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MISSOURI PUBLIC SERVICE COMMISSION

CASE NO. EO-2010-0255

SURREBUTTAL TESTIMONY

OF

JAIME HARO

ON

BEHALF OF

UNION ELECTRIC COMPANY

d/b/a Ameren Missouri

**St. Louis, Missouri
December, 2010**

1 A. A long-term partial requirements sale is an agreement where the seller
2 provides resources sufficient to meet part of the purchasing entity's load obligation
3 during the term of the agreement. The demarcation between short- and long-term is one
4 year.

5 **Q. Are these the definitions as you understood them to be at the time that**
6 **the FAC tariff was proposed, considered by the Commission, and ultimately**
7 **approved by the Commission, as well as at the time that the AEP and Wabash**
8 **agreements were executed?**

9 A. Yes.

10 **Q. Are the AEP and Wabash contracts in fact long-term partial**
11 **requirements sales?**

12 A. Yes they are. The contracts themselves, which I have attached as
13 Schedules JH-S1 and JH-S2, have terms of 15 months (AEP) and 18 months (Wabash).
14 Consequently they are long-term under the commonly accepted use of that term in the
15 wholesale electric marketplace, and as the Company has consistently used that term in
16 connection with its activities related to wholesale power marketing. The contracts also
17 specifically provide that the firm capacity and energy sold under the contracts will be
18 used to meet load obligations of the purchasers. This is the commonly understood
19 meaning of a partial requirements sale, as I noted earlier, and it is how the Company has
20 consistently used that phrase in connection with its activities relating to wholesale power
21 marketing. The Wabash contract states: "The Buyer shall use the Product [capacity and
22 energy] to partially meet the requirements of Citizens Electric Corporation in Missouri."
23 The AEP contract states: "The Capacity and Energy provided by AmerenUE herein will

1 enable AEP to partially meet load serving requirements,” and the “Trade Type” is
2 identified as “PHYSICAL Capacity and associated energy (Partial Requirements—
3 Baseload).” As a consequence of both the contract terms and the nature of the contracts,
4 both contracts are partial requirements sales contracts.

5 **Q. Missouri Industrial Energy Consumers (“MIEC”) witness Maurice**
6 **Brubaker argues that the words in the contract have “no meaning as to the**
7 **character of the service provided,” and that “[c]alling these transactions**
8 **requirements service does not make them so anymore [sic] than calling a dog a duck**
9 **makes it quack.” (Brubaker direct, p. 6, lines 13-14). Is Mr. Brubaker correct?**

10 A. No, Mr. Brubaker is incorrect. These words constitute the terms of the
11 service contract that define the products and services that the seller has agreed to provide
12 and that the purchaser has agreed to purchase. In this case, Ameren Missouri agreed to
13 provide capacity and energy to partially meet the load obligations of the purchasers, and
14 the purchasers agreed to purchase capacity and energy in order to meet those load
15 obligations. Including terms in a contract that define the character of the service
16 provided is not the equivalent of calling a dog a duck.

17 **Q. Are these contracts, in substance, partial requirements contracts?**

18 A. Yes, they are. As indicated in the agreements, capacity and energy from
19 the Wabash contract is to be used to partially meet the load obligations of one of its
20 members, Citizens Electric Corporation (“Citizens”), which is a large electric cooperative
21 that serves more than 20,000 customers in Southeast Missouri. Wabash is the not-for-
22 profit cooperative that acquires capacity and energy on behalf of its members, including
23 Citizens, which use that capacity and energy to meet their load obligations. Capacity and

1 energy provided under the AEP contract is to be used to partially meet the load
2 obligations of the AEP Operating Companies, which consist of electric utilities serving
3 more than 5 million customers in 11 states.

4 **Q. What is the basis for the other parties' contention that the AEP and**
5 **Wabash contracts are not long-term partial requirements contracts?**

6 A. Many of the parties rely on their interpretation of definitions for the
7 phrases "long-term service" and "requirements service" contained on page 310 of the
8 Federal Energy Regulatory Commission's ("FERC") Form 1, which is the annual report
9 for electric companies used by FERC and adopted by the Missouri Public Service
10 Commission. For reporting purposes only, this form classifies contracts as short-term
11 (less than one year), intermediate term (1-5 years) and long-term (greater than 5 years).
12 Form 1 also applies a definition of "requirements service" which ties to a utility's
13 resource planning process.

