulate to that.

19 MR. WOODSMALL: Okay.

20 BY MR. WOODSMALL:

21 Q. Are you familiar with a bill in the
22 legislature this year that would allow gas utilities
23 to include bad debts in the PGA?

24 A. I can't say with certainty. I haven't
25 seen such a bill. I have heard discussions of such a

1 bill.

2 Q. Okay. You believe such a bill exists?

3 A. Again, I can't say with certainty.

4 Q. Okay. Can you tell me what Public
5 Counsel's -- if Public Counsel is against including
6 bad debt in the PGA clause?

7 A. I think that's an issue that we have
8 addressed before this Commission and been opposed to
9 it, yes.

10 Q. Okay. Can you tell me if Noranda
11 participated in lobbying against the bad debt in PGA
12 bill this year in the legislature?

13 A. I don't have any knowledge of that.

14 MR. WOODSMALL: Okay. I have no further
15 questions. Thank you.

16 JUDGE WOODRUFF: All right. Cross from
17 Staff.

18 MR. WILLIAMS: Thank you, Judge.

19 CROSS-EXAMINATION BY MR. WILLIAMS:

20 Q. It's still morning. Good morning,
21 Mr. Kind.

22 A. Good morning, Mr. Williams.

23 Q. In deciding appropriate rate design,
24 should the sole consideration be the results of class
25 cost of service study?

1 A. No, I don't believe so.

2 Q. What other factors or considerations
3 should be taken into account -- and not
4 necessarily -- I'm not looking necessarily for an
5 exhaustive list --

6 A. Uh-huh.

7 Q. -- but the ones that you think should be
8 taken into account.

9 A. Well, I would -- actually just -- just
10 recently responded to a data request from
11 Mr. Woodsmall on this subject and it's probably part
12 of the packet. In his request it was limited to just
13 considerations other than cost of service for
14 nonresidential customer classes. That's his DR
15 No. 2.6.

16 And so in that response I stated that
17 the considerations should include but not be limited
18 to the magnitude of rate impacts, affordability,
19 gradualism, value of service and economic efficiency.

20 And I think I would -- I would expand
21 upon that if we're talking about all customer classes
22 to the importance of getting the price signal right,
23 particularly for smaller customers because that has a
24 major impact on their incentive to adopt energy
25 efficiency measures and has a major impact on the

1 payback period involved in adopting energy efficiency
2 measures.

3 Q. Are you familiar with the Staff's
4 recommendations for rate design in this case?

5 A. I'm just to -- you know, I don't have
6 the specific percentages or recommendation off the
7 top of my head. I know that the Staff had
8 recommended some small changes on a revenue-neutral
9 basis, is my understanding.

10 MR. WILLIAMS: Judge, if I might
11 approach?

12 JUDGE WOODRUFF: You may.

13 BY MR. WILLIAMS:

14 Q. I'm handing you what's been premarked
15 for identification as Exhibit No. 205, in particular
16 page 23. And it's the Staff class cost of service
17 and rate design report that was prefiled January 6th
18 of 2010. Can you take a look at the section that has
19 the header "Rate Design" under Roman numeral III?

20 A. Yes.

21 Q. Please let me know when you've finished
22 reading that section.

23 A. I probably just need to read the first
24 page and the list of ten points, I assume, to get the
25 recommendation, and I've been through that.

1 if Commissioner Jarrett has --

2 COMMISSIONER JARRETT: I don't have any
3 questions.

4 COMMISSIONER DAVIS: Hold on, Mr. Kind.
5 Mr. Kind, have no fear, we'll get you out of here by
6 one o'clock today. Or at least if you're not out of
7 here by one o'clock, it will not be my fault.

8 QUESTIONS BY COMMISSIONER DAVIS:

9 Q. OPC did two cost allocation studies, and
10 I'm looking at the numbers here -- the numbers in the
11 stipulation -- or I guess now what I would call the
12 joint proposal. I guess is it fair to say that
13 the -- the time of use study is the one that is -- is
14 most approximate to the actual settlement or -- and
15 it just -- what --

16 A. I think generally that's correct, but...

17 Q. And I don't know. I mean --

18 A. Yeah, I don't think -- I don't think
19 that would be --

20 Q. In terms of the --

21 A. -- not for all classes.

22 Q. In terms of residential impact, that
23 would be correct?

24 A. Yes.

25 Q. And it's my impression that every study

1 in this case recommended a decrease for small general
2 services; is that correct?

3 A. I would agree except with the way you
4 used the word "recommended." I would -- I would
5 replace that with indicated.

6 Q. Indicated. So every study here
7 indicated that -- that small general services were
8 entitled to a decrease, and yet we have a proposal by
9 the parties to increase small general services; is
10 that fair?

11 A. I guess whether or not a customer class
12 is entitled to a certain revenue-neutral shift, I
13 would not base that solely on class cost of service
14 studies. I would -- I would just say take into
15 account all considerations. But I do understand your
16 concern from looking at the results of all the
17 studies and the shift to small general service.

18 Q. And what are all consideration or what
19 are the other relevant factors here?

20 A. Well, I think you have the other
21 considerations. I don't know if you heard me
22 discussing them with Mr. Williams a short while ago.
23 We were discussing considerations that would go into
24 an individual party's, in particular Public Counsel's
25 rate design recommendations. And I would not

1 necessarily say -- you know, I don't think you should
2 necessarily assume that all of those considerations
3 are the very same or given equivalent weight during
4 the process of negotiating a settlement, such as was
5 done here.

6 Q. Uh-huh. Would you agree with me that
7 the 4 NCP and A&E method as used by AmerenUE is the
8 more superior method for making these estimates?

9 A. No, I would not.

10 Q. Why not?

11 A. Well, I think that really is a question
12 for Ms. Meisenheimer who has developed --

13 Q. Okay.

14 A. -- the production cost allocation
15 factors for Public Counsel. I relied on her judgment
16 and expertise in that area.

17 Q. Okay. Did you hear opening arguments,
18 Mr. Kind?

19 A. I heard parts of them, is all. I was
20 not actually in the room and heard some of it
21 listening upstairs.

22 Q. Right. Did you hear Mr. Woodsmall's
23 opening argument?

24 A. I definitely heard certain parts of
25 that. I may have heard all of it.

1 Q. Okay. Would you agree that the -- that
2 the MIEC study is the only one that found that LT --
3 the only study that found that LTS customers -- the
4 only LTS customer is Noranda -- is the only one that
5 found that the LTS category was entitled to a
6 reduction?

7 A. No. I believe that the AmerenUE study
8 found that as well.

9 Q. Okay. All right. So there were --
10 there were two that found that the LTS -- so to the
11 extent that -- that we adopt the joint position in
12 this case, do you agree with me that we're going to
13 be more reliant on the methodology used by Ameren and
14 MIEC than we are that of OPC and Staff?

15 A. I think it depends just on how the
16 Commission chooses to make that decision and then to
17 explain that decision in your Report and Order.

18 You know, I heard -- I reviewed the
19 Report and Order from the last case where the
20 Commission made its decision approving a nonunanimous
21 stipulation and agreement, and the Commission
22 cited -- cited both the importance of the results of
23 class cost of service study and the Commission's wide
24 discretion in determining how to utilize the results
25 of those studies and other considerations in

1 determining just and reasonable rates.

2 COMMISSIONER DAVIS: Okay. Thank you,
3 Mr. Kind.

4 THE WITNESS: You're welcome.

5 JUDGE WOODRUFF: Recross based on those
6 questions. Ameren.

7 MR. FISCHER: Thank you.

8 RECROSS-EXAMINATION BY MR. FISCHER:

9 Q. Mr. Kind, in your conversation with
10 Commissioner Davis, I think you were asked whether
11 the Ameren method was superior to the others, and I
12 believe you indicated that that wasn't your view, but
13 I would like to ask you -- and he also asked you
14 about the -- whether the Ameren study showed a rate
15 reduction for the LTS class. Would you happen to
16 have the Exhibit 239 which is the colored chart that
17 shows the comparison of the different class cost of
18 service studies?

19 A. Actually, the chart I have is not the
20 final one, and hopefully I didn't provide any
21 misleading responses to Commissioner Davis. I was
22 assuming that they were very minor tweaks in the
23 final chart.

