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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Evidentiary Hearing
March 12, 2015
Jefferson City, Missouri
Volume 35

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

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

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

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

2 (WHEREUPON, the hearing began at
3 8:30 a.m.)

4 (NORANDA EXHIBIT NOS. 610NP/HC AND
5 611NP/HC WERE MARKED FOR IDENTIFICATION BY THE
6 REPORTER.)

7 JUDGE WOODRUFF: Let's come to order,
8 please. We're back for another day of the Ameren
9 rate case hearing, ER-2014-0258. Mr. Dauphinais is
10 on the stand, and I guess we start with him today.
11 You testified earlier in this proceeding, right?

12 THE WITNESS: Yes, I have.

13 JUDGE WOODRUFF: So you're still
14 under oath.

15 THE WITNESS: Yes.

16 MR. DOWNEY: Judge, I would offer
17 Exhibits 508 and 509. I don't believe they've been
18 admitted yet. Each of those has an NP and an HC
19 version.

20 JUDGE WOODRUFF: That's correct. I
21 deferred ruling on those earlier. 508 and 509 HC
22 and NP have been offered. Any objection to their
23 receipt?

24 (No response.)

25 JUDGE WOODRUFF: Hearing none, they

1 will be received.

2 (MIEC EXHIBIT NOS. 508NP/HC AND
3 509NP/HC WERE RECEIVED INTO EVIDENCE.)

4 JUDGE WOODRUFF: Ready for cross? Do
5 you tender the witness for cross?

6 MR. DOWNEY: Yes, I do. I'm sorry.

7 JUDGE WOODRUFF: Public Counsel?

8 MR. ALLISON: Yes, sir.

9 JAMES DAUPHINAIS testified as follows:

10 CROSS-EXAMINATION BY MR. ALLISON:

11 Q. Hi, Mr. Dauphinais. How are you?

12 A. Good morning.

13 Q. You're providing testimony on behalf
14 of MIEC, correct?

15 A. Yes.

16 Q. Okay. Now, in your testimony, I
17 believe it was in your direct testimony, you posit
18 an avoided cost for Ameren if Noranda goes off the
19 system at somewhere between \$28.03 and \$29.39; is
20 that correct?

21 A. Yes.

22 Q. Okay. And Ameren witness Mr. Michels
23 suggests that that price range is between 32.77 per
24 megawatt hour and 34.13 per megawatt hour; is that
25 correct?

1 A. That's using his seven-year
2 historical method with market -- severe market
3 anomalies such as the polar vortex anomaly
4 included.

5 Q. Okay. And we'll get to some of that.
6 **Ms. Kliethermes suggests three different estimates,**
7 **with the lowest at \$29 even per megawatt hour and**
8 **the highest being 35.88 per megawatt hour, correct?**

9 A. Yes, but on surrebuttal she
10 introduced another number of \$28.29 per megawatt
11 hour.

12 Q. Thank you for that. And so within
13 that range of Ms. Kliethermes' testimony, we have
14 four different points, 28.29, \$29, 31.50, and then
15 the 35.88; is that correct?

16 A. Yes, but the 35.88 should be given
17 really no credence. It's a 12-year -- 12-month
18 number that includes the polar vortex anomaly.

19 Q. Okay. And so you think your range is
20 appropriate based upon what you just said because
21 you exclude the impact on price that occurred due
22 to the polar vortex. That's one of the reasons;
23 isn't that right?

24 A. That's one of the reasons.

25 Q. Right. And others included the polar

1 **vortex in their calculations; is that right?**

2 A. The -- one of the numbers from
3 Ms. Kliethermes, two of the numbers, the 31.49 per
4 megawatt hour and 35.88 per megawatt hour included
5 the polar vortex.

6 **Q. Okay. And in addition, with respect**
7 **to the high number that Ms. Kliethermes offered,**
8 **that's due to a 12-month historical period which**
9 **you believe is unreasonable?**

10 A. Correct. It's not the normalized.
11 Never mind removing the severe polar vortex
12 anomaly. It's in general not normalized. We
13 typically use a 36-month normalization of values
14 that don't include any really severe market
15 anomalies in them.

16 **Q. Okay. So when we talk about your**
17 **range, the \$28.03 to \$29.39 per megawatt hour**
18 **range, that's the point -- and I'm going to try to**
19 **summarize this as best I can, understanding I'm not**
20 **an engineer -- that's the point at which it either**
21 **becomes better or worse for customers to have**
22 **Noranda on Ameren's system, in your opinion?**

23 A. Yes, because that represents the cost
24 that would be avoided by Ameren if the Noranda
25 smelter shut down.

1 Q. And so if Noranda were to pay a
2 higher price or a higher rate than whatever that
3 point is, wherever it's set, then that would be
4 good for Ameren's other customers; is that correct?

5 A. Versus a shutdown of Noranda, yes.
6 Correct.

7 Q. And if Noranda were to pay a price
8 that would be less than whatever that point is set
9 at, that's bad for Ameren's other customers?

10 A. That could be bad, yes.

11 Q. So help me understand this, then, per
12 your explanation. If Noranda were to pay a rate
13 above the point you identified, does that then mean
14 that Noranda's making a contribution to Ameren's
15 fixed costs versus variable costs? How
16 does -- how does that work?

17 A. That's exactly right. On an
18 incremental cost basis, Noranda would be making a
19 contribution to fixed costs.

20 Q. Okay. And fundamentally, when you
21 did your approach, Ameren's witness did their
22 approach, Staff's witness did their approach, the
23 fundamental approach in arriving at that point is
24 the same, correct? It's just kind of variations on
25 a theme and how you apply different variables,

1 correct?

2 A. For using historical data, yes.

3 Q. Now, Ameren's costs, generation,
4 distribution, fuel and O&M, that doesn't change
5 necessarily whether the contract is retail or
6 wholesale, does it?

7 A. No, it generally doesn't.

8 Q. Okay. So if you just take a retail
9 contract and then slap a wholesale label on it,
10 that doesn't change, the cost structure doesn't
11 change, does it?

12 A. It doesn't generally change the cost
13 structure, yes.

14 Q. To your knowledge, is Noranda
15 permitted to resell the power it receives from
16 Ameren?

17 A. Noranda itself?

18 Q. Yeah.

19 A. Noranda itself does not, as far as I
20 know, have market base authority or a tariff on
21 file with the Federal Energy Regulatory Commission
22 to take sales for resale. So I don't believe they
23 can resell right now.

24 Q. You believe they can't?

25 A. Yes, I don't believe they're

1 authorized right now to do so. They would have to
2 be authorized by the Federal Energy Regulatory
3 Commission to do so.

4 **Q. Are you familiar with Ameren's**
5 **wholesale contract proposal in this case?**

6 A. As described by Mr. Michels, yes, in
7 his rebuttal testimony.

8 **Q. And in Ameren's wholesale proposal,**
9 **is it fair to say that the risk or the burden of**
10 **that proposal falls on Ameren Missouri's other**
11 **ratepayers?**

12 A. I think with the conditions that were
13 laid out by Mr. Michels, it could do that. It
14 depends whether certain conditions in -- it was a
15 requirement really for an agreement between Noranda
16 and Ameren Missouri as well. So it's sort of a
17 combination of how risks were balanced there plus
18 how risks were then passed through with the
19 conditions that Mr. Michels put forth in his
20 rebuttal testimony.

21 **Q. And one of those conditions was that**
22 **revenues received as a result of the contract would**
23 **run through Ameren's FAC; isn't that right?**

24 A. That is correct.

25 **Q. And is that one of the conditions**

1 that would shift risk onto the other ratepayers as
2 opposed to Ameren's shareholders in that case?

3 A. It could be viewed as that, but
4 there's also an issue about does that -- you know,
5 whatever ratepayers or consumer groups, how they
6 would react to that condition, and we've seen some
7 testimony in surrebuttal on that.

8 One of the challenges is that this
9 would look a lot like a wholesale full requirements
10 contract. And historically we go back a few years,
11 we used to handle wholesale full requirements sales
12 differently than we do today. We used to handle
13 those through a jurisdictional allocator of
14 embedded cost of service.

15 And we don't do that right now,
16 largely because there are fewer of those contracts
17 and smaller contracts. So instead we treat those
18 as off-system sales in the FAC right now.

19 But that taking a sale to Noranda and
20 giving it that treatment could be opposed and, even
21 if approved by the Commission, could be challenged
22 in the courts. So it introduces a whole issue of a
23 retroactive risk that, if it gets approved, it's in
24 effect for two years and suddenly it's illegal in
25 some way, and so, therefore, somebody's got to bear

1 the risk of those retroactive payments. And so
2 it's a major risk question that has to be resolved.

3 Q. And that would be the risk for either
4 Ameren or Noranda, correct?

5 A. Correct.

6 Q. Okay. And in terms of -- I guess one
7 of the questions that I'm getting to is, in terms
8 of just -- let's step back for a second.

9 Noranda's paying a rate around \$42
10 per megawatt hour all in right now, correct?

11 A. I believe that's included in the FAC.

12 Q. Correct. If a wholesale contract had
13 a rate at let's say \$36, that's a difference of \$6;
14 isn't that right?

15 A. Yes.

16 Q. Okay. Somebody's going to pick up
17 that \$6, aren't they?

18 A. Yes.

19 Q. And it's -- the way that Ameren's
20 proposal is structured, Ameren doesn't pick up that
21 \$6, do they?

22 A. That's correct.

23 Q. And Noranda doesn't pick up that \$6,
24 do they?

25 A. Correct.

1 Q. The other customers pick up that \$6,
2 don't they?

3 A. Much as they would under a -- under a
4 retail arrangement, yeah.

5 Q. But under Ameren's proposal, none of
6 the other customers are negotiating that deal, are
7 they?

8 A. That's correct.

9 Q. Now, Noranda, are you aware that
10 Noranda came on to Ameren's system as a result of
11 the Stipulation & Agreement that was entered into a
12 number of years ago in the CCN case?

13 A. I'm aware of it, yes.

14 Q. And are you aware that multiple
15 parties, not just Ameren and Noranda, were
16 signatories to that Stipulation & Agreement
17 resolving the CCN case?

18 A. I believe they were, yes.

19 Q. To your knowledge, based on market
20 conditions at the time, were Ameren's other
21 customers better off or worse off having Noranda on
22 the system when Noranda entered?

23 A. My understanding is, based on market
24 conditions at the time, they would be worse off.

25 Q. Okay. But despite that, Ameren

1 actively pursued Noranda at that time, despite the
2 harmful effects on the other customers; is that
3 correct?

4 A. That's my recollection, yes.

5 Q. And now, as we sit here today, is
6 Noranda's presence on Ameren's system beneficial or
7 detrimental to other customers, in your opinion?

8 A. It's beneficial. There's no
9 question. There are contribution to fixed costs
10 being made.

11 Q. And now Ameren is actively seeking to
12 remove Noranda as a retail customer, isn't it?

13 A. It is, in the sense that without this
14 rate Noranda believes they may shut down, yes, and
15 which would eliminate any contribution to fixed
16 costs for the other ratepayers.

17 Q. Now, are you aware that Ameren has a
18 15-year contract to serve Noranda?

19 A. Yes.

20 Q. And are you aware that the 15-year
21 term was also incorporated as a provision of the
22 stipulation resolving the CCN case and can also be
23 found in the LTS tariff sheets in this case?

24 A. That's my understanding, yes.

25 Q. And if you know, and only if you

1 know, why might customers agree to bring Noranda on
2 Ameren's system if it was detrimental to them in
3 the short term?

4 A. My understanding is there was an
5 expectation of future capital investments coming,
6 and so it would add a contributor to fixed costs
7 that would not otherwise be there. That was one of
8 the factors that I'm aware of.

9 Q. So because over the long term Noranda
10 would be expected to share fixed costs that the
11 other customers would otherwise pay, right?

12 A. Yes.

13 Q. And would a \$34 rate continue to
14 ensure Noranda makes a positive contribution to
15 fixed costs in this -- in this case?

16 A. I think it would. It's important to
17 understand we've got an escalator there. It's a
18 more robust escalator than before, which is based
19 on 50 percent of the general rate increase for base
20 rates. And there's also a provision, it's new
21 legislatively introduced charges, there it's 100
22 percent. So you have those.

23 And, of course, the Commission can --
24 you know, this Commission can't bind future
25 commissions, so the Commission has the ability to

1 review the rate in the future as well.

2 Q. So if an escalator were to apply, you
3 mentioned that, that would -- could continue to
4 ensure a positive contribution to fixed costs going
5 forward, couldn't it?

6 A. Yes. Versus a shutdown, yes.

7 Q. That would have to be evaluated as
8 time passes, of course, right?

9 A. Yes.

10 Q. But it's entirely possible that a
11 \$34 rate plus a 50 percent escalator would ensure,
12 based upon what you know today, that, for instance,
13 in the next rate case Noranda's still making a
14 positive contribution to fixed costs?

15 A. I'd say it's highly likely, yes.

16 Q. Is it highly likely in the case after
17 that, say, that's probably 36 months out?

18 A. I think it's highly likely 36 months
19 out.

20 Q. And beyond that, we get into the
21 realm of forecasting, I suspect; is that correct?

22 A. At some point you get into the realm
23 of forecasting. Again, the Commission has the
24 ability to review the rate.

25 Q. Fair enough. And with respect to

1 fuel, with each rate case fuel gets rebased to some
2 degree back into base rates out of the FAC,
3 correct?

4 A. Correct. Typically what happens is
5 we zero out the fuel adjustment clause, that has a
6 value of zero, and we put the fuel all back into
7 base rates and restart the FAC at a price of zero.

8 Q. So exposure to fuel increases still
9 exists through that rebasing that would occur in
10 each rate case under the -- under the terms of the
11 stipulation; is that right?

12 A. Correct. With Noranda getting a
13 50 percent of the general base rate increase, then
14 they will get a portion of that, yes.

15 Q. Okay. And Noranda originally sought
16 just a flat 1 percent limited escalator in this
17 case, right?

18 A. Yes, it did.

19 Q. Just to finish up, I just want to
20 clarify, you're an engineer by training; is that
21 right?

22 A. Yes.

23 Q. Okay. And you've been working in
24 this field of utility and utility regulatory space
25 since the early 1980s; is that right?

1 A. Since the early 19-- in the
2 regulatory area, I've been involved since about
3 1995. I've been involved in the industry going
4 back to 1984.

5 **Q. And since 19 -- your early days in**
6 **the industry were working for a utility; is that**
7 **right?**

8 A. Working for an electric utility. I
9 was a transmission planner in the system planning
10 department, which had involvement now with
11 transmission planning but also with resource
12 planning.

13 MR. ALLISON: Okay. Fair enough.
14 Thank you. That's all I have.

15 JUDGE WOODRUFF: All right. I see
16 the retailers in the back. Did you wish to cross?

17 MS. BELL: No questions, your Honor.

18 JUDGE WOODRUFF: For Staff?

19 MR. THOMPSON: Thank you, Judge.

20 CROSS-EXAMINATION BY MR. THOMPSON:

21 **Q. Good morning, Mr. Dauphinais.**

22 A. Good morning, Mr. Thompson.

23 **Q. Now, you were answering some**
24 **questions from Public Counsel with respect to when**
25 **Noranda joined Ameren's system. Do you remember**

1 those questions?

2 A. Yes.

3 Q. And wasn't there someone -- wasn't
4 there another load that went off of Ameren's system
5 just before Noranda went on?

6 A. I think part of that agreement, there
7 was the Metro East load in Illinois that was part
8 of it, too. They were, I believe, removed from
9 Union Electric.

10 Q. Okay. Do you know how large a load
11 that was?

12 A. I don't know offhand.

13 Q. Okay. Would you be surprised to
14 learn it was roughly equivalent to the size of
15 Noranda's load?

16 A. I don't know.

17 Q. And would those ratepayers in Metro
18 East, did they make any contribution to Ameren's
19 fixed costs?

20 A. I would assume they would to some
21 degree, but I think it's important to recognize
22 that you had retail access in Illinois, so having
23 future contribution there was a given.

24 Q. Okay. Now, you would agree with me
25 that there is a rate less than fully embedded and

1 allocated cost of service rate at which Noranda on
2 the system provides a benefit to Ameren's other
3 ratepayers over being off the system?

4 A. Yes.

5 Q. And do you know what that point is
6 today?

7 A. My -- my recommendation regarding
8 that point is -- on a normalized test year basis is
9 between \$28.03 per megawatt hour and \$29.39 per
10 megawatt hour.

11 Q. And would you agree with me that that
12 rate changes over time?

13 A. The rate changes over time, but
14 that's why we're doing normalized test year data is
15 to capture where that has been on a known and
16 measurable basis.

17 Q. Well, were you in the room when I was
18 questioning Mr. Fayne?

19 A. I was not present in the room. I did
20 see isolated portions of his cross-examination from
21 the video feed, but I didn't see the whole thing.

22 Q. Okay. Well, so you can calculate
23 that point for a day. Can you calculate it for a
24 week?

25 A. Theoretically, you can calculate in

1 isolation for a week or day, but that's not a fair
2 examination of it. You need to examine it over
3 time.

4 **Q. How much time?**

5 A. You know, the traditional way we do
6 this in setting rates is we look at a test year's
7 worth of data, and it's usually normalized data for
8 a test year.

9 **Q. Right. And that's historical,**
10 **correct?**

11 A. It's historical data.

12 **Q. But the number you're coming up with**
13 **is going to be used prospectively, isn't it?**

14 A. As -- as would any other rate, yes.

15 **Q. Okay. So what I'm trying to get at**
16 **is, you would agree with me that conditions change**
17 **as time goes on?**

18 A. Conditions change, but based on known
19 and measurable data, the numbers that I calculated
20 are the appropriate numbers to use to make a
21 judgment.

22 **Q. So do you believe you could calculate**
23 **a load retention rate that will continue to be**
24 **beneficial for Ameren's customers other than**
25 **Noranda over a term of ten years?**

1 A. We're not -- a rate for ten years has
2 been requested, but this Commission can't bind
3 future commissions.

4 **Q. We understand that, but I'm asking**
5 **you a theoretical question. You are, after all, an**
6 **expert in this area; is that correct?**

7 A. I'm an expert in this area, but the
8 proper comparison is what we're likely to be
9 dealing with by the time Ameren files a new rate
10 case, and that's not likely to be ten years based
11 on recent experience over the last seven years.

12 **Q. Okay. So are you telling me that you**
13 **can calculate it successfully for 18 months?**

14 A. You can reasonably calculate it for
15 18 months. Just the way we're setting all the
16 other rates, everything is changing in Ameren's
17 costs all the time and for all aspects, yet we're
18 setting rates based on historic test year data.
19 And there's no difference really for setting this
20 rate versus any other rate.

21 **Q. Okay. And you're familiar with the**
22 **fuel adjustment clause; is that correct?**

23 A. Yes, I am.

24 **Q. And would you agree with me that the**
25 **fuel adjustment clause changes the rates that**

1 people pay for their electric service between
2 general rate cases?

3 A. It does, yes.

4 Q. And you have sponsored, have you not,
5 a plan where Noranda would receive a load retention
6 rate and would be exempt from the fuel adjustment
7 clause; isn't that correct?

8 A. It would be exempt from the fuel
9 adjustment clause, but we should remember the fuel
10 adjustment clause can go both up and down.

11 Q. Okay. So let's assume it's only
12 going to go up. If Noranda's load retention rate
13 remains constant and Noranda is exempt from a fuel
14 adjustment clause and the fuel adjustment clause
15 goes upwards, then wouldn't that destroy the
16 relationship whereby the load retention rate is
17 beneficial to Noranda's other -- to Ameren's
18 other customers?

19 A. Under that hypothetical, that might
20 happen for a limited period of time. Remember, a
21 couple of things need to be kept in mind. One is
22 that Ameren Missouri over the past seven years has
23 been coming about every 18 months with a new base
24 rate filing, and we have an escalator in the -- in
25 the rate that was proposed in the stipulation on

1 March 9 that basically would pass through
2 50 percent of any general base rate increase onto
3 Noranda. It would get a 50 percent share rather
4 than a 100 percent share, but there would be an
5 increase.

6 So we would see fuel costs that are
7 recovered in the \$34 rate increase. So, therefore,
8 that \$34 rate would go up and would help to prevent
9 there being a loss of contribution to fixed costs
10 coming from Noranda.

11 **Q. Now, you participated in the Noranda**
12 **complaints this past summer, did you not?**

13 A. Yes, I did.

14 **Q. And is it your position that the**
15 **Commission was wrong when it found the point of**
16 **balance to be \$31.50 per megawatt hour?**

17 A. I think the 31.50 -- \$31.50 value,
18 while I respect the Commission's decision and their
19 reasoning, I don't believe it was appropriate to
20 include the polar vortex anomaly in the four-year
21 average. In fact, a three-year average could have
22 been used with severe market anomalies such as the
23 polar vortex removed, consistent with the way we
24 have set the fuel and purchased power cost of
25 Ameren Missouri's base rates over the -- since at

1 least the 2007 rate case.

2 **Q. If you know, what's a ten-year wind**
3 **contract worth in dollars per megawatt hour?**

4 A. I don't know. There are many --
5 those typically depend on what's negotiated,
6 usually done with bilateral contracts, and I don't
7 have knowledge of what currently that might go for.

8 **Q. How about a ten-year full**
9 **requirements contract?**

10 A. Again, that's also up to negotiation.
11 I don't have any information on that.

12 **Q. So you didn't consider those options**
13 **when you were determining what Noranda's best**
14 **option is in this case?**

15 A. Wasn't an option available to
16 Noranda.

17 MR. THOMPSON: No further questions.
18 Thank you.

19 JUDGE WOODRUFF: For Ameren?

20 CROSS-EXAMINATION BY MR. MITTEN:

21 **Q. Good morning, Mr. Dauphinais.**

22 A. Good morning, Mr. Mitten.

23 **Q. Mr. Thompson asked you some questions**
24 **about the effects of Noranda's proposal to be**
25 **excluded from the fuel adjustment clause. Do you**

1 remember those questions?

2 A. Yes.

3 Q. Do you have any idea how much Noranda
4 has paid in fuel adjustment clause charges since
5 the fuel adjustment clause was implemented?

6 A. I do not know.

7 Q. You don't even have a ballpark
8 figure?

9 A. No. I haven't calculated that.

10 Q. But whatever that amount is, under
11 Noranda's proposal, it wouldn't pay those in the
12 future for as long as the special rate is in
13 effect?

14 A. It may be a very different number.
15 It's not necessarily going to be the same number
16 we've seen historically. The going forward, if
17 they were under the FAC versus not being on the
18 FAC, that difference isn't necessarily going to be
19 the same going forward as it was historically.

20 Q. So the historical fuel adjustment
21 clause numbers may not be accurate predictors of
22 what the future fuel adjustment clause numbers
23 would be; is that what you're saying?

24 A. It depends how far back you go.

25 Q. Say we go back three years.

1 A. If you go back three years, at some
2 point it could be argued that you're -- you know,
3 you have normalized indication of what the fuel
4 adjustment factor might be.

5 **Q. Would that be a reliable indicator of**
6 **what the fuel adjustment clause costs for Noranda**
7 **might be in the future?**

8 A. Yeah, because it would be zero at
9 that point because we're setting -- we're setting
10 the base cost of fuel.

11 **Q. But I'm talking about how much**
12 **Noranda has paid in fuel adjustment clause costs**
13 **over the last three years. Would that be a good**
14 **indicator of what Noranda's likely to pay in the**
15 **future?**

16 A. No, not necessarily.

17 **Q. Mr. Allison asked you a question that**
18 **suggested that Ameren Missouri is actively seeking**
19 **to remove Noranda as a retail customer, and you**
20 **seem to agree with that characterization. What's**
21 **the basis for your belief that Ameren Missouri is**
22 **actively seeking to remove Noranda as a retail**
23 **customer?**

24 A. They're active -- the company's
25 active opposition to the request here that's been

1 made, in light of the evidence that's been made --
2 been filed in this proceeding.

3 Q. But if Noranda's request is denied in
4 this case, doesn't it stay a retail customer?

5 A. Only if it -- only if the smelter
6 remains in operation, which it may not.

7 Q. But as long as it does remain in
8 operation, it would still be a retail customer, do
9 you agree?

10 A. As long as it remains in operation,
11 which is a big if.

12 Q. And it's -- as far as Ameren
13 Missouri's proposed alternative to convert Noranda
14 into a wholesale customer, that was premised on
15 Noranda's agreement to that arrangement?

16 A. It was premised on Noranda's
17 agreement with that arrangement, but as I've
18 indicated, there's some significant risk with that
19 arrangement versus a retail arrangement.

20 Q. And that leads me into another
21 question. You talked about the potential risk in
22 terms of retroactive liability resulting from a
23 lawsuit if Noranda was converted from a retail to a
24 wholesale customer. Do you recall that?

25 A. Yes.

1 **Q. Is there any risk associated with the**
2 **Commission granting Noranda the special rate that**
3 **it's seeking in this case?**

4 A. Not a similar risk that I'm aware of.

5 **Q. It's not susceptible to being**
6 **challenged as an unlawful and special rate?**

7 A. I don't think there's the same degree
8 of risk as there is with the wholesale contract.

9 **Q. Is that your opinion as an engineer**
10 **or as a lawyer, Mr. Dauphinais?**

11 A. That's my opinion as a regulatory
12 expert.

13 **Q. Okay. And going back to an answer**
14 **that you gave a moment ago, your assumptions**
15 **regarding the likelihood that the New Madrid**
16 **smelter will close, are those assumptions based**
17 **upon information that has been provided to you by**
18 **Noranda or have you done an independent analysis of**
19 **those claims?**

20 A. I'm not an expert in that area, and I
21 didn't perform an independent analysis.

22 **Q. Thank you.**

23 A. It's based on the evidence that's
24 been filed by Noranda.

25 **Q. Mr. Dauphinais, do you have any idea**

1 **what Ameren Missouri's fully embedded cost of**
2 **service is going to be 18 months from now?**

3 A. Exactly what it will be at, no.

4 Q. Do you have any idea what it's going
5 **to be 36 months from now?**

6 A. No.

7 Q. How about seven years from now?

8 A. No, but again --

9 Q. How about ten years from now?

10 A. I don't, but the company has the
11 ability to seek rate relief as necessary, even
12 though that's not known right now. So there is a
13 mechanism to deal with how that's going to change,
14 and rates are set without that knowledge. All
15 rates are set without that knowledge.

16 Q. And that maybe leads me into another
17 question. You have said a couple of times in
18 response to questions from other parties this
19 morning that this Commission can't bind future
20 commissions. Yet Noranda's executives, when they
21 were proposing this special rate arrangement,
22 indicated that they need long-term rate stability;
23 is that correct?

24 A. Yes.

25 Q. And the initial proposal was for a

1 seven-year term; is that correct?

2 A. Yes.

3 Q. And that would have been a base rate
4 which could only be increased by a maximum of
5 1 percent per year over that seven-year period; is
6 that correct?

7 A. Yes.

8 Q. Well, as you say, it's Noranda's --
9 or your opinion as Noranda's regulatory expert that
10 this Commission cannot bind future commissions, why
11 didn't Noranda simply ask for a special rate for
12 this case only, which would be subject to review in
13 future rate cases?

14 A. I think we've heard that they want
15 that stability. So what they want is they would
16 like to see a rate approved for a longer term. But
17 they -- I think they recognize -- it's clear they
18 recognize the Commission can review whether that
19 rate is still reasonable in future rate
20 proceedings.

21 So they can grant a rate for seven or
22 ten years, but future commissions can review
23 whether that rate is still reasonable or not, and
24 they can adjust it if they feel it's not reasonable
25 anymore.

1 Q. So the seven and ten years that were
2 recommended in Noranda's original proposal and in
3 the stipulation that was presented earlier this
4 week are really meaningless numbers?

5 A. I don't believe they're meaningless,
6 especially in the context of the stipulation. What
7 I think you have an indication in the stipulation
8 from March 9th is there are a number of consumer
9 parties who believe that such a rate is viable
10 based on the information that's available at this
11 time, but recognizing the Commission can review its
12 reasonableness in the future.

13 And I think there's a recognition
14 it's important to indicate at this time that those
15 group -- that there is support for a longer-term
16 rate if the situation as we know it now remains as
17 we expect it right now, it remains that way going
18 forward, again, recognizing the Commission can
19 review the reasonableness of the rate in future
20 rate proceedings.

21 MR. MITTEN: I have no further
22 questions. Thank you, your Honor.

23 JUDGE WOODRUFF: Questions from the
24 Bench then. Mr. Chairman?

25 QUESTIONS BY CHAIRMAN KENNEY:

1 Q. Mr. Dauphinais, good morning.

2 A. Good morning, Mr. Chairman.

3 Q. You have read Mr. Michels' testimony
4 detailing Ameren's wholesale proposal, correct?

5 A. Yes, I have.

6 Q. And Ameren said that its proposal was
7 predicated on three requirements that Noranda had
8 about having a lower price that was stable and
9 long-term; is that correct?

10 A. That's the goal of Noranda was stable
11 and long-term, yes.

12 Q. Okay. So those are the three
13 prerequisites that Noranda needs to have in order
14 to be able to refinance its debt and just to be
15 financially secure; is that a safe summary?

16 A. I think it's a rate at a certain
17 level that's stable over the long-term, yes.

18 Q. So certain level, stability and
19 long-term?

20 A. Yes. And with a recognition --

21 Q. Again --

22 A. With a recognit--

23 Q. Let's put aside the risks for a
24 moment, because as I understand Noranda's concern
25 about the risks, those are primarily legal risks --

1 A. Well --

2 Q. -- is that correct?

3 A. Legal with serious financial
4 implications. The issue of retroactive is that
5 they're going to make certain --

6 Q. Let's hold that for a second because
7 I'm going to come back to that.

8 A. Okay. Sure. Yeah.

9 Q. Putting aside those concerns, does
10 the proposal provide or meet the other three
11 prerequisites in terms of the level, stability and
12 the long-term nature of it? Is five years long
13 enough?

14 A. I can't answer Ameren on the five
15 years.

16 Q. You can't what?

17 A. I can't answer for Ameren on the five
18 years. They were certainly -- as we heard from
19 Mr. Smith, they were seriously negotiating with
20 Ameren on it, so maybe the five years was
21 sufficient for Ameren, but -- I mean, not Ameren,
22 but for Noranda, but I can't answer for Noranda on
23 that.

24 Q. Okay. You can't answer for Noranda;
25 is that what you said?

1 A. Yes.

2 **Q. Aren't you testifying for Noranda?**

3 A. I'm testifying on behalf of MIEC, of
4 which Noranda is a member.

5 **Q. Okay. All right. I keep getting**
6 **them confused. Do you have an opinion about**
7 **whether the five-year term would be long enough to**
8 **meet the requirement of having a stable rate for a**
9 **long-term period of time? Is five years considered**
10 **a long period of time?**

11 A. Five years would be considered
12 long-term, and it may be sufficient for Noranda.

13 **Q. Okay. Would a market rate, assuming**
14 **that the market wholesale rate is lower than a**
15 **retail rate, would that be an adequate level?**

16 A. I think if it was similar to what
17 we're looking at in the March 9th stipulation, it
18 is probably a good likelihood it would be.

19 **Q. And does it meet the other**
20 **requirement of providing Noranda with the**
21 **stability -- the stability it needs?**

22 A. It could. You know, a lot of it gets
23 down to the devil's in the detail and the
24 resolution of the risk issues. But assuming those
25 could be resolved, it has potential to do so.

1 **Q. Okay. I'm going to take that as a**
2 **yes. Assuming that the risk issues are adequately**
3 **satisfied, it meets the three requirements?**

4 A. It's a yes, though I would note that
5 the risk, the risk I -- especially the one I've
6 been highlighting today, is a very significant risk
7 that isn't present in a retail arrangement.

8 **Q. All right. Now, you've got to --**
9 **let's move into that then, because I don't get it.**
10 **What's the risk? I don't understand the nature of**
11 **the risk that you're describing.**

12 A. Well, let's say the Commission --
13 let's say there was a wholesale rate and let's say
14 it even was a \$34 rate for five years, and say it
15 was acceptable to Noranda and Ameren and it was
16 filed and with the conditions Matt Michels laid
17 out. And let's say this issue with passing the --
18 it through the fuel adjustment clause, let's say
19 the Commission approved that.

20 Let's say one of the consumer parties
21 in this proceeding who have been vocally opposed to
22 the wholesale deal decide to pursue it in the
23 courts and basically argue that the Commission
24 doesn't have the ability to pass wholesale full
25 requirements contracts through the fuel adjustment

1 clause.

2 Let's say they prevail on that issue.
3 If they prevail on that issue, what could happen is
4 that the Commission might have to go back to a
5 jurisdictional cost allocator for wholesale full
6 requirements contracts, and that may be retroactive
7 and it could be retroactive back for two years.

8 Depending on how the risk is split
9 between Ameren Missouri and Noranda, it's possible
10 Noranda might have to bear that risk, and so --

11 **Q. Let me stop you. So --**

12 A. Oh, sure.

13 **Q. -- the predicate, the predicate of**
14 **the entire concern is whether it's permissible to**
15 **pass through the fuel adjustment clause the**
16 **wholesale full requirements contract?**

17 A. That's correct, whether it's legal to
18 do so.

19 **Q. So that is the legal question from**
20 **which all the concerns flow?**

21 A. That's the big one.

22 **Q. Okay. That's one. What's next?**

23 A. Okay. So let's say that the courts
24 do rule and say that the Commission cannot do that,
25 and let's say Noranda was assigned all the risk

1 associated with that. Then suddenly Noranda might
2 have to come up with a large surcharge. And the
3 problem is that Noranda has taken advantage of
4 liquidity granted from the lower rate and made
5 substantial capital investments, and suddenly
6 they're going to be exposed to a very large
7 surcharge, and that might lead to Noranda having to
8 shut down, because it creates a liquidity crises.

9 **Q. I understand that. What I'm**
10 **saying, though, is that all those risks that you**
11 **just described flow from that singular legal**
12 **question about whether or not a wholesale full**
13 **requirements contract can be passed through the**
14 **fuel adjustment clause?**

15 A. Correct.

16 **Q. There is no other legal question in**
17 **Noranda or MIEC or your mind separate from that one**
18 **legal question; everything flows from that,**
19 **correct?**

20 A. That's the ones -- the big issue that
21 I'm aware of. There are other issues I believe
22 other parties have raised in their surrebuttal
23 testimony with respect to the wholesale contract,
24 but I'm not as familiar with those.