14 **Q. Is the FERC Form 1 relied upon by the wholesale electric market as a**
15 **reference for contract negotiations?**

16 A. No. In my 12 year career in wholesale power marketing and trading, I
17 have never once heard any reference to FERC Form 1 (by those engaged in power
18 marketing at Ameren Missouri or by other market participants), let alone the definitions
19 found at page 310, in negotiating the terms and conditions of wholesale power contracts.

20 **Q. Is it appropriate to use the definitions of "long-term" and**
21 **"requirements service" contained in FERC Form 1 to interpret Ameren Missouri's**
22 **FAC tariff?**

1 A. No, it is not. The delineations between categories of contracts for annual
2 reporting purposes contained in Form 1 bear no resemblance to the definitions of those
3 terms used in the modern wholesale marketplace for electric energy, and no relationship
4 to the common meaning of the terms “long-term” and “requirements.” The FERC Form
5 1 contract categories date back at least to 1990, years before the modern open access
6 market for electricity existed. I have attached as Schedule JH-S3 a copy of page 310 of
7 Union Electric Company’s 1990 Form 1 which shows the use of these terms in the
8 reporting form has not changed over the last 20 years.

9 **Q. Has the wholesale market for electric energy changed since the**
10 **definitions of “long-term” and “requirements service” were first included in the**
11 **definitions used for the Form 1 Report?**

12 A. Yes, the wholesale market has changed dramatically since those
13 definitions were first included. The definitions included in the Form 1 predate both the
14 Energy Policy Act of 1992 and FERC Order 888, which fundamentally changed the
15 wholesale market for electricity in the United States. The Energy Policy Act of 1992 laid
16 the foundation for the eventual deregulation of the wholesale market for energy in North
17 America by requiring utility companies to allow external entities fair access to electric
18 transmission systems, thereby enabling large energy customers to choose their electric
19 supplier. The FERC adopted Order 888, as well as a series of related orders, in the late
20 1990s to ensure the objectives of the Energy Policy Act were implemented through
21 standards mandating fair and open access to transmission. In short, the modern
22 wholesale market for electricity bears little resemblance to the market that existed when

1 the definitions of “long-term” and “requirements service” were first adopted for reporting
2 purposes in the Form 1 report.

3 **Q. Do participants in the electric markets refer to contracts with a term**
4 **of 1-5 years as “intermediate term” contracts?**

5 A. No. In the 12 years that I have marketed and traded power, I do not recall
6 ever hearing the phrase “intermediate term” used to describe a contract, let alone
7 specifically one with a term duration of 1-5 years (as defined on page 310 of the FERC
8 Form 1), until this proceeding. In the electric marketplace, the demarcation point
9 between long-term and short-term is one year.

10 **Q. Do other witnesses acknowledge that one year is the demarcation**
11 **point between long-term and short-term power contracts in the market?**

12 A. Yes. MIEC witnesses Brubaker and Henry Fayne both acknowledged this
13 fact in their depositions. Mr. Brubaker stated, “[a]nd I just know that in the market
14 today, a lot of people talk of one year as being a dividing point for long-term versus
15 short-term.” Deposition of Maurice Brubaker, p. 64, l. 6-9. Similarly, Mr. Fayne stated,
16 “I also understand having worked with traders that a year or more is often considered
17 long-term”. Deposition of Henry Fayne, p. 40, l. 12-14.

18 **Q. Does FERC itself use the definitions appearing on page 310 of the**
19 **FERC Form 1 in differentiating between long-term and short-term contracts?**

20 A. No. In its decisions dating back to at least 2002, FERC has completely
21 ignored the reporting convention in its Form 1 and has consistently used one year as the
22 demarcation between short-term and long-term contracts. The FERC made this
23 abundantly clear in its order in Docket No. RM06-10-001, issued June 22, 2007--less

1 than a year before Ameren Missouri's filing in Case No. ER-2008-0318 (the case in
2 which the FAC tariff in effect during the accumulation period for this prudence review
3 was approved)--FERC described its consistent use of this demarcation between long- and
4 short-term contracts:

5 Additionally, the Commission at the time of enactment of EPAct
6 2005 had for years defined long-term contracts under the OATT
7 as one year or longer. Similarly, the Commission has treated power
8 sales with a contract term of greater than one year to be "long-term"
9 for reporting purposes. See, e.g., Revised Public Utility Filing
10 Requirements, Order No. 2001, 667 FR 31043, FERC Stats.& Regs.
11 par. 31,127 (2002), Order No. 2001-A, 100 FERC par. 61,074,
12 reconsideration and clarification denied, Order No. 2001-B,
13 100 FERC par. 61, 342 (2002). ***We thus believe it is reasonable***
14 ***to use the convention of treating contracts of a year or more as***
15 ***"long-term" consistent with our longstanding practice.*** (emphasis
16 added.)¹
17

18 Additionally, the FERC's Electronic Quarterly Report ("EQR") data dictionary
19 states: "Contracts with a duration of one year or greater are long-term. Contracts with
20 shorter durations are short-term." (***Re: Revised Public Utility Filing Requirements for***
21 ***Electric Quarterly Reports***, "Order Revising Electric Quarterly Report Data Dictionary,"
22 125 FERC ¶ 61,103 (2008) p. 33). All public utilities and power marketers must file
23 EQRs for each calendar quarter. The filings must summarize contractual terms and
24 conditions for market-based power sales, cost-based power sales, and transmission
25 service. EQRs provide a detailed, comprehensive view of the wholesale power markets
26 on a transaction-by-transaction basis. Unlike FERC Form 1, the information from EQR
27 reports is regularly reviewed and utilized by wholesale power market participants. The

¹ *Re: New PURPA 210(m) Regulations Applicable to Small Power Production and Cogeneration Facilities*,
119 FERC ¶ 61,305 (2007) footnote 17, page 18-19.

1 Kirkwood, Kahoka, Marceline, Perry, AEP and Wabash contracts are categorized as
2 long-term firm contracts in this report.

3 There are also numerous FERC orders in individual cases that reflect the common
4 definition of one year for long-term contracts. For example, in its order in the
5 *Mountainview Power* case, FERC stated:

6 While we are conditionally accepting the PPA on the basis that it is
7 consistent with the Commission's current policy, we will henceforth
8 require that all affiliate ***long-term (one year or longer) power purchase***
9 ***agreements***, whether at cost or market, be subject to the conditions
10 set forth in Edgar. (emphasis added.)²
11

12 **Q. Why does FERC Form 1 continue to categorize contracts as short-**
13 **term, intermediate-term and long-term when these categories are not used by FERC**
14 **in other contexts?**

15 A. I don't know why FERC chose those classifications 20 years ago. Those
16 classifications are simply a vehicle for data collection for that particular report. FERC
17 Form 1 could require that contracts be divided into 3 or 5 or 20 different categories, but
18 that reporting convention would not affect what is a long-term or short-term contract in
19 the marketplace, or how FERC uses the term in other contexts pursuant to its
20 longstanding practice. The FERC Form 1 instructions are for the limited purpose of
21 completing page 310 of the form. Those definitions never applied to or limited the use of
22 the term "long-term" as it is currently used in the wholesale power market. In particular,
23 they have never formed the basis of Ameren Missouri's understanding of the meaning of
24 "long-term" in the wholesale marketplace.

² Re: *Southern California Edison Company, On Behalf of Mountainview Power Company LLC*, "Order Conditionally Accepting Proposed Rate Schedule and Revising Affiliate Policy," 106 FERC par. 61,183, paragraph 58 (2004).

1 **Q. Is there other evidence that the standard definition of long-term is one**
2 **year or longer?**

3 A. Yes. In other areas of the electric business, one year is consistently used
4 as the demarcation point between long-term and short-term. Both the Midwest
5 Independent Transmission System Operator, Inc. (“MISO”) tariff as well as FERC’s pro
6 forma Open Access Transmission Tariff (“OATT”) define long-term point-to-point
7 electric transmission as one year or longer. Additionally, the North American Electric
8 Reliability Corporation (“NERC”) Glossary of Terms Used In Reliability Standards
9 defines a Resource Planner as: “The entity that develops a *long-term (generally one year*
10 *and beyond)* plan for the resource adequacy of specific loads (customer demand and
11 energy requirements) within a Planning Authority Area.” (emphasis added.) See
12 Schedule JH-S4. Even the Ameren Missouri FAC tariff at issue in this case uses one year
13 as the demarcation point between capacity contracts whose costs are included as
14 purchased power expense and flowed through the FAC and those whose costs are not
15 included as purchased power expense and are thus excluded from the FAC. (See Original
16 Sheet No. 98.3, definition of “CPP”). This is a clear recognition that one year is the
17 appropriate demarcation between long-term and short-term capacity.