24 MR. FISCHER: May I approach the
25 witness?

1 JUDGE WOODRUFF: You may.

2 BY MR. FISCHER:

3 Q. There was a change in that chart and it
4 related particularly to the Ameren position on the
5 LTS class.

6 A. Yes, I can see that.

7 Q. Does the -- does the revised chart
8 indicate that Ameren did suggest a slight increase in
9 that particular class?

10 A. That's correct, and I apologize to
11 Commissioner Davis for not using the most up-to-date
12 information which I had not yet reviewed.

13 Q. While -- while --

14 COMMISSIONER DAVIS: That's all right,
15 Mr. Kind.

16 BY MR. FISCHER:

17 Q. Without addressing the merits of the
18 various methods of allocation of cost here, would you
19 agree with me that the Ameren method that is showed
20 here on the yellow table appears to be middle ground
21 in all of these different classes of cost of service
22 studies? And by that I mean, there is something that
23 would suggest a more extreme increase or a more
24 extreme decrease for each of the classes of customers
25 with that yellow line being in the middle?

1 A. I think I would agree middle ground on
2 just the -- over a very general perspective, but it's
3 certainly for some classes, not probably close to the
4 middle in the sense of what the average of all the
5 results would indicate.

6 Q. Okay. But there's a more extreme study
7 on both the right and the left, if you want to call
8 it that, for each of those classes?

9 A. Yes, and in some cases it's very minor
10 in terms -- well, let's see. No, I guess you're
11 right. Yeah, it's -- that's a fair way to
12 characterize it, yes.

13 MR. FISCHER: Okay. Thank you very
14 much.

15 JUDGE WOODRUFF: All right. Any
16 redirect?

17 MR. MILLS: Was that it for cross from
18 the bench?

19 JUDGE WOODRUFF: Nobody else is speaking
20 up, so --

21 MR. MILLS: I don't have any redirect.

22 JUDGE WOODRUFF: Okay. Then Mr. Kind,
23 you can step down.

24 Let's move, then, to the two remaining
25 witnesses. I believe they are Mr. Scheperle and

1 Mr. Rogers for Staff, whichever one wants to go
2 first. Mr. Scheperle, I guess.

3 MR. WOODSMALL: Your Honor, real quick.
4 Did I offer Exhibit 552?

5 JUDGE WOODRUFF: I think so. Let me be
6 sure. Yes, it was received.

7 MR. WOODSMALL: Thank you.

8 MR. WILLIAMS: Judge, I believe I'll
9 start with Mr. Rogers. There may not be any
10 questions for him.

11 JUDGE WOODRUFF: Good morning. Is this
12 the first time you've testified in this case?

13 THE WITNESS: Yes.

14 JUDGE WOODRUFF: All right. Please
15 raise your right hand.

16 (The witness was sworn.)

17 JUDGE WOODRUFF: Thank you very much.
18 And you've probably heard my speech about simply
19 answering the questions that are asked and we'll get
20 out of here a lot sooner. Thank you.

21 DIRECT EXAMINATION BY MR. WILLIAMS:

22 Q. Please state your name.

23 A. John Rogers.

24 Q. By whom are you employed and in what
25 capacity?

1 A. Missouri Public Service Commission,
2 utility regulatory manager.

3 Q. Mr. Rogers, did you contribute a portion
4 of the Staff's class cost of service and rate design
5 report that was filed -- prefiled January 6th of this
6 year and has been marked for identification as
7 Exhibit No. 205?

8 A. Yes.

9 Q. And are the portions of that report for
10 which you're responsible identified in that report?
11 And I believe they're -- include pages 36 and 37
12 regarding AmerenUE's fuel and purchased power
13 adjustment clause.

14 A. Yes.

15 Q. Would you make any changes to that
16 portion of the class cost of service and rate design
17 report here today?

18 A. No.

19 Q. Did you also prepare and cause to be
20 filed rebuttal testimony that was filed on
21 February 11th, 2010, regarding fuel adjustment
22 clause, DSM cost recovery mechanism and residential
23 lighting and appliance program that's been marked for
24 identification as Exhibit No. 214 that has an HC and
25 a nonpropri -- or a public version?

1 A. Yes.

2 Q. Would you have any changes to
3 Exhibit 214 here today?

4 A. No, I don't.

5 Q. Did you also prepare and cause to be
6 filed in March of this year surrebuttal testimony
7 regarding rate design and class cost of service
8 that's been marked for identification as Exhibit
9 No. 215?

10 A. Yes.

11 Q. Do you have any changes to that exhibit
12 here today?

13 A. No, I do not.

14 Q. Are portions of the Staff's class cost
15 of service and rate design report that have been
16 marked for identification as Exhibit No. 205 that are
17 attributed to you and Exhibits No. 214 and 215 your
18 testimony here today for the Commission?

19 A. Yes.

20 MR. WILLIAMS: With that, I offer the
21 portions of Exhibit 205 that are attributed to
22 Mr. Rogers and Exhibits 214 and 215.

23 JUDGE WOODRUFF: 205, 214 and 215 have
24 been offered. Any objections to their receipt?

25 (NO RESPONSE.)

1 JUDGE WOODRUFF: Hearing none, they will
2 be received.

3 (A PORTION OF EXHIBIT NO. 205 AND
4 EXHIBIT NOS. 214 AND 215 WERE RECEIVED INTO EVIDENCE
5 AND MADE A PART OF THE RECORD.)

6 MR. WILLIAMS: Tender the witness for
7 examination.

8 JUDGE WOODRUFF: Okay. We'll begin with
9 MEUA.

10 MR. WOODSMALL: No questions, thank you.

11 JUDGE WOODRUFF: Public Counsel.

12 MR. MILLS: No questions.

13 JUDGE WOODRUFF: MIEC?

14 MS. VUYLSTEKE: No questions.

15 JUDGE WOODRUFF: Ameren.

16 MR. FISCHER: No, sir.

17 JUDGE WOODRUFF: All right. Questions
18 from the bench. Commissioner Davis.

19 COMMISSIONER DAVIS: No questions.

20 JUDGE WOODRUFF: Commissioner Jarrett.

21 COMMISSIONER JARRETT: No questions.

22 JUDGE WOODRUFF: All right. Well, that
23 was a quick one, then. No need for recross or
24 redirect. You can step down.

25 (The witness was sworn.)

1 JUDGE WOODRUFF: Thank you very much and
2 you've also heard my speech about answering only the
3 questions that are asked?

4 THE WITNESS: Yes.

5 JUDGE WOODRUFF: Thank you.

6 DIRECT EXAMINATION BY MR. WILLIAMS:

7 Q. Please state your name.

8 A. Michael Scheperle.

9 Q. By whom are you employed and in what
10 capacity?

11 A. I'm employed by the Missouri Public
12 Service Commission. My title is manager, economic
13 analysis in the energy department.

14 Q. Did you prepare, with the exception of
15 those portions that have been attributed to
16 Mr. Rogers, Staff class cost of service and rate
17 design report that was filed January 6th, 2010 and
18 has been marked for identification in this case as
19 Exhibit No. 205?

20 A. Yes.

21 Q. And do you have any changes or
22 corrections to Exhibit 205 here today?

23 A. No changes.

24 Q. You also prepared direct testimony that
25 was filed in January of this year on class cost of

1 service, rate design, CRM rate design and FAC rate
2 design that's been marked for identification as
3 Exhibit No. 206?

4 A. Yes.

5 Q. Did you also prepare rebuttal testimony
6 that was filed February of this year that's regarding
7 class cost of service and rate design that's been
8 marked for identification as Exhibit 207?

9 A. Yes, and I do have some corrections with
10 rebuttal testimony. I believe there's been a graph
11 as a different exhibit that has corrected some
12 information and also updated the stipulation, and
13 that would have been in schedule MSS R-1 and R-2.
14 I'm not sure of the exhibit number that was on the
15 graph.

16 MR. WILLIAMS: Are you referring to --
17 may I approach?

18 JUDGE WOODRUFF: You may.

19 THE WITNESS: That's what I'm referring
20 to.

21 BY MR. WILLIAMS:

22 Q. Are you referring to the bar chart
23 that's marked for identification as -- well, it's
24 been offered and admitted into evidence as Exhibit
25 No. 239?

1 A. Yes, and then the -- the -- there's a
2 second sheet on that also.

3 Q. And --

4 A. That I would be correcting in my
5 rebuttal testimony.

6 Q. Well, it's an update and a correction,
7 is it not?

8 A. That is correct.

9 Q. And what schedule in your rebuttal
10 testimony are you saying is updated and corrected by
11 Exhibit 239?

12 A. It would be schedule MSS R-1.1 and 1.2.

13 Q. And I didn't ask you regarding
14 Exhibit 206 which is your direct testimony, do you
15 have any changes to that testimony?