25 **Q. Are those legal questions?**

1 A. Some of them may be. I can't recall
2 the details of them.

3 **Q. And those other parties would be?**

4 A. I believe Staff has filed some
5 testimony on the concept of a wholesale agreement.
6 I believe OPC has filed some testimony. I don't
7 know who else might have filed surrebuttal
8 testimony, but all this would appear in surrebuttal
9 testimony because the wholesale proposal concept
10 was not in this case until Mr. Michels introduced
11 it in his rebuttal testimony.

12 **Q. But Noranda's and MIEC's sole concern**
13 **flows from whether or not you can legally pass**
14 **through the FAC a wholesale full requirements**
15 **contract, correct?**

16 A. Well, that's the one that has given
17 us the most alarm, yes, the issue.

18 **Q. Is there -- okay. Is there**
19 **another -- you're hedging. I'm trying to get a**
20 **definitive answer. You said that's the one. Is**
21 **there another?**

22 A. That's the only one I'm -- I'm
23 familiar with. How's that? Maybe that helps.

24 **Q. Everything else would be some other**
25 **party's concern, what's raised in other people's**

1 **testimony?**

2 A. Yes.

3 CHAIRMAN KENNEY: Okay. I don't have
4 any other questions. Thank you.

5 JUDGE WOODRUFF: Commissioner Kenney?

6 COMMISSIONER W. KENNEY: Thank you.

7 QUESTIONS BY COMMISSIONER W. KENNEY:

8 **Q. Hi, Mr. Dauphinais. How are you?**

9 A. Good morning.

10 **Q. I just have -- along that same suit**
11 **that Chairman asked some questions that I was**
12 **interested in, but is there a -- if Ameren -- and**
13 **just a simple question. If Ameren and Noranda were**
14 **to work out an agreement that was acceptable to**
15 **Noranda and Ameren regarding a wholesale exchange,**
16 **is there -- do you see a way that the other**
17 **consumers -- are there fixed costs that**
18 **automatically would transfer to other customers?**

19 A. It would work a lot like -- in a
20 sense like the retail rate, in that the way it
21 would flow through the fuel adjustment clause, the
22 effect would be very similar. That is, there would
23 be some contribution to fixed costs coming in to
24 help with other ratepayers, however, versus a
25 shutdown, so it would still --

1 Q. I'm not saying one or the other. I'm
2 just curious. Forget the shutdown.

3 A. Okay.

4 Q. If they just went to a wholesale
5 market, are there fixed costs that automatically
6 have to be transferred to other customers?

7 A. To some degree, yes. Yeah. Just
8 like a retail rate would, yeah, a retail rate
9 relief for Noranda would, yeah.

10 Q. There would have to be something,
11 right?

12 A. Yes.

13 Q. So other customers -- so if, unlike
14 the agreement, the Stip & Agreement that you
15 guys -- that you're a part of, that you've agreed
16 to with those parties, they would get hit with
17 something that they would have no say in; is that
18 true or --

19 A. That's correct. The rates -- they
20 would have no direct say because the rate, the
21 wholesale arrangement would be negotiated between
22 Noranda and Ameren, while the stipulated rate was
23 negotiated between Noranda and the consumer groups
24 that signed it.

25 Q. I understand that. But I guess my

1 question is, would there automatically be some
2 additional charges going to the other customers if
3 Noranda went off the retail market onto a wholesale
4 market?

5 A. Yes. That's assuming that the
6 Commission found the -- approved Ameren having such
7 an agreement.

8 Q. If we did that, if we approved that?

9 A. Yes.

10 COMMISSIONER W. KENNEY: Thank you.

11 JUDGE WOODRUFF: Commissioner Hall?

12 QUESTIONS BY COMMISSIONER HALL:

13 Q. Good morning.

14 A. Good morning, Commissioner Hall.

15 Q. Okay. Hypothetical. Wholesale rate
16 agreement between Ameren and Noranda at \$34 per
17 megawatt hour. You had some discussion with the
18 Chairman and as well some with Commissioner Kenney
19 about -- well, let me strike that.

20 As it relates to other ratepayers,
21 not Noranda but other ratepayers, would they see a
22 difference in those two scenarios?

23 A. You know, assuming you could get a
24 wholesale agreement in place, it wasn't challenged
25 and all goes in effect, it would be very similar.

1 It would be similar.

2 **Q. Identical, would it not?**

3 A. They would be very close. The
4 specific details of the wholesale agreement might
5 modify that a little. But assuming they generally
6 had the same characteristics, they would be
7 identical.

8 **Q. Okay. And would the -- would the**
9 **effect on Noranda be the same between a \$34**
10 **wholesale rate agreement and a \$34 retail rate set**
11 **by the Commission?**

12 A. Assuming the risks were identical,
13 which is a big if, as I've indicated, assuming the
14 risks were identical, it would be -- have the same
15 effect.

16 **Q. I want to go back to that risk for a**
17 **moment, because either -- either I misunderstood**
18 **what you said or you misspoke, and it's probably I**
19 **misunderstood. But you said that the legal issue**
20 **is whether the wholesale agreement contract would**
21 **flow through the FAC. That's the -- that's the**
22 **real issue, whether it -- whether that's**
23 **appropriate or not?**

24 A. Yeah, and that could be challenged in
25 the courts regardless of how the Commission came

1 out.

2 Q. So the whole -- if there was a
3 wholesale rate agreement, what would the terms of
4 that agreement be as it relates to whether it would
5 flow through the FAC?

6 A. The terms of -- I guess I'm a little
7 confused on the question.

8 Q. Wouldn't the assumption be or
9 wouldn't it be set in the agreement that the
10 revenues that Ameren would receive from Noranda per
11 a wholesale rate agreement would not flow through
12 the FAC? Wouldn't that be the assumption or would
13 that be the term of the ag-- a term of the
14 agreement?

15 A. The term -- the way Ameren proposed
16 it, the revenues from the wholesale agreement would
17 flow through the FAC. That was one of the
18 conditions laid out in Mr. Michels' rebuttal
19 testimony.

20 Q. All right. You were in the hearing
21 room when Mr. Brubaker testified yesterday, I
22 assume?

23 A. Yes, I was.

24 Q. Okay. And I just want to make sure I
25 understand this. Mr. Brubaker testified about the

1 justification for a load retention rate being that
2 rate which is above the incremental cost to serve
3 other customers.

4 A. Yes.

5 Q. Well, at or above the incremental
6 cost so that other customers are benefited as
7 compared to the customers not being served. And I
8 want to just make sure that I understand that, and
9 I think I do, that the incremental cost that
10 Mr. Brubaker spoke of yesterday is the same as the
11 avoided costs that you are describing in your
12 direct testimony?

13 A. Correct. Because it's that -- that
14 avoided cost is the cost to be avoided if Noranda
15 was shut down, so it's the incremental cost.

16 Q. So the incremental cost is -- as you
17 testified, is between \$28.03 and \$29.39 per
18 megawatt hour?

19 A. Yes.

20 Q. Okay. On page 16 of your -- of your
21 direct, you provide the four components of those
22 avoided costs, and the second is the decrease in
23 purchased power costs that would result from the
24 loss of the Noranda load. Are you with me?

25 A. Yes.

1 **Q. Okay. Are you assuming that if -- if**
2 **the smelter were to shut down, that Ameren would**
3 **continue to generate power at the same rate?**

4 A. Yes, because the -- all of Ameren's
5 generation, its operation is dependent on the MISO
6 market because of its participation in the MISO
7 market on behalf of its retail customers. So the
8 output of generation and how it clears in the MISO
9 market is not going to change significantly whether
10 the Noranda load is in operation or not.

11 **Q. Okay. So that was an assumption you**
12 **made, that the generation would remain constant and**
13 **Ameren would have an increase in off-system sales**
14 **to compensate for the reduction in the Noranda**
15 **load?**

16 A. In most hours it would have an
17 increase in off-system sales, because even today
18 it -- in more hours than not it has an off-system
19 sale. Just a very limited number of hours a year
20 does it have a purchase from MISO.

21 **Q. Are you aware, does -- does any party**
22 **in this proceeding take issue with that assumption**
23 **or is that an assumption that is shared by all the**
24 **other experts?**

25 A. It's generally shared by all the

1 experts. That was discussed heavily in 0224, and
2 there was not opposition to that particular
3 assumption.

4 **Q. You also make an assumption that if**
5 **there is a smelter shutdown, that there would be**
6 **just a, I think you used the word small downward**
7 **effect on MISO market prices?**

8 A. That's correct. It would be small
9 enough that it shouldn't affect the dispatch
10 significantly of Ameren's generation, but it would
11 affect off-system sales revenues.

12 **Q. Okay. So is that an assumption that**
13 **is shared by all the experts in this case?**

14 A. There is not agreement on that, on
15 how -- I should say there's not agreement on the
16 amount by which that would fall. I think that
17 would be the best way to characterize it.

18 **Q. Okay. So the calculations that you**
19 **performed in your -- in your testimony and the**
20 **effects on -- the effect -- the potential effect on**
21 **other ratepayers, you're looking at the situation**
22 **at the next rate case, you're not in any way**
23 **performing calculations about the effect on Ameren**
24 **or Noranda or other ratepayers prior to the next**
25 **rate case?**

1 A. Well, what I would say is that I'm --
2 my primary calculation is on a normalized test year
3 basis, as we would normally use in setting any
4 rate. However, I did do in my surrebuttal
5 testimony some numbers on a forward-looking basis
6 as well. It is forecasted values. So basically
7 modifications to Mr. Michels' rebuttal testimony
8 numbers on future expectations of power prices to
9 bring them into more recent load, into a reasonable
10 level, and did put those numbers forward. And I
11 can actually point you where those are in my
12 surrebuttal testimony if it's -- if that's helpful.

13 **Q. Yeah. That would be good.**

14 A. I'm actually going to point you to a
15 schedule. The schedule itself is highly
16 confidential, but I'm not going to speci-- I will
17 not identify any numbers that are highly
18 confidential, or if I think I need to, I will
19 forewarn you. But let me get you the schedule
20 number to my surrebuttal testimony.

21 I'm going to need to pause for a
22 second, because there's a possibility it's not a
23 schedule, it's a work paper, in which case I may
24 point you to some text.

25 Why don't we start with the text, and

1 that would be on page 25 of my surrebuttal
2 testimony. And so what I did is made some
3 adjustments to Mr. Michels' rebuttal testimony. He
4 had a work paper which he calculated his estimate
5 of avoided cost based on Ameren Missouri's
6 expectations of future power prices. They had
7 developed that in the context of their integrated
8 resource plan. They only do that about every three
9 years.

10 And so what I -- with my adjustments
11 to make the numbers to my feeling reasonable, I
12 found that I got to a number for a seven-year
13 period of \$33.49 per megawatt hour. That would
14 include my market price reduction. If we don't
15 include the market price reduction, it would be
16 \$34.89 per megawatt hour.

17 But that's over a seven-year period
18 on average, and we need to remember the proposed
19 \$34 rate under the March 9 stipulation includes an
20 escalator, and that escalator would be 50 percent
21 of the general rate increase.

22 So the \$34 rate is not a static rate.
23 It would be increased over time. And Ameren's been
24 coming in about every 18 months for a rate
25 increase, and the last four rate increases they

1 asked for, the Commission granted a total increase
2 of about 37 percent. So the \$34 rate would likely
3 go up over time.

4 **Q. Going back to your -- to your**
5 **calculation for the -- for the avoided costs, I**
6 **want to make sure I understand. The increase in**
7 **off-system sales would result in a reduction in the**
8 **NBEC, correct?**

9 A. The increase in off-system sales
10 would reduce the actual net energy cost actually.
11 The net -- the NBEC is the base rate version of
12 actual net energy cost.

13 **Q. Right. So wouldn't it have that**
14 **effect at the next rate case?**

15 A. At the next rate case it would, yes.

16 **Q. Right. Okay. So let me go into the**
17 **scenario before the next rate case and there is a**
18 **smelter shutdown. Under the -- under the current**
19 **FAC, there would be -- there would be no change --**
20 **there would be no change in the FAC because the**
21 **off-system sales do not flow through the FAC?**

22 A. I'm sorry. Let me just re--
23 understand, make sure I understand. Are you -- are
24 we having a scenario, first of all, where Noranda
25 continues under existing retail rate, that is they

1 aren't granted the relief requested here?

2 **Q. No. I'm under the -- under the**
3 **current rate structure.**

4 A. So under the current rate structure
5 Noranda is being served?

6 **Q. Correct.**

7 A. And Noranda shuts down?

8 **Q. Correct.**

9 A. And so what now happens?

10 **Q. Well, so -- and so Ameren isn't**
11 **receiving the revenues from Noranda because it's**
12 **not supplying the electricity to Noranda, and it in**
13 **turn sells that power into MISO and recovers X**
14 **amount of off-system sales revenues. Those**
15 **revenues under the current FAC would not flow**
16 **through the FAC, correct?**

17 A. They would flow through the FAC, but
18 they'd be subject to that -- what's called the
19 N Factor.

20 **Q. There's a lot of confusion here,**
21 **because my understanding, and someone please --**
22 **under the current tariff, there is no N Factor**
23 **after January something of 2013.**

24 MR. LOWERY: No, that's incorrect.
25 The N Factor is in the existing tariff.

1 BY COMMISSIONER HALL:

2 Q. Putting that aside, so what was your
3 answer to the question?

4 A. It would flow through, but it would
5 be subject to the N Factor. And the N Factor, what
6 that may mean is that Ameren Missouri would get
7 some degree of those additional off-system sales
8 revenues that is able to retain some portion of
9 those.

10 Q. Well, let's say that the off-system
11 sales price was at or below the price that Noranda
12 was paying. At or below. So Ameren Missouri is
13 not reaping a windfall via the price.

14 A. Yes.

15 Q. Okay. So then under the current FAC,
16 do those revenues flow through the FAC dollar for
17 dollar?

18 A. I don't believe they do. What I
19 would caution is, I almost would like to have that
20 tariff sheet in front of me to make sure I get this
21 entirely correct if I was going to answer that
22 question definitively, because I believe there is a
23 lower of provision in that N Factor as well, and
24 it's important to get that right.

25 Q. My understanding is that that factor,

1 **which I -- the principle, either that factor or the**
2 **principle only applies when the price is above that**
3 **which Noranda is currently paying. And so in my**
4 **hypothetical it's below, so I don't think it would**
5 **apply. I think your counsel's offering to give you**
6 **a copy of the tariff.**

7 MR. DOWNEY: Commissioner, do you
8 have a copy? I'm happy to offer a copy to whoever
9 wants it.

10 MR. THOMPSON: I'll take one.

11 MR. DOWNEY: I only have one.
12 Commissioner Hall gets first dibs.

13 MR. THOMPSON: Absolutely.

14 COMMISSIONER HALL: Actually, I need
15 the witness to have it.

16 MR. ALLISON: Ed, we have another
17 copy here.

18 BY COMMISSIONER HALL:

19 **Q. Mr. Dauphinais, are you looking at**
20 **sheet 72.4.**

21 A. Yes.

22 **Q. Okay. Well, let me just start with**
23 **this. The terminology is understood and universal.**
24 **Does the term N Factor exist on this page**
25 **somewhere?**

1 A. I'm not sure this is actually called
2 N Factor. It's the item under the heading,
3 Adjustment for Reduction of Service Classification
4 12(M) Billing Determinants.

5 **Q. Correct.**

6 A. So that's what -- when we say -- when
7 I said N Factor, that's what I'm referring to, that
8 adjustment.

9 **Q. Well, at one point there was an
10 actual -- the term N Factor existed on this tariff.
11 That was removed. Now, subsection B under there
12 has a similar effect of what was previously called
13 the N Factor, correct?**

14 A. That's my understanding, yes.

15 **Q. All right. So let me try to
16 reconstruct my hypothetical. Similar rate
17 structure, actually identical rate structure as
18 currently exists.**

19 A. Understood.

20 **Q. We've got a shutdown of the smelter.**

21 A. Understood.

22 **Q. Under this version of the FAC, what
23 would happen to the proceeds that Ameren would
24 receive from off-system sales resulting from the
25 elimination of the Noranda load?**

1 A. Up to the level of normalized 12(M)
2 revenues they would have received, they would be
3 able to retain them.

4 **Q. Okay. So if the price that Ameren**
5 **received was at or below the price that Noranda was**
6 **paying, Ameren would receive -- excuse me -- none**
7 **of those revenues would flow through the FAC?**

8 A. Flow back to customers through the
9 FAC, correct.

10 **Q. All right. And where on this tariff**
11 **sheet does -- are you relying on for that**
12 **assertion?**

13 A. I'm relying on the -- on sheet 72.4,
14 the section on adjustment for reduction of service
15 classification 12(M) billing determinants. But
16 more specifically, it's the provision under B, that
17 basically it's the lesser of two values, the lesser
18 of all off-system sales revenues derived from all
19 kilowatt hours of energy sold off-system or the
20 off-system sales revenues up to the reduction of
21 12(M) revenues compared to normalized 12(M)
22 revenues.

23 **Q. So if the FAC was changed so that --**
24 **so that the off-system sales from the Noranda load**
25 **did flow through the FAC, then -- then the ANEC**

1 would go up and the FAC would go down in the amount
2 of 95 percent of off-system sales?

3 A. Take it a little slower because if
4 the -- what would happen is, you're basically
5 saying if this provision wasn't here, right?

6 Q. Yes.

7 A. So this provision wasn't here, then
8 the ANEC would actually go down because off-system
9 sales revenues went up, and 95 percent of that
10 reduction in ANEC would flow back to ratepayers.

11 Q. Okay. Actual net energy cost would
12 go down and the FAC would go down in the amount of
13 95 percent of the FAC, of the off-system sales?

14 A. Correct.

15 Q. And that would continue until the
16 next rate case?

17 A. That would continue 'til the next
18 rate case, yes.

19 COMMISSIONER HALL: I have no further
20 questions, your Honor. Thank you.

21 JUDGE WOODRUFF: Commissioner Rupp?

22 COMMISSIONER RUPP: Thank you.

23 QUESTIONS BY COMMISSIONER RUPP:

24 Q. Looking at what's on the screen --

25 A. Sure.

1 **Q.** -- I had heard testimony yesterday or
2 **the day before that this only applies if it's an**
3 **act of God. Where is that in this tariff sheet?**

4 **A.** There apparently was some confusion.
5 I'm not aware of anything that tied this to an act
6 of God.

7 **Q.** Okay. That helps. So under this
8 **scenario that Commissioner Hall was explaining --**
9 **and I think he writes like word problems for math**
10 **tests. So if this were to be removed, that**
11 **section, and the plant were to go out of business**
12 **and shut down, the entire risk of that lost revenue**
13 **falls solely on the company, on Ameren?**

14 **A.** Well, they can file a base rate
15 proceeding. There's other things they can attempt.
16 They can attempt to get an AAO. There's lots of
17 options available. But, yes, basically they
18 would -- until they got some sort of relief, it
19 would involve --

20 **Q.** Based off of the opposition to the
21 **existing AAO in this case we've heard testimony on,**
22 **they probably would be facing lots of opposition**
23 **from various parties?**

24 **A.** I would imagine so.

25 **Q.** Okay. So the risk to the company

1 without this is the difference of what they could
2 get -- no. So with this tariff sheet the way it
3 is, the risk to the company is only the difference
4 of which they can get -- they can sell the power in
5 the MISO and recoup the off-system sales versus
6 what they were getting?

7 A. Yeah. The key is if they can't
8 get -- they can't get revenues out there, then
9 they're out that. They're out the difference in
10 the price, yes.

11 Q. So help me understand the dollar
12 amount that we're saying. Assuming today's MISO
13 prices, ballpark it, I'm just looking for a
14 generality, and they shut down the smelter, they
15 try to sell all the power today at current rates,
16 how much risk is there for the company on the
17 spread between what they could sell it for in the
18 off market?

19 A. There's a lot of things in play.
20 Let's use the -- let's use the 28.03, for the lack
21 of anything else.

22 Q. That's the one I was going to use,
23 too.

24 A. Yeah. That's what they're saving.
25 So -- so we need to carry that back to, what, maybe

1 a \$42 rate. They're getting 42 revenue right now.
2 So it's that difference is our starting point, and
3 then it's with billing units of Noranda. And we
4 can do that exercise if you'd like to do it.

5 **Q. I'm just looking for a ballpark**
6 **because I'm trying to wrap my head around the**
7 **dollar amount of risk that the company has an**
8 **exposure to if the --**

9 A. So right now, it's about a \$14
10 difference per megawatt hour. And I'm going to go
11 to one of my schedules where I can get Noranda
12 billing units.

13 **Q. That's wonderful.**

14 A. So we have about 4 million megawatt
15 hours annually. Might as well double check my
16 calculation. So I'm getting about \$56 million
17 annually.

18 **Q. Thank you for doing that math for me.**
19 **Okay. Walk me through a history lesson here. The**
20 **FAC originated in this state when and how?**

21 A. The FAC, you know, in the '70s there
22 was an FAC of sorts that was approved in some form,
23 I believe, by the Commission for one or more
24 utilities. That was challenged in something we've
25 heard as the UCCM decision and was found that the

1 Commission can't authorize a fuel adjustment
2 clause.

3 We fast forward into the, oh, I'd say
4 the early 2000s, and in that time frame legislation
5 was passed that allowed the Commission to decide
6 that they could authorize a fuel adjustment clause
7 if they felt it was reasonable. And there's a
8 number of things that are detailed in the
9 legislation on that.

10 **Q. And the ability for Ameren to -- or**
11 **Noranda to enter into a wholesale contract, where**
12 **does that ability come from?**

13 A. Noranda?

14 **Q. I'm sorry. Yes.**

15 A. Noranda has -- there's really not
16 legislation that enables them to enter into
17 wholesale contracts. There's legislation that
18 enables them to purchase power at retail from
19 pretty much anybody under the act, under the act in
20 question. There's a provision in the Missouri
21 statutes that allows aluminum smelters, maybe
22 aluminum smelters over a certain size, I can't
23 remember that detail, but Noranda would qualify for
24 that.

25 **Q. Okay. Then where is the authority**

1 **for Ameren to offer a wholesale contract to -- to**
2 **Noranda?**

3 A. Actually, Noranda -- Ameren can't
4 directly make a wholesale sale to Noranda, because
5 Noranda would -- a wholesale sale involves a sale
6 to an entity who in turn is going to resell the
7 power. It's not a wholesale transaction unless you
8 do that.

9 So the only way you could do such a
10 wholesale sale is you would have to establish an
11 intermediary between Noranda and Ameren, then
12 create the resale.

13 Q. So in the conversations that were
14 happening earlier this year that you were providing
15 some risk assessment on, was that really a
16 wholesale contract or was the construct that there
17 would be a third-party intermediary?

18 A. I think the parties recognized there
19 would have be a third-party intermediary. I was
20 involved in providing some advice, but I was not
21 involved directly in the negotiations per se. But
22 it was my understanding is that both the parties
23 understood there would likely need to be an
24 intermediary established. It wasn't ever, as far
25 as I know, agreed to what form it could take. It

1 could be an affiliate of Ameren. It could be
2 Ameren Missouri. It could be an affiliate of
3 Noranda. It could be a third party. There's lots
4 of possibilities.

5 **Q. And the risk that you have identified**
6 **in Mr. Chairman's questioning, you know, was a**
7 **legal risk and then some -- a period of**
8 **retroactivity. And that risk exists because the**
9 **authority for that to happen is not clearly spelled**
10 **out in our rules or where?**

11 A. I think it's a combination of that,
12 as well as longstanding practice where wholesale
13 full requirements contracts were addressed or were
14 jurisdictionally allocated. That was done until a
15 fairly recent time period.

16 For example, even in the 2007 rate
17 case for Ameren, I believe they're still using a
18 jurisdictional allocator between wholesale full
19 requirements contracts and retail customers.

20 So it's -- under that method, you're
21 basically taking fully allocated embedded cost of
22 service and allocating it between wholesale full
23 requirements service and retail customers. So
24 effectively what we're saying is, regardless of
25 what price Ameren Missouri sold the power to the

1 wholesale full requirements customers, we're going
2 to hold Ameren responsible for the fully allocated
3 share of embedded cost for that sale.

4 Q. Okay. So would the risk be mitigated
5 if under the same statute that granted the aluminum
6 smelter that Noranda would be able to -- would
7 qualify to address this issue and very clearly by
8 the Legislature that would allow that to happen,
9 this construct that we've been discussing to
10 happen? If the Legislature were to pass that and
11 it was signed by the Governor, would that mitigate
12 the risk of a lawsuit and then a potential
13 retroactivity of --

14 A. In my -- I guess it all depends on
15 the nature of what that legislation looked like and
16 whether it, you know, held up as being
17 constitutional. And I'm not -- you know, I have
18 regulatory expertise. I have engineering
19 expertise. I don't have --

20 Q. Assuming it's constitutional and the
21 Legislature grants the Commission its power and the
22 Legislature were to clearly allow the Commission to
23 approve these constructs, would that mitigate a
24 large amount of risk?

25 A. It could potentially do so.

1 COMMISSIONER RUPP: Thank you.

2 JUDGE WOODRUFF: I have some
3 follow-up questions.

4 QUESTIONS BY JUDGE WOODRUFF:

5 Q. The \$56 million annual impact that
6 you calculated for Commissioner Rupp, that's the
7 impact on Ameren if the Noranda smelter closes; is
8 that correct?

9 A. Yes. And again, it's assumed on the
10 \$28 avoided cost and the difference between that
11 and a fully loaded \$42 rate, which includes the
12 FAC.

13 Q. Is that -- is that with the N Factor
14 in place or does the N Factor have an impact on
15 that?

16 A. That's with what I've been calling
17 the N Factor. Hold on -- let me -- that is if --
18 that is with the N Factor in place.

19 Q. So essentially that's the difference
20 between what they can get from selling the power to
21 Noranda compared to what they would get if they
22 sold it on the open market?

23 A. Yes.

24 Q. All right. And then also can you
25 explain a little bit more about why Noranda was a

1 **short-term detriment to the Ameren system when they**
2 **first came on ten years ago?**

3 A. Market prices were greater than fully
4 allocated embedded cost of service.

5 **Q. So it's the opposite of the way it is**
6 **today?**

7 A. Yes.

8 **Q. And that's just the general market**
9 **for electricity, that was a factor for that?**

10 A. Yes. We had substantially higher,
11 for example, natural gas prices and that had --
12 really helped put a lot of pressure on wholesale
13 market prices for electricity.

14 **Q. Then one more question. Under the**
15 **jointly proposed position, the Stipulation &**
16 **Agreement that was filed a few days ago, what**
17 **happens if the special rate is in place and then**
18 **Noranda still closes? Is there any provision in**
19 **the Stipulation & Agreement to deal with that**
20 **situation?**

21 A. I can't recall whether there --
22 there's several provisions I have a good
23 understanding of, but I can't recall if there's a
24 specific provision that deals with that.

25 JUDGE WOODRUFF: Okay. Thank you

1 very much. We'll then move to questions -- recross
2 based on questions from the Bench, beginning with
3 Public Counsel.

4 MR. ALLISON: Thank you, sir.

5 RE-CROSS-EXAMINATION BY MR. ALLISON:

6 Q. To your knowledge, Ameren purchases
7 insurance, doesn't it, for a variety of risks?

8 A. I believe they may. I don't have any
9 specific understanding of what they acquire at this
10 time.

11 Q. Are ratepayers insurers for Ameren?

12 A. They are in the sense that Ameren can
13 go to the Commission to ask for rate relief, and if
14 they've been prudent, there's a good likelihood
15 they'll get that rate relief.

16 Q. Businesses going -- a customer, a
17 business customer of Ameren's, when they go out of
18 business, that's just kind of a normal risk that
19 Ameren takes; isn't that right?

20 A. Yes. Any -- any business customer
21 could go out of business and Ameren would be out
22 those revenues.

23 Q. But the magnitude with Noranda is
24 quite a bit different than perhaps any other
25 business in your service territory?

1 A. Yes, because Noranda is a very large
2 portion versus any other customers, a very large
3 portion of Ameren's total load.

4 **Q. But the fundamental nature of the**
5 **risk is no different with respect to a customer**
6 **going out of service, just like every other**
7 **customer going out of service?**

8 A. The fundamental risk is similar.
9 Some businesses are more risky than others.

10 **Q. Right. I want to get to a couple of**
11 **other questions that the Commissioners asked. I**
12 **think the Chairman was talking about and some of**
13 **the others spoke about the legal risks inherent in**
14 **a wholesale deal. I just wanted to make sure.**
15 **You're an engineer and regulatory expert, not a**
16 **lawyer, right?**

17 A. That's correct.

18 **Q. Okay. So your reference to the scope**
19 **of the potential legal risks from a wholesale deal**
20 **is limited to your personal knowledge of your**
21 **interactions with Noranda about whatever questions**
22 **Noranda might have asked you to discuss with them;**
23 **isn't that correct?**

24 A. Yes. I was involved in providing
25 advice while they were negotiating with Ameren.

1 Q. And there may be other legal risks
2 inherent in a wholesale deal that Noranda did not
3 discuss with you; isn't that right?

4 A. Yes.

5 Q. There may be other legal risks that
6 Noranda hasn't even contemplated; isn't that right?

7 A. That's possible.

8 Q. Including potentially the risk
9 that -- that the underlying statute in
10 Section 91.026 is unconstitutional; isn't that
11 right?

12 A. It's possible, but I don't know.

13 Q. Fair enough. You don't know?

14 A. No.

15 Q. So when you talk about one legal risk
16 with respect to how the FAC would be used in this
17 case and the jurisdictional allocation, that is not
18 the entire universe of legal risks associated with
19 this transaction, to your knowledge?

20 A. It's not necessarily the entire
21 universe, no.

22 MR. ALLISON: Okay. Thank you. I
23 think that's it. Thank you.

24 JUDGE WOODRUFF: MECG?

25 MR. WOODSMALL: No questions.

1 JUDGE WOODRUFF: Staff?

2 MR. THOMPSON: I have one question,
3 Judge.

4 RECROSS-EXAMINATION BY MR. THOMPSON:

5 Q. Do you recall the responses you were
6 giving to Commissioner Rupp?

7 A. Yes.

8 Q. And isn't it true that you would have
9 to adjust that amount and remove the \$4 from the
10 FAC?

11 A. I'll need a moment. It may be
12 possible. I mean, I want to make sure I read this
13 carefully, because the question is, is it base rate
14 revenues only that matters on the 12(M), and that's
15 a good question.

16 It really hinges on whether 12 -- and
17 go to this sheet 72.4. If you go to sheet 72.4 and
18 that subsection B on the bottom, it really hinges
19 on what 12(M) revenues are defined as. If they're
20 defined to include FAC revenues, then the number I
21 gave is correct, 56 million.

22 If 12(M) revenues excludes FAC
23 revenues for 12(M), then, yeah, it would be \$4. So
24 instead of a \$14 per megawatt hour difference, it
25 would a \$10 per megawatt hour difference, assuming

1 a \$4 FAC.

2 Q. Okay. Now, and talking about
3 sheet 72.4, there's been proposals in this case to
4 move the Noranda load to a different tariff sheet;
5 isn't that correct?

6 A. If you -- I guess I'm -- you'll have
7 to be more specific.

8 Q. Well, for example, haven't -- haven't
9 there been proposals to create a new service
10 classification and to provide Noranda with a load
11 retention rate under a new service classification?

12 A. For example, under the stipulation?

13 Q. Yes.

14 A. Yes. That's correct.

15 Q. Is there anything that would prevent
16 what we've been calling Factor N from then coming
17 into play?

18 A. I have to think about that for a
19 minute. Well, one thing is, Factor N as it's
20 presented here, Factor N is a term to refer to
21 this, because it's not actually anywhere saying
22 Factor N anywhere.

23 Q. Right. I use that as shorthand to
24 refer to that.

25 A. This very specifically says 12(M)

1 revenues right now. So it all depends on whether
2 the term 12(M) revenues is changed to another term
3 or not.

4 **Q. If there are no 12(M) revenues, would**
5 **you agree that it would be below the level of**
6 **normalized 12-month monthly billing determinants**
7 **established in Case ER-2012-0166?**

8 A. Yes, but I would caution that I think
9 if a new rate class was approved, that this
10 language would have to be modified.

11 **Q. That was the point I was trying to**
12 **make. Thank you. And finally, Commissioner Rupp**
13 **was asking you some questions about risk, correct?**

14 A. Yes.

15 **Q. Now, the FAC itself is purely a**
16 **device to reduce risk to the company; isn't that**
17 **correct?**

18 A. Yes.

19 **Q. And what we've been calling the**
20 **N Factor is -- is an additional device to reduce**
21 **risk to the company?**

22 A. Yes.

23 MR. THOMPSON: Thank you. No further
24 questions.

25 JUDGE WOODRUFF: For Ameren?

1 RE-CROSS-EXAMINATION BY MR. MITTEN:

2 **Q. Mr. Dauphinais, I'm going to try and**
3 **get to the bottom of your legal concerns about**
4 **moving Noranda from a retail to a wholesale**
5 **customer. Your concern is that the revenues that**
6 **Ameren Missouri would receive by selling the**
7 **Noranda load into the market could not be flowed**
8 **through the fuel adjustment clause as off-system**
9 **sales revenues?**

10 A. Yes, but there's a little bit more to
11 it, just so we make sure we have it clear, is that
12 construct assumes that basically all of Ameren
13 Missouri's embedded costs to serve is being
14 recovered from its retail customers. So it's
15 basically putting all the costs onto retail
16 customers, except for Noranda.

17 So the cost to serve Noranda is in
18 that embedded cost, and then the way that is offset
19 is through revenues, wholesale revenues from
20 Noranda flowing through the FAC. That's how it
21 would work.

22 **Q. But again, the legal concern is that**
23 **somebody could challenge the propriety of flowing**
24 **those off-system -- those off-system sales revenues**
25 **through the fuel adjustment clause?**

1 A. A combination of that and basically
2 including the embedded cost to serve Noranda in
3 retail rates to all other customers. So it's a
4 combination versus a jurisdictional allocator
5 approach.

6 **Q. Okay. Are you familiar with the**
7 **steps that Ameren Missouri took following the**
8 **January 2009 ice storm to try and mitigate the**
9 **effects of the loss of Noranda's load following**
10 **that ice storm?**

11 A. I'm aware of some of them.

12 **Q. Ameren Missouri entered into**
13 **requirements contracts with a couple of utilities**
14 **and claimed that the revenues derived from those**
15 **contracts were exempt from the fuel adjustment**
16 **clause. Do you recall that?**

17 A. My understanding is they entered into
18 multi-year sales, firm sales to AEP and Wabash of
19 some level. I don't know if calling them
20 requirements sales is the correct terminology.
21 They certainly were not full requirements sales.