18 Outside the context of power sales and transmission, long-term is also regularly
19 used to describe contracts of one year or more. For example, as Ameren Missouri
20 witness Gary Weiss testifies, this Commission considers debt instruments with a term of
21 one year or longer to be long-term debt in establishing the capital structures for all
22 utilities.

1 **Q. Notwithstanding that one year is used by wholesale power market**
2 **participants, by the FERC and in other contexts as the demarcation between long-**
3 **term and short-term contracts, is it possible that the FAC tariff at issue in this case**
4 **was meant to incorporate the definition of long-term contracts (5 years) contained**
5 **on page 310 of the FERC Form 1?**

6 A. No, that is not possible. When Ameren Missouri originally proposed the
7 FAC tariff, when it was being considered by the parties to Case No. ER-2008-0318, and
8 when the Commission ultimately approved the tariff in that case, the scope of the
9 exclusion from “OSSR” was clearly meant to be broad enough to encompass the
10 municipal contracts with the cities of Kirkwood, Marceline, Perry and Kahoka that were
11 in existence at the time the tariff was approved. All parties apparently agree with this
12 because no party argues that it was improper for Ameren Missouri to exclude the
13 revenues from those municipal contracts from OSSR for the period at issue in this
14 prudence review proceeding. But only one of those contracts, the contract with the City
15 of Perry, had a term of five years or longer. The contracts for Kirkwood (29 months),
16 Marceline (36 months), and Kahoka (36 months) had significantly shorter terms.³ The
17 intended meaning of long-term in the FAC tariff had to be less than five years, or these
18 contracts would not have qualified for the exclusion. Consequently it is not possible that
19 the tariff could have been based on consideration of the definition of long-term (5 years)
20 found on page 310 of FERC Form 1.

³ Ameren Missouri’s municipal contracts have sometimes been shorter than the AEP and Wabash contracts. For example, in October 2009, Ameren Missouri and the City of Kirkwood entered into a separate partial requirements agreement with a term of 14 months. In 2008, Ameren Missouri entered into a partial requirements contract with the City of Kahoka for a term of **22 days**.

1 Those who argue that the AEP and Wabash contracts are included in factor OSSR
2 cannot have it both ways; that is, they can't claim the FERC Form 1 reporting instruction
3 definition of five years or longer for long-term controls, but at the same time exclude
4 contracts with terms of less than five years (29 months, 36 months and 36 months) from
5 OSSR. This conclusively shows that the FERC Form 1 instructions had nothing to do
6 with the meaning of the phrase "long-term full and partial requirements sales" in the FAC
7 tariff.

8 **Q. What is Staff witness Mantle's view of "long-term" in this context?**

9 A. Ms. Mantle's view of "long-term" is a bit confusing. In her deposition,
10 she stated that she could not say what the Commission's definition of "long-term" was
11 when Ameren Missouri's FAC tariff took effect, but in her opinion "long-term" meant 5
12 years or greater at that time. Deposition of Lena Mantle, p. 30, l. 9-13. However, Ms.
13 Mantle later opined that the definition of "long-term" has evolved since the Commission
14 issued its order in Case No. ER-2008-0318, on January 27, 2009. She stated: "With the
15 opening of the wholesale electric markets and the ability to buy on the spot purchase, spot
16 market, utilities are reluctant to offer long-term contracts, and so where in the past it may
17 have been a five year would be long term, now three years is about the longest that I've
18 seen." Deposition of Lena Mantle, p. 31, l. 2-7. She attributes this evolution in the
19 definition of "long-term" between January 27, 2009 and today, to "[t]he evolution of the
20 electric market. It was still in what you might call infancy. It was emerging at that
21 time." Deposition of Lena Mantle, p. 31, l. 17-19.

22 **Q. What is your response to Ms. Mantle's views on the meaning of "long-**
23 **term"?**

1 A. Ms. Mantle’s views of the meaning of “long-term” are completely at odds
2 with the meaning used in the marketplace, FERC’s longstanding practice and by the Staff
3 itself in the context of this case, since the Staff has not attempted to reclassify the
4 Kirkwood contract, which has a term of less than three years. Ms. Mantle’s testimony
5 that the marketplace was “in its infancy” in 2009 evidences a lack of understanding about
6 the wholesale power market, which has been in existence in its modern form since the
7 mid-1990’s. Although the market continues to evolve, it was certainly no longer in its
8 infancy by 2009. And the demarcation between short-term and long-term contracts in
9 this market is and has consistently been one year; this demarcation is not evolving.