16 A. No changes.

17 Q. Did you also prepare and have filed in
18 March of this year surrebuttal testimony on the
19 issues of class cost of service and rate design
20 that's been marked for identification as Exhibit
21 No. 208?

22 A. Yes.

23 Q. Do you have any changes to that
24 testimony?

25 A. No changes.

1 Q. With the changes you've just related
2 regarding Exhibit No. 207, is -- are Exhibits -- and
3 the portions of 205 that you've earlier identified,
4 are Exhibits 205, 207, 206, 208 your testimony here
5 today?

6 A. Yes.

7 MR. WILLIAMS: I offer Exhibits 205,
8 206, 207 and 208.

9 JUDGE WOODRUFF: Actually, I believe I
10 just admitted 205, portions of 205. Are you offering
11 the whole thing?

12 MR. WILLIAMS: Yes, the entire thing.

13 JUDGE WOODRUFF: All right. The balance
14 of 205, 206, 207 and 208 have been offered. Are
15 there any objections to their receipt?

16 (NO RESPONSE.)

17 JUDGE WOODRUFF: Hearing none, they will
18 be received.

19 (THE BALANCE OF EXHIBIT NO. 205 AND
20 EXHIBIT NOS. 206, 207 AND 208 WERE RECEIVED INTO
21 EVIDENCE AND MADE A PART OF THE RECORD.)

22 MR. WILLIAMS: I tender the witness for
23 examination.

24 JUDGE WOODRUFF: All right. For cross
25 beginning with MEUA.

1 MR. WOODSMALL: Thank you.

2 CROSS-EXAMINATION BY MR. WOODSMALL:

3 Q. Good morning, sir.

4 A. Good morning.

5 Q. Did Staff file testimony in Case No.
6 ER-2007-0002 on class cost of service, rate design?

7 A. Yes.

8 MR. WOODSMALL: Hand you an exhibit.

9 And I believe this is Exhibit 553?

10 JUDGE WOODRUFF: That would be correct.

11 (EXHIBIT NO. 553 WAS MARKED FOR

12 IDENTIFICATION BY THE COURT REPORTER.)

13 BY MR. WOODSMALL:

14 Q. Do you recognize what's been marked as
15 Exhibit 553?

16 A. Yes, I do.

17 Q. And that is Staff's response to a data
18 request that I sent; is that correct?

19 A. That is correct.

20 Q. And you prepared the response to that
21 data request; is that correct?

22 A. That is correct.

23 Q. Can you tell me if the response to
24 MEUA-2.2 is the results of Staff's class cost of
25 service case on a revenue-neutral basis in class

1 ER-2007-0002?

2 A. Yes.

3 Q. And did Staff file a class cost of
4 service study in Case No. ER-2008-0318?

5 A. Yes.

6 Q. And can you tell me if the results of
7 that class cost of service study are reflected in the
8 response to MEUA-2.4?

9 A. Yes.

10 Q. And Staff filed a class cost of service
11 study in this case; is that correct?

12 A. That is correct.

13 Q. And are the results of that class cost
14 of service study reflected in MEUA-2.6?

15 A. Yes.

16 MR. WOODSMALL: Move for the admission
17 of Exhibit 553, your Honor.

18 JUDGE WOODRUFF: 553 has been offered.

19 Any objections to its receipt?

20 (NO RESPONSE.)

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

23 (EXHIBIT NO. 553 WAS RECEIVED INTO
24 EVIDENCE AND MADE A PART OF THE RECORD.)

25 BY MR. WOODSMALL:

1 Q. When you calculate necessary shifts on a
2 revenue-neutral basis, is it fair to say that you
3 assume that all classes are paying the same overall
4 earned return on equity?

5 MR. WILLIAMS: Judge, I'm going to
6 object to that qualifier of "necessary shifts."

7 JUDGE WOODRUFF: Do you want to clarify
8 your question?

9 BY MR. WOODSMALL:

10 Q. When you -- when you calculate, when you
11 quantify the shifts under a revenue-neutral class
12 cost of service study, do you assume that all classes
13 are paying the same overall earned return on equity?

14 A. Yes.

15 Q. Can you tell me whether AmerenUE
16 experiences an increased business risk associated
17 with serving Noranda Aluminum? I'll hand you a data
18 request. Is that Staff's response to data request
19 MEUA-1.1?

20 MR. WILLIAMS: May I see that?

21 MR. WOODSMALL: Sorry.

22 BY MR. WOODSMALL:

23 Q. Is that Staff's -- Staff's response to
24 data request MEUA-1.1 and -- 1.1 through 1.4?

25 A. Yes, it is.

1 Q. Can you read me the -- the question in
2 1.1?

3 A. "Does AmerenUE experience an increased
4 business risk associated with the existence of a
5 customer the size Noranda has as a customer?"

6 Q. Can you read me the response, please?

7 A. The answer is, "Yes," provided by David
8 Murray and answered March 4th, 2010.

9 Q. Thank you.

10 A. Two thousand -- it should be 2010.

11 Q. Thank you. Do you take into account the
12 increased business risk associated with serving the
13 LTS class when you do your class cost of service
14 study?

15 A. Yes.

16 Q. You do -- do you assign that risk solely
17 to the LTS class?

18 A. Yes.

19 Q. You assign -- you quantify the risk and
20 assign it solely to the LTS class?

21 A. Oh, no. No, not -- not -- not just to
22 the LT -- LTS class, to all classes.

23 Q. Okay. That -- that risk is passed
24 through to all classes; is that correct?

25 A. That is correct.

1 Q. Okay. Have you seen the stipulation
2 that was filed in this case regarding class cost of
3 service, rate design?

4 A. Yes, I have.

5 Q. As an expert, do you believe that that
6 stipulation leads to just and reasonable rates?

7 A. Staff does not support the stip. Staff
8 supports its recommendation in this case.

9 Q. Do you believe that that stipulation
10 leads to just and reasonable rates?

11 A. Staff does not support the stipulation.

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

14 JUDGE WOODRUFF: All right. Cross for
15 Public Counsel.

16 MR. MILLS: Yes.

17 CROSS-EXAMINATION BY MR. MILLS:

18 Q. Mr. Scheperle, what -- what is Staff's
19 role in a proceeding such as this?

20 A. Staff's role would be to basically
21 represent the Staff. You would take into
22 consideration the company involved, all ratepayers.

23 Q. Okay. And the Staff has in the past
24 objected to not -- to nonunanimous stipulations and
25 agreements, has it not?

1 A. It has.

2 Q. And on what basis did the Staff object
3 in the past?

4 A. There would be various reasons. I mean,
5 it could be the allocation of revenue to particular
6 classes or it could be a potential rate shock to
7 customers.

8 Q. Okay. And any of those factors would
9 lead to the rates resulting from the stipulation and
10 agreement being not just and reasonable rates; is
11 that correct?

12 A. That is correct.

13 Q. So the ultimate reason that Staff would
14 object to a nonunanimous stipulation and agreement is
15 because it would lead to rates that are not just and
16 reasonable; is that correct?

17 A. That is correct.

18 Q. Okay. So is it correct that because
19 Staff did not object to the nonunanimous stipulation
20 and agreement in this case that Staff is not of the
21 opinion that the rates resulting from the
22 nonunanimous stipulation and agreement in this case
23 would not lead to rates that are just and -- not just
24 and reasonable -- I've got way too many negatives.
25 Let me back up.

1 If the Staff believed that the
2 nonunanimous stipulation and agreement in this case
3 resulted in rates that were not just and reasonable,
4 would the Staff have objected?

5 A. Yes.

6 Q. Okay. And the Staff did not object?

7 A. That is correct.

8 MR. MILLS: Okay. No further questions.

9 JUDGE WOODRUFF: All right. For MIEC.

10 CROSS-EXAMINATION BY MS. VUYLSTEKE:

11 Q. Good morning, Mr. Scheperle. How are
12 you?

13 A. Good morning.

14 Q. I would like to show you your
15 response -- or Staff's response to a data request and
16 ask if you could just go ahead and read the Staff's
17 response into the record?

18 A. Okay.

19 Q. Now, this is MEUA's Exhibit 553, and I
20 believe Mr. Woodsmall pointed out that this answer
21 was provided by David Murray on behalf of the Staff
22 and not by you, and I noticed there are several
23 questions contained in this data request. And
24 Mr. Woodsmall asked you about the answer to the first
25 request, and I'm wondering if you could also read

1 this data request and response into the record as
2 well which is the second item.