22 **Q. But the fuel adjustment clause**
23 **provided for full and partial requirements sales**
24 **being exempt from the fuel adjustment clause; are**
25 **you aware of that?**

1 A. Can you state that again so I can
2 make sure to get it right?

3 **Q. The terms of the fuel adjustment**
4 **clause exempted the revenues from full and partial**
5 **requirements sales?**

6 A. It may have. I don't recall exact
7 terminology at that time.

8 **Q. Staff claimed that all those revenues**
9 **received from AEP and Wabash should have been**
10 **flowed through the fuel adjustment clause as**
11 **off-system sales revenues; is that correct?**

12 A. That's my understanding, yes.

13 **Q. And I also believe the Commission**
14 **decided that Staff was correct?**

15 A. Yes.

16 **Q. And ultimately that case was taken to**
17 **the Court of Appeals and the Court of Appeals**
18 **affirmed the Commission; is that correct?**

19 A. Correct. But, again, those sales
20 were not full requirements sales.

21 **Q. Again --**

22 A. The specific ones in question were
23 not full requirement sales.

24 **Q. But again, if the -- is that really**
25 **important if the fuel adjustment clause tariff**

1 **exempted fuel -- full and partial requirements**
2 **sales revenues?**

3 A. It may, because the full requirements
4 part of it wasn't necessarily tested maybe in the
5 legal -- in what took place, because the contracts
6 in question were not full requirements contracts.

7 **Q. Are you familiar with the Court of**
8 **Appeals decision in that case?**

9 A. Not the details.

10 **Q. So you don't know whether or not it**
11 **turned on whether or not those were full or partial**
12 **requirements sales?**

13 A. I don't know that.

14 **Q. You also indicated in your response**
15 **to one of the Commissioners' questions -- and I'm**
16 **sorry I can't recall which -- there is disagreement**
17 **among the parties as to the amount that the price**
18 **for off-system power will decline if the Noranda**
19 **load is lost due to a closure of the New Madrid**
20 **smelter. Do you recall that?**

21 A. Yes.

22 **Q. And I believe I recall in your**
23 **testimony you indicate the price decline to be**
24 **1 and a half percent?**

25 A. Yes.

1 **Q. Do you know what Mr. Michels'**
2 **estimate is?**

3 A. Mr. Michels did a -- it's called a
4 Midas analysis. This came up in the deposition.
5 But the only thing I'm going to do is pause,
6 because I don't know if his result was considered
7 highly confidential or not, because that whole
8 deposition was held under highly confidential.

9 **Q. It's not highly confidential.**

10 A. Okay. His Midas analysis was a very
11 simplistic forward-looking projection, and I don't
12 necessarily agree it's the appropriate way to do
13 it, is he had a .15 percent decrease in that
14 analysis.

15 **Q. So his -- his estimate of the price**
16 **decrease was 1/10 of your estimate, correct?**

17 A. Correct. But I don't necessarily
18 agree Midas is the right tool to do that analysis.

19 **Q. Now, in your surrebuttal testimony,**
20 **you indicate that one of the reasons that you**
21 **believe that there will be a decline in the cost of**
22 **off-system power is the loss of load expectation**
23 **study completed by MISO that identified significant**
24 **transmission limitations for exports of capacity**
25 **from MISO load resource zone 5; is that correct?**

1 MR. DOWNEY: Judge, I'm going to
2 object. This has nothing to do with questions from
3 the Bench.

4 MR. MITTEN: Yes, it does. It had to
5 do with a decline in the price of off-system power,
6 which was a question that was asked by the Bench.

7 JUDGE WOODRUFF: Overrule the
8 objection. You can answer.

9 THE WITNESS: That has nothing to do
10 with my market price reduction of 1 and a half
11 percent.

12 BY MR. MITTEN:

13 Q. Well, what does your testimony on
14 page 24 in your surrebuttal testimony refer to?

15 MR. DOWNEY: Again, Judge, if this
16 has nothing to do with the market adjustment price
17 for the energy, it's beyond the scope of questions
18 from the Bench.

19 JUDGE WOODRUFF: I think he has a
20 right to explore the response that he just got,
21 that it's not related. So I'll again overrule the
22 objection.

23 BY MR. MITTEN:

24 Q. So the limitations of exports from
25 MISO LRZ-5, aren't those off-system sales,

1 **Mr. Dauphinais?**

2 A. Capacity sales would be off-system
3 sales, but it has nothing to do with my 1 and a
4 half percent market price reduction.

5 Q. And I'm not necessarily referring to
6 your 1 and a half percent price reduction, but you
7 do -- could you please turn to page 57 of
8 Schedule JRD-12, which is attached to your
9 surrebuttal testimony. Tell me when you're there.

10 A. Yes.

11 Q. That illustrates local resource
12 zone 5 for MISO; is that correct?

13 A. Yes.

14 Q. And that's basically Ameren's
15 Missouri service area; is that right?

16 A. It's broader than that, because it
17 would include like the city of Columbia.

18 Q. And there's some text associated with
19 that that indicates transfer is initially limited
20 to constraints listed above, then it's limited by
21 generation; is that correct? Is that correct, what
22 it says?

23 A. Yes. Again, this does -- nothing to
24 do with the 1 and a half percent market price
25 reduction. This has to do with future capacity

1 prices.

2 Q. Could you turn to page 35 of that
3 same schedule?

4 MR. DOWNEY: Judge, same objection.
5 I mean, this has nothing to do with his calculation
6 of the impact on energy prices, and thus it has --
7 it's not been tied to any questions from the Bench.

8 JUDGE WOODRUFF: Where are you going
9 with this?

10 MR. MITTEN: Judge, just a minute ago
11 he said that this has to do with exports of power
12 from LRZ-5, which he indicated were off-system
13 sales.

14 MR. DOWNEY: But he's asking him
15 questions about capacity. The witness is saying it
16 has nothing to do with his calculation of the price
17 of the energy. And so I think it just proves my
18 point that it's beyond questions from the Bench.

19 JUDGE WOODRUFF: I'll allow the
20 questions. Go on.

21 BY MR. MITTEN:

22 Q. Are you on page 35 of
23 Schedule JRD-12?

24 A. I'm going there now. You're using 35
25 of 77, the lower page numbers?

1 Q. Yes, I am, 35 of 77. There's a chart
2 that appears at the top of that page. About
3 halfway down that chart there's a peak demand
4 number, and the peak demand number for LRZ-5 is
5 8,576 megawatts; is that correct?

6 A. Yes.

7 Q. And near the top of that chart there
8 is a line designated UCAP. What is UCAP?

9 A. UCAP is what's referred to as
10 unforced capacity. It's basically the installed
11 amount of generation capacity derated for expected
12 forced outage rates.

13 Q. So based upon the amount of capacity
14 that is in LRZ-5, there is not enough capacity in
15 that zone to fulfill the peak demand in that zone;
16 is that correct?

17 A. Based on this one slide, and this is
18 just -- there's an assumption being made in the
19 study for what the level would be. Yes, it might
20 not necessarily be that level when we get to 1,560.

21 Q. And would you agree with me, and you
22 can do the calculation if you'd like, that the
23 difference between 8,576, the peak demand, and
24 7,935, the UCAP, is 641 megawatts?

25 A. That appears correct, yes.

1 Q. Noranda's load is --

2 A. I would --

3 Q. Mr. Dauphinais, Noranda's load is
4 550 megawatts; is that correct?

5 A. No, not right now. Not at 4 million
6 megawatt hours a year.

7 Q. So what would Noranda's --

8 A. Probably closer to around 500.

9 Q. 500. So even if Noranda's load was
10 taken off the peak demand, there still wouldn't be
11 enough generation in LRZ-5 to meet the peak demand
12 in that zone; would you agree?

13 A. In this isolated LRZ. But the key is
14 you can import power into the LRZ, capacity import
15 limit, which is --

16 Q. And that's exactly what Ameren does.
17 It has generation units in Illinois that it uses to
18 serve its peak demand requirements in zone 5; is
19 that correct?

20 A. It has some combustion turbines in
21 Illinois, yes.

22 Q. So it's actually importing power into
23 LRZ-5; is that correct?

24 A. To some extent, yes.

25 Q. And if Noranda left the system, it

1 would still be required to import power in order to
2 meet its demand; is that correct?

3 A. I don't know actually it would need
4 to import anymore, because of the loss of the load.
5 I -- depending on the numbers, it may be necessary
6 to some degree to still import.

7 Q. Again, if you -- if you shave the
8 peak demand by 500 megawatts, that still gives you
9 8,076 and you still only have 7,935 megawatts
10 available in Zone 5 to serve that load; is that
11 correct?

12 A. We need to be very careful when using
13 this, because you're using these numbers here, and
14 it's not telling the complete story.

15 Q. But based upon what I just said, my
16 arithmetic is correct?

17 A. Step through it again.

18 Q. Again, if you reduce the peak demand
19 by 500 megawatts to reflect the loss of Noranda's
20 load, that peak demand would be 8,076 megawatts,
21 correct?

22 A. Yes.

23 Q. And the capacity in zone 5 is only
24 7,935 megawatts?

25 A. Based on the representation here,

1 that would be correct.

2 **Q. So there would still be a need to**
3 **import power into zone 5 in order to satisfy the**
4 **peak demand, correct?**

5 A. Again, based on the numbers here,
6 yes.

7 **Q. The units that Ameren Missouri owns**
8 **and operates in Illinois, are those in LRZ-5 or**
9 **another LRZ?**

10 A. I don't know for sure, but I believe
11 they are in LRZ-4.

12 **Q. Do you know if there are any capacity**
13 **limitations in LRZ-4?**

14 A. LRZ-4 is running long. It's long and
15 the actual numbers are longer than the numbers
16 here, because MISO recently issued a preliminary
17 indication of the amount of capacity that's
18 available in each of the local resource zones based
19 on registrations that have been submitted, and the
20 numbers are substantially higher on UCAP for many
21 of the local resource zones listed here.

22 JUDGE WOODRUFF: Can you explain what
23 you mean by running long?

24 THE WITNESS: Running long means
25 there's more capacity than is shown here.

1 MR. MITTEN: I don't think I have any
2 further questions. Thank you.

3 JUDGE WOODRUFF: Redirect?

4 MR. DOWNEY: Judge, I have a lot of
5 redirect. Could we take a break?

6 JUDGE WOODRUFF: We can. Let's come
7 back at 10:25.

8 (A BREAK WAS TAKEN.)

9 JUDGE WOODRUFF: All right. Let's
10 come back on the record. We're back from our
11 break, and Mr. Dauphinais is still on the stand,
12 and we're ready for redirect.

13 MR. DOWNEY: Judge, I will say that I
14 made a copy of tariff sheet 72.4. I provided it to
15 all counsel and to all the Commissioners. I
16 understand from Mr. Lowery that this is an exhibit
17 to Ms. Barnes' testimony. Which testimony?

18 MR. LOWERY: It's one of her
19 schedules in the direct testimony. The entire
20 tariff including these provisions is already in
21 with the direct.

22 MR. DOWNEY: So I'm not going to have
23 it marked and introduce it as an exhibit, but I did
24 provide a copy.

25 JUDGE WOODRUFF: Thank you. You can

1 inquire then.

2 MR. DOWNEY: All right. May I
3 approach the witness?

4 JUDGE WOODRUFF: You may.

5 REDIRECT EXAMINATION BY MR. DOWNEY:

6 Q. Mr. Dauphinais, I'm going to hand you
7 a document, and it's from Case No. EA-2005-0180.
8 Unfortunately, this is the only copy I have. Would
9 you tell -- would you tell the Commission what the
10 style of that case is?

11 A. I'm sorry. You'll have to define
12 style for me.

13 Q. Okay. The name of the case.

14 A. The case number? Or you gave that.

15 Q. The description of the case.

16 A. The description of the case is the
17 application of Union Electric Company for a
18 certificate of public convenience and necessity
19 authorizing it to construct, install, own, operate,
20 control, manage and maintain electric plant as
21 defined in Section 386.020, parenthetical 14,
22 RSMo., to provide electric service in a portion of
23 New Madrid County, Missouri, as an extension of its
24 existing certificated area.

25 Q. Would this be the case that we were

1 talking about earlier today where Noranda was
2 brought in to the Ameren system?

3 A. Yes.

4 Q. Would you turn to page 16, and would
5 you read the first full paragraph into the
6 record -- well, first of all, tell the Commission
7 what this document is.

8 A. This specific document is Union
9 Electric Company's prehearing brief.

10 Q. All right. And would you read the
11 first full paragraph of page 16 into the record.

12 A. In summary, the evidence in this case
13 will show that virtually every relevant public
14 interest consideration mitigates strongly in favor
15 of granting the requested CCN. All analyses show
16 AmerenUE's cost will be lower with Noranda than
17 without it; Noranda unquestionably needs AmerenUE's
18 reliable, cost-based, regulated service; Noranda
19 prefers AmerenUE's reliable, cost-based, regulated
20 service, and Noranda's preference is indeed
21 reflected in the State's public policy and customer
22 preference, has been relied upon by this Commission
23 in the past in any event; and finally,
24 considerations relating to the economic development
25 and prosperity of the region and the state show the

1 public interest is promoted by granting this CCN.

2 Q. Okay. Thank you. Set that document
3 down. Now, for a nonlawyer, you were asked a lot
4 of -- for a lot of legal opinions on cross. Do you
5 recall those questions?

6 A. Yes.

7 Q. Were you a party to any of the
8 negotiations between AmerenUE and Noranda regarding
9 any wholesale rate?

10 A. I was involved in only one limited
11 conference call which directly involved the
12 company. Otherwise, I was not involved. I was
13 involved only in a support role in regard to
14 providing technical expertise.

15 Q. All right. Do you know whether the
16 wholesale proposal made by Ameren is lawfully or
17 legally enforceable?

18 A. I don't know.

19 Q. I'll ask you no further questions
20 about that.

21 You were asked some questions by
22 AmerenUE's attorney with respect to
23 Schedule JRD-12?

24 A. Yes.

25 Q. On page 35 of 77?

1 A. Yes.

2 Q. And actually, the document number
3 says page -- has page 34, but it's page 35 of 77,
4 correct? So we're looking at the right page?

5 A. Yes.

6 Q. And you were asked some questions
7 about the chart at the top of the page, and you
8 wanted to tell Mr. Mitten why that chart doesn't
9 tell the complete story. You weren't allowed to
10 provide that explanation. What is your
11 explanation?

12 A. Well, this chart is providing certain
13 information that, first of all, makes certain
14 assumptions. Projection is done for inputs into
15 the loss of load expectation study performed by
16 MISO, but it also provides some of the results, so
17 it's a combination of that.

18 But the key is the peak demand is not
19 necessarily the coincident peak demand of local
20 resource zone 5, and that's -- actually would be
21 the key value for -- for Missouri. That is what is
22 its demand in local resource zone 5 at the time of
23 the MISO peak, and this table is not providing us
24 that. It's a lower number.

25 Q. All right. And you and Mr. Michels

1 both calculated an impact on energy price, I'm
2 going to say on the grid, if Noranda ceases buying
3 power, correct?

4 A. Can you say that again? I just want
5 to make sure I heard it all correctly.

6 Q. Sure. You calculated an impact, did
7 you not, of the price of power sold on the MISO
8 grid if Noranda closes its plant, did you not?

9 A. Correct. My analysis showed a 1 and
10 a half percent decrease in those prices.

11 Q. All right. So the price comes down.
12 And Mr. Michels also performed a calculation, and I
13 believe you discussed that as well, right?

14 A. Yes. That's right. In his
15 deposition it came out that the company had
16 performed what's called a Midas analysis and, as I
17 indicated earlier, some significant limitations
18 with that analysis. But he did calculate a number,
19 yes.

20 Q. And his number and your number both
21 show that the price of energy sold on the market
22 will come down some, you disagree on the amount,
23 but it will come down some if Noranda closes its
24 plant?

25 A. Correct.

1 **Q. All right. Now, what impact does**
2 **that have on ratepayers who benefit from off-system**
3 **sales through the FAC?**

4 A. It -- there's two implications of
5 that, but the principal implication of that is it
6 lowers the off-system sales revenue for all
7 off-system sales. And the reason is that if it
8 lowers the market price, it lowers the market price
9 of which all of Ameren Missouri's off-system sales
10 are made at, so it reduces all those revenues by
11 the percent decrease in the market price, so 1 and
12 a half percent.

13 **Q. Thank you. Now, you and Mr. Mitten**
14 **had a lot of discussion about capacity in zone 5,**
15 **and Mr. Mitten and you were talking about power**
16 **that Ameren generates, I believe he said in**
17 **Illinois, that it transfers into this zone to serve**
18 **the zone that Noranda is located in. Do you recall**
19 **that discussion?**

20 A. Yes.

21 **Q. First of all, did I correctly**
22 **describe that discussion?**

23 A. I think broadly, yes.

24 **Q. Okay. But I thought Ameren Missouri**
25 **sold all of its power to MISO and then MISO, in**

1 turn, was selling -- or AmerenUE was buying the
2 power back to serve its customers. Isn't that
3 Ameren's position?

4 A. That's Ameren's position, but that's
5 not what really happens.

6 Q. Okay. Now, Judge Woodruff was asking
7 you some questions, and I believe others probably,
8 Commissioner Rupp and others, were asking you
9 questions about the impact of what we've been
10 calling the N Factor on the FAC clause. Do you
11 recall those discussions?

12 A. Yes.

13 Q. And I think Mr. Thompson pointed out
14 that there may be some issue about whether Ameren
15 Missouri would recover under sheet No. 72.4 its
16 lost FAC surcharges to Noranda. Do you recall
17 that?

18 A. I recall it. I'm not sure that was
19 the -- the question was related to the way you
20 described it.

21 Q. Okay. I'll see if I can work on a
22 better question for you. But I believe you
23 concluded that over the course of a year, Ameren
24 Missouri would suffer an impact of about
25 \$56 million if power were sold at the current

1 market rate versus the Ameren rate. Do you recall
2 that discussion?

3 A. Yes. Including the FAC, yes.

4 Q. And if you did not include the FAC,
5 would it be more like \$40 million?

6 A. Yes.

7 Q. And Ameren was faced with a similar
8 issue, was it not, in 2009, do you recall?

9 A. We didn't have this provision here,
10 but they were faced with a similar situation to
11 where they would have a revenue -- they would have
12 a shortfall, yeah.

13 Q. And do you know whether Ameren
14 Missouri sought an AAO as a result of its revenue
15 shortfall?

16 A. I don't recall.

17 Q. Do you know if that's an issue, the
18 recovery of AAO cost, whether that is an issue in
19 this case?

20 A. I believe it is, but I don't know
21 much about the details.

22 Q. Could Ameren Missouri ask for an AAO
23 to recover its lost revenues if Noranda would shut
24 down the plant?

25 A. Yes. It could seek that, yes.

1 **Q. And if it were allowed an AAO, do you**
2 **know if Ameren would suffer no negative impact from**
3 **the closure of the plant financially?**

4 **A. Assuming the AAO took it all the way**
5 **back to when the plant was closed, yes.**

6 **Q. And do you know who would suffer an**
7 **impact, assuming energy prices are below the price**
8 **that Noranda would be paying for energy had it**
9 **stayed open? When I say energy, what rates Noranda**
10 **would be paying if the plant remained open.**

11 **A. Are you still saying in the context**
12 **of an AAO that's granted by the Commission?**

13 **Q. Absolutely.**

14 **A. In that case what happens is**
15 **customers, retail customers will pick all of it up,**
16 **yeah.**

17 **Q. Thank you. Mr. Dauphinais, you were**
18 **asked some questions from Mr. Thompson about the**
19 **change in fuel adjustment clause surcharges. Do**
20 **you recall that discussion?**

21 **A. Broadly, yeah.**

22 **Q. And does the incremental cost of**
23 **power change in a dollar-for-dollar relationship**
24 **following the FAC charge changes?**

25 **A. Can you repeat that?**

1 **Q. Sure. Does the incremental cost of**
2 **power change in a dollar-for-dollar -- on a**
3 **dollar-for-dollar basis following FAC surcharge**
4 **changes? In other words, what's the relation**
5 **between the two?**

6 A. They're not necessarily directly
7 related. Some factors are inverse or inversely
8 related. For example, lower energy market prices
9 yield lower off-system sales revenues, which result
10 in a higher FAC charges, if looked at in isolation.
11 But it's not the only thing that goes into the FAC
12 factor. There's a lot of other things moving
13 around as well.

14 **Q. All right. So the FAC surcharges**
15 **could be increasing and yet the incremental cost of**
16 **power wouldn't be increasing; is that a**
17 **possibility?**

18 A. The incremental cost for power could
19 be -- could be decreasing while the FAC is
20 increasing.

21 **Q. So it could even be decreasing at the**
22 **same time that the fuel adjustment surcharge is**
23 **increasing?**

24 A. Yes.

25 **Q. Now, assuming this Commission were to**

1 adopt a \$34 per megawatt hour rate for Noranda with
2 50 percent of any adjustments ordered in subsequent
3 rate cases, if the incremental cost of power
4 increased by \$2, would Noranda still be providing a
5 benefit to other customers? Recall you've got an
6 incremental cost in the range of 28 something.

7 A. So you're saying you go from \$28 to
8 \$30?

9 Q. Yes.

10 A. That would be still -- \$30 would be
11 still well below \$34.

12 Q. And if we had a \$3 increase in the
13 incremental cost of power, would Noranda still be
14 providing a benefit to other ratepayers?

15 A. Yes. \$31 is less than \$34.

16 Q. All the way up to -- increase of \$5
17 in the incremental cost of power, would Noranda
18 still be providing a benefit to other ratepayers?

19 A. \$5 would elevate it to \$33 per
20 megawatt hour, which is still less than the \$34 per
21 megawatt hour. In all this we're assuming that
22 Ameren Missouri wasn't coming in for a new base
23 rate case or asked for a rate increase in base
24 rates.

25 Q. So just so it's clear, when there is

1 a rate case and we rebase rates, do we take into
2 account the then-current fuel costs in rebasing
3 rates?

4 A. Yes, we do. We basically zero out
5 the FAC on a going-forward basis and we then take
6 fuel and purchased power costs and update it and
7 put that into base rates.

8 Q. So then when -- even if you have a
9 customer that is exempt from the fuel adjustment
10 surcharge, if that customer is not exempt from
11 increases in base rates, would it incur some impact
12 on the -- from the increase in fuel costs --

13 A. Yes.

14 Q. -- when rates are rebased?

15 A. Yes.

16 Q. Okay. And would that occur in a rate
17 case?

18 A. Yes.

19 Q. And do you know how often rate cases
20 are being filed lately?

21 A. For Ameren Missouri, they've filed
22 like five cases in the past seven years. It's
23 going roughly one every 18 months.

24 Q. Thank you. Now, I believe
25 Commissioner Hall asked you some questions about

1 **tariff sheet No. 72.4.**

2 A. Yes.

3 **Q. And what would be the impact of**
4 **removing this adjustment for reduction of service**
5 **classification 12M billing determinants if Noranda**
6 **closed its plant, what would be the impact on**
7 **Ameren Missouri from removal of this clause?**

8 A. If this clause was removed?

9 **Q. Yes.**

10 A. Well, they would be -- they would
11 basically have to return all their off-system sales
12 revenues through the FAC or 95 percent of all their
13 off-system sales revenues through the FAC back to
14 retail customers if this clause doesn't exist.

15 **Q. All right. Would the removal of that**
16 **clause give Ameren Missouri a financial incentive**
17 **to keep Noranda Aluminum on the system, in your**
18 **opinion?**

19 A. Yes.

20 **Q. Further financial incentive than --**

21 A. Further financial incentive because
22 this removal of this clause would remove yet
23 another protection the company has from a shutdown
24 of Noranda.

25 **Q. As Mr. Thompson referred to, this**

1 cause shifts risk away from Ameren Missouri. Do
2 you recall that?

3 A. Correct, to other ratepayers. To
4 ratepayers, I should say.

5 Q. Now, there was a lot of discussion
6 about the proposal of Mr. Michels for a wholesale
7 power contract. Do you recall that?

8 A. Yes.

9 Q. And I think you testified at length
10 that there were some legal issues that you're not
11 quite familiar with. Do you recall that?

12 A. I'm not familiar with all the legal
13 issues is what I said, yes.

14 Q. Okay. If Noranda were to take
15 service under a wholesale contract, would Noranda
16 have a right to continue to be served by Ameren
17 Missouri at the conclusion of that contract?

18 A. It might not.

19 Q. Would that be a significant concern
20 for a company like Noranda Aluminum?

21 A. Absolutely.

22 Q. You had discussed at the time of the
23 CCN case -- that's the case that I provided that
24 document to you earlier on redirect.

25 A. Yes.

1 Q. You testified that ratepayers, as far
2 as the then-current market price of energy, were a
3 little bit worse off bringing Noranda onto the
4 system versus the rate Noranda was going to pay to
5 Ameren Missouri. Do you recall that?

6 A. Yes.

7 Q. And yet the Commission still found
8 that it was in the public interest to include
9 Noranda in Ameren Missouri's jurisdiction?

10 A. Yes.

11 Q. Can you explain why, if you know?

12 A. I don't know offhand. I'm sure it's
13 laid out in the Order.

14 MR. DOWNEY: All right. That's all I
15 have, Judge.

16 JUDGE WOODRUFF: All right. Then you
17 may step down.

18 THE WITNESS: Thank you.

19 (Witness excused.)

20 JUDGE WOODRUFF: Now, we're ready for
21 Mr. Schwartz.

22 MR. MITTEN: Your Honor, before
23 Mr. Schwartz takes the stand, I had asked counsel
24 if they would be willing to take Mr. Michels out of
25 turn. He needs to finish his testimony today, and

1 it is our proposal that Mr. Michels follow
2 Mr. Schwartz to the witness stand. All counsel
3 have not responded to that request, but I wanted to
4 make the Commission aware of the request and that
5 there may be an adjustment in the schedule.

6 JUDGE WOODRUFF: Yes.

7 (Witness sworn.)

8 JUDGE WOODRUFF: You may inquire when
9 you're ready.

10 MR. MALLIN: Thank you, your Honor.
11 We're still checking to make sure the witness has
12 Exhibits 610 and 611 before him.

13 THE WITNESS: I don't.

14 MR. MALLIN: Mr. Schwartz, do you
15 have a -- is that your water there, or is that
16 someone else's?

17 THE WITNESS: It's someone else's.

18 MR. MALLIN: If I might inquire.

19 JUDGE WOODRUFF: You may.

20 MR. MALLIN: Thank you.

21 STEVEN SCHWARTZ testified as follows:

22 DIRECT EXAMINATION BY MR. MALLIN:

23 Q. Could you state your full name.

24 A. Steven Schwartz.

25 Q. Is it Dr. Schwartz?

1 A. Yes.

2 Q. Dr. Schwartz, by whom are you
3 employed?

4 A. Alvarez & Marsal.

5 Q. In what capacity?

6 A. My title is managing director. I'm
7 an economist.

8 Q. You've caused to have prepared and
9 have filed in this particular case certain
10 testimony?

11 A. That's correct.

12 Q. Direct testimony as well as
13 surrebuttal testimony?

14 A. That's correct.

15 Q. And do you have before you
16 Exhibits 610 and 611?

17 A. I do. I also have 610HC and 611HC.

18 Q. And is 610 your direct testimony in
19 this case?

20 A. Yes.

21 Q. Is 611 your surrebuttal testimony in
22 this case?

23 A. Yes.

24 Q. And if I were to pose those same
25 questions found in both of those exhibits to you

1 today, would you provide those answers found in
2 those exhibits in response to those questions?

3 A. I would.

4 Q. Are there any changes or corrections
5 that you wish to make to that testimony now?

6 A. No.

7 MR. MALLIN: Your Honor, we would
8 move for admission of Exhibits 610 and 611.

9 JUDGE WOODRUFF: 610 and 611 have
10 been offered. Any objection to their receipt?

11 (No response.)

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

14 (NORANDA EXHIBIT NOS. 610 AND 611
15 WERE RECEIVED INTO EVIDENCE.)

16 MR. MALLIN: I tender the witness.
17 I do mention to the Court, as you're well aware,
18 Mr. Schwartz was ill yesterday. And so if you do
19 feel ill at all during any point of the balance of
20 the day, please just let us know.

21 THE WITNESS: I will.

22 MR. MALLIN: Thank you. Thank you,
23 your Honor.

24 MR. ALLISON: Thank you.

25 CROSS-EXAMINATION BY MR. ALLISON:

1 Q. Hi, Dr. Schwartz. How are you?

2 A. Good morning.

3 Q. Good morning. I just want to go
4 through a couple of the points of your testimony
5 really quickly and make sure I have this right. So
6 Noranda's cost structure with respect to power, is
7 it your understanding that Noranda's not generating
8 enough operating cash to cover its expenses?

9 A. No. It's margins are falling. It
10 still has positive margins, but its margins are
11 declining, and with respect to power, power is the
12 single biggest cost item.

13 Q. Okay. And as a result of declining
14 margins, Noranda is accessing its line of credit,
15 is it not?

16 A. It's depleting its cash balances, and
17 it accesses its line of credit on a routine basis.

18 Q. And it's going in and out of this
19 line of credit?

20 A. That's my understanding.

21 Q. If you were to characterize Noranda's
22 current financial condition, is it fair to
23 characterize that as precarious or struggling?

24 A. I think the term I used in my report
25 or my testimony is precarious.

1 **Q. And why do you use that term**
2 **particularly?**

3 MR. MALLIN: Your Honor, at this
4 point I think we will have to go into HC.

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

6 (REPORTER'S NOTE: At this point, an
7 in-camera session was held, which is contained in
8 Volume 36, pages 2890 through 2894 of the
9 transcript.)

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1 JUDGE WOODRUFF: And we're back in
2 regular session, and Public Counsel concluded its
3 cross. We're now at Ameren.

4 CROSS-EXAMINATION BY MR. NELSON:

5 Q. Good morning, Dr. Schwartz.

6 A. Good morning.

7 Q. Welcome back.

8 A. Thank you.

9 Q. Glad to see you back. You're not a
10 banker?

11 A. I am not.

12 Q. You worked for various economic
13 institutions, you've taught, but no banking
14 experience?

15 A. Not from the operational side.

16 Q. Let's talk a little bit about some
17 terminology. You're familiar with the term
18 forecast?

19 A. Yes.

20 Q. And you're familiar with the term
21 sensitivity analysis?

22 A. Yes.

23 Q. And the two are not the same?

24 A. No, they are not.

25 Q. You mentioned looking at some, I

1 think you called them pricing scenarios that were
2 provided to you by Noranda, correct?

3 A. Correct.

4 Q. You understood those were not
5 forecasts?

6 A. I understand that's the way Noranda
7 has characterized them.

8 Q. And you don't have a different
9 characterization?

10 A. Until this case came along, I never
11 really thought about a distinction between scenario
12 and forecast. I understand that that distinction
13 has been drawn here, and I'm fine operating in that
14 realm.

15 Q. Fair enough. You did not do any
16 independent price forecast in this case, correct?

17 A. I did not.

18 Q. And you don't know what specific
19 analytical processes Mr. Boyles used in coming up
20 with these scenarios, correct?

21 A. Beyond what he has testified to, no.

22 Q. And you're not testifying that the
23 Noranda scenarios are the most likely to occur;
24 rather, in your direct testimony at least you're
25 referring to them as the scenarios that Noranda

1 **believes are most likely to occur, correct?**

2 A. That's correct.

3 **Q. You haven't made an independent**
4 **evaluation that these scenarios have any particular**
5 **probability of occurring in the real world?**

6 A. I have not assigned a probability to
7 any of them, that is correct.

8 **Q. You've not formed an opinion as to**
9 **whether any particular Noranda scenario is more or**
10 **less likely to occur, correct?**

11 A. That's not completely correct. As
12 you and I discussed during my deposition, I
13 indicated that, in my judgment as an economist, I
14 don't see sources of upward pricing pressure that
15 would lead me to believe that several of the
16 scenarios that begin with fairly sharp price
17 increases in the near term are likely to occur,
18 because I don't see the sources of those price
19 increases.

20 MR. NELSON: Your Honor, may I
21 approach the witness?

22 JUDGE WOODRUFF: You may.

23 BY MR. NELSON:

24 **Q. Dr. Schwartz, you and I spoke a**
25 **couple of times in deposition, correct?**

1 A. We did.

2 Q. We had some scheduling issues, so we
3 had to break it into two parts, right?

4 A. Correct.

5 Q. I'm going to hand you, sir, a copy of
6 a deposition transcript taken on February 12th of
7 2015. Can you confirm for me that is Volume 1 of
8 your deposition?

9 A. It appears to be.

10 Q. Okay. And I'm also going to hand you
11 what's marked as Volume 2 of your deposition,
12 March 4, 2015. Can you confirm that's Volume 2?

13 A. It appears to be as well.

14 Q. And, of course, you've given a lot of
15 depositions in your career, correct?

16 A. Yes.

17 Q. So you know the rules about you're
18 under oath, you have to tell the truth, those sort
19 of things, fair?

20 A. Yes.

21 Q. If you could, please, turn to page 80
22 of Volume 1 of your deposition. Just let know when
23 you're there. Actually, I'm sorry. Go back to
24 page 79, because the question starts on page 79.

25 A. Yes.

1 Q. Line 22, I asked you, Would it be
2 fair to say that you looked at whether or not the
3 model had what you believed to be the right pieces
4 and they were in the right order and functioned
5 together correctly, but you did not render an
6 opinion as to the reasonableness of the assumptions
7 that went into the model? Do you see that
8 question?

9 A. I do.

10 Q. Did I read it right?

11 A. You did.

12 Q. And you answered in your deposition,
13 Well, if by assumptions you're talking about the
14 assumptions with respect to aluminum prices, as
15 I've already indicated, I have not formed an
16 opinion as to whether any particular scenario is
17 more or less likely to occur. Did I read that
18 correctly?

19 A. You did.

20 Q. And that was your answer when I took
21 your deposition?

22 A. Yes, and I believe I modified that
23 answer in my second session.

24 Q. Now, in your direct testimony,
25 page 24, you referred to any aluminum price

1 scenario when you were discussing various scenarios
2 and their impacts on Noranda's hypothetical future,
3 correct?

4 A. I'm sorry. You were reading from?

5 Q. Page 24 of your direct testimony.

6 A. Okay.

7 Q. Do you see that reference to any
8 price scenario? I'll quote, starting at line 5 of
9 your testimony on page 24, that said, Under the
10 models I have analyzed, I see little prospect for
11 Noranda to survive as an economically viable going
12 concern under the Ameren rate proposal for any
13 aluminum price scenario, that testimony --

14 A. Yes.

15 Q. -- do you see that?

16 When you used the term "any aluminum
17 price scenario," you were referring to the three
18 different price scenarios Noranda gave you,
19 correct?