10 **Q. Turning now to the debate about the definition of a “partial**
11 **requirements” contract, you previously stated that this term refers to the seller’s**
12 **obligation to provide resources sufficient to meet part of the purchasing entity’s**
13 **load obligation during the term of the agreement. Is there support for this**
14 **definition?**

15 A. Yes. Based on my years of experience as a marketer and trader of power,
16 this is the definition of a partial requirements contract that market participants use. This
17 definition is also supported in industry publications. For example, the Electric Energy
18 Inc. (“EEI”) Glossary of Electric Industry Terms, p. 115, defines “Partial Requirements”
19 as “a wholesale customer who purchases, or is committed to purchase, only a portion of
20 its electric power generation need from a particular entity. There often is a specified
21 contractual ceiling on the amount of power that a partial requirements customer can take
22 from the entity. In contrast, a ‘requirements’ or ‘full requirements’ customer is
23 committed to purchase all of its needs from a single entity and generally would not have a

1 ceiling on the amount of power it can take.” Similarly, the North American Energy
2 Standards Board (“NAESB”) Wholesale Electric Quadrant (“WEQ”) Glossary defines
3 “Partial Requirements” as “a sale of power to a purchaser in which the seller pledges to
4 meet a specified part of the purchaser’s requirements.” Copies of the EEI and NAESB
5 definitions are attached as Schedule JH-S5.

6 These definitions are intuitive. They make common sense based on the plain
7 meaning of the words “partial” and “requirements.” Webster’s Dictionary defines
8 “partial” as “of or relating to a part rather than the whole; not general or total,” and it
9 defines “requirement” as “something required; something wanted or needed; necessity;
10 something essential to the existence or occurrence of something else.” Webster’s Ninth
11 New Collegiate Dictionary. So it makes logical sense that a partial requirements power
12 contract would be a contract that provides part of the power and energy needed by the
13 purchasing entity to meet its load obligations.

14 **Q. Have any of the other witnesses indicated whether they agree with this**
15 **definition of partial requirements sales?**

16 A. Yes. In her deposition, Staff witness Lena Mantle defined “long-term
17 requirements sales” as simply “[a] contract to provide electricity. Just using the phrase
18 long-term requirement, to me that would be three to five years, and *there would be some*
19 *requirements for providing electricity*. I don’t know what may be part of that in
20 addition. It could vary quite a bit.” Deposition of Lena Mantle, p. 33, l. 1-8 (emphasis
21 added.) When asked to define the phrase “long-term partial requirement sale” Ms.
22 Mantle stated: “Partial can mean *part of the person who’s signing the contracts*
23 *requirements, not necessarily fulfilling all their needs,*” and at another point in the

1 deposition stated: “It would be three to five years, *anything less than full.*” Deposition
2 of Lena Mantle, p. 35, l. 12-14; p. 42, l. 1-5 (emphasis added.) When again asked about
3 her definition of requirements sales, Ms. Mantle admitted: “*standing on its own, it could*
4 *be a contract such as what they [Ameren Missouri] signed with AEP and Wabash*
5 *because you’re not fulfilling all the requirements of AEP and Wabash.*” Deposition of
6 Lena Mantle, p. 35, l. 21-p. 36, l.1 (emphasis added.) However, she then offered her
7 opinion that the AEP and Wabash contracts at issue in this case would not qualify as
8 long-term requirements sales only “because they weren’t long enough.” Deposition of
9 Lena Mantle, p. 35, l. 15-p. 36, l. 5. Although Ms. Mantle takes issue with the definition
10 of long-term, it is clear from her deposition that she supports definitions of “requirements
11 sales” and “partial requirements sales” that are entirely consistent with my view of those
12 terms. In fact, she specifically acknowledges that contracts such as Ameren Missouri’s
13 contracts with AEP and Wabash qualify as partial requirements contracts. Couple her
14 admission that the AEP and Wabash contracts are partial requirements contracts with the
15 fact that long-term means one year or longer (and must mean one year or longer given the
16 other contracts that are excluded from OSSR) and Ms. Mantle’s theory that the AEP and
17 Wabash contracts are included in OSSR falls apart.