3 A. This is data request MUEA-1.2. "If the
4 answer to MEUA-1.1 is yes, please quantify the
5 increased business risk in terms of increased return
6 on equity associated with having Noranda as a
7 customer.

8 "Answer: At this time, Staff is not
9 aware of a reliable methodology to quantify an
10 increased return requirement for this risk factor.
11 Provided by David Murray."

12 Q. Thank you. Now, Mr. Scheperle, you
13 filed in this case two cost of service methodologies;
14 is that correct?

15 A. That is correct.

16 Q. Have you reviewed the stipulation in
17 this case? I believe you have.

18 A. Yes.

19 Q. And is it your understanding that the
20 Staff does not oppose the stipulation?

21 A. That is correct.

22 Q. Does the stipulation provide a larger
23 benefit to the LGS customer class than you did in
24 your filed testimony?

25 A. It does on the addendum.

1 MS. VUYLSTEKE: Thank you. No further
2 questions.

3 JUDGE WOODRUFF: Okay. For AmerenUE.

4 MR. FISCHER: No, thank you.

5 JUDGE WOODRUFF: Okay. Come up for
6 questions from the bench. Commissioner Davis.

7 QUESTIONS BY COMMISSIONER DAVIS:

8 Q. Good morning, Mr. -- or -- yes, it is
9 still morning. Mr. Scheperle, I realize that Staff
10 is not taking a position, but I want to -- I want to
11 go back to your question with Mr. Mills. Is Staff's
12 role here to advocate for the right answer?

13 A. I would say yes.

14 Q. And you believe that the right answer is
15 Staff's study, correct?

16 A. That is correct.

17 Q. And are you concerned that if we adopt
18 the stip -- or the joint proposal that, in fact, that
19 some of the inequities that were observed in Staff's
20 study would -- would only be perpetuated or worsened?

21 A. That is a concern.

22 Q. Mr. Scheperle, forgive my ignorance
23 here, but who -- who -- give me some examples of
24 customers that would be included in the small general
25 services class. Can you do that for me?

1 A. Sure. It would -- with Ameren it would
2 be basically the small general services, any customer
3 that has less than 100 kW's. So you would be
4 including barber shops or small retail
5 establishments.

6 Q. Okay. So predominantly small businesses
7 with few employees?

8 A. That is correct.

9 Q. That usually -- I guess it could be --
10 it could be chain stores too, they'd just have to
11 be -- each would -- each would be a unit using less
12 than 100 --

13 A. 100 kW.

14 Q. -- kW. Okay. And under -- under both
15 of Staff's studies, you found that the -- the LPS
16 category was entitled to a slight decrease; is that a
17 fair assumption?

18 A. That is correct.

19 Q. Okay. And who are the LPS customers?

20 A. There's about 69 customers. Some of
21 them -- they're big manufacturing companies. They'd
22 be like Anheuser-Busch, Doe Run.

23 Q. Okay. So included that -- LPS, you
24 know, was more or less correct -- I mean, basically
25 less than -- than half a point off, correct?

1 A. Correct.

2 Q. And then you actually concluded that the
3 LTS category which would be Noranda, was entitled to
4 about a 4 percent increase; is that correct?

5 A. That's on a revenue-neutral basis, but
6 Staff's recommendation, since it's within 5 percent
7 plus or minus, that they get the overall system
8 increase. And that would be the same thing for the
9 LPS class.

10 Q. Okay.

11 A. With -- when you're within 5 percent
12 plus or minus, you get the overall system increase.

13 Q. Okay. So under your -- under your
14 theory, then, really the only two groups that -- that
15 need any -- any reallocation are the residential and
16 the large general services?

17 A. That is correct.

18 Q. Okay. Mr. Scheperle, this is -- this is
19 just a general question. I mean, when we're choosing
20 between NCP, A&E versus CP, A&P 4 versus 12 and time
21 of use, what are -- what are the most important
22 factors that we need to consider as a Commission?

23 A. There's some similarities between, say,
24 the A&E which is the average and excess method and
25 the average and peak method. In both of them, you

1 notice that there's -- they have the average piece of
2 it. There's no disagreement with the average piece
3 of it. It really comes down to the peak versus the
4 excess method, and that's where the -- the
5 allocations differ between the parties.

6 The average piece basically looks at the
7 average over a 12-month period. And the peak
8 portion, Staff's method, is we looked at Ameren's
9 loads and they peak -- they're predominantly summer
10 peaking. In the four summer months which is June,
11 July, August and September, are within 85 to 100
12 percent of their system peaks. So Staff uses those
13 four summer months for their 4 CP average and peak
14 method.

15 And that is different from the average
16 and excess. The average and excess basically uses
17 the average piece, but when they come to the excess
18 piece, they subtract the average and then just base
19 it on the excess piece of it for the allocation of
20 that portion of it.

21 Q. Did you hear Mr. Brubaker's testimony?

22 A. Yes, I did.

23 Q. Okay. And so what about that -- that
24 double-counting of averages that I heard him
25 represent, is that a fair characterization?

1 A. It's a fair characterization, but -- I
2 mean, for what he said, but also in surrebuttal, I
3 had done some research on previous Commission
4 decisions, some of them back -- back in the 80's. In
5 a lot of cases since the '80s, the rate design and
6 class cost of service have been settled. But back in
7 the 80's, the Commission in about three different
8 cases said that there is no double-counting with the
9 average and peak method.

10 Q. Okay. But just because one of our
11 previous Commissions said it in an order, that
12 doesn't necessarily make it so. So I mean, I'm just
13 trying to ask you -- I mean, is Mr. Brubaker's
14 criticism fair? Is -- is there double-counting?

15 A. I don't think it's -- I don't think
16 there is double-counting.

17 Q. Okay. And would you care to elaborate
18 on that?

19 A. Basically for the peak portion, we're
20 taking it from when the plant is there and what each
21 class contributes building up to the peak. So if you
22 take -- say, the system peak occurs in August, what
23 does the residential class contribute to that peak in
24 August for that hour? Is it 20 percent, is it
25 30 percent? You look at the next class, SGS. And

1 you look at all the classes and what do they
2 contribute to that peak. And that's basically what
3 we do.

4 And of course, we look at -- 4 CP is
5 looking at the four -- the four peaks which you'd be
6 looking at the June peak, you'd be looking at the
7 July peak, you'd be looking at the August peak and
8 you'd be looking at the September peak. And it's an
9 allocation of what that class contributes in those
10 four months, and that's how you would allocate the --
11 the "P" part of it, of the A&P method.

12 COMMISSIONER DAVIS: Okay. Thank you,
13 Mr. Scheperle.

14 JUDGE WOODRUFF: Commissioner Jarrett.

15 COMMISSIONER JARRETT: I don't have any
16 questions. Thank you, sir.

17 JUDGE WOODRUFF: Anyone wish to recross
18 based on those questions from the bench?

19 MS. VUYLSTEKE: Yes.

20 JUDGE WOODRUFF: Public Counsel first.

21 RE-CROSS-EXAMINATION BY MR. MILLS:

22 Q. Mr. Scheperle, is there a single right
23 answer to determining class cost of service?

24 A. No, there isn't.

25 Q. Is just and reasonable a point or a

1 range?

2 A. Just and reasonable would be a range.

3 Q. Okay. And so when -- when -- in
4 response to questions from Commissioner Davis when
5 you were talking about the Staff's results, you
6 believe Staff's class cost of service results sort of
7 indicates one point within the range of just and
8 reasonable rates, correct?

9 A. That is correct.

10 Q. But there could be other results other
11 than exactly what Staff came up with that the Staff
12 would also consider just and reasonable, could there
13 not?

14 A. Yes.

15 Q. Okay. And now this is -- in response to
16 some questions from Commissioner Davis, both you and
17 Mr. Brubaker had some sort of general discussion
18 about the various methods of assigning costs to
19 classes. Would you be willing, outside of the
20 context of a contested case, to do a symposium for
21 the Commissioners and maybe others, maybe along with
22 Mr. Brubaker, Mr. Kind, possibly bring Dr. Proctor
23 back just to sort of go through when you're not on
24 the stand to talk about some of this stuff and the
25 strengths and weaknesses of various methods?

1 A. I would be agreeable to that.

2 Q. Do you think that would be a good idea?

3 A. Potentially, yes.

4 Q. Okay. Now, with respect to looking at
5 some of these methods, are all of the methods --
6 methods that are used in this case and that are
7 generally used to allocate costs for electric
8 utilities, allocate more cost to off -- to off -- I'm
9 sorry -- to on-peak periods than to off-peak periods?