20 MR. MALLIN: Counsel, I think you are
21 now into an HC Area.

22 MR. NELSON: Am I?

23 MR. MALLIN: I believe the question
24 is, yes. Your Honor, I have to ask that we go to
25 HC.

1 (REPORTER'S NOTE: At this point, an
2 in-camera session was held, which is contained in
3 Volume 36, pages 2902 through 2903 of the
4 transcript.)

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

3 BY MR. NELSON:

4 Q. You're aware that CRU studies
5 aluminum markets, correct?

6 A. Yes.

7 Q. But you have no opinion on whether or
8 not CRU has expertise in aluminum markets, correct?

9 A. I don't have an independent opinion
10 on that, that's correct.

11 Q. You don't know if Noranda uses CRU
12 forecasts in its daily business, correct?

13 A. I don't.

14 Q. The model that you reviewed to come
15 to your conclusions, the Noranda enterprise model,
16 you're familiar with that?

17 A. Yes.

18 Q. You do recall looking at that,
19 correct?

20 A. Yes.

21 Q. It was provided to you by Noranda?

22 A. That's correct.

23 Q. It's not a model that you
24 independently built?

25 A. That's correct.

1 Q. And that model has some assumptions
2 about capital expenditures, correct?

3 A. Correct.

4 Q. And the assumption that Noranda made
5 and has asked you to assume that they're going to
6 spend 100 million --

7 MR. MALLIN: Counsel, again, that
8 number is HC. Be real careful with these
9 questions, because we'll have to go to HC.

10 JUDGE WOODRUFF: All right.

11 MR. MALLIN: I apologize once again,
12 your Honor.

13 (REPORTER'S NOTE: At this point, an
14 in-camera session was held, which is contained in
15 Volume 36, pages 2906 through 2909 of the
16 transcript.)

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1 BY MR. NELSON:

2 Q. You don't have an opinion, do you,
3 that -- as to whether or not the word precarious is
4 the same as the word stable, fair?

5 A. I don't think precarious and stable
6 are inconsistent, but I haven't made a judgment as
7 to whether they are synonyms or not.

8 Q. Noranda has adequate liquidity to pay
9 its bills, correct?

10 A. Currently, yes, I believe it does.

11 MR. NELSON: If I may have a moment
12 to consult with counsel, maybe we can avoid the
13 back question and back and forth.

14 I think we have to go back into HC,
15 your Honor.

16 (REPORTER'S NOTE: At this point, an
17 in-camera session was held, which is contained in
18 Volume 36, pages 2911 through 2912 of the
19 transcript.)

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1 JUDGE WOODRUFF: And ready for
2 Commissioner questions from the Bench.
3 Mr. Chairman?

4 CHAIRMAN KENNEY: Good morning,
5 Dr. Schwartz. I don't have any questions. Thank
6 you.

7 THE WITNESS: Good morning. Thank
8 you.

9 JUDGE WOODRUFF: Commission Kenney?

10 COMMISSIONER W. KENNEY: Just
11 briefly. Thank you.

12 QUESTIONS BY COMMISSIONER W. KENNEY:

13 Q. Thank you, Dr. Schwartz.

14 A. Good morning.

15 Q. Have you worked for Noranda
16 previously in any other rate cases or any other
17 contractual arrangement with them?

18 A. I have not.

19 Q. This is your first one?

20 A. It is.

21 Q. So you don't have a familiarity with
22 the acquisition by Apollo in May of 2007 or how
23 that might affect the company?

24 A. What I know about it is what --

25 Q. Because you were talking about

1 liquidity.

2 A. Yes.

3 Q. So do -- if the company pays out
4 special dividends, does that affect one's
5 liquidity?

6 A. It depends on how they finance the
7 li-- how they finance the special dividend, and --

8 Q. If it's a cash payout?

9 A. Well, it was a cash payout, but I
10 think in this case they had to borrow money to do
11 it. So the question is, if they had to borrow
12 money --

13 Q. I mean, all the payouts were -- they
14 had to borrow money for every one of the payouts?

15 A. There you're getting into questions
16 of fact that I just don't know. I know there was
17 one --

18 Q. Is it a common business practice to
19 borrow money to pay special dividends?

20 A. I don't think I can comment on that.
21 I don't know.

22 Q. You don't want to comment or you
23 can't?

24 A. I can't. I don't know. I know it
25 happens, but you used the word common, and I'm not

1 sure that I know enough to say that it is or isn't
2 common.

3 Q. Is it prudent business sense to
4 borrow money to pay a special dividend, in your
5 mind as an economist?

6 A. I haven't studied that. I don't
7 know.

8 Q. If you had extra cash on hand on your
9 books, would your liquidity improve?

10 A. Yes.

11 Q. Okay. And then looking forward from
12 a perspective of a company, if a company had a
13 ten-year contract, even though you've heard today
14 as you've been sitting in this room that a future
15 Commission can make changes to that, those rates --

16 A. Correct.

17 Q. -- if a company had a ten-year
18 contract, how would investors look at that?

19 A. If you're talking about a ten-year
20 contract for power, I think they would view that as
21 giving an element of rate certainty and rate
22 predictability.

23 Q. Would that help with their ability to
24 borrow money?

25 A. All else equal, I think certainty is

1 a good thing when you're trying to borrow money. I
2 suspect it would be helpful, that fact by itself.

3 COMMISSIONER W. KENNEY: All right.

4 Thank you.

5 JUDGE WOODRUFF: Commissioner Hall?

6 COMMISSIONER HALL: Yes.

7 QUESTIONS BY COMMISSIONER HALL:

8 Q. Good morning, Dr. Schwartz.

9 A. Good morning.

10 Q. On page 15 of your direct testimony,
11 you use the term net margin, net income margins.

12 A. Yes.

13 Q. Could you define that for me?

14 A. It's -- it's the margin after you've
15 paid all expenses, interest, depreciation.

16 Q. It's just the difference between
17 revenues and expenses?

18 A. Yes, but it's all your expenses.

19 Q. Correct. So all your revenues, all
20 your expenses?

21 A. Correct.

22 Q. All right. You concluded that you
23 saw little prospect for Noranda to survive as an
24 economically viable going concern absent some rate
25 relief in this proceeding; is that correct?

1 A. Correct.

2 Q. When you made that determination or
3 you offered that position, were you focusing
4 largely on margins?

5 A. I don't know if I would say largely,
6 but I was certainly focused on margins, the fact
7 that margins had been declining, that the business
8 isn't generating very much operating cash. So for
9 its liquidity, it's heavily dependant on access to
10 that asset-based line of credit.

11 So on a going-forward basis, given
12 the proposed rate structure in Ameren's rate
13 proposal and the importance of power in its cost
14 structure, it was hard to see an improvement in
15 margin forthcoming.

16 And in those circumstances, because I
17 thought it was unlikely or at least they would have
18 great difficulty in refinancing that, it seemed to
19 me that their viability as a going concern is in
20 question, because without that access to the line
21 of credit, it's hard to see how Noranda survives.

22 Q. So is it safe to say that you were
23 focused on margins, but you were looking at how
24 margins affected liquidity and how margins affected
25 the ability to refinance?

1 A. I would change that characterization
2 only slightly. I was looking at how margins affect
3 the amount of operating cash being thrown off, and
4 in assessing the likelihood of being able to
5 refinance the debt, certainly margins play a role,
6 but also looking at margins and the operating cash
7 and looking at whether Noranda could survive
8 without access to the line of credit.

9 **Q. I didn't understand that answer.**

10 A. I'm sorry. Well, it's --

11 **Q. I'm not saying that's your fault.**

12 **Tell me why I am wrong to conclude that what you**
13 **are saying is that the problem that Noranda faces**
14 **going forward, the problem is based upon net income**
15 **margins and how they effect its liquidity.**

16 A. You're not wrong, but I think --

17 **Q. I love it. Okay. Go ahead.**

18 A. You're not wrong, but there's more
19 behind that that I think is important to
20 understand, at least in my view of this. Margins
21 can be low now, but if there's prospects for them
22 improving, that's a different story.

23 The concern that I have is that
24 margins are low now. Under the rate proposal,
25 power costs will go up. Power is the single

1 biggest cost item in Noranda's cost structure. So
2 it's a combination of where they are now and where
3 they're likely to be going forward under the
4 existing proposals. That's really what I was
5 trying say in my first answer that I think confused
6 you.

7 **Q. So how would your analysis change, if**
8 **any, if we were to put in a hypothetical 2 to**
9 **\$300 million more liquidity into the equation?**

10 A. Depends on where the liquidity comes
11 from.

12 **Q. Let's just say it's found, 2 to**
13 **300 million more in liquidity. So that during**
14 **periods when aluminum prices are low and there are**
15 **losses, the company can sustain itself until a**
16 **period later in the future where aluminum prices go**
17 **up.**

18 A. Sure. If there was a basis for
19 assuming or believing or thinking that you could
20 find that cash cushion, then the prospects of
21 surviving through the rocky times become better.

22 **Q. Is there any way to quantify or**
23 **characterize that increased chance at viability?**

24 A. It could be analyzed. I haven't
25 analyzed it.

1 COMMISSIONER HALL: Thank you. I
2 have no further questions.

3 JUDGE WOODRUFF: Any recross based on
4 questions from the Bench?

5 MR. MALLIN: One second, your Honor.

6 JUDGE WOODRUFF: Recross first.

7 MR. MALLIN: No. I understand.

8 MR. NELSON: Ameren does have some
9 recross. I'm not sure if I need to wait for
10 Mr. Mallin.

11 JUDGE WOODRUFF: Okay. Just wait.

12 MR. MALLIN: I'm sorry. Is it my
13 turn now?

14 JUDGE WOODRUFF: No. We've got
15 recross-examination.

16 RE-CROSS-EXAMINATION BY MR. NELSON:

17 **Q. You were asked some questions by**
18 **Commissioner Hall regarding net margins.**

19 A. Yes.

20 **Q. Do you recall that discussion about**
21 **30 seconds ago?**

22 A. I do.

23 **Q. And you -- one of the things you said**
24 **is that the margins had a prospect for improving**
25 **that would change the outlook for the company,**

1 fair?

2 A. It could change it, yes.

3 Q. And, in fact, for the fourth quarter
4 2015, what was Noranda's reported net earnings per
5 share?

6 A. I don't know. But earnings per share
7 and margin aren't the same thing.

8 Q. No, but they correlate, right? It
9 flows through?

10 A. There should be some correlation, but
11 in any event, I don't know.

12 Q. But they were positive, right,
13 positive 14 cents a share?

14 A. I don't know.

15 Q. You also mentioned if it was likely
16 going forward that these prospects would improve,
17 then that could change Noranda's liquidity picture,
18 correct?

19 A. I think I said it could change its
20 prospects with respect to refinancing.

21 Q. And you and I can agree that the best
22 evidence we have in this case of what aluminum
23 prices are going forward is the CRU forecast,
24 correct?

25 A. I won't agree to that.

1 **Q. You haven't even actually analyzed**
2 **the CRU forecast, have you, sir?**

3 A. I haven't. My problem, as we've
4 discussed, with the CRU forecast is that it
5 presumes steadily rising prices and, as an
6 economist, I see no basis for the prices to be
7 rising in the near term.

8 **Q. CRU's been doing forecasts for how**
9 **many years?**

10 A. I don't know.

11 **Q. Got how many Ph.D.s and other highly**
12 **trained people to do those forecasts?**

13 A. I have no idea.

14 **Q. Earns how much per year from**
15 **companies around the world, including Noranda,**
16 **who -- for these copyrighted forecasts?**

17 A. I have no idea.

18 **Q. Nobody's paying you to do aluminum**
19 **price forecasting, fair?**

20 A. Not in this case.

21 **Q. And so when we talk about likely to**
22 **go forward, likely going forward, we want to talk**
23 **about Noranda's prospects going forward, what's**
24 **most likely, you don't have any better number to**
25 **give us than the CRU forecasts that have been**

1 **prepared by their teams of experts, correct?**

2 A. I don't have a better number, but I
3 do have an opinion on the trend that they're
4 predicting, and I don't agree with their trend.

5 **Q. And you haven't run an analysis of**
6 **Noranda's prospects going forward using CRU's**
7 **forecast pricing, correct?**

8 A. That is correct.

9 MR. NELSON: Nothing further.

10 JUDGE WOODRUFF: Redirect?

11 MR. MALLIN: Thank you, your Honor.
12 I apologize about getting out of order.

13 REDIRECT EXAMINATION BY MR. MALLIN:

14 **Q. Dr. Schwartz, why don't you agree**
15 **with the CRU forecast?**

16 A. In terms of the trend, the reason I
17 don't agree with it is because the market
18 conditions right now don't support price increases.

19 **Q. What market conditions?**

20 A. In the market for aluminum. We've
21 had a period over the last number of years where
22 production has outstripped consumption, surpluses
23 have built up. I think we've heard testimony about
24 some of the surpluses that are supposedly being
25 held in warehouses for investment purposes being

1 released into the market.

2 But even if demand for aluminum
3 increases, and the sources of those increases and
4 demand are somewhat uncertain at best, you've got
5 large surpluses that can absorb those increases in
6 demand, and that's going to prevent, based on the
7 data that I've seen, the kinds of price increases
8 over the near term that CRU is predicting.

9 **Q. Near term meaning how many years out?**

10 A. Mr. Nelson and I had this discussion
11 in the deposition. I think in near term we're
12 talking 12 to 18 months, perhaps up to 36 months.

13 **Q. So during the period of time that**
14 **Noranda will be in the process of acquiring the**
15 **refinancing that you earlier identified?**

16 A. Correct.

17 **Q. There was some questions asked about**
18 **Standard & Poor's. Are you aware of whether or not**
19 **Standard & Poor's has downgraded Noranda recently?**

20 A. I am aware that they have downgraded
21 Noranda's debt recently.

22 **Q. Are you aware that they've been --**
23 **it's been downgraded twice recently by Standard &**
24 **Poor's?**

25 A. You know, I recall one downgrade. I

1 don't recall the second.

2 Q. Is that downgrade consistent with
3 your opinion you expressed earlier with regard to
4 the current financial status or state of Noranda?

5 A. Yes.

6 Q. Am I correct, sir, that as part of
7 the work you did in this case, you did, in fact,
8 see all 11 different scenarios that were presented
9 to the Public Service Commission?

10 A. I did.

11 Q. Did you within -- as a professional
12 in this area, as an economist, make any
13 determination as to whether or not any of those
14 11 were reasonable and representative of what you
15 thought Noranda faced in the near term?

16 A. Of the scenarios that I looked at, I
17 determined that the -- I think it was three
18 scenarios called for steadily rising prices over
19 the, you know, near and intermediate term were
20 unlikely because I didn't see any basis for those
21 price increases.

22 I thought the other scenarios that
23 called for prices to decline by different amounts
24 and over different time horizons but over the near
25 and immediate term were more likely because the

1 market conditions were more consistent with price
2 stability and price decline and not consistent with
3 price increase.

4 Q. As a result of going through that
5 analysis, did it confirm your opinion with regard
6 to the likelihood or unlikelihood of Noranda being
7 able to refinance in 2017 and 2019?

8 A. It confirmed and was consistent with
9 the opinions I already formed.

10 Q. I asked that question openly, because
11 we are not in an HC setting right now. Thank you,
12 sir.

13 In your professional career, sir, are
14 you aware of any smelter entering into Chapter 11
15 bankruptcy protection and then reemerging?

16 A. I'm not aware of one way or the
17 other.

18 Q. And I'm not sure if you know this or
19 not, but there was questions asked about whether or
20 not a special dividend may or may not have been the
21 result of a loan being taken out in the past. From
22 a pure liquidity point of view, if a special
23 dividend is declared and that dividend is financed
24 as a result of a loan, does that change the
25 liquidity of the company?

1 A. Not necessarily.

2 **Q. Explain that answer.**

3 A. It depends on whether the debt has
4 been repaid. To the extent that the debt has been
5 repaid, it has no effect. To the extent that it
6 has been partially repaid or has not been repaid,
7 there's going to be an interest expense, and that
8 interest expense is going to be reflected in cash
9 that's ultimately generated. So it could have an
10 effect that way.

11 **Q. But if a new loan went out and was**
12 **acquired in order to pay that special dividend, in**
13 **that situation would that affect liquidity?**

14 A. Not necessarily.

15 MR. MALLIN: Just one minute, your
16 Honor. Thank you, Dr. Schwartz. Thank you, your
17 Honor.

18 JUDGE WOODRUFF: You can step down.

19 THE WITNESS: Thank you.

20 (Witness excused.)

21 JUDGE WOODRUFF: Than we talked about
22 taking Mr. Michels. Is that acceptable? All
23 right. Let's do that.

24 Welcome back, Mr. Michels. I believe
25 you testified earlier.

1 MR. MITTEN: Your Honor, this is his
2 last scheduled appearance, so we would offer into
3 evidence the exhibits, his rebuttal and surrebuttal
4 testimonies in this case.

5 JUDGE WOODRUFF: That was 26 and 27.
6 Any objections to their receipt?

7 (No response.)

8 JUDGE WOODRUFF: Hearing none, they
9 will be received.

10 (AMEREN MISSOURI EXHIBIT NOS. 26 AND
11 27 WERE RECEIVED INTO EVIDENCE.)

12 MR. MITTEN: Mr. Michels is available
13 for cross-examination.

14 JUDGE WOODRUFF: For cross, we'll
15 begin with Staff.

16 MATT MICHELS testified as follows:

17 CROSS-EXAMINATION BY MR. THOMPSON:

18 Q. Good morning, Mr. Michels.

19 A. Good morning.

20 Q. Remind me, what is it you do for
21 Ameren Missouri?

22 A. My position is Senior Manager of
23 Corporate Analysis, and in that capacity I am
24 responsible for the company's integrated resource
25 planning and also fuel budgeting.

1 **Q. Does Ameren Missouri have any**
2 **contracts regarding wind power?**

3 A. Yes, we do.

4 **Q. And what are the terms of those**
5 **contracts in terms of duration?**

6 A. The term is 15 years.

7 **Q. And where are you in that 15-year**
8 **term?**

9 A. That contract started in August of
10 2009, so we are five and a half years into it.

11 **Q. Okay. And has the market pow--**
12 **market price of wind power changed over that term?**

13 A. I don't know what you mean by the
14 market price of wind power, but we have --
15 contracts for wind power varied from the price that
16 we have in the current contract, and if we get into
17 the price, I think that may be HC.

18 **Q. I don't want to know about the price.**
19 **What I want to know is whether the price has**
20 **changed.**

21 A. There have been contracts at
22 different prices for wind than what -- than the
23 contract that we currently have, yeah.

24 **Q. So in other words, five and a half**
25 **years ago when you entered into these contracts,**

1 **were you willing to pay more than you'd have to pay**
2 **today for the same contract?**

3 A. I think we might be able to get a
4 wind contract today for less than the price that we
5 signed for in 2009.

6 MR. THOMPSON: Okay. I think that's
7 all I have. Thank you.

8 JUDGE WOODRUFF: MECG?

9 MR. WOODSMALL: Yeah. Yes, very
10 briefly.

11 CROSS-EXAMINATION BY MR. WOODSMALL:

12 **Q. Good morning, sir.**

13 A. Good morning.

14 **Q. Looking at your amended rebuttal**
15 **testimony, do you have that in front of you?**

16 A. Yes, I do.

17 **Q. Now, as I understand it, in your**
18 **testimony, pages 28 to 29, you compare the revenues**
19 **associated with Noranda's 32.50 proposal to**
20 **revenues that could be generated from off-system**
21 **sales if Noranda closed; is that correct?**

22 A. Yes. That's correct.

23 **Q. And I believe lines 4 or 5 of**
24 **page 29, you conclude that revenues would be**
25 **\$272 million less under Noranda's 32.50 proposal;**

1 is that correct?

2 A. That's correct.

3 Q. Have you done a similar analysis or
4 do you have any conclusion as to what the
5 difference would be under the stipulated
6 \$34 amount?

7 A. Yes, I have.

8 Q. Can you tell me what that is?

9 A. The difference that I came up with
10 was about \$550 million over the ten-year term.

11 Q. 550 million the customers would be
12 better off with the off-system sales revenues
13 associated with Noranda closing; is that correct?

14 A. That's correct.

15 MR. WOODSMALL: Okay. No further
16 questions.

17 JUDGE WOODRUFF: Public Counsel?

18 MR. ALLISON: Thank you.

19 CROSS-EXAMINATION BY MR. ALLISON:

20 Q. Mr. Michels, how are you?

21 A. I'm doing fine.

22 Q. Good. So Ameren has a current
23 contract with Noranda, right?

24 A. Correct.

25 Q. It's a 15-year contract?

1 A. That's correct.

2 Q. Okay. And that contract was entered
3 into in 2005; is that right?

4 A. I believe that's correct, in May, I
5 think.

6 Q. Okay. And in order to facilitate
7 that contract, to your knowledge, a case was filed
8 in front of the PSC of the CCN case, I think we
9 refer to it colloquially; is that right?

10 A. I'm aware of that case and some of
11 the elements of it. I wasn't involved in the case.

12 Q. Okay. Fair enough. Are you aware
13 that as part of that, the agreement that resolved
14 that case, there was a transfer of, I'll use the
15 word assets referred to as the Metro East transfer
16 as part of the resolution of that case; is that
17 right?

18 A. Yes, I'm aware of that.

19 Q. Are you also aware that, prior to
20 that case, Ameren had sought that Metro East
21 transfer and been denied by the Commission?

22 A. I was not aware of that.

23 Q. If that were in the record, would
24 that have any effect on Ameren's position -- strike
25 that question. You're not aware of it?

1 A. I'm not aware.

2 Q. Thank you. So that 15-year term of
3 the contract, that's also reflected in the LTS
4 12(M) tariff sheets; isn't that right?

5 A. I don't know if it is or not.

6 Q. Okay. Have you reviewed the tariff
7 sheets as you prepared for this case?

8 A. No, I have not.

9 Q. Okay. Fair enough. Ameren is now
10 proposing that Noranda move to -- or putting out a
11 wholesale contract proposal; isn't that right?

12 A. I did generally a wholesale proposal
13 in my rebuttal testimony, yes.

14 Q. As you sit here today -- well, one of
15 the elements of that proposal was that Ameren and
16 Noranda would negotiate the terms of a contract; is
17 that correct?

18 A. That's correct.

19 Q. And as you sit here today, there is
20 no contract; is that right?

21 A. That's correct.

22 Q. But there were negotiations, to your
23 knowledge, right?

24 A. There were. I wasn't involved in
25 them directly, but I am aware that there were.

1 Q. Fair enough. But that did not
2 resolve itself?

3 A. Correct.

4 Q. That did not successfully resolve
5 itself in a contract, correct?

6 A. It did not result in a contract,
7 correct.

8 Q. Okay. But the price that would have
9 been in that contract under your proposal would
10 have to be negotiated by only Ameren and Noranda;
11 isn't that right?

12 A. That's correct.

13 Q. So the difference between what
14 Noranda currently pays and the amount that Noranda
15 would pay under any wholesale agreement, that lost
16 revenue, would that be borne by the company under
17 your proposal?

18 A. No.

19 Q. And so it's Ameren's proposal that
20 the shareholders not bear the risk of the wholesale
21 contract; isn't that right?

22 A. What -- what risk are you talking
23 about?

24 Q. Well, if you're not going to -- if
25 you're not going to bear the difference in the

1 price and instead -- and we haven't talked about
2 this. Let me rephrase my question to you.

3 You also as a part of your proposal
4 propose that the revenues from sales generated be
5 flowed through Ameren's existing FAC; isn't that
6 right?

7 A. That's correct.

8 Q. Okay. And through the combination of
9 the price differential and flowing the revenues
10 through Ameren's FAC, Ameren's shareholders would
11 be held harmless as a result of that contract,
12 wouldn't they?

13 A. I don't think that covers the entire
14 scope of risk that might be involved in adopting a
15 wholesale agreement like that, but specifically
16 related to setting rates, then the other customers
17 of Ameren Missouri would pick up the difference
18 related to the difference between the rate, and any
19 difference in what is sold to Noranda or in the
20 open market would also be flowed through the FAC.

21 Q. And the proposal I think also
22 suggested that the Commission would need to
23 preapprove that use of the FAC in this case,
24 correct?

25 A. I believe that's what we asked for,

1 yes.

2 **Q. So the only way that Ameren's willing**
3 **to offer a wholesale contract is if the**
4 **shareholders don't bear that rate risk; isn't that**
5 **right?**

6 A. I don't know. I don't know that we
7 explored every opportunity or every possibility
8 that might be involved. This is the one that I
9 proposed. I don't know what else we might have
10 been willing to do.

11 **Q. Okay. Fair enough. Ameren talks**
12 **about canceling or suspending the CCN. You talked**
13 **about that in your testimony?**

14 A. That's right.

15 **Q. At the end of the five-year term of a**
16 **wholesale contract, what do you foresee with**
17 **respect to Ameren's provision of power to Noranda**
18 **at that point if the CCN is canceled or -- or**
19 **suspended? How would that work from your**
20 **perspective?**

21 A. Yeah. I may have laid out some
22 options for how that could play out following the
23 five-year term in my testimony, but to the extent
24 that I didn't, Noranda could seek to extend the
25 agreement with Ameren Missouri or sign another

1 agreement or it could seek to engage with another
2 power supplier to supply its electricity.

3 **Q. Without the CCN, are you aware of any**
4 **legal obligation that Ameren would have to serve**
5 **Noranda?**

6 A. Without the CCN in place and under a
7 wholesale agreement, any obligations to serve
8 Noranda would be delineated specifically in
9 whatever that wholesale agreement was.

10 **Q. Fair enough. And the term of your**
11 **proposed wholesale agreement is five years, right?**

12 A. That's what I proposed, right.

13 **Q. Again, there's no agreement?**

14 A. There's no agreement.

15 **Q. That's what the proposal was. And**
16 **your current retail contract with Noranda also**
17 **happens to expire in five years; isn't that right?**

18 A. I believe that's correct, at the end
19 of May 2020.

20 **Q. And notice is required to be given**
21 **this summer, correct, if either of the parties want**
22 **to end the contract?**

23 A. I believe there's a five-year notice
24 requirement, yes.

25 **Q. And so this proposal, when you look**

1 at this proposal, it's really just a do over of the
2 2005 CCN case, isn't it?

3 A. I don't know that I'd characterize it
4 that way. There are a lot of different issues that
5 I -- that I understand were involved in this CCN
6 case.

7 Q. Sure. There are a lot of different
8 circumstances. But I think in the 2005 CCN case,
9 and you're a high-level representative of Ameren,
10 Ameren was proposing a retail deal, and now, during
11 the term of that agreement, that 15-year term,
12 Ameren is now proposing a wholesale agreement;
13 isn't that right?

14 A. That's correct. In the context of
15 this --

16 Q. That's right, isn't it?

17 A. That's right.

18 Q. And in order to get that done, in
19 order to get a wholesale deal done, Ameren's
20 willing to gave Noranda a haircut on its rate;
21 isn't that right?

22 A. Yes, in the context of this case.
23 Yes.

24 Q. But only as long as the other
25 customers are there to make Ameren whole; isn't

1 **that right?**

2 A. We would expect rates to be reset so
3 that we're --

4 **Q. That's possible?**

5 A. -- we have a fair opportunity to earn
6 our revenue requirement and rate of return.

7 **Q. But Ameren's position is that Noranda
8 doesn't really need rate relief, isn't it?**

9 A. I believe that's what our witnesses
10 and perhaps others have testified to. Mr. Mudge is
11 going to be up here.

12 **Q. Yeah. And I think Ameren has said if
13 they do need it, it's their own fault; isn't that
14 Ameren's position?**

15 A. I believe that's accurate, yes. Yes.

16 **Q. So in spite of that position, Ameren
17 is making a proposal to cut Noranda's rate even
18 though you don't think they need it?**

19 A. Understanding that the Commission
20 would have to approve it over any objections that
21 might be made, yes.

22 **Q. No. Despite the fact that you take
23 the position they don't need the rate relief,
24 you're actually saying you're willing to give them
25 rate relief; isn't that right?**

1 A. That's correct.

2 Q. But that rate relief is contingent
3 upon Ameren's shareholders bearing no risk; isn't
4 that right?

5 A. I wouldn't say that Ameren's
6 shareholders would bear no risk, no.

7 Q. Well, you previously said that they
8 would -- that you're insulating them from rate
9 risk, I should say it that way; is that correct?

10 A. But not any of the other risks that
11 might come along with offering a wholesale
12 agreement.

13 Q. Fair enough. And you do not have a
14 wholesale agreement with Noranda right now, as
15 you've said. Were you in the -- in the hearing
16 room when other witnesses have testified about how
17 that has broken down and the issue over which that
18 has broken down?

19 A. I was either in the hearing room or
20 watching on the webcast.

21 Q. You're aware of that issue?

22 A. Except for anything that I might have
23 been watching that was in-camera.

24 Q. Understood. And others have
25 testified that the negotiation broke down over the

1 **assignment of risk; isn't that right?**

2 A. I believe that's what others have
3 said, yes.

4 MR. ALLISON: Fair enough. Thank
5 you. I don't have anything further.

6 JUDGE WOODRUFF: All right. For
7 MIEC?

8 MR. DOWNEY: Yes. Thank you, Judge.

9 CROSS-EXAMINATION BY MR. DOWNEY:

10 **Q. I'd like you to turn back to page 29**
11 **of your rebuttal. Good morning.**

12 A. Good morning.

13 **Q. The figure you have on line 4 and the**
14 **figure you discussed with Mr. Woodsmall, that's**
15 **based on a ten-year assumption, correct?**

16 A. The figure I have here, no, is based
17 on a seven-year assumption.

18 **Q. I'm sorry. The figure here is based**
19 **on seven years and the figure you gave**
20 **Mr. Woodsmall is based on ten years?**

21 A. If you're talking about the
22 \$550 million yes, that's based on ten years.

23 **Q. And you understand the Commission can**
24 **grant whatever term of relief it deems appropriate?**
25 **You understand that?**

1 A. No, I'm not sure what you mean.

2 Q. In this case, it's going to set a
3 rate for a customer, Noranda, and that rate will be
4 good until the next rate case. Do you understand
5 that?

6 A. Good until a rate case or any kind of
7 legal challenge that might come up, depending on
8 what the rate or other circumstances are, yes.

9 Q. Okay. But I guess my point is, the
10 Commission's hands are not tied for seven years or
11 ten years; you agree with that?

12 A. I would say that a commission cannot
13 bind a future commission. In this case, I would
14 think it highly unlikely that once we start down
15 this path, that there is going to be an appetite
16 for altering the path.

17 Q. Do you have an opinion whether Ameren
18 Missouri would have an appetite for veering off
19 that path in the future?

20 A. Well, I don't know if I can address a
21 hypothetical without some assumptions, but if
22 circumstances change and it appears to warrant a
23 challenge, maybe even if circumstances don't change
24 and it appears to warrant a challenge, I think
25 Ameren Missouri would make the argument it believed

1 necessary at that time based on the circumstances.
2 That's about the best I can do, not knowing what
3 kind of circumstances we might be dealing with in
4 the future.

5 **Q. And that will occur more than likely**
6 **in each rate case, would you agree with that, that**
7 **process you just described?**

8 A. Well, it could occur in a rate case.
9 It could occur through a complaint case. It could
10 occur through any kind of a legal challenge. I
11 think there are a number of possibilities that are
12 raised.

13 **Q. And -- but it could occur at least in**
14 **the rate cases, perhaps more often than that, you**
15 **agree?**

16 A. Perhaps, yes.

17 **Q. And those rate cases lately have been**
18 **filed on kind of an 18-month basis; do you agree**
19 **with that?**

20 A. That seems in the ballpark
21 reasonable, yes.

22 **Q. All right. And there's been a lot of**
23 **discussion -- have you been in the courtroom most**
24 **of this week?**

25 A. Most of this week, no. If not in the

1 courtroom, then I've been watching the webcast to
2 the extent it's not HC.

3 **Q. And there's been a lot of discussion**
4 **about what the current market price for power is.**
5 **Do you recall hearing any of that discussion?**

6 A. Yes, I do.

7 **Q. And it's below \$30 per megawatt hour**
8 **currently?**

9 A. I haven't looked this week, but it
10 might be in the \$30 range.

11 **Q. \$30 range means right around \$30?**

12 A. Right around \$30.

13 **Q. Little more, little less?**

14 A. Probably.

15 MR. DOWNEY: And I'm not sure if this
16 is highly confidential or not, Judge. We probably
17 ought to go in-camera.

18 JUDGE WOODRUFF: We will go
19 in-camera.

20 (REPORTER'S NOTE: At this point, an
21 in-camera session was held, which is contained in
22 Volume 36, pages 2945 through 2947 of the
23 transcript.)

24

25

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

3 THE WITNESS: Could you repeat your
4 question?

5 BY MR. DOWNEY:

6 Q. Yes. In performing your analysis to
7 determine the cost of the Noranda meter forward
8 energy price, did you also calculate a capacity
9 charge expressed in dollars per kilowatt year?

10 A. Yes, we did.

11 Q. Okay. And for purposes of performing
12 that calculation, did you -- did you include the
13 market price for capacity for -- okay. Is the
14 capacity cost based on new entry in the market for
15 2020?

16 A. I don't remember the exact year, but
17 we did make the assumption for development of our
18 capacity prices that it would be at the current
19 market, current visible market, which I believe was
20 three years at the time, and that it would increase
21 to the cost of new entry, which is MISO's basis for
22 establishing what a default capacity price would be
23 essentially in the early 2020s time frame.

24 Q. Is it fair to say that it's far from
25 certain that capacity market prices will actually

1 **reach cost of new entry?**

2 A. They may be higher; they may be
3 lower. Any forecast is subject to differences that
4 are actually going to occur over time.

5 **Q. I understand. 2020 is five years**
6 **from now, correct?**

7 A. Right.

8 MR. DOWNEY: Nothing further, Judge.

9 JUDGE WOODRUFF: All right. That
10 concludes the recross-examination. Before we come
11 up for questions from the Bench, we'll take a break
12 for lunch. Let's come back at 1 o'clock.

13 (A BREAK WAS TAKEN.)

14 JUDGE WOODRUFF: We're back from our
15 lunch break, and Mr. Michels is still on the stand
16 and we're ready for questions from the Bench.
17 We'll begin with Chairman Kenney.