18 **Q. Have other witnesses supported this definition of partial**
19 **requirements?**

20 . A. Yes. MIEC witnesses Brubaker and Fayne both provided
21 characterizations of partial requirements in their depositions which are consistent with
22 and support this definition. When asked what the distinction between full and partial
23 requirements service was, Mr. Brubaker stated, “In general, full requirements service

1 means that the selling party is the sole source of the generation to the seller or to the
2 purchaser. *Partial requirements would mean that there is a division of responsibility*
3 *for generation. It could be either that the purchasing party has some of its own*
4 *generation or that it has supply contracts with more than one seller.”* Deposition of
5 Maurice Brubaker, p. 72, l. 1-8 (emphasis added.) Mr. Brubaker also characterized a
6 partial requirements contract as “*something that's more bare-bones where the utility or*
7 *the customer may purchase a block of power and then do hourly denominations (sic)*
8 *for the difference.”* Deposition of Maurice Brubaker, p. 23, l. 20-23 (emphasis added.)

9 **Q. What testimony did Mr. Fayne provide on this subject during his**
10 **deposition?**

11 A. Mr. Fayne also supported a common-sense definition of partial
12 requirements sales in his deposition. Specifically, he defined “long-term partial
13 requirements sales” as “*sales that are made to another entity that only meet part of that*
14 *entity’s requirements”* Deposition of Henry Fayne, p. 42, l. 10-12 (emphasis added.) He
15 also stated that “*(r)equirement sales are any sales to either an end user, i.e. to retail*
16 *customers, or to a wholesale purchaser who will resell that power or has an obligation*
17 *for that power to its own customers. That is what requirements means. It’s an*
18 *obligation to meet some – it is a requirement to meet some obligation of load”* and “*they*
19 *could also be a sale to AEP for six months helping them meet some of their pressure*
20 *(sic) requirements.”* Deposition of Henry Fayne, p. 44, l. 18- p. 45, l. 4 (emphasis
21 added.) Finally, he admitted that “*any transaction to a load-serving entity is at least a*
22 *partial requirements contract regardless of duration.”* Deposition of Henry Fayne, p.
23 61, l. 21-23 (emphasis added.)

1 **Q. As previously discussed, several of the witnesses in this case rely on**
2 **the definition “requirements service” contained in FERC Form 1 to argue that the**
3 **AEP and Wabash contracts do not qualify as long-term partial requirements**
4 **service. Do you have any further comment on this?**

5 A. Yes. First, to state the obvious, FERC Form 1 does not contain a
6 definition for “partial requirement sales” let alone for “long-term partial requirement
7 sale.” Second, let me reiterate that the 20-year-old FERC Form 1 definition of
8 “requirements service” is not the appropriate definition to use for purposes of classifying
9 the AEP and Wabash contracts. It does not match the definition of requirements service
10 commonly used in the modern marketplace, and does not comport with the plain meaning
11 of the word “requirements” as contemplated in Ameren Missouri’s tariff. Moreover, as I
12 previously discussed, it is clear that the FERC Form 1 definitions were not being relied
13 upon when the FAC tariff was drafted and approved. Otherwise, all but one of the
14 Company’s municipal contracts would have been reclassified because they do not meet
15 the definition of “long-term” contained in Form 1. Since the Form 1 definition of “long-
16 term” was not being considered when the Company’s FAC tariff was developed and
17 adopted, it is not reasonable to believe the definition of “requirements service” that
18 appears on the same page of Form 1 was being considered. In other words, these FERC
19 Form 1 instructions either formed the basis for the meaning of the phrase “long-term full
20 and partial requirements sales” in the Company’s FAC tariff or they did not. Neither
21 Staff nor the other parties can pick and choose one FERC Form 1 definition (e.g.,
22 “requirements service”) while ignoring the other (e.g., “long-term”).

1 **Q. What do the instructions on page 310 of FERC Form 1 provide**
2 **regarding “requirements service”?**

3 A. Form 1 states: “Requirement service is service which the supplier plans to
4 provide on an on-going basis (i.e., the supplier includes projected load for this service in
5 its system resource planning). In addition, the reliability of requirements service must be
6 the same as or second only to the supplier’s service to its own ultimate consumers.”