10 A. I would say yes.

11 Q. None of them say -- none of them assume
12 that it costs the exact same amount to serve in all
13 8,760 hours of the year, do they?

14 A. No.

15 Q. Okay. And so, really, the differences
16 among them are really one of more of degree rather
17 than, you know, absolute differences; is that not
18 correct?

19 A. That's correct.

20 Q. Okay. Should the Commission approach
21 the question of determining which of these are the
22 best methods from a -- from a purely mathematical
23 standpoint and then -- or should they have some sort
24 of idea of a subjective notion of how much it costs
25 to serve on-peak as opposed to off-peak before they

1 try to determine which of these methods is more
2 appropriate?

3 A. I think they should have a subjective
4 method.

5 Q. In -- in the -- the methods that used an
6 average and something else, does -- do the peak
7 periods also figure into the average?

8 A. Yes, they do.

9 Q. So when you're doing average and peak or
10 average and excess, the average includes all of the
11 hours?

12 A. That is correct.

13 Q. Peak and nonpeak?

14 A. That is correct. It includes all 8,760
15 hours.

16 Q. Okay. And then in the peak or the
17 excess, the peaking hours are included again, are
18 they not?

19 A. Yes, they are.

20 MR. MILLS: That's all. Thank you.

21 JUDGE WOODRUFF: For MIEC.

22 RE-CROSS-EXAMINATION BY MS. VUYLSTEKE:

23 Q. Mr. Scheperle, did the Commission say in
24 the last rate case that the average and peak study
25 was double-counting?

1 A. I believe the Order did state that.

2 Q. Okay. And the two cost of service
3 methodologies that you filed in this case, are those
4 similar to the two methods that the Staff filed in
5 UE's previous case?

6 A. Staff previously filed one class cost of
7 service, so they're not the same. In this case,
8 class -- or Staff filed two class cost of service
9 studies.

10 Q. Are they similar to the methods used in
11 UE -- the last UE case?

12 A. They're both an average and peak method.

13 Q. Are they similar?

14 A. One of them, the capacity utilization is
15 similar.

16 Q. So one of those studies that you --

17 A. I mean, it's similar with what we filed
18 in the previous case.

19 MS. VUYLSTEKE: Thank you.

20 JUDGE WOODRUFF: Ameren.

21 RE-CROSS-EXAMINATION BY MR. FISCHER:

22 Q. In discussion with Commissioner Davis,
23 you were talking about the average and peak and you
24 talked about the average base where there's no real
25 disagreement. Do you recall that?

1 A. I recall that.

2 Q. Now, is that portion when you talk about
3 average really an energy allocator?

4 A. The method -- the method -- the way it
5 is applied, yes, it's the energy allocator,
6 basically.

7 Q. From your perspective, would it be
8 appropriate to just use an average or an energy
9 allocator to allocate all costs of power plants?

10 A. For Ameren's system, Staff basically
11 considered that they peak in the -- in the summer and
12 that the peak portion of it should be considered in
13 the summer because the system peak usually occurs
14 in -- in August, and the other months, summer months
15 are within 85 percent of that. And the winter months
16 are not within 85 percent, so Staff considered summer
17 months, four summer months.

18 Q. So it's appropriate to take into account
19 from your perspective four summer months of peak in
20 allocating these cost of power plants?

21 A. That is one method of doing it, yes.

22 Q. Okay. Is it appropriate to adopt
23 methods that really are energy allocators?

24 A. That is not Staff's recommendation in
25 this case.

1 MR. FISCHER: Okay. That's all I have.

2 Thank you.

3 JUDGE WOODRUFF: All right. Redirect.

4 MR. WILLIAMS: No questions.

5 JUDGE WOODRUFF: Okay. Then Mr. Rogers,
6 you can step down.

7 MR. WILLIAMS: Scheperle.

8 JUDGE WOODRUFF: You can both step down.

9 All right. Well, thank you very much.

10 I believe that is the last witness for
11 this proceeding unless somebody has something else
12 that they --

13 MS. TATRO: Your Honor, I have some
14 testimony I would like to move into the record of
15 witnesses that did not appear because of various
16 stipulations and agreements.

17 MR. MILLS: Me too.

18 MR. WILLIAMS: So do I, and I would like
19 to confer with your list.

20 JUDGE WOODRUFF: Why don't I go through
21 the list as we -- and that's --

22 COMMISSIONER DAVIS: And Judge, I'd --
23 I'd like -- I'd like to inquire of the parties maybe
24 one more opportunity if I could.

25 JUDGE WOODRUFF: Go ahead.

1 COMMISSIONER DAVIS: First of all,
2 Mr. Williams, is there going to be another
3 reconciliation, will there be a true-up
4 reconciliation to -- after all of these items that
5 have been settled or --

6 MR. WILLIAMS: If there wasn't going to
7 be, there will.

8 COMMISSIONER DAVIS: How about we get
9 a -- get a true-up reconciliation? Can we -- can we
10 get that? That way you only have to do one.

11 MR. WILLIAMS: All right.

12 COMMISSIONER DAVIS: I -- I got one more
13 question. It -- it isn't -- and this is for all the
14 parties which -- specific to the -- to the issue of
15 rate design. In the -- in the record -- what is
16 there in the record -- and it could be prefiled
17 testimony or in the testimony that we've heard here
18 because I missed some of it yesterday, I'm going to
19 have to come back and watch it -- what in the record
20 most supports your position?

21 MR. WILLIAMS: Well, that's easy for
22 Staff. It's our evidence that we put in this case.

23 COMMISSIONER DAVIS: All right. Well,
24 that's -- that's easy. Looking for the -- for the --
25 for the stipulating -- for the stipulating parties.

1 And maybe -- Mr. Woodsmall, maybe this is a more
2 appropriate question for them. Certainly easier for
3 you and Mr. Fischer.

4 MR. WILLIAMS: Commissioner --
5 Commissioner, I would add that we believe some of the
6 other cost of service studies also supports Staff's
7 position.

8 COMMISSIONER DAVIS: Okay.

9 MR. FISCHER: Certainly from Ameren's
10 perspective, I'd encourage you to look at Will Cooper
11 and Bill Warwick's testimony on the cost of service.
12 Of course, we're recommending the cross-support of
13 equal percentage increase, and we think the record
14 would support that.

15 MR. MILLS: Commissioner Davis, from my
16 perspective it's not that easy because there's not
17 a -- you know, our filed testimony was not designed
18 to support the position that we have now taken. But
19 I think there are portions of the filed testimony,
20 certainly there is a lot in the -- in the
21 on-the-record testimony from the last couple of days
22 that I think you will be able to find that supports
23 the stipulation and agreement or the -- or the
24 slightly modified addendum to the stipulation and
25 agreement.

1 MS. VUYLSTEKE: From MIEC it's the
2 testimony of Maurice Brubaker that most supports the
3 stipulation -- more -- most supports the stipulation.

4 MR. WOODSMALL: My answer is in two
5 parts and I can -- I can explain that. The first
6 part is that all four studies show that the large
7 general service small primary class deserves
8 significant reductions, significant being much in
9 excess of the four million that's reflected in the
10 stipulation. And you've seen that in the various
11 exhibits that I've put in.

12 The second part that I'd point out is
13 that the stipulation has no evidence to support.
14 Instead, what they ask you to do is take Public
15 Counsel's study for this one, for residential, take
16 Maurice Brubaker's study in order to support the LTS
17 shift, take someone else's study to support another
18 shift. There's no consolidated piece of testimony.
19 Instead, they ask you to just pick and choose various
20 parts of those studies that support the stipulation.
21 But there's no single expert that -- whose study
22 supports that stipulation.

23 COMMISSIONER DAVIS: Okay. And I
24 guess -- so Mr. Woodsmall, you're saying that we
25 can't exactly treat this like a Workers' Comp case

1 where we find all the witnesses credible and just
2 sort of split the difference?

3 MR. WOODSMALL: I think -- I don't -- I
4 don't know much about Workers' Comp, so I'll have
5 to --

6 COMMISSIONER DAVIS: Well, that's fair,
7 that's fair.

8 MR. WOODSMALL: I think you have to --
9 you can find multiple witnesses to be credible, but
10 you have to make some findings of fact. And you
11 can't say that I -- I believe Mr. Brubaker's findings
12 as it pertains to LTS but I believe Mr. Kind's
13 results as it pertains to small general service. I
14 think you have to make some findings of fact that
15 pertain overall.