18 QUESTIONS BY CHAIRMAN KENNEY:

19 **Q. Hello.**

20 A. Good afternoon.

21 **Q. Can you hear me okay, Mr. Michels?**

22 A. I can hear you fine.

23 **Q. Okay. Good. What are the**
24 **characteristics of a wholesale sale versus a retail**
25 **sale?**

1 A. Well, generally speaking, with a
2 wholesale sale the -- the rights and obligations
3 are limited to whatever is included in the contract
4 that's executed between the parties, and under a
5 retail sale, they're governed by the laws of the
6 state and the rules of the Commission.

7 **Q. Okay. That's -- that's particularly**
8 **with respect to the sale of electrons. But just**
9 **generally speaking, what's the difference between a**
10 **wholesale sale and a retail sale?**

11 A. Retail sale would be directly to a
12 customer. A wholesale sale would be to another
13 party for resale.

14 **Q. So what are the features of what**
15 **you've described that would make the arrangement**
16 **between Ameren and Noranda a wholesale sale --**

17 A. Well --

18 **Q. -- given that definition that you**
19 **just gave?**

20 A. Yeah, I do think we'd have to have an
21 intermediary. I didn't include that in my
22 testimony, but I think one would be necessary in
23 order for us to set up a wholesale transaction of
24 the kind that I described.

25 **Q. Who would that be?**

1 A. It could be an affiliate of Noranda.
2 It could be an affiliate of Ameren Missouri. It
3 could be another third party.

4 **Q. So you don't speak to that in your**
5 **testimony, correct?**

6 A. I did not mention the need for an
7 intermediary in my testimony, no.

8 **Q. So is it fair to say, then, that just**
9 **a transaction between Ameren and Noranda isn't a**
10 **wholesale sale just because you denominate it as**
11 **such?**

12 A. I would agree with that, yes.

13 **Q. Okay. So what you've described in**
14 **your testimony isn't actually a wholesale sale?**

15 A. It was missing the intermediary part,
16 but that's what was contemplated.

17 **Q. Okay. But I mean, if it's missing**
18 **the intermediary, that's a big deal, right? So as**
19 **it is described in your testimony, it's not a**
20 **wholesale sale?**

21 A. I would say that's fair.

22 **Q. So according to -- did you read Lena**
23 **Mantle's testimony for OPC?**

24 A. I did, but it's been a while.

25 **Q. She references the fact that when**

1 Noranda and Ameren entered into its contractual --
2 where we approved the CCN rather, that part of the
3 rationale for that was -- or Ameren had to add or
4 buy some combined cycle units, I guess, that were
5 in Illinois. Does that ring a bell?

6 A. CTG units, not combined cycles. But,
7 yes, gas-fired CTGs.

8 Q. Gas-fired units?

9 A. That's right.

10 Q. And those are in Ameren Missouri's
11 rate base and are being paid for by Missouri
12 consumers, right?

13 A. Those assets are in rate base, yes.

14 Q. Are they fully depreciated?

15 A. I don't know.

16 Q. Let's assume that they're not. If
17 you take Noranda out of the equation, does that
18 shift the burden of paying for those to those
19 remaining ratepayers? Noranda wouldn't be
20 contributing toward the cost of that asset any
21 longer, would they?

22 A. If Noranda is no longer a retail
23 customer of Ameren Missouri, then they would not be
24 paying cost of service based rates which reflect
25 those assets in rate base, no.

1 CHAIRMAN KENNEY: I don't actually
2 have any other questions. Thanks for your time.

3 JUDGE WOODRUFF: Commissioner Kenney?

4 QUESTIONS BY COMMISSIONER W. KENNEY:

5 Q. Hello, Mr. Michels. How are you
6 today?

7 A. I'm fine, thank you.

8 Q. Good. Good to have you here. I'm
9 having a hard time kind of grasping some of this
10 stuff, but I have a better excuse than anybody here
11 because I'm part of a national football league head
12 injury lawsuit.

13 A. Okay.

14 Q. I am also the Kansas City Chiefs -- I
15 hold the records with the Kansas City Chiefs as the
16 all time sackee. You usually only hear about the
17 sackers.

18 A. My condolences, Commissioner.

19 Q. Every other record was broken.

20 Okay. You mentioned on --

21 Mr. Woodsmall, Mr. Downey talked to you about
22 line 4 of 29 and your assumption and the conclusion
23 you came to.

24 A. Yes.

25 Q. Okay. And then it was brought up,

1 the question about what the Stipulation & Agreement
2 that was presented by OPC, Noranda, the Consumers
3 Council, Missouri Retailers Association and
4 Missouri Industrial Energy Consumers, and -- at the
5 \$34 rate, and you came up with an amount that the
6 customer over a ten-year period would be better off
7 by \$550 million?

8 A. Without Noranda versus them on the
9 reduced rate, yes.

10 Q. Would Ameren be better off?

11 A. With Noranda?

12 Q. Well, wouldn't they get to -- they
13 could sell those off-system sales. You still have
14 a lot of other fixed costs going into the rate
15 base. So if Noranda wasn't on the system,
16 currently the way our FAC works, would Ameren be
17 better off?

18 A. No, I don't think Ameren would be
19 better off.

20 Q. Would they be worse off?

21 A. Possibly. Between rate cases and
22 before rates would be reset, if Noranda were to
23 leave the system for whatever reason, then we would
24 collect revenues for off-system sales for that same
25 energy that we would have otherwise sold to

1 Noranda, and if that price is less than what we
2 were selling to Noranda at, then while we would,
3 under Factor N, what has been generally described
4 as Factor N during the discussion today, collect
5 the revenue that we got from the off-system sales,
6 we would lose whatever margin difference there was
7 between what we were selling to Noranda for and
8 whatever that wholesale price is.

9 Q. Okay. Now, with the -- the
10 discussion was brought up about the 15-year
11 contract that Ameren has with Noranda, five years
12 and some odd time left on it?

13 A. Right.

14 Q. Does that five-year period make a
15 difference for Ameren regarding off-system sales?
16 Going past five years, would that change the way
17 that the contract was expired?

18 A. If everything else were the same?

19 Q. Everything else being --

20 A. The FAC was the same as it is today?
21 I don't think it makes a difference.

22 Q. So you're still thinking year six,
23 eight, nine, ten, those off-system sales, that they
24 would be able to collect without going through the
25 FAC?

1 A. Without going through the FAC? I
2 think the off-system sales would still be part of
3 net base energy cost and would flow through the FAC
4 to the extent there's any difference.

5 **Q. And if this Commission changed the**
6 **FAC and got rid of the N Factor, would Ameren be**
7 **worse off without Noranda?**

8 A. At the time that Noranda would depart
9 the system, yes.

10 **Q. If Noranda were not part of the**
11 **system and the N Factor was not part of the FAC, or**
12 **it's called the N Factor, then Ameren would be**
13 **worse off also?**

14 A. Until we were able to get rates
15 reset, yes.

16 COMMISSIONER W. KENNEY: Thank you.

17 JUDGE WOODRUFF: Commissioner Hall?

18 COMMISSIONER HALL: Yes.

19 QUESTIONS BY COMMISSIONER HALL:

20 **Q. Good afternoon.**

21 A. Good afternoon.

22 **Q. Turn to page 26 of your amended**
23 **rebuttal testimony. I think you calculate the**
24 **ANBEC and the MISO administrative charges as being**
25 **between 32.77 and 34.13?**

1 A. That's correct.

2 Q. Is that the same thing that prior
3 witnesses, Mr. Dauphinais and Mr. Brubaker,
4 referred to as the avoided costs or the incremental
5 cost of serving Noranda?

6 A. Yes, it is.

7 Q. Okay. So let me give you a
8 hypothetical. Let's say that Ameren was going to
9 serve Noranda at \$36 --

10 A. Okay.

11 Q. -- per megawatt hour. That would be
12 above the incremental cost of serving Noranda,
13 correct?

14 A. Under these --

15 Q. Yes.

16 A. -- conditions?

17 Q. Under your calculation, there would
18 be -- it would be above the incremental cost of
19 serving Noranda?

20 A. That's correct.

21 Q. Okay. So does that mean that at \$36
22 Noranda would be contributing to Ameren's fixed
23 costs?

24 A. I believe it does, yes.

25 Q. Okay. So does that also mean that --

1 **that Ameren and Ameren's other ratepayers would be**
2 **better off at a \$36 rate, discounted rate, \$36**
3 **discounted rate than they would be if Noranda left**
4 **the system?**

5 A. If we're accepting that this would be
6 the avoided cost during that entire time?

7 **Q. I'm accepting your testimony.**

8 A. Well, okay. Well, maybe I should
9 make it clear that these are based on a historical
10 analysis, because this was in response to a
11 historical analysis --

12 **Q. Right. So --**

13 A. -- that Mr. Dauphinais did. So it's
14 not really a prediction of what's going to happen
15 in the future.

16 **Q. I'm asking -- I'm saying that if we**
17 **take as a given that the avoided costs are between**
18 **32.77 and 34.13 and in our hypothetical we're**
19 **setting a rate at \$36, so the question is, is**
20 **Ameren and are Ameren's other ratepayers better off**
21 **at that \$36 rate than they would be if Noranda's**
22 **load left the system?**

23 A. I think -- if those conditions remain
24 in place, then I think Ameren Missouri's other
25 customers are better off under those conditions at

1 a \$36 rate than if Noranda were gone and the
2 incremental cost were these numbers, one of these
3 numbers.

4 **Q. All right. Thank you. And that \$36**
5 **amount, that \$36 hypothetical rate, does it matter**
6 **if that is a discounted rate set by this Commission**
7 **in this rate case or it is a negotiated wholesale**
8 **rate between Ameren and Noranda? Are your prior**
9 **answers all the same?**

10 A. I think if we're focusing just on the
11 term of the agreement, I think that would be
12 correct. There would be differences in
13 obligations, of course, under a wholesale versus a
14 retail, but immediate impact related to price and
15 who bears the difference in that price would be the
16 same.

17 **Q. Okay. Under the -- under the**
18 **wholesale rate proposal that Ameren has put forth,**
19 **the wholesale contract revenues would flow through**
20 **the FAC; is that correct?**

21 A. With the conditions that we've
22 included, yes.

23 **Q. With the condition that we've**
24 **included. What's that?**

25 A. Well, in my rebuttal testimony, I

1 indicated that we would be willing to enter this
2 kind of arrangement as long as those revenues were
3 determined to flow through the FAC.

4 **Q. Flow through the FAC?**

5 A. That's right.

6 **Q. Okay. So if they flow through the**
7 **FAC, is it true that that would reduce both the**
8 **ANEC and the NBEC equally?**

9 A. It would reduce the net base energy
10 cost --

11 **Q. Right.**

12 A. -- that Ameren would include in
13 revenue requirement in a rate case.

14 **Q. Correct.**

15 A. Reducing the ANEC, the ANEC is based
16 on what's going on in the market --

17 **Q. Right.**

18 A. -- so energy, capacity and any of the
19 load-related MISO charges.

20 **Q. If you held all those constant, so**
21 **what you put into rates and what happened in**
22 **reality were the same?**

23 A. ANEC would not change under those
24 circumstances.

25 **Q. Okay. So it would have no net effect**

1 on the FAC, because the FAC is the difference
2 between the two, so if it changes the two in the
3 same amount, it has no effect on the FAC?

4 A. Okay. So you're saying if -- if this
5 is an off-system sale as we suggested that it would
6 need to be and that reduces net base energy cost,
7 then the question is, how would that effect the FAC
8 rate?

9 Q. Well, first the ANEC and then -- and
10 then the FAC?

11 A. The ANEC I would expect would be the
12 same.

13 Q. Right.

14 A. What happens with the FAC is --

15 Q. I mean --

16 A. -- really a function of how the net
17 base -- or what level net base energy costs are set
18 at, so --

19 Q. Right. I mean, the FAC is 95 percent
20 of the difference between the two, and so if -- if
21 the contract revenues flow equally to the ANEC and
22 the NBEC, then it should have no effect on the FAC,
23 right, or am I missing something?

24 A. Well, yeah. I'm not following what
25 you mean by the contract revenues flowing to the

1 ANEC. The ANEC is purely a market creature and
2 doesn't have anything to do with what the wholesale
3 contract actually is.

4 **Q. It's the actual cost of energy. And**
5 **so if you've got these contract revenues flowing**
6 **through the FAC, then it would be affecting the**
7 **actual cost of energy, dollar for dollar, would it**
8 **not?**

9 A. Okay. I think I'm following you now.

10 **Q. Okay.**

11 A. So we're still talking with the
12 example of we're selling to Noranda under a
13 wholesale arrangement at \$36?

14 **Q. Correct.**

15 A. The ANEC is one of these two numbers,
16 pick one, say 34.13. And so the revenue from that
17 contract flows through at the \$36, and then the
18 cost, the avoided cost is 34.13. So, yeah,
19 whatever that -- whatever that difference is would
20 be 95 percent allocated to customers through the
21 FAC until it was incorporated then into base rates.

22 **Q. So I think -- I think after all that,**
23 **I think you agreed with me that it would not have a**
24 **net effect on the FAC?**

25 A. If what I just described is what

1 you're talking about, then yes.

2 Q. Okay. I guess the transcript will be
3 what the transcript is. Okay. And then so at the
4 next rate case, the revenues from the wholesale
5 contract would be included in the company's
6 revenues and would be part of the calculation of
7 setting rates, right?

8 A. Yes.

9 Q. Were you in the hearing room during
10 Mr. Dauphinais' testimony?

11 A. I was.

12 Q. Okay. I believe in response to a
13 question from Commissioner Rupp, he calculated the
14 cost -- or the cost to Ameren of Noranda leaving
15 the system, Noranda's load leaving the system, and
16 I believe he calculated it at \$56 million. Does
17 that sound familiar?

18 A. I remember the number, yes.

19 Q. Okay. And high -- and then in
20 response to a question from the Judge, he said that
21 that was assuming that the current FAC N Factor
22 stays in effect?

23 A. I believe I recall that as well.

24 Q. Okay. And that \$56 million -- and I
25 think you got into this a moment ago with

1 **Commissioner Kenney -- that \$56 million is the**
2 **difference between the amount of revenues that**
3 **Ameren receives from Noranda at Noranda's rate and**
4 **what it could receive in the market through**
5 **off-system sales; is that correct?**

6 A. I believe it's a margin difference,
7 not a revenue difference, but for -- I mean, yes,
8 that would be the difference between what we get
9 for margin by serving Noranda retail and selling
10 that same energy in the wholesale market.

11 **Q. Then in response to a question from**
12 **Commissioner Kenney, you said that Ameren would be**
13 **worse off in that situation if the N Factor concept**
14 **was removed from the FAC?**

15 A. Yes.

16 **Q. Correct?**

17 A. Yes.

18 **Q. Can you quantify that, how much worse**
19 **off?**

20 A. Well, I don't remember the whole
21 numbers that Mr. Dauphinais was dealing with when
22 he calculated his difference of \$56 million. But
23 let's just say it's \$156 million and \$100 million,
24 to make it easy on me, then that other \$100 million
25 of margin, say, then 95 percent of that would be

1 flowed to customers rather than kept by Ameren
2 Missouri.

3 Q. Well, I think what he did was he took
4 the current rate charged by Ameren to Noranda,
5 which the all-in rate was about \$45, and I think
6 what he did then was he subtracted 28, which is
7 what was the incremental cost to serve Noranda, but
8 it might also be the going rate in the wholesale
9 market. I'm not sure. And then he multiplied that
10 by Noranda's load to come out to the \$56 million.

11 A. 45 minus 28 times Noranda's load?

12 Q. Yeah. Is that a reasonable approach,
13 or did I --

14 A. Yeah, I'm not sure the numbers quite
15 work out that way, because they're about 4 million
16 megawatt hours. So if we can reverse engineer it,
17 it would be 56 million divided by 4 would be 14, a
18 \$14 difference, so --

19 Q. Slow down.

20 A. I'm sorry.

21 Q. 14 is what? It's the difference
22 between what and what?

23 A. Well, if the difference he calculated
24 is \$56 million and you assumed that their load is
25 4 million megawatt hours.

1 Q. Well, how did you get 56 in this?

2 A. That was the \$56 million difference
3 you mentioned that Mr. Dauphinais had.

4 Q. I -- that was the result of some
5 calculation, and I want to go back and see how he
6 got to the 56 and see if you agree, and then -- and
7 then see what happens when we remove the N Factor,
8 so --

9 A. Okay. I don't know how he got to the
10 56 exactly.

11 Q. What do you -- what do you believe
12 Ameren could sell Noranda's load for in off-system
13 sales at what -- what amount?

14 A. Well, let me preface this by saying
15 I'm not a -- I'm not a pricing expert. I'm not
16 involved in our trading function or anything, and
17 so those kinds of questions would be better left to
18 somebody who was in that function.

19 Q. Okay. Well, hang on one second.
20 Okay. Let's assume the same figures that
21 Mr. Dauphinais used, and take the difference
22 between the rate that Noranda is currently paying,
23 which I believe he said was 42, and the amount that
24 Ameren would be able to receive on such power going
25 through MISO at 28. So that comes to 14.

1 A. Okay.

2 Q. So then you take 14 and multiply that
3 by Noranda's load, and what do you get?

4 A. I think that's \$56 million, if you
5 round their load to 4 million megawatt hours.

6 Q. Okay. So now if you eliminate the
7 N Factor and the off-system sales flow through the
8 FAC, what is the impact on Ameren?

9 A. Then you would take the -- I may get
10 myself into trouble a little bit here, because I
11 think there are some -- I think it talks about
12 margin in the FAC with respect to what we're
13 calling the N Factor, but let's keep the math
14 simple and we can get an order of magnitude. But
15 you would take that \$28 that you're selling in the
16 market and --

17 Q. Take 95 percent of that?

18 A. -- 95 percent of that flows through
19 the FAC back to customers. So 28 times 4 million
20 megawatt hours would be \$112 million. 95 percent of
21 that would be, you know, a little over
22 \$100 million.

23 Q. Okay. And that impact would only be
24 felt by Ameren until the next rate case?

25 A. Until the rates were reset out of a

1 rate case.

2 Q. On page 37 of your amended rebuttal,
3 you describe the various things that would need to
4 occur in order for this wholesale rate agreement to
5 take effect?

6 A. That's right.

7 Q. One of them was at 37, lines 9 and
8 10. The Commission would have to approve the
9 agreement between Noranda and Ameren Missouri?

10 A. Yes.

11 Q. Is that your -- your legal conclusion
12 or is that what you have been told by your lawyers,
13 or what do you base that assertion on?

14 A. Well, I think I led into that entire
15 section by saying that I had been advised by
16 counsel that the following would need to take
17 place.

18 Q. Okay. Any other information other
19 than -- other than what your counsel told you to
20 come to that conclusion?

21 A. Not that I'm aware of.

22 COMMISSIONER HALL: All right. I
23 have no further questions.

24 THE WITNESS: Thank you.

25 JUDGE WOODRUFF: Commissioner Rupp?

1 COMMISSIONER RUPP: No.

2 JUDGE WOODRUFF: Any recross based on
3 those questions from the Bench, beginning with
4 Public Counsel?

5 RECROSS-EXAMINATION BY MR. ALLISON:

6 Q. Mr. Michels, I think I heard the
7 Chairman ask you a couple of questions about the
8 wholesale arrangement. You mentioned that there
9 would need to be an intermediary, you called it an
10 intermediary, acting between Ameren and Noranda in
11 that type of an arrangement; is that right?

12 A. That's right. For it to be a
13 wholesale agreement, yes.

14 Q. Do you happen to know, would that
15 intermediary need to be regulated by the Public
16 Service Commission in order to provide power to
17 Noranda?

18 A. I don't believe it would.

19 Q. And why would that be if you don't
20 know who the intermediary would be?

21 A. Why would it be that it's not
22 necessary for the intermediary to be regulated by
23 the Commission?

24 Q. Right. I think you previously
25 testified you didn't know who the intermediary

1 would be. Now you're saying you don't think that
2 intermediary has to be regulated. So who would the
3 intermediary be and why wouldn't they be regulated?

4 A. Well, we had -- we had the
5 discussions -- or Ameren Missouri and Noranda had
6 discussions about a wholesale agreement and were
7 not able to reach an agreement. I think it was
8 recognized that an intermediary would have to be
9 involved in that agreement, but since no agreement
10 was made, there wasn't a determination about who
11 the intermediary would be.

12 Q. Okay. Fair enough. Now, in the 2005
13 case that the Chairman referred to, Ameren made a
14 series of arguments in support of bringing Noranda
15 onto Ameren's system as a retail customer. And I'm
16 going to quote you one of those arguments and then
17 I'm going to ask you what's changed. Okay? And
18 here it is: Noranda -- and I'm quoting from
19 Ameren's brief in EA-2005-0180, I believe it was
20 authored by Mr. Lowery. Noranda unquestionably
21 needs AmerenUE's reliable cost-based regulated
22 service. Noranda prefers AmerenUE's reliable
23 cost-based regulated service. And Noranda's
24 preference is indeed reflected in this state's
25 public policy and customer preference has been

1 relied upon by this Commission in the past in any
2 event. And finally, considerations relating to
3 economic development and prosperity of the region
4 and the state show the public interest is promoted
5 by granting the CCN in that case.

6 I don't expect you to know whether I
7 read that accurately. But my question to you, why
8 now a wholesale agreement?

9 Q. Well, yeah. Let me explain why that
10 came about. Our preference really, our preferred
11 option is for Noranda to remain a retail customer
12 of Ameren Missouri at cost of service based rates.
13 And in spite of our view as to whether Noranda is
14 in need of any kind of lower rate, which you'll
15 hear from other witnesses, we don't believe that
16 they are, but in spite of that, we saw the
17 Commission's order in the complaint case, the 0224
18 case, which indicated -- which really encouraged
19 the parties to try and come to some sort of
20 resolution.

21 So it was in that spirit that we
22 proposed this wholesale arrangement which we
23 believed could give Noranda a lower rate without --
24 without running afoul of any of the regulatory
25 issues that we saw with providing a deeply

1 discounted retail rate.

2 Q. And so, again, your quote is it's
3 your preference that Noranda remain a retail
4 cost-based customer, paraphrase. I won't say that.
5 You just said it was Ameren's preference that
6 Noranda remain a retail cost-based customer; is
7 that right?

8 A. Yes. There's been --

9 Q. That's -- that's what you said,
10 correct?

11 A. Yeah. That's correct.

12 Q. Okay. Fair enough. There was a long
13 discussion about the public interest and bringing
14 Noranda into Ameren's system. It was a CCN case,
15 and as you may be aware, one of the relevant
16 factors in concluding the argument in that case,
17 again, Ameren made the following statement: Every
18 relevant consideration relating to the public
19 interest mitigates strongly in favor of granting
20 the relief requested by the company in its
21 application. And the relief was to bring Noranda
22 as a retail customer and to expand the CCN. Relief
23 that will give Noranda what it needs, a long-term,
24 cost-based, reliable supply of electricity from a
25 Missouri company with a vested interest in this

1 state, with generating assets in the region and
2 with a capability of meeting Noranda's needs.

3 How is your proposal to cancel or
4 suspend the CCN in this case consistent with the
5 argument that you made to bring Noranda into the
6 system?

7 A. Well, as I just explained, our
8 preference is that they remain a retail customer,
9 which would be entirely consistent with that. The
10 reason we brought up the wholesale proposal that I
11 included in my testimony was because we saw
12 encouragement from the Commission that we try and
13 work out an arrangement and, in our view, at that
14 time that was the only kind of arrangement that we
15 thought would pass muster from a regulatory
16 standpoint.

17 Q. An arrangement that ultimately bore
18 no rate risk for Ameren shareholders, isn't that
19 right, and all rate risk for all the other
20 customers in Ameren's service territory?

21 A. As we were discussing earlier --

22 Q. No. That's correct, I think you --
23 you mentioned that's correct; isn't that right?

24 A. That's what I mean, when we were
25 discussing that earlier. I wouldn't have any

1 reason to say anything different.

2 MR. ALLISON: Fair enough. That's
3 all I have. Thank you.

4 JUDGE WOODRUFF: For Staff?

5 CROSS-EXAMINATION BY MR. THOMPSON:

6 Q. With respect to the questions that
7 Commissioner Hall was asking you about selling
8 excess energy, this is if Noranda went off the
9 system, in fact, isn't it true that Ameren Missouri
10 sells all of its generated energy to MISO?

11 A. That's exactly right. So we wouldn't
12 have to find another buyer for this energy. We
13 sell that into the MISO market. Whenever the
14 generation is in the money, it runs and sells on
15 the MISO market.

16 Q. And the effect would be you would buy
17 less back to serve your native load, which would be
18 smaller?

19 A. That's correct.

20 Q. And that's why we speak of avoided
21 costs?

22 A. That's correct.

23 Q. And are there costs associated with
24 buying power from MISO that are not associated with
25 selling power to MISO?

1 A. Certainly. There are load-based
2 charges through the MISO tariff that we incur.

3 **Q. The MISO transmission charges, right?**

4 A. Yes, mainly.

5 **Q. Okay. So when we speak of off-system**
6 **sales, is it true that off-system sales are the net**
7 **between what you sell to MISO and what you buy**
8 **back?**

9 A. That's the way it's accounted for on
10 our accounting books.

11 MR. THOMPSON: Thank you. No further
12 questions.

13 JUDGE WOODRUFF: MECG?

14 MR. WOODSMALL: No questions.

15 JUDGE WOODRUFF: MIEC?

16 MR. DOWNEY: Just a few, Judge.

17 RECROSS-EXAMINATION BY MR. DOWNEY:

18 **Q. Mr. Michels, as I understand your**
19 **answers to Commissioner Hall, if the price charged**
20 **to Noranda and the term of that price were the same**
21 **for both a retail deal or a wholesale deal, the**
22 **impact to ratepayers would be the same; isn't that**
23 **what you said?**

24 A. Notwithstanding long-term differences
25 related to the difference in obligations between a

1 wholesale agreement and a retail -- and retail
2 service. If the price is the same and the load is
3 the same, then the impact on other customers from a
4 bill standpoint is the same.

5 Q. All right. And I also understood you
6 to say that it is Ameren Missouri's preference that
7 Noranda remain a retail customer?

8 A. That's correct.

9 MR. DOWNEY: No further questions.

10 JUDGE WOODRUFF: Redirect?

11 REDIRECT EXAMINATION BY MR. MITTEN:

12 Q. Mr. Michels, Mr. Allison asked you a
13 few questions a few minutes ago regarding the brief
14 that Ameren filed in the CCN case in which Noranda
15 became a retail customer of Ameren. Do you recall
16 that?

17 A. I do.

18 Q. And as I recall, since I don't have
19 the brief in front of me, that brief indicated that
20 Ameren believed it was in the public interest for
21 Noranda to become a retail customer of Ameren
22 Missouri. Do you recall that?

23 A. I do.

24 Q. Do you know if at the time Noranda
25 was a cost-based retail customer of Ameren

1 **Missouri?**

2 A. At what time?

3 Q. At the time that the CCN was granted,
4 was that the intention, that Noranda would be a
5 cost-based retail customer?

6 A. Yes, it was.

7 Q. Do you think the estimation of
8 whether or not having Noranda as a customer would
9 be in the public interest would change if Noranda
10 received a rate that was significantly below its
11 cost of service?

12 A. It could.

13 Q. Earlier today Mr. Allison also asked
14 you some questions about your proposal that the
15 Commission consider a wholesale contract as an
16 alternative to the special rate proposal that
17 Noranda has made in this case. Do you recall that?

18 A. I do.

19 Q. And I think he characterized that
20 proposal as indicating a willingness by Ameren
21 Missouri to give Noranda a haircut. Do you recall
22 that question?

23 A. I do.

24 Q. Is a wholesale rate a reduced rate?

25 A. A wholesale rate is simply a

1 market --

2 **Q. Let me rephrase that. Is a wholesale**
3 **rate a discounted rate?**

4 A. No. A wholesale rate by definition
5 would be a market-based rate.

6 **Q. And is it a market-based rate that**
7 **Ameren was proposing as part of that wholesale**
8 **proposal that you included in your testimony?**

9 A. Yes, it was.

10 **Q. And so the record is clear, why did**
11 **you include that wholesale proposal in your**
12 **rebuttal testimony in this case?**

13 A. As I've explained, we included that
14 wholesale proposal because we saw encouragement
15 from the Commission in its order in last summer's
16 complaint case, the 0224 case, for parties to try
17 and find an avenue by which a reduced price could
18 be offered to Noranda, and we believe that a
19 wholesale arrangement was an arrangement that could
20 be entered into without raising a number of the
21 issues that I and other of our witnesses have
22 indicated created potential regulatory legal
23 problems.

24 **Q. Could you please turn to page 26 of**
25 **your amended rebuttal testimony in this case.**

1 Commissioner Hall asked you about some figures
2 that -- here in the answer that begins on line 6
3 and ends on line 12, the \$32.77 per megawatt hour
4 and \$34.13 per megawatt hour. Do you recall those
5 questions?

6 A. Yes, I do.

7 Q. What do those numbers represent,
8 Mr. Michels?

9 A. These numbers are basically
10 historical power prices, and these are based on a
11 seven-year history. The first number includes ARR
12 revenue and the market price reduction that
13 Mr. Dauphinais applied based on the exclusion of
14 Noranda's load from MISO, saying that prices would
15 drop 1.5 percent. And the 34.13 includes neither
16 of ARR revenue or his downward price adjustment.

17 Q. Do you believe it's appropriate to
18 try and predict what power prices are going to be
19 for the future based upon a seven-year historical
20 average?

21 A. No, I don't, and I said so in my
22 testimony. History is not a good indicator for
23 judging the reasonableness of a long-term contract
24 proposal. In this case the original proposal was
25 for seven years, and so I simply included this as

1 an example by which you could show that including a
2 longer term of history would show a different level
3 of average cost than if you used the much shorter
4 three-year history that Mr. Dauphinais used.

5 **Q. Do you believe it's appropriate to**
6 **use three years of history to determine what power**
7 **prices are going to be for the future?**

8 A. No, I don't. Nor would it be
9 appropriate to use, you know, a -- say we went back
10 to early last year when we had the polar vortex.
11 We had average prices during the first four months
12 that were in the neighborhood of \$39 a megawatt
13 hour, which is a good deal higher than the number
14 of -- some of the numbers that we're talking about
15 here for avoided costs. And the average price last
16 year, this is all at the Ameren Missouri/UE pricing
17 node, were over \$33 a megawatt hour.

18 So using the history isn't a good
19 indication. It's a good indication of what kind of
20 volatility or variability there might be in the
21 market, and it's that kind of variability that
22 really leads to the risk of allowing Noranda to
23 have a fixed price for a long term in the future.

24 **Q. Did you do any projections to come up**
25 **with a likely power rate for the future that the**

1 Commission should use to determine whether or not
2 Noranda's special rate proposal in this case is
3 reasonable?

4 A. Yes, we did, and it was those prices
5 to which Mr. Dauphinais had applied some
6 adjustments to come up with his forecast that he
7 used for comparison. We, for our integrated
8 resource plan, typically do some pricing scenarios.
9 And what I mean by that is we construct bottom up
10 scenarios based on what the drivers of power prices
11 are going to be in the future, and gas prices are a
12 big component of that, what future load growth is
13 going to be, and then also what impact there might
14 be to supply, which are driven heavily by not only
15 those other two items but also environmental
16 regulations.

17 And so we met with experts in each of
18 those several areas and came up with assumptions
19 for the future and actually a range of assumptions
20 that we then combined into 15 scenarios that we
21 used to represent what we think the long-term
22 trends are going to be for prices based on those
23 fundamental drivers.

24 So when we look at those, we are
25 looking at, like I said, fundamental drivers,

1 rather than looking at potentially short-term
2 permutations in the power markets, of which the
3 polar vortex would be an example.

4 So those were the power prices that
5 we used in our integrated resource plan, those were
6 the power prices that we used to judge the cost
7 effectiveness of the energy efficiency programs,
8 and those are the prices that I used to perform my
9 analysis of Noranda's long-term price proposal.

10 **Q. You mentioned some adjustments to**
11 **your estimate of future power price to which**
12 **Mr. Dauphinais had made some adjustments. Do you**
13 **remember that?**

14 A. I do.

15 **Q. Could you go through that, what your**
16 **original estimate was and the adjustments that**
17 **Mr. Dauphinais proposed?**

18 A. Sure. My original estimate, I
19 believe, was \$42.73 a megawatt hour for energy
20 capacity and then MISO load-related charges for the
21 seven year-period for which Noranda proposed their
22 fixed rate.

23 Mr. Dauphinais created a number of
24 adjustments and brought that down to, I believe it
25 was \$33.89 -- or \$33.84. And that was a little bit

1 higher than the seven-year average of the price
2 proposal which was \$33.49. So even after making
3 his adjustments, it was still a bit higher than the
4 average price that they were proposing for the
5 seven years.

6 One of the adjustments he made was to
7 assume that power prices in MISO would drop by
8 1.5 percent if Noranda's smelter load were to leave
9 MISO by whatever method. In that case, he assumed
10 the smelter shutdown. So that load was no longer
11 in MISO. And then he did a regression analysis
12 that said that those prices will go down
13 1.5 percent.

14 **Q. Do you believe that the 1.5 percent**
15 **reduction that Mr. Dauphinais calculated is**
16 **reliable?**

17 A. I don't think it is. And I spell
18 that out in my surrebuttal testimony, a -- an
19 approach that would be much preferable to what he
20 did. I don't think what he did with a regression
21 analysis really gives a true picture of the
22 difference between power prices in MISO with and
23 without Noranda, because he used historical data,
24 and the only historical data he had included
25 Noranda. So there is no historical data that does

1 not include Noranda.

2 But what I proposed was doing a model
3 simulation, and I specifically mentioned ProMod as
4 an example of the kind of model that could be used
5 to do that analysis because it includes
6 transmission constraints. So it takes into account
7 things like congestion and losses and things beyond
8 just the energy price.

9 We didn't perform the study with
10 ProMod, but we did perform a study that's included
11 in testimony. But the price reduction that we came
12 up with in our Midas model was .15 percent
13 reduction, rather than 1.5 percent reduction, so
14 about a 10th of the impact that he indicated.
15 That's miniscule. So I would simply remove that
16 adjustment that he made to our power price, so that
17 would take him from 33.84 up to \$34.89.

18 **Q. Were there any other adjustments that**
19 **Mr. Dauphinais proposed?**

20 A. Yes. He also included an adjustment
21 for a risk premium that was calculated by
22 Mr. Phillips in his surrebuttal testimony. That
23 adjustment was 85 cents, I believe, and that
24 adjustment was intended to remove the risk premium
25 from the historical forward prices that

1 Mr. Phillips used in his analysis.

2 **Q. Is that an appropriate adjustment?**

3 A. I don't think it is. As Mr. Phillips
4 explained in his surrebuttal testimony, that risk
5 premium is really representative of what a seller
6 would want to get for their power, an additional
7 amount a seller would want to get for their power
8 to lock in a contract that they -- for that kind a
9 term.