16 COMMISSIONER DAVIS: Okay. And Mr. --
17 let me just go back to Mr. Woodsmall. And your
18 position is that Noranda should not receive a
19 decrease and -- and just, if you would, restate again
20 what your position is so I'm clear as to what it is.

21 MR. WOODSMALL: Okay. The first part is
22 we didn't take a position on any study.

23 COMMISSIONER DAVIS: Okay.

24 MR. WOODSMALL: It wasn't necessary.
25 All studies show that we deserve significant rate

1 reductions well in excess of four million that's in
2 the stipulation. We believe, as Public Counsel used
3 to believe, that it is fundamentally inequitable to
4 give any rate reduction to any class while other
5 classes are receiving rate increases. And we don't
6 believe that that is equitable.

7 We believe that to the extent you give
8 Noranda any reductions, it's just going to perpetuate
9 the problem and make it doubly hard for us to get any
10 relief going forward in future cases. So to the
11 extent anybody gets relief from the residential
12 class, it ought to be the large general service small
13 primary class.

14 COMMISSIONER DAVIS: Okay. Mr. Mills,
15 did you want to respond to that? I saw some shaking
16 of the heads or something there.

17 MR. MILLS: Yeah. I -- I -- I don't
18 agree with the characterization of that concept is
19 fundamentally inequitable. I think as Mr. Kind said
20 under oath, it is a -- a -- a consideration when
21 you're trying to figure out whether or not a
22 particular result is equitable or not. But you can't
23 say that if it has that particular aspect to it, that
24 despite everything else that's going on in the world,
25 that is fundamentally inequitable to give one class a

1 decrease when the others have an increase. Certainly
2 it's something you want to look at, but it does not
3 make a result fundamentally inequitable.

4 MR. WOODSMALL: I agree. I might have
5 exaggerated.

6 MR. WILLIAMS: Commissioner, if you
7 don't mind Staff weighing in on this since we're
8 doing a little bit of arguing about our positions.

9 COMMISSIONER DAVIS: I -- you know, I
10 want to give everybody one -- I want to give
11 everybody one last shot here to say whatever they
12 want to on this issue.

13 MR. WILLIAMS: Well, as Staff indicated
14 in its opening, we do believe this is a situation
15 where the Commission could find all of the witnesses
16 to be credible and reasonable. It's a matter upon
17 which reasonable minds may differ and do.

18 Having said that, the Commission
19 certainly has to have evidentiary support for its --
20 the ultimate result it comes to on rate design and it
21 needs to explain that result.

22 In addition, class cost of service study
23 results are not the only factor that the Commission
24 needs to consider in arriving at the result. In
25 fact, Staff didn't just rely on its class cost of

1 service study results. Had it done so, it could have
2 just applied those mechanistically and said here are
3 the changes that fall out from our study. We use
4 those as guidance for the recommendation we made.

5 COMMISSIONER DAVIS: Ms. Vuylsteke, did
6 you want to add anything?

7 MS. VUYLSTEKE: No, I don't have
8 anything to add. Thank you.

9 COMMISSIONER DAVIS: Mr. Fischer,
10 Ms. Tatro?

11 MR. FISCHER: I don't have anything to
12 add. Thank you.

13 COMMISSIONER DAVIS: Mr. Woodsmall,
14 going to come back to you one more time. It seems
15 like everybody's kind of ganged up on you here.

16 MR. WOODSMALL: I felt like that, yes.

17 COMMISSIONER DAVIS: So I mean, is there
18 anything else that you want to add and is there
19 anything else you want to direct our attention to
20 that we need to look at?

21 MR. WOODSMALL: I would just be
22 repeating myself.

23 COMMISSIONER DAVIS: Okay.

24 MR. WOODSMALL: One of the standards is
25 the overwhelming weight of the evidence. And as

1 you've seen four studies, the overwhelming weight of
2 the evidence is that the large general service class
3 deserves a significant rate reduction.

4 COMMISSIONER DAVIS: As well as the
5 small -- the general -- well, the small general
6 services class deserves a reduction and isn't getting
7 one; is that fair to say?

8 MR. WOODSMALL: They're getting a rate
9 increase --

10 COMMISSIONER DAVIS: Right.

11 MR. WOODSMALL: -- out of the
12 stipulation, yes.

13 COMMISSIONER DAVIS: Right.

14 MR. FISCHER: Judge, I would add one --
15 one important point, I guess, is we're talking on a
16 revenue-neutral basis. We're talking a substantial
17 revenue requirement increase in this case, and
18 whatever comes out of it when we talk about a rate
19 reduction or a tweak to a class here or there, we
20 need to be cognizant of what we're going to be adding
21 with the revenue requirement increase itself.

22 COMMISSIONER DAVIS: Right. Okay.
23 So -- got it. All right. Thank you. I think that's
24 all I have.

25 JUDGE WOODRUFF: All right. I did want

1 to make one more remark before we started going
2 through all the testimony. Commissioners at the
3 agenda meeting this week on Wednesday indicated that
4 they would like to have a on-the-record proceeding
5 involving all the file stipulations and agreements
6 that have not had their seven days run yet. So I'll
7 be scheduling that probably -- not next week, but
8 probably the week after that. And I don't know what
9 day that will be, but...

10 MR. WILLIAMS: Are you aware there was
11 one that was just filed yesterday?

12 JUDGE WOODRUFF: Yes. And that's why
13 we'll wait seven days out and see if there's any
14 objections and then have that on-the-record on it.
15 All right. Well, back to the testimony, then.

16 MR. WILLIAMS: Oh, Judge, one other
17 thing. While the addendum to the stipulation and
18 agreement regarding rate design indicated Staff was
19 not opposing it, Staff's not formally stated its
20 position. The addendum does correctly reflect
21 Staff's position and Staff does not oppose the
22 addendum as well.

23 JUDGE WOODRUFF: All right. And MEUA
24 indicated on the record that they do oppose here,
25 so --

1 MR. WOODSMALL: Yes.

2 JUDGE WOODRUFF: All right. Back to the
3 testimony. I'm looking through Ameren's premarked
4 exhibits. Finnell direct was 130 and Finnell
5 rebuttal is 131. That's not been offered or
6 received. I assume that's something you want to
7 offer?

8 MS. TATRO: Yes. Do you want to go
9 through my list?

10 JUDGE WOODRUFF: Yeah, why don't you.

11 MS. TATRO: I have 130 which is the
12 direct testimony of Tim Finnell; 131 HC and NP which
13 is rebuttal testimony of Timothy Finnell; 133 which
14 is the surrebuttal testimony of Timothy Finnell; 138
15 which is direct testimony of Richard Mark; 139 which
16 is rebuttal testimony of Richard Mark; 140 which is
17 additional rebuttal testimony of Richard Mark and 141
18 which is surrebuttal testimony of Richard Mark.

19 JUDGE WOODRUFF: Okay.

20 MS. TATRO: I would move those into the
21 record. And I'm hopeful that that comports with
22 your --

23 JUDGE WOODRUFF: It does. 130, 131,
24 133, 138, 139, 140 and 141 have been offered. Any
25 objections to their receipt?

1 (NO RESPONSE.)

2 JUDGE WOODRUFF: Hearing none, they will
3 be received.

4 (EXHIBIT NOS. 130, 131 HC, 131 NP, 133,
5 138, 139, 140 AND 141 WERE RECEIVED INTO EVIDENCE AND
6 MADE A PART OF THE RECORD.)

7 JUDGE WOODRUFF: And going through the
8 rest of Ameren's exhibits, it looks like everything
9 that was offered has been received with one exception
10 from -- I think it was back the first day of -- 161
11 was marked but not offered, and I think that was
12 intentional. It was the fossil plant maintenance
13 expenditures.

14 Moving on to Staff, there are several
15 Staff items that you might want to offer at this
16 point.

17 MR. WILLIAMS: I'm sure there are. I
18 don't know that Exhibit No. 200 has yet been offered
19 in its entirety. I would do so now.

20 JUDGE WOODRUFF: All right. 200 has
21 been offered in its entirety. Portions were received
22 earlier. Any objection to receiving the rest of 200?

23 (NO RESPONSE.)

24 JUDGE WOODRUFF: Hearing none, it will
25 be received.

1 (EXHIBIT NO. 200 WAS RECEIVED INTO
2 EVIDENCE AND MADE A PART OF THE RECORD.)