10 And because Noranda is asking for a
11 seven-year fixed-price term notwithstanding future
12 adjustments by the Commission, which I think it
13 would be very difficult to do, I don't think it's
14 appropriate to include that risk premium
15 adjustment. So that would add another 85 cents to
16 Mr. Dauphinais' number and get it up to \$35.74.

17 **Q. Any other adjustments that**
18 **Mr. Dauphinais proposed that you don't think are**
19 **appropriate?**

20 A. Yes. The last and the largest
21 adjustment is the capacity price assumptions that
22 we used in our integrated resource plan, and as I
23 explained in some -- in response to some earlier
24 questioning, that's based on what's going on in the
25 visible market today and an expectation that at

1 some point MISO could be short.

2 And when I say MISO, it also kind of
3 depends on which zone you're looking at as to
4 whether or not they would be short. And so
5 Mr. Dauphinais' criticism was that because zone 5,
6 which includes Ameren Missouri's entire retail
7 service territory, was export constrained,
8 according to the MISO LLE study, that it was
9 unlikely that we would be able to get prices for
10 our capacity that would approach that level. And
11 so he made an adjustment to the growth in those
12 capacity prices to reflect that.

13 What he failed to account for was
14 that because Ameren Missouri is short capacity in
15 zone 5 where its load is, it has to import capacity
16 from its generation that's in Illinois, which is in
17 Zone 4. And as we know, Illinois is a restructured
18 state. It includes generators that are actively
19 seeking a way to increase the power price or the
20 capacity prices that they're getting for their
21 generation.

22 Some of those generators already have
23 the ability to bid into the PJM capacity market,
24 and most of the generators are looking for any
25 other way they can increase capacity prices that

1 they get for their generation, including the
2 potential to take all of Illinois into PJM and
3 allow them to bid in that market.

4 So that pressure as well as the
5 pressure on the coal generation in the state, and
6 there's over 10,000 megawatts of coal generation in
7 MISO, means that there could be much more
8 significant upward pressure on capacity prices, and
9 they may go beyond for several years what we've
10 estimated them to be out in the -- out in the
11 future.

12 So I would -- I would also remove
13 that adjustment, which was \$3.84, and that would
14 bring the power price up to \$39.58, I believe.

15 **Q. And \$39.58 is greater than Noranda**
16 **proposed in its original special rate proposal; is**
17 **that correct?**

18 A. They originally proposed a seven-year
19 rate that averaged \$33.49. So it would be -- it
20 would be about \$6 higher.

21 **Q. And how does \$39.58 compare to the**
22 **rate that was proposed in the stipulation that was**
23 **offered earlier this week?**

24 A. Well, we'd have to look at a
25 different rate, because that \$39 is for seven

1 years. Our estimate for ten years is \$49.85, so
2 almost \$50 a megawatt hour, and their price
3 proposal and I -- it gets a little tricky because
4 they said they would participate in 50 percent of
5 any rate increases, but based on our estimates of
6 future rate increases using our IRP analysis, we
7 estimate the their average rate over that ten years
8 would be about \$37 a megawatt hour.

9 MR. MITTEN: I don't think I have any
10 further questions. Thank you, your Honor.

11 JUDGE WOODRUFF: You can step down.

12 (Witness excused.)

13 JUDGE WOODRUFF: Next witness then
14 will be from Staff, Mr. Scheperle, I believe.

15 MR. THOMPSON: Thank you, Judge.

16 JUDGE WOODRUFF: Welcome back,
17 Mr. Scheperle. You testified earlier, so you're
18 still under oath.

19 THE WITNESS: Yes.

20 MICHAEL SCHEPERLE testified as follows:

21 DIRECT EXAMINATION BY MR. THOMPSON:

22 Q. Good afternoon, Mr. Scheperle.

23 A. Good afternoon.

24 Q. This is the last time you're
25 scheduled to testify in this proceeding; is that

1 right?

2 A. That is correct.

3 Q. And you prepared or caused to be
4 prepared direct, rebuttal and surrebuttal
5 testimony?

6 A. Yes.

7 Q. And that has been previously
8 identified to the tribunal?

9 A. Yes.

10 MR. THOMPSON: I would move for the
11 admission of Mr. Scheperle's testimony at this
12 time.

13 JUDGE WOODRUFF: All right. It was
14 232 his direct, 233 rebuttal and 234 his
15 surrebuttal. Any objections to its receipt?

16 (No response.)

17 JUDGE WOODRUFF: Hearing none, it
18 will be received.

19 (STAFF EXHIBIT NOS. 232, 233 AND 234
20 WERE RECEIVED INTO EVIDENCE.)

21 BY MR. THOMPSON:

22 Q. And you also sponsored a Staff Rate
23 Design Cost of Service Report; is that correct?

24 A. That is correct.

25 Q. And now, I understand Ms. Kliethermes

1 and Mr. Barnes are both scheduled to testify after
2 you?

3 A. That is correct.

4 Q. And did they contribute to that
5 document?

6 A. I know Ms. Kliethermes did.

7 Q. Okay. Well, I won't offer that then
8 at this time. Was there anything else that you
9 sponsored?

10 A. No.

11 MR. THOMPSON: Okay. At this time I
12 will turn Mr. Scheperle over for cross-examination.

13 JUDGE WOODRUFF: For cross, let's
14 begin with Ameren.

15 MR. MITTEN: No questions.

16 JUDGE WOODSMALL: MECG?

17 MR. WOODSMALL: No questions.

18 JUDGE WOODRUFF: Public Counsel?

19 MR. ALLISON: No questions.

20 JUDGE WOODRUFF: MIEC?

21 MR. DOWNEY: No questions.

22 JUDGE WOODRUFF: Come up for
23 questions from the Bench. Mr. Chairman?

24 CHAIRMAN KENNEY: Sorry about that.

25 Mr. Scheperle, thanks for being here. I don't have

1 any questions.

2 THE WITNESS: Thank you.

3 JUDGE WOODRUFF: Commissioner Kenney?

4 COMMISSIONER W. KENNEY: No, thank
5 you.

6 COMMISSIONER HALL: No questions.

7 Thank you.

8 JUDGE WOODRUFF: Commissioner Rupp?

9 COMMISSIONER RUPP: Thank you. No
10 questions.

11 JUDGE WOODRUFF: No questions, so no
12 need for recross or redirect. You can step down.

13 (Witness excused.)

14 JUDGE WOODRUFF: Ms. Kliethermes
15 then. I believe you also testified earlier.

16 THE WITNESS: I have.

17 JUDGE WOODRUFF: So you are also
18 still under oath.

19 SARAH KLIETHERMES testified as follows:

20 DIRECT EXAMINATION BY MR. THOMPSON:

21 Q. Good afternoon, Ms. Kliethermes.

22 A. Good afternoon.

23 Q. Now, Ms. Kliethermes, you also
24 prepared testimony in this case; is that correct?

25 A. I have.

1 **Q. Rebuttal testimony and surrebuttal**
2 **testimony?**

3 A. Yes.

4 **Q. And both of those have been**
5 **previously identified?**

6 A. Yes.

7 **Q. I think your surrebuttal is in NP and**
8 **HC versions?**

9 A. That sounds correct.

10 **Q. Do you have any changes or**
11 **corrections to these that you have not previously**
12 **identified?**

13 A. Actually, I did receive a contact
14 from both Noranda and Ameren Missouri alerting
15 me to an error on page 31 of my surrebuttal. In
16 line 10 and lines 21 and 22, I referred to a rate
17 of 32.50 per megawatt hour, and both of those
18 should read at its current rate.

19 **Q. Both of those should read what?**

20 A. At its current rate -- or I'm
21 sorry -- its current rate.

22 **Q. Okay. Do you have any other**
23 **corrections or changes you need to make?**

24 A. The others have been previously
25 indicated.

1 **Q. Okay. And you've already testified**
2 **that these were true and correct to the best of**
3 **your knowledge and belief?**

4 A. At the time, yes.

5 **Q. And is this the last time so far as**
6 **you know that you're scheduled to testify in this**
7 **matter?**

8 A. So far as I know, yes.

9 MR. THOMPSON: Okay. I would move
10 for admission of Ms. Kliethermes' rebuttal and
11 surrebuttal testimony NP and HC at this time.

12 JUDGE WOODRUFF: 221 and surrebuttal
13 is 222. Any objections to their receipt?

14 (No response.)

15 JUDGE WOODRUFF: Hearing none, they
16 will be received.

17 (STAFF EXHIBIT NOS. 221 AND 222 NP
18 AND HC WERE RECEIVED INTO EVIDENCE.)

19 BY MR. THOMPSON:

20 **Q. And, Ms. Kliethermes, I understand**
21 **you also contributed to the Staff Rate Design Class**
22 **Cost of Service Report?**

23 A. Yes, and the Cost of Service Report.

24 **Q. And the Cost of Service Report.**
25 **Okay. Now, I've been told, and you can agree or**

1 disagree with me, that you are the last contributor
2 to the Rate Design Report who will testify in this
3 matter?

4 A. Subject to check, I believe
5 Mr. Barnes did have a paragraph or two in the Rate
6 Design Report.

7 MR. THOMPSON: Okay. Well, then we
8 will defer offering the Rate Design Report until
9 Mr. Barnes testifies. At that point I will turn
10 Ms. Kliethermes over for cross-examination.

11 JUDGE WOODRUFF: Okay. Beginning
12 with Ameren?

13 MR. MITTEN: No questions.

14 JUDGE WOODRUFF: MECG?

15 MR. WOODSMALL: No questions.

16 JUDGE WOODRUFF: Public Counsel?

17 MR. ALLISON: No questions.

18 JUDGE WOODRUFF: MIEC?

19 MR. DOWNEY: Just a few.

20 CROSS-EXAMINATION BY MR. DOWNEY:

21 Q. Good afternoon.

22 A. Good afternoon.

23 Q. Am I correct in that it's your
24 opinion that the lowest reasonable incremental cost
25 to serve Noranda at its meter based on Staff's fuel

1 **run ending December of 2014 is \$28.29 per megawatt**
2 **hour?**

3 A. I don't believe I would agree with
4 the characterization in your question. I believe I
5 found that would be the rate consistent with the
6 market prices used in Staff's fuel run. I'm not
7 sure that I said that I would view that as a
8 reasonable rate.

9 Q. I think take a look at Appendix 1-6
10 of your surrebuttal.

11 A. I'm there.

12 Q. And there are not line numbers, but
13 towards the bottom of the page, do you not say the
14 lowest reasonable calculation of that amount is
15 \$118,777,387 annually or approximately \$28.29 per
16 megawatt hour at Noranda's meter?

17 A. I think that sentence out of context
18 does read that way. In the context of that
19 paragraph, that certainly was not my intent.

20 Q. Tell us your intent.

21 A. My intent was to reflect the
22 valuations within this rate case that have been
23 offered for market prices of energy. I did, I
24 hope, make sufficiently clear in my surrebuttal
25 that I was not saying that the market prices used

1 in the fuel run, which are at gen node level, would
2 be appropriate for finding the cost of serving
3 load. Rather, that is used in the context of
4 finding how off-system sales margin revenues need
5 to be adjusted.

6 MR. DOWNEY: No further questions.

7 JUDGE WOODRUFF: Come up for
8 questions from the Bench. Mr. Chairman?

9 CHAIRMAN KENNEY: Ms. Kliethermes,
10 thank you. No questions.

11 JUDGE WOODRUFF: Commissioner Hall?

12 QUESTIONS BY COMMISSIONER HALL:

13 Q. Good afternoon.

14 A. Good afternoon.

15 Q. **Page 27 of your surrebuttal**
16 **testimony, lines 16 and 17, I take that to mean**
17 **that with regard to Ameren's wholesale rate**
18 **proposal, you take issue with running the gains and**
19 **losses on such a contract through the FAC?**

20 A. Again, this is -- well, I guess not
21 again. This is expanded upon in the appendix in my
22 surrebuttal. If there's a proper jurisdictional
23 allocation, I believe Staff's opinion would be that
24 you could run it through the FAC.

25 But part of the difficulty here is

1 that we didn't know what the terms of the contract
2 would be, whether they would be reasonable. And I
3 apologize for not being able to give you a more
4 direct answer to this, but it would depend on the
5 contract.

6 **Q. Let's start with, what is a proper**
7 **jurisdictional allocation?**

8 A. Sure.

9 **Q. I mean, first tell me what the number**
10 **is, tell me what it means.**

11 A. That's what -- I'm trying to think of
12 the best place to start. We haven't done this in a
13 while with Ameren because they've not been terribly
14 active in firm wholesale contract sales. The
15 easiest way to explain this is if you think of a
16 multi-jurisdictional utility. Let's say Ameren was
17 still in Illinois. What Staff would do from the
18 outset of the case is it would find an appropriate
19 measure to split every aspect of the revenue
20 requirement between Missouri and Illinois. Does
21 that make sense?

22 **Q. Yes.**

23 A. What would happen with the
24 jurisdictional sales, wholesale jurisdiction is
25 exactly the same thing. We would from the

1 beginning of the case, you know, when we look at
2 capacity, part of that cost would be assigned to
3 wholesale jurisdiction. When we look at energy,
4 part of that would be assigned to wholesale
5 jurisdiction. When we look at pens and papers for
6 the office, part of that would be assigned to
7 wholesale jurisdiction.

8 **Q. So if there was a proper**
9 **jurisdictional allocation, then you would be fine**
10 **with flowing the wholesale contract through the**
11 **FAC?**

12 A. A reasonable contract on reasonable
13 terms, yes.

14 **Q. Do you believe that the Commission**
15 **has the legal authority to require that it approve**
16 **any wholesale contract between Ameren and Noranda?**
17 **I know you're not an attorney, but --**

18 A. Actually, I am.

19 **Q. I'm sorry. So one of those people.**

20 A. Not on this case.

21 **Q. You have two hats. Great. If you**
22 **can answer the question, please do.**

23 A. And to answer from a nonlegal
24 perspective, because I -- well, I hope not from an
25 illegal perspective, given my role in this case.

1 I'm not sure -- there's two issues that come to
2 mind. One is I don't know if the Staff or the
3 Commission can tell Ameren that they can't do a
4 wholesale contract. The question -- with any
5 party. The question would be whether or not it has
6 an impact on Missouri rates.

7 So I -- subject to contradiction from
8 counsel, I believe that's Staff's understanding.

9 **Q. So your understanding would be the**
10 **Commission would have the authority to require that**
11 **it approve the contract in that it has the**
12 **obligation to make sure that it is fair to other**
13 **customers?**

14 A. Well, that's where this gets weird,
15 for lack of a better word. To my knowledge, when
16 Ameren -- let's say Ameren enters a wholesale
17 contract with the City of Jackson, Missouri, and I
18 have no idea if they even have a municipal utility,
19 but it would, in my experience, not be a matter for
20 the Commission to approve that.

21 It would be a matter that when FAC
22 adjustment time rolled around, Staff would look at
23 it and would see whether or not that contract was
24 prudent. And if the contract was imprudent, I
25 think it's likely that Staff would recommend

1 disallowances of the amount that was imprudent in
2 that contract.

3 To me, that is very different from
4 approval, and it is certainly different to me from
5 preapproval, which is what I understand Ameren
6 Missouri to have requested here; in other words,
7 for the Commission to make a determination prior to
8 an FAC prudence review that the contract was
9 prudent.

10 **Q. You've been in the hearing room when**
11 **there was -- when there's been discussion of the**
12 **potential risk to both Ameren and Noranda on this**
13 **wholesale rate proposal should there be a**
14 **determination that it was inappropriate to flow the**
15 **wholesale contract through the FAC?**

16 A. Yes.

17 **Q. What is your understanding of that**
18 **risk?**

19 A. Again, from a nonlegal perspective, I
20 don't know that that risk is different for either
21 party, whether the contract is treated as wholesale
22 or resale, as it has been outlined by the parties
23 so far. Granted you could have a very -- it would
24 matter the terms of the wholesale contract if there
25 were one, how that risk is assigned, but from what

1 I've heard so far, I don't know that there would be
2 any difference.

3 **Q. What would that risk be?**

4 A. That the price is wrong. And in both
5 instances I believe that price passes to Missouri's
6 captive ratepayers.

7 **Q. So the price being wrong meaning it's**
8 **a price below that which is fair to the other**
9 **ratepayers?**

10 A. In the instance of it being a risk of
11 harm, yes. There is also the risk that it's too
12 high. Granted the numbers we're hearing, I don't
13 think that's a likely outcome. But just the risk
14 that the price being wrong does technically cut
15 both ways.

16 **Q. Do you think that that risk could be**
17 **mitigated or eliminated by language in a tariff or**
18 **order issued by the Commission?**

19 A. Absolutely. I outlined a proposal
20 for this in my, I believe, rebuttal.

21 **Q. Does it mitigate it or eliminate it**
22 **from your perspective?**

23 A. If it doesn't eliminate it, it comes
24 pretty darn close. It would be a dollar for dollar
25 adjustment to be paid by Noranda relative to what

1 the market price with transmission and supportive
2 services would be.

3 **Q. Are there -- would there be any other**
4 **ways to mitigate the risk to Noranda and Ameren and**
5 **other ratepayers?**

6 A. Setting cost of service based rates.
7 I'm not trying to be glib.

8 **Q. Okay. Let's -- now, I understand**
9 **Staff's position to be that we should not deviate**
10 **from cost of service ratemaking when setting an LTS**
11 **rate for Noranda?**

12 A. If I could hedge that a bit.

13 **Q. Come on. You're going to qualify**
14 **that?**

15 A. I am.

16 **Q. Okay.**

17 A. Because Staff has not said -- well,
18 has not said because we don't know whether or not
19 Noranda would really close down. We don't know.
20 That is a policy question for your determination in
21 this case. If you believe that without rate relief
22 Noranda will close down, then Staff says, yes,
23 something's better than nothing. Mitigate it as
24 best as you can.

25 If you do not believe Noranda would

1 close down, then we recognize they're currently
2 paying below cost of service and should move closer
3 to it.

4 **Q. And the key calculation for the**
5 **Commission to take into account when setting a rate**
6 **for Noranda, if the Commission were to believe that**
7 **Noranda's financial future was precarious and the**
8 **viability of the smelter would be not likely absent**
9 **rate relief, would be the incremental cost to serve**
10 **Noranda?**

11 A. Plus some margin. If there's no
12 margin, then there is no something to be better
13 than nothing.

14 **Q. Okay. So thank you for answering**
15 **that very long-winded question. So what is your**
16 **calculation for the incremental cost to serve**
17 **Noranda?**

18 A. I actually did not do a full new
19 calculation in this case, because in my opinion
20 nothing really significant has changed with that
21 calculation that the Commission found this summer,
22 and I believe that's 31.50 at Noranda's meter.

23 **Q. So from your perspective, any rate**
24 **above 31.50 would be better for Ameren and Ameren's**
25 **customers compared to Noranda leaving the system?**

1 A. If I can qualify what I think you're
2 saying. If it is a rate set in this case either
3 index to market or subject to FAC with no intent or
4 language or cloud of binding what a future
5 commission could do with that rate, then yes.

6 COMMISSIONER HALL: I have no further
7 questions. Thank you.

8 JUDGE WOODRUFF: Commissioner Rupp?

9 QUESTIONS BY COMMISSIONER RUPP:

10 **Q. Welcome.**

11 A. Hello.

12 **Q. I'd like to back up to ratemaking**
13 **101. I think you're very well versed in this and**
14 **you can help me understand this.**

15 A. I sure hope so.

16 **Q. I'm going to be extremely simplified.**
17 **Under current rates, does Noranda pay for their**
18 **cost of electricity the same that I pay at my**
19 **house?**

20 A. No.

21 **Q. Why is that?**

22 A. Several reasons.

23 **Q. The real generic dumbbed-down reason.**

24 A. The real generic is they are in a
25 different class with different characteristics.

1 Those characteristics that would be different at a
2 high level are that they don't use the distribution
3 system, so they don't have to pay for that. They
4 have a stable load factor, which means that they
5 don't cause -- all energy that Noranda purchases
6 through MISO has the same price in a given hour,
7 but because of Noranda's stable load factor, even
8 though it purchases an average of 480 megawatts of
9 expensive electricity every day, it also purchases
10 an average of 480 megawatts of cheap electricity
11 every day, and the way that those two wash is
12 different than how those same factors would wash
13 for you as a residential customer. That's the
14 biggest part of the differences.

15 **Q. So could you classify in generic**
16 **terms the rate that they have versus a residential**
17 **person as a bulk discount? They purchase more,**
18 **it's more consistent, they're larger players, so**
19 **therefore they get --**

20 **A.** There are aspects of that that would
21 come into play, yeah.

22 **Q. Okay. Very good. So under the**
23 **current rate structure right now, with those**
24 **discounts taking effect, everything that you said,**
25 **being a large player, they use a large amount of**

1 **electricity, the stable load, are the rates they're**
2 **paying now consistent with -- a discount for all of**
3 **those factors?**

4 A. Today compared to the cost as those
5 are calculated in this rate case, no, they are not.
6 They are below cost. Staff recommends an increase.

7 Q. **So the rate they've been paying the**
8 **last -- since the last rate case, there's a**
9 **discount there?**

10 A. And I really can't remember the exact
11 outcome of the last rate case in detail to know if
12 there was a discount built in. I don't believe
13 there was an intentional discount built in. As
14 costs have changed over time, they are currently
15 paying a rate that we find to be below cost of
16 service by about \$5.35 a megawatt hour.

17 Q. **So \$5 and whatever cents, would you**
18 **characterize that as more of a bulk discount for**
19 **all the reasons that you walked through or you**
20 **would characterize that as more of an economic**
21 **development discount?**

22 A. I would not characterize it as an
23 intentional discount. I think that's just the way
24 costs have changed since the last rate case.

25 Q. **Okay. So if we were to do the exact**

1 same rate that is going on right now, would there
2 be a discount?

3 A. Yes.

4 Q. And would you characterize that as
5 a -- more of a bulk discount for all the reasons
6 that you've said or would you characterize that
7 more of an economic development discount?

8 A. If you're giving them what you're
9 terming a bulk discount, that rate would be I
10 believe 39--something a megawatt hour is what it
11 would work out to. So I would say that anything
12 under 39--something a megawatt hour would be some
13 other sort of policy-related discount.

14 Q. So the number that I've been trying
15 to get to in my mind via this line of questioning
16 is roughly \$39, is where you believe that you cross
17 over into -- below that is crossing over into some
18 type of an economic development or other -- or
19 discount for other reasons?

20 A. To make it just slightly more
21 complicated, and I apologize for that, that value
22 according to Staff's last cost of service study
23 would actually be between \$43.59 and \$46.79. The
24 \$39 rate, 39.78 is what we recommended because that
25 jump of going from the \$37 that they're at now up

1 to the 43, \$46 that they should be at, we try not
2 to make abrupt jumps in rate design recommendations
3 because, well, a lot of reasons.

4 But, yes, that fully embedded cost of
5 service calculation is 43.59, and the cost of
6 service calculation excluding market participation
7 is 46.79 at Noranda's meter.

8 **Q. So would it be fair to say that**
9 **inherent in those numbers you gave, which would be**
10 **Staff's recommendation, there already is economic**
11 **development discount or other discount in those**
12 **numbers via your recommendation?**

13 A. To me, that's a label that I don't
14 use. Certainly if a Commissioner perceived it that
15 way, I wouldn't have an argument with that.

16 COMMISSIONER RUPP: Okay. Thank you.

17 JUDGE WOODRUFF: All right. Recross
18 based on questions from the Bench. MECG?

19 MR. WOODSMALL: Yes, real briefly.

20 RECROSS-EXAMINATION BY MR. WOODSMALL:

21 **Q. You were asked some questions by**
22 **Commissioner Hall about incremental cost. Do you**
23 **recall that?**

24 A. Yes.

25 **Q. And I believe you said that if the**

1 Commission believes that the viability of Noranda
2 is threatened, that they are going to close, Staff
3 would agree that a 31.50 rate with some
4 contribution to fixed cost would be appropriate; is
5 that correct?

6 A. I generally agree. I don't remember
7 the exact words that were used, but that would be
8 the bottom end.

9 Q. Okay. And let me ask you, how long
10 would Staff recommend that such a rate be
11 applicable?

12 A. Until the next rate case.

13 Q. And would such a rate exempt Noranda
14 from application of the FAC?

15 A. Only to the extent that it will -- a
16 rate that low, I believe it would probably be more
17 appropriate to at least consider going to a market
18 indexing mechanism, because that type of rate
19 Noranda would not be contributing to fixed costs.
20 They're -- they would not be providing a positive
21 rate of return to the company if you did a cost of
22 service study.

23 And so giving them participation in
24 the benefits the company has for its ratepayers
25 through off-system sales, I'm not sure of the

1 equity of that. So at a rate much below their
2 current rate, I would look very strongly at
3 indexing that to market.

4 MR. WOODSMALL: I think you answered
5 my question. Thank you.

6 JUDGE WOODRUFF: Ameren?

7 MR. MITTEN: No questions.

8 JUDGE WOODRUFF: Public Counsel?
9 MIEC?

10 MR. DOWNEY: I have a few.

11 RECROSS-EXAMINATION BY MR. DOWNEY:

12 Q. Ms. Kliethermes, would you agree that
13 Mr. Brubaker's cost of service study shows a lower
14 cost for Noranda Aluminum than your study?

15 A. For LTS, yes.

16 Q. Is Noranda the only member of the LTS
17 class?

18 A. Yes.

19 Q. Okay. And do you recall, did
20 Ameren's class cost of service study have a lower
21 cost for the LTS class than your study?

22 A. It looks like it. Frankly, I'm --
23 yes. Yes, they did.

24 Q. Thank you. Now, I believe it's in
25 your surrebuttal testimony, you've laid out the

1 **details of your proposal for this market index; is**
2 **that fair?**

3 A. I wouldn't call them details, but the
4 framework.

5 MR. DOWNEY: Framework. All right.
6 And I think that's all I have. Thank you.

7 JUDGE WOODRUFF: Redirect?

8 MR. THOMPSON: Thank you, Judge.

9 REDIRECT EXAMINATION BY MR. THOMPSON:

10 **Q. Now, you were asked some questions by**
11 **Commissioner Hall that prompted you to explain**
12 **jurisdictional allocations.**

13 A. My understanding of jurisdictional
14 allocations.

15 **Q. Okay. And is that somehow different**
16 **from universal understandings of jurisdictional**
17 **allocations?**

18 A. That is something that is typically
19 handled by an engineer in coming up with the
20 jurisdictional allocational factor and the auditors
21 in applying it. It's not terribly dissimilar from
22 a Staff class cost of service stu-- or from a class
23 cost of service study, which is what I do, but
24 there could certainly be differences that on the
25 spot I'm not thinking of.

1 Q. Okay. Would you agree with me that
2 in a rate case where jurisdictional allocations are
3 involved, that the auditors or other Staff members
4 develop a number of allocation factors?

5 A. Absolutely.

6 Q. And that different allocation factors
7 are applied to different items of cost?

8 A. Yes.

9 Q. Or cost or revenue or assets?

10 A. Yes.

11 Q. And the purpose is to essentially
12 assign these items into the appropriate
13 jurisdiction for ratemaking purposes?

14 A. Yes. What is done with the
15 jurisdictional allocation factor is it takes --
16 it's used to develop the revenue requirement.
17 Whereas, what we do with class cost of service is
18 to divvy up that revenue requirement.

19 Q. So in a case where you were
20 allocating between a wholesale jurisdiction and
21 retail jurisdiction, would the jurisdictional
22 allocation be used to try to capture all of the
23 actual incremental costs involved in each
24 jurisdiction?

25 A. You used incremental there. I'm not

1 sure if it would be done on incremental or if it
2 would be done as an assignment or allocation of
3 total cost experienced by the company.

4 Q. Okay. Well, take incremental out,
5 because I don't know what I'm talking about anyway.

6 A. That would generally be my
7 understanding.

8 Q. Okay. So it's a -- it's a costing
9 mechanism?

10 A. Yes.

11 Q. Now, you also indicated that Staff's
12 dedication to traditional cost of service
13 ratemaking in this case is tempered by a
14 willingness to accept a reasonable solution on
15 reasonable terms to the Noranda problem if the
16 Commission believes that Noranda is, in fact, on
17 the verge of going out of business?

18 A. Yes. I think it's a policy question
19 for the Commission.

20 Q. What do you mean by a reasonable
21 solution?

22 A. Well, if Ameren and Noranda were to
23 enter into a contract -- well, I'll assume for
24 purposes of this discussion that the jurisdictional
25 allocation would be similar to the cost class of

1 service allocation, because while I'm confident
2 there are differences, they are probably too far
3 off.

4 We found that to be about \$46 a
5 megawatt hour once you exclude off-system sales
6 participation. So if it was a one-year deal, I
7 would expect that that would need to be within the
8 range of the prices of roughly \$46 a megawatt hour,
9 again, subject to a whole lot of variables and
10 terms.

11 To do a ten-year deal, I believe
12 there was testimony, and I don't recall if it was
13 HC, about what the wholesale opportunities for
14 Noranda were in the 224 case this summer, and I
15 would expect that something in the range of those
16 contract prices would be a reasonable deal on
17 reasonable terms.

18 **Q. Okay. And what was the value of**
19 **31.50 at Noranda's meter that I heard you provide**
20 **to Commissioner Hall?**

21 A. That was the outcome of the 0224 case
22 that the Commission ruled on this summer.

23 **Q. What does it represent?**

24 A. It represents a -- a reasonable
25 estimate of the cost of day-ahead energy to provide

1 for Noranda and a kind of built-in levelized value
2 of ancillary services associated with serving
3 Noranda, and I believe an estimate or an accounting
4 for at that time the not-yet implemented,
5 since-implemented 2014 increased Schedule 26A.

6 Q. Okay. And did I hear you say that if
7 the Commission were to give Noranda a rate at 31.50
8 at its meter, that there would be no contribution
9 to fixed costs?

10 A. On average.

11 Q. On average. So there would have to
12 be something added to that 31.50?

13 A. Yes.

14 Q. Okay. What if a dollar was added?

15 A. Then on average that would be one
16 times approximately 4.2 million, so approximately
17 4.2 million contribution to other customers.

18 Q. Okay. And so that -- in other words,
19 I want to make sure I'm understanding you
20 correctly. Whatever that margin is, it is to that
21 extent that Noranda would be contributing to costs
22 that other customers would otherwise have to pay?

23 A. Yes. And I think the way that would
24 mechanically happen would be when Staff and the
25 company and whatever other parties are

1 participating take the Commission's order and
2 attempt to reduce it to tariffs, that we would
3 calculate what that margin is and subtract it from
4 revenue requirement and develop the rates for the
5 other classes.

6 Q. Okay.

7 A. I would assume.

8 Q. Now, would you be confident that that
9 figure of 31.50 would be accurate until Ameren
10 Missouri's next rate case?

11 A. I hesitate to use the word accurate.

12 Q. What word would you use?

13 A. It would be a reasonable value for
14 purposes of setting rates from case to case. As
15 you know, we use historic test year information in
16 developing rates.

17 Q. Well, assume if you would that Ameren
18 Missouri is going to file another rate case
19 18 months from today. This is a hypothetical.

20 A. Sure.

21 Q. And assume that the Commission has
22 given Noranda a load retention rate of 31.50 per
23 megawatt hour plus a margin, and that the margin
24 is, let's say, in the neighborhood of a dollar,
25 like we discussed a moment ago. Do you -- do you

1 **have an opinion as to whether that rate would on**
2 **average be beneficial to the other ratepayers until**
3 **such time as that following rate case was filed?**

4 A. On average, the value of that would
5 diminish over time, though, as it's my
6 understanding that there is going to be some
7 increases to Schedule 26A costs that are -- I don't
8 want to use the word known, but I don't think they
9 will -- that anyone will be surprised if those
10 Schedule 26A costs that would go up, particularly
11 as the Illinois River project may be completed or
12 other -- other items covered under the MISO --
13 forgive me, my mind just went back on the title --
14 MVP projects.

15 **Q. Okay. So the value or the beneficial**
16 **value of the margin might well decrease over time?**

17 A. Yes, assuming that the average plays
18 out, all else being equal, there's still some, I
19 guess, reasonably anticipated changes that could
20 occur.

21 **Q. Now, what if you devise a mechanism**
22 **so that the margin would change over time? I think**
23 **you mentioned a market index.**

24 A. Yes.

25 **Q. What is a market index?**

1 A. That's a term I don't know if I've
2 used it before or if I just grabbed on the spot in
3 talking with Mr. -- Commissioner Hall, to refer to
4 what I generally describe in my, I believe it was
5 surrebuttal testimony at -- perhaps it was my
6 rebuttal. Yes. I apologize. I believe I answered
7 Mr. Downey wrong earlier. That was my rebuttal
8 testimony, not my surrebuttal testimony, at page 16
9 and 17.

10 **Q. Okay. Well, could you just tell us**
11 **briefly what a market index is?**

12 A. What I would look at doing would be
13 to take some value, whether you use what was
14 experienced in the test year, what was experienced
15 or what was used in the fuel run, find some market
16 price, probably the most recently ending 12 months
17 for which information is available would be the
18 easiest way to do this. You would modify the FAC
19 tariffs with all the other customer classes so that
20 at the end of each accumulation period you would
21 take what Noranda's usage was and find what its
22 cost was on the market plus ancillary services as
23 an average, plus whatever's happened with the
24 transmission administrative charges, and that would
25 be removed from the costs or flowed through the

1 FAC.

2 And then you would on some basis,
3 whether annually, quarterly, to coincide with the
4 FAC, you would adjust Noranda's rate by the
5 difference between what was the baseline of those
6 costs during whatever period you baseline them and
7 what they were experienced at that time.

8 **Q. Okay. Why couldn't you just subject**
9 **the margin to the FAC?**

10 A. You could, once you -- and I went
11 into this a bit with Mr. Woodsmall. At its current
12 rate, Noranda is more or less only meeting embedded
13 expense and is not contributing a positive return
14 to the company. I don't recall how it fell out at
15 the very end, but it was within 100 to 200,000
16 either positive or negative at the time of Staff
17 direct. So since they are not contributing a
18 positive return to the company, that means they are
19 not contributing to the cost of plant.

20 Plant is used to make off-system
21 sales, so if they're not paying for off-system
22 sales, as I believe Mr. Dauphinais testified to
23 earlier, if -- if market prices go up and
24 administrative and Schedule 26 prices stay flat,
25 it's likely that the FAC would go negative.