3 MR. WILLIAMS: According to my
4 recordkeeping, 201 through 208 have been offered and
5 accepted.

6 JUDGE WOODRUFF: Yes.

7 MR. WILLIAMS: I don't know about 209
8 through 213.

9 JUDGE WOODRUFF: That would be Beck
10 rebuttal, Murray rebuttal and surrebuttal, Hill
11 rebuttal and surrebuttal and they've all been
12 received.

13 MR. WILLIAMS: Thank you.

14 JUDGE WOODRUFF: Next one I have for
15 Staff has not been offered or received. It's Anne
16 Ross's direct, rebuttal and surrebuttal which is 218
17 through 220.

18 MR. WILLIAMS: Staff offers Exhibits 218
19 through 220.

20 JUDGE WOODRUFF: 218 through 220 have
21 been offered. Any objections to their receipt?

22 (NO RESPONSE.)

23 JUDGE WOODRUFF: Hearing none, they will
24 be received.

25 (EXHIBIT NOS. 218, 219 AND 220 WERE

1 RECEIVED INTO EVIDENCE AND MADE A PART OF THE
2 RECORD.)

3 JUDGE WOODRUFF: Then we've got
4 Maloney's supplemental rebuttal 223 has not been
5 offered.

6 MR. WILLIAMS: Staff offers 223.

7 JUDGE WOODRUFF: 223 has been offered.
8 Any objections to its receipt?

9 (NO RESPONSE.)

10 JUDGE WOODRUFF: Hearing none, it will
11 be received.

12 (EXHIBIT NO. 223 WAS RECEIVED INTO
13 EVIDENCE AND MADE A PART OF THE RECORD.)

14 JUDGE WOODRUFF: Go down to 225 is
15 Ferguson's surrebuttal.

16 MR. WILLIAMS: Staff offers Exhibit
17 No. 225.

18 JUDGE WOODRUFF: 225 has been offered.
19 Any objections to its receipt?

20 (NO RESPONSE.)

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

23 (EXHIBIT NO. 225 WAS RECEIVED INTO
24 EVIDENCE AND MADE A PART OF THE RECORD.)

25 JUDGE WOODRUFF: Then 226 and 228 are a

1 couple -- one is the deposition of Julie Cannell and
2 228 is the Exhibit 2 from JC local public hearing.
3 Those were marked. I don't think they've ever been
4 offered and I don't think you intended to offer them.

5 MR. WILLIAMS: I believe Mr. Dearmont
6 handled that, and I believe he probably read portions
7 in as was done by most of the attorneys in this case.

8 JUDGE WOODRUFF: I think he used them
9 for some -- for some cross-examination purposes.

10 MR. WILLIAMS: Right. I'll -- I'll
11 double-check on that, but I'm not going to go ahead
12 and offer them at this point.

13 JUDGE WOODRUFF: All right.

14 MR. WILLIAMS: There's -- 227's been
15 offered and admitted?

16 JUDGE WOODRUFF: That's the
17 reconciliation. I don't believe it has been offered.

18 MR. WILLIAMS: Staff offers Exhibit 227.

19 JUDGE WOODRUFF: 227 has been offered.

20 Any objections to its receipt?

21 (NO RESPONSE.)

22 JUDGE WOODRUFF: Hearing none, it will
23 be received.

24 (EXHIBIT NO. 227 WAS RECEIVED INTO
25 EVIDENCE AND MADE A PART OF THE RECORD.)

1 JUDGE WOODRUFF: Let's go back to the
2 deposition of Julie Cannell and the exhibits from JC.
3 There was some questions a couple of days ago, I
4 believe Mr. Lowery brought that up, that these
5 exhibits had, in fact, been put into EFIS, and the
6 company wanted to remove them from EFIS.

7 MS. TATRO: I believe that Mr. Lowery
8 did request that you remove it from EFIS, and I
9 believe at the time you indicated it had been
10 inadvertently filed and that you were holding off on
11 removing it to see whether or not during the rest of
12 the hearing it became necessary. I don't believe
13 that it did and we would remove that motion.

14 JUDGE WOODRUFF: Anyone object to that
15 motion to remove those documents from EFIS?

16 MR. WOODSMALL: I'm just confused. The
17 transcript from the public hearings are all in EFIS,
18 aren't they?

19 JUDGE WOODRUFF: Yes, they are. The
20 particular concern was about the deposition of Julie
21 Cannell.

22 MR. WOODSMALL: Okay. I have none.

23 JUDGE WOODRUFF: And Exhibit 2 from JC
24 local public hearing was already in, but it was also
25 received as Exhibit 228 and it doesn't really need to

1 be in again, so --

2 MR. WILLIAMS: Oh, 228, okay. And Staff
3 hadn't intended that it be offered as an exhibit
4 again since it's already in the record.

5 JUDGE WOODRUFF: Right. But when they
6 were handed to the court reporter as marked
7 documents, they went upstairs --

8 MR. WILLIAMS: I see.

9 JUDGE WOODRUFF: -- and they were just
10 churned into EFIS along with everything else.

11 MR. WILLIAMS: I see. Since it's
12 already part of the record, I certainly have no
13 objection on that one. And if we're going to end up
14 offering the deposition of Julie Cannell, we'll do
15 that. I don't anticipate we will.

16 JUDGE WOODRUFF: Well, this is pretty
17 much your last chance.

18 MR. WILLIAMS: Then I won't.

19 JUDGE WOODRUFF: I will order that those
20 two documents be removed from EFIS.

21 Then for Staff, we had Exhibit 231 which
22 was Guy Gilbert's manual on -- whatever it was on. I
23 showed it as being marked and we -- I don't believe
24 we ever -- I reserved ruling until the parties had a
25 chance to see it. I don't know if the parties have

1 seen it. I don't know that the Commission has ever
2 gotten a copy of it.

3 MR. MILLS: Judge, I think copies
4 certainly were provided to the parties sometime soon
5 after it came up on the record and I have no
6 objection to it.

7 JUDGE WOODRUFF: Okay.

8 MS. TATRO: I'm sorry. I didn't hear
9 which one we're discussing. I apologize.

10 COMMISSIONER DAVIS: Guy Gilbert
11 depreciation manual.

12 JUDGE WOODRUFF: Guy Gilbert's
13 depreciation manual.

14 COMMISSIONER DAVIS: And Judge, I think
15 I received a copy of it here on the bench that --

16 JUDGE WOODRUFF: I may have too.

17 COMMISSIONER DAVIS: -- may have been
18 distributed to us. That's my recollection.

19 JUDGE WOODRUFF: As long as the court
20 reporter had it, it will be in the record and
21 apparently she did. So at this point, is there any
22 objection to Exhibit 231?

23 (NO RESPONSE.)

24 JUDGE WOODRUFF: Hearing none, it will
25 be received.

1 (EXHIBIT NO. 231 WAS RECEIVED INTO
2 EVIDENCE AND MADE A PART OF THE RECORD.)

3 JUDGE WOODRUFF: 240 was reserved to be
4 a late-filed exhibit on vegetation management
5 numbers. And we're moving over to Public Counsel.
6 We had direct, rebuttal and surrebuttal from
7 Mr. Trippensee.

8 MR. MILLS: Yes, and for the direct and
9 the surrebuttal, they're both HC and NP versions.

10 JUDGE WOODRUFF: Okay. Yes.

11 MR. MILLS: And I believe that's all
12 that I have that has not been offered and accepted.

13 JUDGE WOODRUFF: All right. 312, 313,
14 314 have been offered. Any objections to their
15 receipt?

16 (NO RESPONSE.)

17 JUDGE WOODRUFF: Hearing none, they will
18 be received.

19 (EXHIBIT NOS. 312, 313 AND 314 WERE
20 RECEIVED INTO EVIDENCE AND MADE A PART OF THE
21 RECORD.)

22 JUDGE WOODRUFF: Let's see. Looking at
23 the MIEC stuff. No. 442 was a heat rate chart which
24 I made a reserved ruling on.

25 MR. BYRNE: Can I briefly address it,

1 your Honor?

2 JUDGE WOODRUFF: Sure.

3 MR. BYRNE: 442 is the heat rate
4 exhibit, and I know Mr. Lowery objected to it before.
5 I think -- I think typically, if the company provides
6 any records or if any of the company witnesses
7 provide answers to data requests, those are
8 admissions of the company.

9 In this case, this was a -- this was an
10 exhibit that was used by one of our outside experts,
11 Mr. Loos, in developing his study and his testimony.
12 MIEC did not ask Mr. Loos about this, who could have
13 conceivably identified it and -- and explained it or
14 not explained it. And then they asked Mr. Birk about
15 it when he took the witness stand and Mr. Birk had
16 never seen it before.