1 **Q. Okay. And why is that a problem?**

2 A. Well, that's a problem because if
3 you're saying that the 31.50 is the right rate plus
4 whatever increment, you're then reducing what that
5 contribution is going forward.

6 **Q. What if you provided that it could
7 not go negative, just with respect to the margin?**

8 A. I would have to defer to somebody
9 more familiar with the FAC as to how the math would
10 work on that, as to -- to what language would be
11 needed to accomplish that.

12 **Q. Okay. But if you had appropriate
13 language to accomplish that, would that take care
14 of your concern?**

15 A. I believe it would. Not having
16 considered it before, I believe it would.

17 **Q. Okay. Thank you. And now, there was
18 talk about how Noranda at its current rate is not
19 contributing to its full cost of service or paying
20 its full cost of service. Do you recall that?**

21 A. Yes.

22 **Q. And this is a finding of Staff's
23 class cost of service study; is that right?**

24 A. I believe that was a finding of all
25 of the submitted cost of service studies.

1 Q. But wasn't it a finding of Staff's?

2 A. Yes.

3 Q. Okay. And does Staff prefer its
4 class cost of service study over those of the other
5 parties?

6 A. Certainly.

7 Q. Okay. Thank you. So that's the one
8 I'm going to be talking about. Now, is that class
9 cost of service study, how confident are you in the
10 results of that study?

11 A. I am confident in its results as it
12 relates to what a class cost of service study is to
13 be used for and the point in time in which it is
14 conducted.

15 Q. What is it to be used for?

16 A. It's to be used as a general guide in
17 determining what classes are or are not meeting
18 fully embedded costs and certainly meeting their
19 allocated expense. I think a lot of attention can
20 be paid to the methodology that frankly is wasted
21 energy. They are a general guide.

22 Q. Okay. They're a general guide. So
23 when you say they're a general guide, does that
24 mean that they lack scientific precision?

25 A. Unfortunately, the problem is that

1 they're -- they are precise to a fault.

2 Q. Well, Ms. Kliethermes, I'm trying to
3 understand why they're just a guide. If the
4 Commission is presented with a class cost of
5 service study that it believes is accurate and that
6 study shows that a class is not paying its full
7 cost of service, why does that not mean that the
8 rate is not just and reasonable?

9 A. I did not say that the rate is not
10 just and reasonable. If it's associated with class
11 cost of service study, finding it would be adjusted
12 as part of a rate case. To -- and I went through
13 this quite lengthily in my rebuttal testimony near
14 the beginning.

15 But essentially a class cost of
16 service study is done for a test year as of that
17 party's direct filing. The minute we file it,
18 probably before we file it, our auditors are on the
19 phone with their auditors and account balances that
20 we've allocated on one basis are being adjusted
21 either up or down, depreciation expenses accruing,
22 capital projects are getting recorded.

23 They're good for what they're good
24 for, but to look at them as an element of utmost
25 precision is a misuse of what a class cost of

1 service study is.

2 **Q. Okay. That's what I was trying to**
3 **understand. And thank you very much for the**
4 **explanation. So does that mean the fact that**
5 **Noranda is not quite at its cost, does that reduce**
6 **the importance of that?**

7 A. Well, there's a distinction that
8 comes into play with Noranda, and that is that, at
9 its current rate relative to the company's current
10 cost, as found by Staff's direct case and as I now
11 understand it the position of the case above
12 Staff's direct case, it was not meeting its
13 expense, meaning it was providing a negative
14 return.

15 **Q. Okay. Is it the only class providing**
16 **a negative return?**

17 A. I think res was close, but I think
18 they were positive.

19 **Q. So isn't it true that over time all**
20 **of the classes essentially get out of whack with**
21 **respect to producing enough money to pay exactly**
22 **their cost of service?**

23 A. Fully embedded cost of service, yes.
24 We try to not let them get so far out of whack that
25 they're producing a negative return.

1 Q. Okay. But it's not unusual for
2 classes to creep up or down from their fully
3 embedded cost of service between rate cases?

4 A. No, not at all.

5 Q. And when you -- when you take action
6 to move them back towards their fully embedded
7 class cost of service, sometimes that's painful, is
8 it not?

9 A. We generally do not recommend shifts
10 so abrupt that it would be painful. I believe Brad
11 Fortson filed Staff's testimony on this. Mike
12 Scheperle may have as well, talking about the
13 principles that we look to constrain those
14 movements.

15 Q. Okay. Now, if the Commission decides
16 that Noranda is not in a precarious financial state
17 such that it is likely to go out of business if it
18 does not get a special electric rate, what kind of
19 ratemaking should this Commission use in setting
20 Noranda's rate?

21 A. Staff recommends .25 over system
22 average increase, which as of Staff's direct filing
23 would be a rate of about 39.78.

24 Q. Okay. That's the specific number?

25 A. Well, that's the specific number at

1 the time of direct. You'd have to redo the math.

2 **Q. Is that fully embedded cost of**
3 **service?**

4 A. No.

5 **Q. Is it below?**

6 A. Yes.

7 **Q. By how much?**

8 A. Fully embedded cost of service,
9 assuming OSS participation was 43.59 on the same
10 basis.

11 **Q. Okay. Does it move them towards**
12 **fully embedded cost of service?**

13 A. It moves them a quarter of a percent
14 more than it moves system average, yes.

15 **Q. Okay. And that's -- and that would**
16 **be Staff's normal way of addressing the imbalance**
17 **that you have described?**

18 A. Yes.

19 **Q. Okay. And is that part and parcel of**
20 **traditional cost of service ratemaking?**

21 A. That is traditional cost of service
22 ratemaking.

23 MR. THOMPSON: I have no further
24 questions. Thank you.

25 JUDGE WOODRUFF: All right.

1 Ms. Kliethermes, you can step down then.

2 (Witness excused.)

3 JUDGE WOODRUFF: Next witness will be
4 Mr. Barnes. We'll take a break before he comes up.
5 We'll come back at 2:55.

6 (A BREAK WAS TAKEN.)

7 JUDGE WOODRUFF: While we were on
8 break, Mr. Thompson found one more exhibit he wants
9 to offer through Ms. Kliethermes. So
10 Ms. Kliethermes is back at the stand, and
11 Mr. Thompson, when you're ready to discuss this.

12 MR. THOMPSON: Thank you very much,
13 Judge, and I appreciate your forbearance.

14 (STAFF EXHIBIT NO. 246 WAS MARKED FOR
15 IDENTIFICATION BY THE REPORTER.)

16 SARAH KLIETHERMES testified as follows:

17 REDIRECT EXAMINATION BY MR. THOMPSON:

18 **Q. Ms. Kliethermes, do you recognize**
19 **this document I've just handed to you?**

20 A. Yes, I do.

21 MR. THOMPSON: And what's our next
22 exhibit number, Judge?

23 JUDGE WOODRUFF: 246.

24 BY MR. THOMPSON:

25 **Q. This would be marked, then, as**

1 **Exhibit 246. Can you tell me what this is?**

2 A. Yes. This is -- the first page of
3 this document was the information that Commissioner
4 Kenney requested of you during your opening, and I
5 believe your response was that's something for
6 Sarah Kliethermes to take care of something along
7 those lines, and this is simply what the
8 contribution would be and what the increase would
9 be without Noranda and at various levels of
10 wholesale rate and various Noranda rates per
11 megawatt hour.

12 And the second and third pages would
13 be the documents that I was referring to in my
14 discussion a moment ago with Commissioner Rupp.

15 **Q. Very good.**

16 MR. THOMPSON: I will offer
17 Exhibit 246 at this time.

18 JUDGE WOODRUFF: All right. 246 has
19 been offered. Any objections to its receipt?

20 MR. DOWNEY: Judge, just a question.
21 Can we look at it for a minute, and do we have an
22 opportunity to cross-examine her on this?

23 JUDGE WOODRUFF: If you wish.

24 MR. DOWNEY: I've got a witness in
25 the other room we want to show it to.

1 JUDGE WOODRUFF: If it works out for
2 you, if somebody else can take care of that, we can
3 go on to another witness and bring her back later.
4 Is that acceptable?

5 MR. LOWERY: Maybe we should send
6 this down the street, too. Neither one of us
7 understand it.

8 JUDGE WOODRUFF: All right. I
9 assume, Ms. Kliethermes, you're going to be around?

10 THE WITNESS: I suspect I will be.

11 MR. THOMPSON: Thank you, Judge. I
12 apologize. Staff calls Matt Barnes.

13 JUDGE WOODRUFF: All right.
14 Mr. Barnes, is this the first time you've
15 testified?

16 THE WITNESS: No. I've testified
17 before.

18 JUDGE WOODRUFF: You're still under
19 oath.

20 MATT BARNES testified as follows:

21 DIRECT EXAMINATION BY MR. THOMPSON:

22 Q. Okay. Mr. Barnes, you produced
23 rebuttal testimony and surrebuttal testimony, both
24 of which are HC?

25 A. Yes.

1 **Q. And you've been up on the stand**
2 **already --**

3 A. Yes.

4 **Q. -- during the fuel adjustment clause**
5 **discussion on Monday?**

6 A. Yes.

7 **Q. And did you -- do you have any**
8 **additional corrections or changes?**

9 A. None that I -- than I made Monday.

10 **Q. Okay. Well, I would -- and you're**
11 **not scheduled to testify again?**

12 A. No.

13 MR. THOMPSON: I offer Mr. Barnes'
14 rebuttal and surrebuttal testimony at this time.

15 JUDGE WOODRUFF: Rebuttal is 203 and
16 his surrebuttal is 204. Any objections to their
17 receipt?

18 (No response.)

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

21 (STAFF EXHIBIT NOS. 203NP/HC AND
22 204NP/HC WERE RECEIVED INTO EVIDENCE.)

23 MR. THOMPSON:

24 **Q. Now, the reason Mr. Barnes is here**
25 **during this portion of the case is because he**

1 contributed to a document that is attached to
2 Ms. Kliethermes' surrebuttal testimony in which
3 Staff provided a response to Mr. Michels', what's
4 been called the wholesale proposal with respect to
5 the Noranda rate. Isn't that correct, Mr. Barnes?

6 A. I provided some scenarios that show
7 what Noranda's proposal is to move to a different
8 class but still remain in retail rates, and then
9 another scenario that shows what the base factors
10 would be if Noranda's completely out of the FAC. I
11 didn't take into the wholesale what -- what
12 revenues and costs would flow through the FAC, if
13 any.

14 Q. And was I accurate that that is
15 attached to Ms. Kliethermes' testimony?

16 A. Yes.

17 Q. Her surrebuttal?

18 A. Yes.

19 MR. THOMPSON: Okay. So I guess
20 that's already been admitted. So I will tender
21 Mr. Barnes for cross-examination at this time.

22 JUDGE WOODRUFF: Did you wish to
23 offer the Staff reports?

24 MR. THOMPSON: Thank you. I forgot
25 all about that.

1 BY MR. THOMPSON:

2 Q. You also contributed to Staff's Rate
3 Design Class Cost of Service Report?

4 A. Yes.

5 Q. And to the Revenue Requirement Class
6 Cost of Service Report?

7 A. Yes.

8 MR. THOMPSON: I'd like to offer both
9 of those at this time.

10 JUDGE WOODRUFF: That's 201 and 202.
11 Any objections to their receipt?

12 (No response.)

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

15 (STAFF EXHIBIT NOS. 201 AND 202 WERE
16 RECEIVED INTO EVIDENCE.)

17 JUDGE WOODRUFF: For
18 cross-examination, then, we begin with Ameren.

19 MR. LOWERY: None.

20 JUDGE WOODRUFF: MECG?

21 MR. WOODSMALL: No.

22 JUDGE WOODRUFF: MIEC?

23 MR. DOWNEY: Just a few, Judge.

24 CROSS-EXAMINATION BY MR. DOWNEY:

25 Q. Good afternoon, Mr. Barnes.

1 A. Good afternoon.

2 Q. I just have a -- you're an
3 accountant, correct?

4 A. Yes.

5 Q. So I have just a few questions about
6 mechanically, mathematically how we could -- if the
7 Commission decides to exempt Noranda Aluminum from
8 the FAC, how that could work. So I'd like to just
9 run through a few steps with you, see if you agree
10 that this is a plausible mechanism.

11 A. Okay.

12 Q. Okay. First, you could still include
13 Noranda's load in the base fuel calculation. Do
14 you agree that you could do that as step one?

15 A. Yes.

16 Q. Okay. And then step two, you could
17 include Noranda's share of the over/under, if you
18 will, on increases/decreases on fuel costs as step
19 two?

20 A. Yes.

21 Q. The way you currently do it
22 basically?

23 A. Yes. Yes.

24 Q. And then third, and this I guess
25 would be when you're performing the reconciliation,

1 when you're distributing that over/under fuel cost
2 for the surcharge, you could simply leave Noranda's
3 forecasted load kilowatt hours out of the
4 denominator. Do you agree that is an approach that
5 could be implemented if the Commission chose to
6 exclude Noranda from the FAC?

7 A. Yes. That's right.

8 Q. Thank you, that wasn't too bad, was
9 it?

10 A. No.

11 JUDGE WOODRUFF: Public Counsel have
12 anything?

13 MR. ALLISON: No.

14 JUDGE WOODRUFF: Questions from the
15 Bench, Mr. Chairman?

16 CHAIRMAN KENNEY: No questions,
17 Mr. Barnes. Thank you.

18 THE WITNESS: Thank you.

19 JUDGE WOODRUFF: Commissioner Hall.

20 COMMISSIONER HALL: Yes, a few.

21 QUESTIONS BY COMMISSIONER HALL:

22 Q. Good afternoon, Mr. Barnes.

23 A. Good afternoon.

24 Q. I'd like to look for a moment at your
25 rebuttal testimony on page 3, and you discuss

1 **Staff's position with regards to a proposal put**
2 **forth by Ms. Mantle on behalf of OPC?**

3 A. Yes.

4 **Q. To start with, could you explain to**
5 **me what you believe Ms. Mantle's proposal is?**

6 A. I understand she wanted to remove
7 some of the -- some of the language completely from
8 the tariff sheets. And my proposal was to -- she
9 said if it was to stay in, that there would be some
10 language changed to reflect what she thought that
11 the Commission should approve.

12 And Staff thinks that language should
13 be -- that it should stay in there, and that's
14 assuming that Noranda's still in the FAC. My
15 initial recommendation was to continue the FAC as
16 is with Noranda.

17 **Q. Let me -- my understanding of what**
18 **Ms. Mantle's proposal is is to eliminate the**
19 **adjustment for reduction of service classification**
20 **12(M) billing determinants in the -- in the FAC**
21 **tariff sheet, correct?**

22 A. Yes.

23 **Q. Okay. So if that were to occur, then**
24 **any off-system sales that Ameren enjoyed as a**
25 **result of the elimination of the Noranda load, then**

1 that would -- that would flow through the FAC?

2 A. Yes.

3 Q. And I -- it appears that Staff is
4 opposed to that proposal, and I'm trying to
5 understand why.

6 A. Well, at the time that I wrote the
7 testimony, I guess I didn't really give it much
8 thought as far as what happens if the N Factor does
9 go away. It would benefit customers more. Plus,
10 since I've been working on the FAC, I've never
11 seen -- I haven't had that -- had to use that
12 factor yet because this was developed after the ice
13 storm.

14 Q. Well, let me -- one of the items that
15 I will be asking for additional briefing from the
16 parties after this case is the parties' position on
17 the elimination of the N Factor from this tariff
18 sheet. So if you would prefer to wait for that
19 opportunity to explain Staff's position on this
20 issue, that's fine with me.

21 A. I appreciate that. That would give
22 me a chance to discuss some more with my supervisor
23 and other FAC experts on Staff.

24 Q. Thank you.

25 A. Thank you.

1 JUDGE WOODRUFF: Any recross based on
2 those questions from the Bench? I don't see any
3 hands going up. Any redirect?

4 MR. THOMPSON: No, thank you, Judge.

5 JUDGE WOODRUFF: Mr. Barnes, then you
6 can step down.

7 (Witness excused.)

8 JUDGE WOODRUFF: I believe we're
9 ready for Ms. Mantle. Did you take the stand
10 earlier?

11 MS. MANTLE: Yes, I did.

12 JUDGE WOODRUFF: So you're still
13 under oath also.

14 MS. MANTLE: Yes.

15 MR. ALLISON: And I believe this is
16 the last time Ms. Mantle will be testifying in the
17 case, and I think we have previously moved the
18 admission of Exhibits 400, 401 and 402 HC and NP,
19 and I would ask for a ruling at this time.

20 JUDGE WOODRUFF: 400, 401 and 402
21 have been offered. Any objection to their receipt?

22 (No response.)

23 JUDGE WOODRUFF: Hearing none, they
24 will be received.

25 (OPC EXHIBIT NOS. 400NP/HC, 401NP/HC

1 AND 402NP/HC WERE RECEIVED INTO EVIDENCE.)

2 MR. ALLISON: And I tender Ms. Mantle
3 for cross-examination.

4 JUDGE WOODRUFF: Okay. MIEC?

5 MR. DOWNEY: Thank you.

6 LENA MANTLE testified as follows:

7 CROSS-EXAMINATION BY MR. DOWNEY:

8 Q. Good afternoon.

9 A. Good afternoon.

10 Q. I consider you to be an expert on a
11 lot of utility issues, but would you agree you're
12 an expert on the FAC?

13 A. Yes.

14 Q. I want to ask you some questions
15 about jurisdictional allocation and how it does or
16 doesn't have any impact on the FAC, and
17 particularly I want to talk to you about allocating
18 the jurisdictional costs as between wholesale
19 customers and retail customers. Okay?

20 A. Okay.

21 Q. As I understand what you do when you
22 allocate these costs is you figure out which costs
23 are used to serve the wholesale customers, and I
24 realize Ameren doesn't have many of them, and you
25 segregate those costs from the costs that serve all

1 **the other ratepayers; is that fair?**

2 A. Most of the costs are total utility
3 and they're allocated based on energy or demand of
4 the wholesale customer. I would -- I believe
5 there's very few that can -- typically you can draw
6 a bright line and say this is only a wholesale
7 customer cost or this is only retail. The majority
8 of the cost of any utility is a total utility cost
9 that is allocated based on the characteristics of
10 retail versus wholesale.

11 **Q. Okay. Under some reasonable formula**
12 **for allocating the costs, you assign the costs**
13 **directly or separately, I guess, to the wholesale**
14 **customers; is that fair?**

15 A. Yes, based on the characteristics of
16 the cost type and the wholesale versus retail
17 customers.

18 **Q. Okay. And so then those costs are**
19 **not baked into base rates that retail customers**
20 **pay; is that right?**

21 A. For every utility but Ameren, that is
22 correct.

23 **Q. Okay. If we have a major customer**
24 **and we do it -- if Ameren Missouri would have a**
25 **major wholesale customer and we would do it the way**

1 all the other utilities do it, is that what we
2 would do is assign the costs to that wholesale
3 contract?

4 A. That's the way it was done by Ameren
5 up until the end of the ER-2011-0028 case. So
6 costs were allocated to wholesale customers and
7 retails even for Ameren.

8 Q. And then would it be the
9 responsibility of Ameren to simply collect whatever
10 the revenues are that it needs to collect under
11 that contract from that customer?

12 A. At that point, it's up to Ameren to
13 cover the cost, and whatever profits it makes are
14 Ameren's to do with.

15 Q. And what role does the FAC have in
16 that process?

17 A. In that process, there is no FAC, the
18 way it was prior to the operational law rate of the
19 ER-2011-0028.

20 Q. Okay. I mean, assuming it were done
21 for Ameren Missouri like it's done for the other
22 utilities, there would be nothing, no impact on the
23 FAC?

24 A. That is correct. The other utilities
25 that have an FAC that have jurisdictions, there is

1 an allocation factor in their FAC tariff, so that
2 even some of the fuel costs that are incurred get
3 allocated to the wholesale customers.

4 Q. I want to change gears a little bit.
5 I appreciate the education on that. You've heard a
6 lot of -- have you been in the hearing room this
7 week?

8 A. I wasn't here yesterday, but I was in
9 my office listening to some of it when I was able
10 to.

11 Q. Have you heard any of the discussions
12 with any of the witnesses or the discussions of the
13 Commissioners about the incremental cost to serve
14 Noranda?

15 A. I've heard the discussion today.
16 There was quite a bit of discussion.

17 Q. And would you agree that, I think --
18 actually, I'm going to represent that I believe all
19 of the witnesses believe that if Noranda is charged
20 something extra, some amount above the incremental
21 cost to serve it, there would be a benefit to
22 ratepayers from keeping Noranda on the system
23 versus the smelter shutting down?

24 A. I believe that's a fair
25 characterization.

1 Q. Are you aware that the Office of
2 Public Counsel signed onto a nonunanimous
3 stipulation?

4 A. Yes.

5 Q. And have you had a chance to review
6 that?

7 A. Yes, I have.

8 Q. Have you reviewed the conditions that
9 are imposed on Noranda in that stipulation?

10 A. Yes.

11 Q. Do you have an opinion on whether,
12 you know, with continuing review obviously of the
13 Commission, because we all understand that is the
14 case, do you agree?

15 A. Yes.

16 Q. This Commission cannot bind future
17 commissions?

18 A. That's my understanding.

19 Q. All right. With that understanding,
20 do you have an opinion on whether this -- the rate
21 and the terms in this nonunanimous stipulation are
22 in the public interest?

23 A. I do believe that it is in the public
24 interest.

25 Q. And do you believe the rate with

1 those conditions would be a just and reasonable
2 rate?

3 A. The rate is one of those conditions.
4 The total package is of benefit to the ratepayers.

5 Q. All right. And do you have an
6 understanding of whether that rate, certainly until
7 the Commission would examine this issue again,
8 would be above the incremental cost to serve
9 Noranda?

10 A. It's above the incremental cost as we
11 know it today, yes.

12 MR. DOWNEY: Okay. I have no further
13 questions.

14 JUDGE WOODRUFF: MECG?

15 MR. WOODSMALL: Very briefly.

16 CROSS-EXAMINATION BY MR. WOODSMALL:

17 Q. Is it your understanding that the
18 nonunanimous stipulation is ten years?

19 A. Yes.

20 Q. How much confidence do you have that
21 the rate at the end of ten years will be above the
22 incremental cost at that point in time?

23 A. I have no idea what the rate -- what
24 that amount will be in ten years. If I did, I
25 wouldn't be working here.

1 **Q. How confident are you then that the**
2 **rate will be just and reasonable in ten years?**

3 A. What is built in to this agreement is
4 that Noranda would receive half -- whatever
5 increase in future rate cases was passed or was
6 granted by the Commission, half of that would be
7 required, their rates would increase half,
8 50 percent of what the total was, percentage. That
9 amount I believe would keep it above the
10 incremental market cost, because the biggest cost
11 to Ameren is fuel cost. That's what they tell us,
12 and that's what the numbers show. And every time
13 there is a rate case, that fuel cost will be
14 updated and all the costs will be updated, and the
15 increase -- I feel good about that the increase
16 will be greater than the incremental market cost.

17 **Q. Do you have any understanding or**
18 **opinion as to what the wholesale price of**
19 **electricity will be in ten years?**

20 A. No.

21 **Q. Do you have any opinion as to whether**
22 **customers would be better off in ten years with**
23 **Noranda being gone and Ameren selling that**
24 **electricity on the wholesale market?**

25 A. Ten years from now?

1 **Q. Correct .**

2 A. When this contract -- when this would
3 end? No, I don't. My crystal ball is real blurry
4 that far out.

5 **Q. Five years from now, is your crystal**
6 **ball --**

7 A. I believe the ratepayers and the
8 citizens of Missouri would be -- it's a benefit to
9 them for Noranda to be operating, and to make that
10 a real possibility, if this is what's required, I
11 mean, five years from now to keep them running and
12 to keep them employing and to keep them multiplying
13 and providing jobs and to keep them contributing to
14 any part of Ameren Missouri's fixed cost is a
15 benefit.

16 **Q. Okay. Would you agree that -- assume**
17 **the following hypothetical: In five years gas**
18 **prices return to \$11 and wholesale electric rates**
19 **go up.**

20 A. Okay.

21 **Q. Would you agree then that it is**
22 **likely that Ameren ratepayers would be better off,**
23 **just purely from a rate standpoint, with Noranda**
24 **being closed?**

25 A. I don't know. The incremental

1 cost -- I mean, when Ameren entered into this
2 contract or the initial contract with Noranda in
3 2005, we had higher market prices, and,
4 fortunately, it wasn't a short-term -- nobody
5 looked at it as short-term, what's going to happen
6 in the next six months, because in that time period
7 obviously it would not have been beneficial. So
8 just looking at one piece, what the market price
9 is, I know one of the considerations was not just
10 what could we -- could Ameren earn making
11 off-system sales, but could it make this much
12 off-system sales? Could there be -- and at that
13 time the load wasn't as high as it is right now,
14 but could there be 480 megawatts of load off-system
15 sales made every hour, the continuous-type load.

16 And so if you get a price a little
17 bit under market, but the fact that you get it
18 every hour, that's -- that contributes to whether
19 or not it's a good deal. So there's lots of
20 considerations, not just looking at what is the
21 market price.

22 **Q. Let me ask you one more question.**

23 **Well, it will be a couple more questions. Were you**
24 **in here when Ms. Kliethermes testified?**

25 **A. Yes.**

1 **Q.** And she said it was Staff's -- and
2 you used to do class cost of service studies on
3 behalf of Staff; is that correct?

4 **A.** I did not do the class cost of
5 studies -- service studies. I was manager of the
6 group that did them, though.

7 **Q.** Okay. And she said that it was
8 Staff's opinion that an incremental rate to Noranda
9 with some contribution to fixed cost is appropriate
10 if the Commission believes that Noranda is going to
11 close. Did you hear her say that?

12 **A.** Yes.

13 **Q.** Do you agree with that statement?

14 **A.** Yes.

15 **Q.** Did you hear her say that it was
16 Staff's position that that rate would only be
17 applicable for the period of time 'til the next
18 case?

19 **A.** Yes.

20 **Q.** Do you agree with that position of
21 Staff?

22 **A.** I agree with OPC's position that
23 50 percent of whatever the next increase should be,
24 that's what the rates Noranda --

25 **Q.** I'm asking for your position. Was it

1 **your -- let's go back. Was it your position when**
2 **you were on Staff that that rate should only be**
3 **applicable 'til the next rate case?**

4 A. We never had this before like this
5 when I was on Staff, so I don't know what the
6 position would have been. I do know, looking back
7 over the past four or five rate increases, that the
8 total increase was over 40 percent on average for
9 Ameren, and Noranda's increase was less than
10 13 percent. So, you know, 50 percent -- getting
11 50 percent of the increases would have gotten them
12 at least a 20 percent increase where what actually
13 happened was only 12 percent.

14 So I don't know what my position
15 would have been had I been on Staff. I probably
16 would have agreed with Staff because --

17 **Q. You probably would have agreed with**
18 **what Ms. Kliethermes said?**

19 A. That's Staff's position, yeah. But
20 now I'm -- I reviewed this agreement that OPC has
21 signed onto and believe that with the -- all the
22 different pieces to it, that it is a benefit to the
23 ratepayers.

24 **Q. Okay. But you probably would have**
25 **agreed with Staff's position?**

1 A. Yes.

2 MR. WOODSMALL: Thank you. No
3 further questions.

4 JUDGE WOODRUFF: Cross from Staff?

5 MR. THOMPSON: No questions. Thank
6 you.

7 JUDGE WOODRUFF: Ameren.

8 CROSS-EXAMINATION BY MR. LOWERY:

9 Q. Ms. Mantle, you haven't conducted any
10 analysis whatsoever with respect to Noranda's
11 finances going into the future; is that true?

12 A. That is true.

13 Q. You don't have an opinion about
14 whether the smelter is going to close or is likely
15 to close or what will happen if Noranda doesn't get
16 rate relief in this case because you haven't
17 analyzed any information that would allow you to
18 form an opinion, have you?

19 A. I've listened to testimony, not just
20 in this case but in the complaint case, and I
21 believe there is a possibility that it will close.

22 Q. You're an industrial engineer?

23 A. That's correct.

24 Q. You're not an economist?

25 A. I worked under an economist for many,

1 many years. He tried to make me one. But no, I do
2 not have -- I do not have a degree that says I'm an
3 economist.

4 Q. Are you an investment banker?

5 A. No, sir.

6 Q. Are you a financial analyst?

7 A. No, sir.

8 Q. Are you an accountant?

9 A. No, sir.

10 Q. You haven't conducted an analysis of
11 what -- I've heard the term incremental cost, I've
12 heard the term opportunity cost, in relation to
13 sort of what this crossover point should be and
14 would be in the future with respect to Noranda. Do
15 you know what I'm talking about when I use those
16 terms in the context of this case?

17 A. I don't know that I've heard
18 opportunity cost. I've heard incremental cost.
19 I've heard embedded cost.

20 Q. Well, the point that everybody keeps
21 searching for here is, if we give Noranda a seven
22 or ten-year deal, in order to figure out if
23 customers will be better off with Noranda on the
24 system or -- on the system or off the system, in
25 order to predict whether that's true in the future,

1 you've got to come up with what's sort of the
2 all-in energy capacity transmission, what's the
3 all-in amount that Ameren Missouri could realize
4 for those megawatt hours Noranda isn't taking if
5 Noranda was off the system, right?

6 That's going to tell us later,
7 whatever that number is, that's going to tell us as
8 we look back whether the customers were better off
9 with Noranda on the system or off the system; isn't
10 that right?

11 A. As we look back, that is what will
12 tell us, yes.

13 Q. And you haven't done any analysis
14 that allows you to forecast what that number is
15 actually going to be in the next three years, five
16 years, seven years, have you?

17 A. No, I have not.

18 Q. And if that number is more than the
19 amount that would be produced by this stipulated
20 agreement that OPC and others have reached, then,
21 in fact, customers would have been better off with
22 Noranda off the system than taking retail service
23 at that rate; isn't that right?

24 A. Financially, they -- as far as their
25 electric bill, yes, but there's other economic --

1 other benefits. I believe you're asking --

2 Q. Let me -- I'll change my question.

3 From a rate perspective, from the perspective of
4 the rates that other Ameren Missouri customers pay,
5 if it turns out that that all-in amount that Ameren
6 Missouri could have realized if Noranda was not on
7 the system is higher than this amount that you
8 produced under the stipulation, then from a rate
9 perspective all the other customers would be better
10 off if Noranda was off the system; isn't that
11 right?

12 A. Yes.

13 Q. And you don't have any idea whether
14 that's going to be the case or not, do you?

15 A. No one does, I don't believe.

16 Q. And when OPC signs on to the
17 stipulation and they come to the conclusion that
18 they accept the fact that Noranda's going to go out
19 of business, OPC's just making a judgment that's
20 not based on any analysis; isn't that right?

21 A. I wouldn't say it's not based on any
22 analysis. OPC has listened to testimony. It may
23 not be number-crunching, forecasting numbers, but
24 there's also other types of analysis, considering
25 what people have said and looking at other people's

1 testimony. I wouldn't say that it was based on no
2 analysis. It was based on analysis of what was
3 heard and what's been read.

4 Q. I haven't seen any testimony from
5 anybody at OPC that weighs in one way or the other
6 on this issue of financial feed for Noranda; isn't
7 that fair?

8 A. That is fair.

9 Q. I want to clear up something. You
10 had initially recommended that what's been sort of
11 generally referred to as the N Factor -- and I
12 apologize, Commissioner Hall, I didn't realize that
13 we had change the nomenclature from a couple
14 tariffs ago. I knew we hadn't changed the
15 provision.

16 But you know what I mean by the
17 N Factor, right?

18 A. Yes.

19 Q. You had initially recommended the
20 N Factor be removed when you filed testimony early
21 in the case, right?

22 A. Yes.

23 Q. But that's no longer your
24 recommendation, is it?

25 A. No, because we entered into a

1 Nonunanimous Stip & Agreement regarding that tariff
2 sheet --

3 Q. And you're supporting --

4 A. -- that was --

5 Q. I apologize. You're supporting that
6 stipulation, right?

7 A. Yes.

8 Q. And had we not entered into that
9 stipulation, and let's imagine that your
10 recommendation had still been that it be removed,
11 but if the Commission disagreed with you, at one
12 point you were recommending a change to the
13 language of the N Factor, right?

14 A. Yes.

15 Q. But you weren't even -- even before
16 entering into the stipulation, you had decided that
17 that change in language should not be made,
18 correct?

19 A. Yes, based on the rebuttal testimony
20 of Ameren witness Lynn Barnes. As most of you
21 realize, it's a very complicated tariff, and as it
22 was explained, my concern was that not all revenues
23 that would have been provided by Noranda should be
24 recovered because the variable cost would not be
25 incurred to meet Noranda's loads.

1 So the genesis of my recommendation
2 was, let's make sure that it's only the fixed
3 costs, that they recover only fixed costs that they
4 would be losing. And as Ms. Barnes pointed out,
5 the fact that the total off-system sales revenue is
6 flowed through and then an adjustment is made, the
7 variable cost would not be recovered based on the
8 current N Factor the way it's described in the
9 tariff. I know there's been a lot of confusion
10 about what exactly would be recovered and when it
11 would be, but I am convinced that it would only
12 recover the fixed costs that would be allocated in
13 the rate case.

14 **Q. To put that in terms at least this**
15 **lawyer can understand, it already operates the way**
16 **that you thought that it should with respect to**
17 **that issue, right?**

18 A. If we have to have an N Factor, yes,
19 the way it should.

20 **Q. The Stipulation & Agreement that OPC**
21 **and others have entered into with Noranda, it was**
22 **signed and submitted in this case before any of the**
23 **witnesses took the witness stand in this case to**
24 **give live testimony about Noranda's financial**
25 **condition; isn't that true?**

1 A. I believe that's correct.

2 Q. So this opinion that you have that
3 this qual-- I'm going to call it a qualitative
4 opinion. You can tell me if you disagree. This
5 qualitative opinion that you have that you've -- I
6 guess you haven't listened to the testimony and
7 come to that opinion, you read some testimony and
8 came to that opinion, right, about Noranda's
9 possibility that it might close the smelter?

10 A. And the -- yes, and the testimony
11 that was given in the 224 case.

12 Q. So I guess -- I guess when the
13 Commission in its Report and Order had a lot of
14 things to say about that testimony in the 224 case
15 that indicated that it was not at all convincing,
16 you disagree with that; is that right?