17 So I think that under these
18 circumstances, even though most of the time if you're
19 getting data from the -- from the Company's records,
20 those constitute admissions that we would never have
21 any objection of putting in the record, because this
22 was Mr. Loos's and he's not a -- he's not an employee
23 of the Company, he was on the witness stand and could
24 have been asked about it and MIEC didn't ask him
25 about it, we would renew our objection.

1 JUDGE WOODRUFF: MIEC?

2 MR. DOWNEY: Judge, yesterday we had a
3 discussion on the record about the testimony and
4 there was an objection and you overruled the
5 objection. The witness testified. Mr. Lowery asked
6 the witness questions, no objection from me. The
7 witness testified.

8 Yes -- when I offered the exhibit, which
9 I will submit is an admission, I've got a copy of the
10 cover page part and it says, "AmerenUE response to
11 MIEC data request." So it's the same as a party
12 responding to an interrogatory.

13 But after the hearing yesterday, in the
14 e-mail there were communications from Mr. Lowery to
15 you -- from me to you with a copy to all the parties.
16 Mr. Lowery also moved to strike the testimony that
17 was admitted over his objection, and I assume also
18 strike his questions and answers to his questions,
19 and I don't know of any basis for doing that.

20 So I would -- number one, I would
21 suggest that the document itself is an admission.
22 It -- it on its face shows that it's an admission of
23 the Company, so it should be received. The motion to
24 strike should be denied.

25 MR. MILLS: May I weigh in on this

1 briefly, Judge?

2 JUDGE WOODRUFF: Yes.

3 MR. MILLS: If you'll recall earlier in
4 the case, Mr. Byrne forgot to ask foundation
5 questions of a witness and you allowed him to do that
6 after the fact. It seems to me that this is sort of
7 a similar situation. If UE has some reason to
8 believe that the document is inaccurate, I think it's
9 incumbent upon them to bring Mr. Loos forward and say
10 no, this isn't right.

11 But barring that, I think it's a little
12 bit disingenuous for UE to say, ah-ha, you forgot to
13 ask the right guy the right question so there's no
14 foundation when they weren't able to work -- make a
15 workaround to that themselves. I think they ought to
16 offer the same sort of workaround for the MIEC.

17 MR. BYRNE: Well, your Honor, I don't
18 think it's incumbent on us at all. I think it's
19 incumbent on the party who wants to offer the exhibit
20 to ask the right witness the foundation questions.
21 And I ultimately did ask the right foundation
22 questions, but Mr. Loos is not here anymore. And so
23 anyway, he may have -- who knows what he may have
24 been able to explain about this document, but he
25 never -- he was not allowed to testify about it.

1 JUDGE WOODRUFF: Well, I'll
2 short-circuit this. I'm overruling the objection.
3 The document will be received.

4 (EXHIBIT NO. 442 WAS RECEIVED INTO
5 EVIDENCE AND MADE A PART OF THE RECORD.)

6 MR. WILLIAMS: Judge?

7 JUDGE WOODRUFF: Yes.

8 MR. WILLIAMS: Back to Exhibit 240. I'm
9 going to go ahead and offer that and I expect
10 AmerenUE will object.

11 JUDGE WOODRUFF: Well, that's -- we
12 haven't seen it yet, I think.

13 MR. WILLIAMS: I'm going to give it to
14 you.

15 JUDGE WOODRUFF: Okay.

16 MR. WILLIAMS: I think that what they'll
17 want to do is to reserve the opportunity to object if
18 they find there's some issues about it.

19 JUDGE WOODRUFF: All right. Go ahead
20 and hand it out.

21 (EXHIBIT NO. 240 WAS MARKED FOR
22 IDENTIFICATION BY THE COURT REPORTER.)

23 MR. WILLIAMS: Yesterday Staff filed
24 an amended -- prefiled amended rebuttal testimony --
25 or surrebuttal testimony of Steve Rackers. If no

1 party objects, we're not intending to offer that
2 and would prefer that it wasn't cluttering up the
3 Commission's Electronic Filing Information System.
4 So -- I know there was discussion about removing
5 some other documents from that system earlier.
6 If that one was also removed, Staff would appreciate
7 it.

8 And as to Exhibit 240, I believe it's
9 been distributed to the parties and Staff offers
10 Exhibit 240 at this time.

11 JUDGE WOODRUFF: Ms. Tatro.

12 MS. TATRO: AmerenUE will object. This
13 was just handed to us this morning. Our revenue
14 requirement -- Gary Weiss -- witness is gone because
15 he thought we were on rate design and revenue
16 requirement was done.

17 In speaking with Mr. Rackers prior to
18 the hearing today, he confirmed that he hadn't shared
19 this information with Mr. Weiss yet, so I can't
20 confirm the validity or nonvalidity of this matter.
21 I would have to object to it being offered at this
22 time.

23 JUDGE WOODRUFF: What I'll do is reserve
24 ruling on the admission of the document, give
25 AmerenUE and other parties, say, from a week -- until

1 a week from today to file any written objection to
2 the document.

3 MS. TATRO: Thank you.

4 MR. WILLIAMS: Thank you, Judge.

5 JUDGE WOODRUFF: Okay. Moving on, I
6 believe everything is in now for Public Counsel. MEG
7 had Ms. Laconte's direct testimony. Does anyone want
8 to offer that?

9 MS. VUYLSTEKE: Yeah, I would like to
10 offer that. I think it's 450.

11 JUDGE WOODRUFF: 450's been offered.
12 Any objections to its receipt?

13 (NO RESPONSE.)

14 JUDGE WOODRUFF: Hearing none, it will
15 be received.

16 (EXHIBIT NO. 450 WAS RECEIVED INTO
17 EVIDENCE AND MADE A PART OF THE RECORD.)

18 JUDGE WOODRUFF: That takes care of
19 all the exhibits that were -- were premarked and
20 also all the exhibits that were offered at the
21 hearing.

22 MS. VUYLSTEKE: We have one additional
23 exhibit, Judge, and I apologize. This is just a
24 hearing exhibit from Mr. Roam's cross-examination,
25 and I believe one of the Commissioners may have asked

1 for this.

2 It was the numerical exhibit that he
3 showed, and this is just a replication of it.

4 JUDGE WOODRUFF: Okay. Do you remember
5 what number that was?

6 MS. VUYLSTEKE: I believe this is 443 or
7 444.

8 JUDGE WOODRUFF: Okay. So it would be a
9 new number?

10 MS. VUYLSTEKE: Yes.

11 JUDGE WOODRUFF: It will be 443, then.

12 MS. VUYLSTEKE: Thank you.

13 (EXHIBIT NO. 443 WAS MARKED FOR
14 IDENTIFICATION BY THE COURT REPORTER.)

15 JUDGE WOODRUFF: Was this something that
16 he had done as a -- as a large chart?

17 MS. VUYLSTEKE: This is the large chart
18 that he did.

19 JUDGE WOODRUFF: 443 has been offered.
20 Any objections to its receipt?

21 (NO RESPONSE.)

22 JUDGE WOODRUFF: Hearing none, it will
23 be received.

24 (EXHIBIT NO. 443 WAS RECEIVED INTO
25 EVIDENCE AND MADE A PART OF THE RECORD.)

1 JUDGE WOODRUFF: All right. That was
2 all the exhibits. Anything else anyone wants to
3 bring up at this time?

4 (NO RESPONSE.)

5 JUDGE WOODRUFF: All right, then, we are
6 adjourned.

7 (EXHIBIT NOS. 312, 313, 314, 422, 423,
8 424, 425, AND 432 WERE MARKED FOR IDENTIFICATION BY
9 THE COURT REPORTER.)

10 (WHEREUPON, the hearing was concluded.)

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1 C E R T I F I C A T E

2 STATE OF MISSOURI)
3) ss.
4 COUNTY OF COLE)

5 I, Pamela Fick, Registered Merit Reporter
6 and Certified Shorthand Reporter do hereby certify
7 that I was personally present at the proceedings had
8 in the above-entitled cause at the time and place set
9 forth in the caption sheet thereof; that I then and
10 there took down in Stenotype the proceedings had; and
11 that the foregoing is a full, true and correct
12 transcript of such Stenotype notes so made at such
13 time and place.

14 Given at my office in the City of
15 Jefferson, County of Cole, State of Missouri.

16

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18 _____
PAMELA FICK, RMR, CCR #447, CSR

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