17 A. Yes.

18 MR. LOWERY: I have no further
19 questions.

20 JUDGE WOODRUFF: Come up for
21 questions from the Bench. Mr. Chairman?

22 QUESTIONS BY CHAIRMAN KENNEY:

23 Q. Ms. Mantle, hello.

24 A. Hello.

25 Q. Good to see you. Do you have

1 Ameren's tariff sheet 72.4 --

2 A. Yes, I do.

3 Q. -- around?

4 And it's the one that says date of
5 issue at the bottom May 31st, 2013.

6 A. Yes.

7 Q. Date effective June 30th, 2013.

8 A. Yes, I have that.

9 Q. Okay. And the adjustments for
10 reduction of service classification 12(M) billing
11 determinants, is that the N Factor that we keep
12 referring to?

13 A. Yes, sir, it is.

14 Q. Okay. Let me ask a question about
15 OPC's recommendation to provide rate relief to
16 Noranda. And I believe you said that whatever the
17 rate is that we determine that we would give
18 Noranda, that customers would still -- the other
19 customers would still benefit as compared to
20 Noranda leaving the system; is that right?

21 A. The --

22 Q. The benefit that would be received
23 would be as compared to whether Noranda leaves the
24 system or not --

25 A. Are you --

1 Q. -- is that correct?

2 A. There is a rate in this agreement,
3 and I do believe it would contribute to the fixed
4 cost. I'm not for sure if I'm answering your
5 question because I'm not sure if I understand your
6 question.

7 Q. Let me phrase it better. That wasn't
8 very well stated. I think we're talking about
9 providing Noranda rate relief because, if we don't,
10 customers will be worse off if they leave the
11 system than if we give them this rate reduction and
12 they stay on the system; is that correct?

13 A. Yes.

14 Q. But all of this is a benefit to the
15 customers as compared to Noranda leaving
16 altogether? I just want to make sure I'm framing
17 the benefit that we're talking about correctly.

18 A. Yes, that is correct.

19 Q. Okay. But the -- whether Noranda
20 leaves the system or not is predicated on our first
21 determining that they're having some sort of
22 liquidity crisis that would cause them to close,
23 correct?

24 A. Correct.

25 Q. In the absence of that, OPC wouldn't

1 **be supporting any type of reduced rate for Noranda,**
2 **correct?**

3 A. I don't know. I do know that in past
4 cases Noranda actually got rate decreases when
5 Ameren in total got increases, and those were
6 generally come to by Stipulation & Agreement. So
7 in the past OPC, Staff and other customer groups
8 have gotten together and have reduced, actually
9 reduced Noranda's rates without this possibility of
10 Noranda closing.

11 **Q. What was the basis for that?**

12 A. I remember when -- with the case in
13 which the CCN was granted, there was a lot of
14 discussion on what tariff should they be charged
15 under, and it was determined that it was similar to
16 the large power service with some modifications.

17 Some of those changes may have been
18 cost of service studies were finally done to see
19 exactly what the cost was to serve them. Other
20 times it may have been, and I believe it was, you
21 know, Noranda came in and gave a case to the other
22 customers that, you know, that it needed its rates
23 to be reduced or not increased as much as the other
24 customer classes. And that was a determination
25 made by the parties that signed onto the Stip and

1 Agreement.

2 Q. Okay. But the proposal that OPC is
3 supporting in this case is predicated on the notion
4 Noranda will shut down otherwise, correct?

5 A. Correct.

6 Q. So if we don't find as a Commission
7 that Noranda's experiencing a liquidity crisis such
8 that it will imminently shut down, you wouldn't
9 recommend that we provide the rate relief that
10 you've outlined in your proposal; is that fair?

11 A. I -- I hesitate because there's no --
12 nothing in the agreement that says that this is
13 what -- you know, this is why this determination
14 needs to be made, and if the Commission makes the
15 determination, this is what we're recommending be
16 done.

17 This is our agreement. So I would
18 think it stands on its own and you -- the
19 Commissioners have it before you. If you make the
20 determine -- it's the -- for the Commission to
21 determine.

22 Q. If we wrote a Report and Order that
23 said Noranda's not experiencing any sort of
24 liquidity crisis and, in fact, Noranda is flush but
25 we're going to adopt OPC's proposal anyway, would

1 **you support that Report and Order as a general**
2 **proposition?**

3 A. Yes.

4 **Q. Really? Okay.**

5 A. I've worked for Staff for many years.

6 **Q. Do you think that that kind of Report**
7 **and Order would be a good statement of public**
8 **policy?**

9 A. I think that, as Commissioners, you
10 are very aware of public policy and the impact that
11 that has on -- has on rates and the citizens of
12 Missouri, and I look for that to be a determination
13 from the Commission, not from an engineer sitting
14 here on the stand.

15 **Q. All right. You're a good witness.**
16 **Thanks, Ms. Mantle.**

17 CHAIRMAN KENNEY: I have no other
18 questions.

19 JUDGE WOODRUFF: Commissioner Kenney?

20 COMMISSIONER W. KENNEY: I have no
21 questions, Ms. Mantle. Thank you.

22 JUDGE WOODRUFF: Commissioner Hall?

23 QUESTIONS BY COMMISSIONER HALL:

24 **Q. Good afternoon, Ms. Mantle.**

25 A. Good afternoon.

1 **Q.** I would like to take a look at your
2 **direct testimony in this case, in particular that**
3 **testimony on page 25 and 26 concerning the FAC. I**
4 **understand that this no longer constitutes OPC's**
5 **position on this issue, so we may have to do some**
6 **dancing here.**

7 A. Okay.

8 **Q.** I want to understand the policy basis
9 **for this proposal.**

10 A. I was looking at my rebuttal
11 testimony. That's a whole different proposal on
12 that page. The policy behind removing the
13 N Factor --

14 **Q.** **Yes.**

15 A. -- as we've been referring to it?

16 **Q.** **Yes.**

17 A. The reasoning behind that is Ameren
18 Missouri asked to have Noranda for a customer back
19 in 2005. As a matter of fact, it came in and asked
20 the Commission -- we were given a very short turn
21 around. We had like three months to do all types
22 of analysis and give our recommendation to the
23 Commission.

24 Ameren wanted Noranda as a customer.

25 There was no FAC at that time. Ameren wanted

1 Noranda as a customer even if Noranda was -- could
2 go out of business. They were willing to take that
3 risk at that time. And we believe that Ameren has
4 moved all of the risk of Noranda to its customers.
5 It chose to take on Noranda, and it's moved all the
6 risk to the customers.

7 **Q. So it has moved the risk to its**
8 **customers by the inclusion -- by the inclusion of**
9 **this N Factor provision?**

10 A. Well, there's still -- I mean, there
11 could be some reduction in Noranda's usage where it
12 doesn't kick in, but it -- when the N Factor was
13 set up, the idea was it would be about at least one
14 pot line went down. We wanted it to be big enough
15 that it was really impactful. Ameren at first
16 wanted a much lower threshold, and it was
17 negotiated to be higher.

18 So there is -- you know, they could
19 lose part of a pot line. This provision would not
20 kick in. So there is a threshold at which Noranda
21 can lose load and this N Factor would not kick in.

22 **Q. On page 25, you say that OPC**
23 **recommends removal of this adjustment, and the**
24 **adjustment moves the risk of losing Noranda from**
25 **Ameren Missouri to its customers. The adjustment**

1 is what we're calling the N Factor?

2 A. The adjustment is what moves the risk
3 to the customers.

4 Q. And your testimony at this point in
5 time was that is not a just and reasonable
6 allocation of risk?

7 A. That is correct.

8 COMMISSIONER HALL: I have no further
9 questions,

10 JUDGE WOODRUFF: Commissioner Rupp?

11 QUESTIONS BY JUDGE WOODRUFF:

12 Q. Ms. Mantle, I've been around for a
13 lot of these rate cases now, too. I just want to
14 test my memory on a couple of things you said. The
15 first one, the N Factor, as I recall, it went in by
16 Stipulation & Agreement. Would that be correct?

17 A. That would be correct. It would have
18 been in the 2010 case, I think ER-2010-0036.

19 Q. Okay. And the other question I had,
20 I think about the same case, the 2010 case. You
21 mentioned that there was a case where Noranda was
22 allowed a rate decrease while everybody else had an
23 increase. My memory of that is that that was a
24 stipulated position that was opposed and the
25 Commission ultimately rejected that and said that

1 **Noranda could not get a decrease while everybody**
2 **else got an increase.**

3 A. There was -- and I don't remember
4 exactly which case, and you are correct on that
5 one, but there was another case where Ameren did
6 actually get a decrease.

7 JUDGE WOODRUFF: Okay. Thank you.
8 Any recross based on those questions from the
9 Bench? I see MIEC.

10 RECROSS-EXAMINATION BY MR. DOWNEY:

11 **Q. You had some discussions with the**
12 **Chairman about public policy. Can you describe for**
13 **the Commission other benefits to keeping Noranda on**
14 **the system besides just this economic incremental**
15 **cost issue?**

16 A. Noranda will be contributing to fuel
17 cost increase, fuel cost into the future. There
18 are benefits to that there is -- Ameren, the same
19 as when Noranda first came on, Ameren can be
20 assured that it will have a load every hour and get
21 revenues for every hour. There's benefits of the
22 jobs in the area and the economy in the bootheel
23 and throughout the rest of the state that's
24 impacted by keeping Noranda online.

25 **Q. I may have just one more question.**

1 I'm going to ask you some questions about something
2 I know nothing about, so please bear with me.
3 Apparently when Noranda was first placed on
4 service, Noranda placed on service by Ameren, it
5 was under a different class than the LTS class; is
6 that correct?

7 A. The rate was the same as the LPS
8 class, large power class at that time.

9 Q. Okay. That's probably -- all right.
10 And in the subsequent rate case after Noranda
11 started taking service from Ameren Missouri, was
12 it -- was its rate lowered? Do you recall?

13 A. I recall that that was the first time
14 a class cost of service was done with Noranda's
15 load. I don't recall whether it went down or not.

16 Q. Whether the LTS rate was lower than
17 the prior rate?

18 A. Than the large primary rate. Yeah.
19 I do not know at this time.

20 MR. DOWNEY: Thank you.

21 JUDGE WOODRUFF: For Ameren?

22 RE-CROSS-EXAMINATION BY MR. LOWERY:

23 Q. Ms. Mantle, I want to test your
24 memory of some of these facts that you've been
25 talking about. First of all, when Noranda became a

1 customer of Ameren Missouri, that was a result of a
2 Stipulation & Agreement entered into among the
3 Staff and Ameren and other parties under which the
4 parties agreed that the certificate of convenience
5 and necessity should be granted; isn't that right?

6 A. That was the -- there was a
7 Stipulation & Agreement in that case, of all the
8 parties.

9 Q. And under that Stipulation &
10 Agreement, the parties, including the Staff, agreed
11 that the CCN should be granted; isn't that right?

12 A. Yes.

13 Q. And didn't the Commission itself find
14 that granting the CCN was necessary or convenient
15 for public service?

16 A. Yes.

17 Q. And you were mistaken, were you not,
18 when you said that the rate that Noranda paid was
19 the same as the LPS rate; in fact, the rate was
20 based upon the LPS rate but the component of that
21 rate that represented the use of the distribution
22 system was removed; isn't that right?

23 A. That would be correct, because
24 Noranda does not have any distribution to serve the
25 transmission.

1 **Q. So it wasn't the same rate as the LPS**
2 **rate, you were mistaken; isn't that right?**

3 A. Most of the components were the same,
4 and it was based off of the large power rate. So
5 no, it was not exactly the large power service
6 rate.

7 **Q. And you were mistaken, then, because**
8 **your testimony was it was the same as the LPS rate.**
9 **Isn't that what you just testified to?**

10 A. If that was my testimony, then it was
11 incorrect.

12 MR. LOWERY: I don't think I have any
13 further questions, your Honor. Thank you.

14 JUDGE WOODRUFF: Redirect?

15 MR. ALLISON: Just briefly. Thank
16 you.

17 REDIRECT EXAMINATION BY MR. ALLISON:

18 **Q. Ms. Mantle, on I think it's page 13**
19 **of your surrebuttal testimony, you put together a**
20 **chart that I think is reproduced from -- reproduced**
21 **and then amended from Mr. Davis' chart; is that**
22 **correct?**

23 A. You were looking at from the
24 complaint case.

25 **Q. Oh, that's right. I'm sorry. From**

1 the complaint case, that's right. And that's in
2 0224, right?

3 A. Yes.

4 Q. Fair enough. And in that case you
5 went through and discussed each of the rate case
6 increases since the year 2007 rate case; isn't that
7 correct?

8 A. Yes.

9 Q. And the total increase from those
10 cases was 43.12 percent; is that right?

11 A. That seems right. I don't have the
12 numbers in front of me, but it was over 40 percent.

13 Q. That's fine. And then Noranda's
14 increase, cumulative increase over that period was
15 only 12.67 percent, right?

16 A. Yes.

17 Q. So when the stipulation that was
18 entered into earlier this week has an escalator,
19 for lack of a better word, that is 50 percent of
20 the entire system average increase in each case, if
21 that had been applied going backwards, I think it
22 was your testimony that Noranda's increases would
23 have been somewhere around 21 and a half percent;
24 is that right?

25 A. Yes.

1 Q. And the record in the 224 case lists
2 particularly each rate increase and what Noranda
3 got in each rate increase; is that right?

4 A. Both in my testimony and Ameren
5 Missouri witness Bill Davis' testimony.

6 Q. And you were asked a little bit about
7 the 2005 CCN case, and I just wanted to touch on
8 that just briefly. And you talk a lot about that
9 in your surrebuttal testimony. In the 2005 CCN
10 case, Ameren and Noranda had already come to a
11 contractual arrangement when that CCN case was
12 brought, hadn't it?

13 A. Yes, they had.

14 Q. And so the question there was, as you
15 understand it, what is in the public interest,
16 right, as it is in any CCN case, to extend Ameren's
17 service territory to cover the area in which
18 Noranda finds itself; is that right?

19 A. Yes.

20 Q. And so as you assessed whether or not
21 that was in the public interest, can you go through
22 some of the factors that all of the parties were
23 looking at in order to determine whether that was
24 in the public interest as it related to, you know,
25 accepting that contract and bringing them on board?

1 A. There was -- I mean, one of the
2 factors that was looked at, just as it's being
3 looked at now, is what was the market price and how
4 did that compare to the rate that was being
5 Noranda. And as you've already heard, if we'd
6 looked at that by itself for that short time
7 period, it would not have been beneficial. But the
8 parties took a long-term look at this contract. It
9 was and still is for a total of 15 years. We knew
10 that Ameren was looking at quite a bit of capital
11 expenditures to meet environmental regulations. I
12 don't think all of those have come to fruition, but
13 there has been considerable capital expenditure
14 since Noranda came online that they have helped
15 contribute to the fixed costs.

16 Another important consideration was
17 that AmerenUE at that time had some territory in
18 Illinois, the Metro East area, that it had been
19 trying to -- probably not going to use the right
20 word -- divest itself of or transfer to, is
21 probably the best words, to Ameren SIPS. And so it
22 was wanting -- Illinois had been restructured.
23 Missouri hadn't. So there was a lot of problems
24 going back and forth, allocation of cost, but yet
25 they hadn't been able to show that it was a benefit

1 to Ameren Missouri customers to do -- for that
2 transfer to go through.

3 And the load of the Ameren Illinois
4 Metro East was approximately about the same peak
5 demand as Noranda. They did not have the energy
6 usage that Noranda did. So that was a factor and,
7 you know, how can we make this transfer happen.

8 Also, taking on Noranda would require
9 additional capacity, and what that involved was the
10 purchase of some, I think they were owned by Ameren
11 SIPS, but some combustion turbines in Illinois that
12 were owned by an Ameren affiliate, that part of the
13 agreement was that Ameren Missouri would purchase
14 those combustion turbines.

15 So there were a lot of
16 considerations. Evaluations were done over a
17 15-year time period. Midas models, forecasting
18 models were. Different market prices were run.
19 There was a lot of work done by Ameren, by Noranda,
20 by Staff, by OPC, a lot of meetings, to come to the
21 Stipulation & Agreement that you've heard about.

22 So that kind of in a nutshell is my
23 recollection of the case.

24 **Q. All right. I appreciate that. I'm**
25 **just looking through your testimony. I think you**

1 hit all the components of that that I wanted to
2 bring to the Commission's attention.

3 So at the end of the day, I want to
4 just clarify two last points, one of which, just to
5 make clear, I understand Commissioner Hall was
6 asking questions about the N Factor, and I just
7 want to make the record incredibly clear with
8 respect to this issue. OPC signed a Stipulation &
9 Agreement with respect to FAC-related issues, and
10 that included a resolution of that N Factor
11 question; isn't that right?

12 A. That is correct.

13 Q. And OPC supports that, the position
14 taken in that Stipulation & Agreement; is that
15 right?

16 A. That is correct.

17 Q. Fair enough. And in addition, OPC
18 also supports the stipulation, the Nonunanimous
19 Stipulation & Agreement that was filed earlier this
20 week with respect to rate design and certain other
21 issues; is that right?

22 A. Yes.

23 Q. And it's your independent judgment,
24 having worked in this area for a long time, that
25 that is a just and reasonable resolution of the

1 **issues that are treated in that stipulation; is**
2 **that right?**

3 A. That is correct.

4 MR. ALLISON: Thank you. I don't
5 have anything further.

6 JUDGE WOODRUFF: You can step down.

7 (Witness excused.)

8 JUDGE WOODRUFF: Then we'll go to
9 Mr. Davis for Ameren. Welcome back, Mr. Davis.

10 MR. MITTEN: Your Honor, I previously
11 offered Exhibit 7 through 10. This is Mr. Davis'
12 last scheduled appearance, and I'd ask that they be
13 received into the evidence at this time.

14 JUDGE WOODRUFF: Exhibits 7, 8, 9 and
15 10 have been offered into evidence. Any objection
16 to their receipt?

17 (No response.)

18 JUDGE WOODRUFF: Hearing none, they
19 will be received.

20 (AMEREN MISSOURI EXHIBIT NOS. 7, 8, 9
21 AND 10 WERE RECEIVED INTO EVIDENCE.)

22 MR. MITTEN: Mr. Davis is available
23 for cross-examination.

24 JUDGE WOODRUFF: For cross, we'll
25 begin with Staff.

1 MR. THOMPSON: I have no questions
2 for Mr. Davis. Thank you.

3 JUDGE WOODRUFF: MECG?

4 MR. WOODSMALL: No questions.

5 JUDGE WOODRUFF: Public Counsel?

6 MR. ALLISON: No questions.

7 JUDGE WOODRUFF: MIEC?

8 MR. DOWNEY: No questions.

9 JUDGE WOODRUFF: We'll come up for
10 questions from the Bench. Mr. Chairman.

11 CHAIRMAN KENNEY: Mr. Davis, no,
12 thank you. No questions.

13 JUDGE WOODRUFF: Commissioner Hall?

14 COMMISSIONER HALL: I have no
15 questions. Thank you.

16 JUDGE WOODRUFF: There was no
17 recross, so no need for further -- or there's no
18 questions, so no need for recross or redirect, and
19 you can step down.

20 (Witness excused.)

21 JUDGE WOODRUFF: That leaves
22 Mr. Mudge.

23 JUDGE WOODRUFF: Good afternoon.
24 Raise your right hand.

25 (Witness sworn.)

1 JUDGE WOODRUFF: You may inquire when
2 you're ready.

3 MR. NELSON: Thank you, your Honor.
4 I believe Mr. Mudge's testimony has been prefiled
5 and premarked as 33NP and 33HC.

6 JUDGE WOODRUFF: That is correct.

7 ROBERT MUDGE testified as follows:

8 DIRECT EXAMINATION BY MR. NELSON:

9 Q. Please tell us your name.

10 A. Robert Mudge.

11 Q. Where do you work?

12 A. The Brattle Group.

13 Q. What do you do at the Brattle Group?

14 A. The Brattle Group is an economics and
15 finance consulting firm. I'm a principal of the
16 firm.

17 Q. Are you the Robert Mudge who has
18 caused to be filed in this case rebuttal testimony
19 which has been marked as Exhibits 33HC and 33NP?

20 A. Yes.

21 Q. Do you have any changes to that
22 testimony?

23 A. I do not.

24 Q. If I were to ask you today the
25 questions contained in that testimony, would your

1 **answers today under oath be the same as contained**
2 **in the testimony?**

3 A. They would.

4 MR. NELSON: Your Honor, at this time
5 I'd move for the admission of Exhibits 33HC and
6 33NP.

7 JUDGE WOODRUFF: 33 HC and NP have
8 been offered. Any objection to their receipt?

9 (No response.)

10 JUDGE WOODRUFF: Hearing none, they
11 will be received.

12 (AMEREN MISSOURI EXHIBIT NO. 33NP/HC
13 WAS RECEIVED INTO EVIDENCE.)

14 MR. NELSON: Tender the witness for
15 cross.

16 JUDGE WOODRUFF: For cross we'll
17 begin with Staff.

18 MR. THOMPSON: I have no questions
19 for Mr. Mudge. Thank you.

20 JUDGE WOODRUFF: MECG?

21 MR. WOODSMALL: No questions.

22 JUDGE WOODRUFF: Public Counsel?

23 MR. ALLISON: No questions.

24 MR. WOODSMALL: MIEC?

25 MR. MALLIN: No questions.

1 JUDGE WOODRUFF: Come up for
2 questions from the Bench. Mr. Chairman?

3 CHAIRMAN KENNEY: Mr. Mudge, no
4 questions. Thanks for being here.

5 JUDGE WOODRUFF: Commissioner Kenney?

6 COMMISSIONER W. KENNEY: Thank you,
7 Mr. Mudge. No questions.

8 JUDGE WOODRUFF: Commissioner Hall?

9 COMMISSIONER HALL: I have no
10 questions. Thank you.

11 JUDGE WOODRUFF: Okay. There was no
12 questions, so no need for recross or redirect, and
13 you can step down.

14 (Witness excused.)

15 JUDGE WOODRUFF: Okay. Mr. Mudge was
16 the last witness on my schedule here. We do have a
17 couple other things to take care of. First of all,
18 the Exhibit 246 that was offered by Staff about an
19 hour ago, does anyone wish to be heard on that?

20 MR. DOWNEY: Yes, Judge.

21 JUDGE WOODRUFF: Go ahead, MIEC.

22 MR. DOWNEY: Can you give me five
23 minutes to figure out what the questions are? I
24 haven't had a chance to confer yet.

25 JUDGE WOODRUFF: Okay. Why don't we

1 take about a ten-minute break, actually about a
2 13-minute break. We'll come back at 4:10.

3 (A BREAK WAS TAKEN.)

4 JUDGE WOODRUFF: All right. We're
5 back from our short break, and we're back to
6 discuss Exhibit 246 from Staff. Mr. Thompson, do
7 you wish to be heard on this?

8 MR. THOMPSON: Sarah, do you want to
9 take the stand? I apologize for dumping this on
10 everybody at the end. This is an exhibit that was
11 prepared in response to a request Commissioner
12 Kenney made while I was doing my opening statement,
13 the first page that is. The second two to pages
14 are taken out of Ms. Kliethermes' testimony and are
15 already in the record.

16 So I have offered Exhibit 246. The
17 parties asked to have an opportunity to
18 cross-examine, and at this point I would tender
19 Ms. Kliethermes for cross. Hopefully they may
20 withdraw their objections. I don't know what
21 they're going to do.

22 MR. DOWNEY: Judge, I thought the way
23 we were dealing with this is just sustaining the
24 objections because we don't have any of the backup
25 for this. It's at the 11th hour. And if it really

1 is just a recitation of facts in the record, it can
2 be briefed. Because of that, I haven't conferred
3 with my clients to figure out what questions they
4 even want me to ask about it.

5 JUDGE WOODRUFF: Let me ask the
6 witness, Ms. Kliethermes, this information is all
7 from the record?

8 THE WITNESS: Yes.

9 JUDGE WOODRUFF: And it could be
10 provided in briefs?

11 THE WITNESS: Yes. Well, I'll caveat
12 that by saying you would multiply numbers that are
13 in the record.

14 MR. DOWNEY: Lawyers can do that.

15 MR. LOWERY: We can take issue with
16 the math if they -- lawyers can have engineers
17 check the math and then we can deal with it.

18 JUDGE WOODRUFF: All right. Do you
19 still wish to offer the exhibit?

20 MR. THOMPSON: Yes.

21 JUDGE WOODRUFF: I'm going to
22 overrule -- I'm going to sustain the objections.
23 It will not be admitted.

24 MR. THOMPSON: Thank you, Judge. You
25 run a tight ship.

1 JUDGE WOODRUFF: All right. 246 is
2 not admitted.

3 Before we go through the list of
4 exhibits and so forth, Commissioner Hall had some
5 information he wanted to impart.

6 COMMISSIONER HALL: It's my
7 understanding, as is the practice after a hearing
8 such as this, that all the parties file post-
9 hearing briefs. There's a couple of issues that I
10 would hope to see covered in those post-hearing
11 briefs, and I would assume that for the most part
12 they would be without me saying anything, but I
13 want to make it -- I want to be very clear about
14 that.

15 I want to know what is this risk
16 concern that Ameren and Noranda have concerning the
17 wholesale agreement proposal that Ameren's put
18 forth, and to what extent the Commission in an
19 Order or a tariff could mitigate or eliminate that
20 risk. I'm also curious as to what extent the
21 General Assembly can mitigate or eliminate that
22 risk.

23 Second issue, how and to what extent
24 would ratepayers be harmed by moving Noranda to
25 wholesale service. Can the Commission or General

1 Assembly mitigate or eliminate that harm?

2 What would be the effect on Ameren
3 and its customers of eliminating the 12(M)
4 adjustment of off-system sales in the current FAC
5 tariff? Is it appropriate to do so?

6 And then finally, assuming that the
7 AAO granted to Ameren for the ice storm that shut
8 down Noranda was appropriate and was for lost fixed
9 costs, what legal basis is there for denying
10 recovery of those amounts deferred?

11 JUDGE WOODRUFF: And if you didn't
12 get it all down, it will be in the transcript. All
13 right.

14 MR. LOWERY: That's good. I couldn't
15 write that fast.

16 JUDGE WOODRUFF: All right. We need
17 to deal with the exhibits that were offered by --
18 or that were submitted by witnesses who did not
19 actually testify today in the last three weeks. I
20 believe some of them were addressed in the
21 preliminary filings in this case suggesting that if
22 they didn't even have any issues that were here,
23 they would just be allowed to be admitted; is that
24 correct? Some others were for people who had
25 testimony that had issues that were settled before

1 they ever got a chance to take the stand.

2 So what I'm going to do is go through
3 for each party the list of the witnesses and see if
4 there's any objection to their testimony. First
5 would be the Adams direct, Bauer rebuttal, Bauer
6 surrebuttal, DeGraw direct, Iselin rebuttal,
7 Langenhorst direct, Lovett rebuttal, Loos direct,
8 Martin direct, Muniz rebuttal, Peters direct,
9 Peters rebuttal, Porter rebuttal, Porter
10 surrebuttal, Pozzo direct, Spanos, Spanos rebuttal,
11 Spanos surrebuttal, Weisenborn rebuttal, Weiss
12 direct.

13 I believe that covers everything from
14 Ameren. Did I miss anything?

15 MR. LOWERY: I don't think so, but my
16 list might not be up to date. Are those -- you
17 didn't mention Humphreys. Did Humphreys somehow
18 not get admitted.

19 JUDGE WOODRUFF: I show Humphreys as
20 being in.

21 MR. LOWERY: I think you were correct
22 then, your Honor.

23 JUDGE WOODRUFF: Do you wish to offer
24 those documents at this time?

25 MR. LOWERY: We do. We offer all of

1 those testimonies at this time.

2 JUDGE WOODRUFF: Any objections to
3 their receipt?

4 (No response.)

5 JUDGE WOODRUFF: Hearing none, they
6 will be received.

7 (AMEREN MISSOURI EXHIBIT NOS. 1, 5,
8 6, 11, 20NP/HC, 22, 23, 24, 25, 34, 35, 36NP/HC,
9 37, 38NP/HC, 39, 43, 44, 45, 51, and 52 WERE
10 RECEIVED INTO EVIDENCE.)

11 JUDGE WOODRUFF: I believe that takes
12 care of Ameren. Oh, there's Exhibit 56 was the
13 errata to Mr. Reed's testimony. I deferred that
14 until he was going to come back later and then I
15 don't believe he ever came back.

16 MR. LOWERY: Yes, he came back
17 yesterday, but I -- or Tuesday. Actually, I was
18 ill and wasn't here. So we offer it.

19 JUDGE WOODRUFF: Any objection to its
20 receipt?

21 (No response.)

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

24 (AMEREN MISSOURI EXHIBIT NO. 56 WAS
25 RECEIVED INTO EVIDENCE.)

1 JUDGE WOODRUFF: Moving on to Staff,
2 similar situation, we've got Boustead surrebuttal,
3 Carle surrebuttal, Eubanks surrebuttal, Ferguson
4 rebuttal, Ferguson surrebuttal, Kunst rebuttal,
5 Kunst surrebuttal, Lange surrebuttal, Maloney
6 rebuttal, Rice rebuttal, Rice surrebuttal, Scheible
7 surrebuttal, Sharpe surrebuttal, Warren rebuttal,
8 Warren surrebuttal, Wells surrebuttal, and I
9 believe that's it.

10 MR. THOMPSON: I would offer all of
11 those at this time, Judge.

12 JUDGE WOODRUFF: Any objections to
13 their receipt?

14 (No response.)

15 JUDGE WOODRUFF: Hearing none, they
16 will all be received.

17 MR. THOMPSON: Thank you.

18 (STAFF EXHIBIT NOS. 207, 208NP/HC,
19 212, 213, 214NP/HC, 223NP/HC, 224NP/HC, 225, 226,
20 229, 230, 231, 235NP/HC, 238, 239 AND 240NP/HC WERE
21 RECEIVED INTO EVIDENCE.)

22 JUDGE WOODRUFF: OPC, everything has
23 been admitted that they offered.

24 For MIEC, we have Andrews direct,
25 Carver direct andCarver surrebuttal, Phillips

1 direct and Phillips surrebuttal. Do you wish to
2 offer those?

3 MR. DOWNEY: Yes, your Honor.

4 JUDGE WOODRUFF: All right. Any
5 objection to their receipt?

6 (No response.)

7 JUDGE WOODRUFF: Then those named
8 testimonies will all be received.

9 (MIEC EXHIBIT NOS. 500NP/HC, 506,
10 507, 515 AND 516NP/HC WERE RECEIVED INTO EVIDENCE.)

11 JUDGE WOODRUFF: Exhibits 530 and
12 531, going back to the first week, 530 was the
13 Global Metals Weekly and 531 was the CRU report.
14 Neither were offered at the time.

15 MR. DOWNEY: What was the first one?

16 JUDGE WOODRUFF: The Global Metals
17 Weekly Report from March 4th of 2015. I recall
18 asking him at the time. He did not wish to offer
19 them at that time. He said I'll put them in later,
20 but later never came.

21 MR. DOWNEY: Yes. I'll offer them.

22 JUDGE WOODRUFF: Let's deal with them
23 separately. 530 is the Global Metals Weekly. Any
24 objections to its receipt?

25 MR. LOWERY: I do have an objection.

1 I don't believe -- I don't know that there's
2 foundation for admission of this entire document.
3 It wasn't offered at the time, and we might have
4 had an opportunity to ask questions about it at the
5 time. So yeah, I object on the grounds of lack of
6 foundation.

7 JUDGE WOODRUFF: I'll sustain that
8 objection. The other one, 531, the CRU report,
9 there was an objection made at the time in that it
10 had not been produced in discovery. It never came
11 back up again.

12 MR. LOWERY: Same objection. There's
13 been no satisfactory explanation given as to why it
14 wasn't produced or any contention that it wasn't
15 asked for.

16 MR. DOWNEY: Let me just say this,
17 Judge. Nobody showed you or me any DR that
18 requested this report. What I did was I looked at
19 the DR requests, and I did not see a request that
20 asked for something like this. Unless you call
21 this a CRU forecast, which I've looked at the
22 report closely and I don't think you would call it
23 a forecast, it wasn't requested.

24 MR. LOWERY: We disagree, and I think
25 it was incumbent on MIEC if they wanted to get this

1 document in to respond before now with their
2 explanation as to why they didn't produce it.

3 JUDGE WOODRUFF: I'll sustain the
4 objection. It will not be admitted.

5 For the separately listed Noranda
6 witnesses, they've all been received.

7 Division of Energy, I don't think
8 there's anybody here from Division of Energy.
9 Similar situation for Miller direct, Miller
10 surrebuttal, Schroeder direct, Schroeder Rebuttal
11 and Schroeder surrebuttal.

12 MS. TATRO: I think those were all
13 supposed to come in because of the stipulation.

14 JUDGE WOODRUFF: I think that's
15 correct, and they will be admitted.

16 (DIVISION OF ENERGY EXHIBIT NOS. 705,
17 706, 707NP/HC, 708 AND 209 WERE RECEIVED INTO
18 EVIDENCE.)

19 JUDGE WOODRUFF: Wal-Mart's evidence
20 is all in. Electrical Workers is all in. The
21 Cities' is all in. Sierra Club's is in. Consumers
22 Council's is in. And I believe that's all, except
23 for MCEG, and all shown as admitted.

24 Okay. I believe that takes care of
25 all the evidence, then. Anything else that anyone

1 needs to bring up?

2 MR. WOODSMALL: Do we have a briefing
3 date established already?

4 JUDGE WOODRUFF: The briefing dates
5 were established by the schedule. We have true-up
6 also, and at some point we'll -- I'm not sure when
7 that comes in.

8 MR. LOWERY: Testimony I think is
9 Tuesday. Whether we --

10 JUDGE WOODRUFF: We won't know if it
11 needs a hearing until after we see the testimony.

12 MR. LOWERY: Right.

13 JUDGE WOODRUFF: If there's nothing
14 else, then we are adjourned.

15 (WHEREUPON, the hearing concluded at
16 4:22 p.m.)

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C E R T I F I C A T E

STATE OF MISSOURI)

) ss.

COUNTY OF COLE)

I, Kellene K. Feddersen, Certified
Shorthand Reporter with the firm of Midwest
Litigation Services, do hereby certify that I was
personally present at the proceedings had in the
above-entitled cause at the time and place set
forth in the caption sheet thereof; that I then and
there took down in Stenotype the proceedings had;
and that the foregoing is a full, true and correct
transcript of such Stenotype notes so made at such
time and place.

Given at my office in the City of
Jefferson, County of Cole, State of Missouri.

Kellene K. Feddersen, RPR, CSR, CCR

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