7 **Q. Do Ameren Missouri’s contracts with AEP and Wabash meet these**
8 **standards for requirements service?**

9 A. Arguably they do. First, the load obligation represented by these
10 agreements actually has been included in Ameren Missouri’s various system resource
11 planning efforts – including the Integrated Resource Plan (“IRP”). Secondly, these
12 agreements were firm obligations, and thus second only to our own load in terms of
13 reliability.

14 **Q. Are you suggesting that these specific agreements were included in**
15 **Ameren Missouri’s most recent IRP?**

16 A. No. As discussed in more detail in the surrebuttal testimony of Ameren
17 Missouri witness Steven Wills, Ameren Missouri is required to submit an IRP to the
18 Commission once every three years. The IRP reflects a snapshot in time that shows
19 Ameren Missouri’s resource plan at that moment. Ameren Missouri’s last IRP, filed in
20 Case No. EO-2007-0409, was submitted in February 2008 and included load projections
21 prepared before that date – and more than two years before the AEP and Wabash
22 contracts were consummated. The fact that it was not possible for the specific contracts
23 with AEP and Wabash to be considered in Case No. EO-2007-0409 because they were

1 not in existence at the time of the filing does not mean that those contracts cannot qualify
2 as partial requirements sales. Indeed only one of the municipal contracts excluded from
3 OSSR was in existence at the time of Ameren Missouri's last IRP filing, yet all parties to
4 this case agree that all of the municipal contracts qualify as long-term full or partial
5 requirements sales. Moreover, as noted by Mr. Wills in his surrebuttal testimony, the
6 2008 IRP did not project loads for *any* full or partial requirements customers –
7 municipalities or otherwise - beyond December 31, 2008. In fact Ameren Missouri
8 stopped providing service to two of those municipal customers following the expiration
9 of their contracts on December 31, 2008.⁴

10 **Q. Do any of the witnesses representing other parties in this case provide**
11 **support for your position that a specific agreement does not need to be included in**
12 **the IRP to meet the definition of a partial requirements sale or contract?**

13 A. Yes. In his deposition, MIEC witness Brubaker was asked if “system
14 resource planning” meant the IRP and only the IRP in his mind, or if there are other
15 aspects of system resource planning that could be involved. In his response he stated, “I
16 would think that they would be generally reflected in the IRP process because the IRP
17 includes load obligations and projected loads. I wouldn't say that a specific particular
18 agreement had to be included in an IRP at a point in time because it's a dynamic world
19 that we live in.” Deposition of Maurice Brubaker, p. 68, l. 10-18. He also agreed that
20 “whether that particular contract or even that particular customer's load appears in the
21 latest IRP is not necessarily determinative as to whether it is a requirements contract.”
22 Deposition of Maurice Brubaker, p. 69, l. 12-16.

⁴Ameren Missouri executed new contracts with Kirkwood, Kahoka and Marceline, but did not execute new contracts with Hannibal and Centralia.

1 **Q. Was the load associated with the AEP and Wabash agreements in fact**
2 **included in Ameren Missouri's most recently concluded IRP?**

3 A. Yes. In his surrebuttal testimony Mr. Wills explains that the AEP and
4 Wabash contracts simply reflect a sale of the same megawatt-hours as the Noranda load
5 lost due to the January 2009 ice storm. The load associated with the AEP and Wabash
6 contracts simply replaced the lost Noranda load. As noted previously, that load was
7 included in Ameren Missouri's IRP filing in Case No. EO-2007-0409.

8 **Q. Do you have any final observations regarding the notion that load for**
9 **a specific power supply agreement must be projected in an IRP in order for that**
10 **agreement to qualify as a long-term partial requirements sale?**

11 A. Yes. As Mr. Wills explains in his surrebuttal testimony, although Ameren
12 Missouri's 2008 IRP filing did not project load for any of the municipal agreements
13 beyond December 31, 2008, no party has argued that Ameren Missouri's municipal
14 agreements do not qualify as long-term full or partial requirement sales. If the fact that
15 Ameren Missouri did not include its municipal contracts in the 2008 IRP filing does not
16 disqualify those contracts as long-term full or partial requirements sales, then Staff and
17 the intervenors cannot credibly argue that failure to specifically include the AEP and
18 Wabash contracts in that same IRP filing disqualifies them as long-term full or partial
19 requirements sales. Staff and the intervenors simply cannot have it both ways.

20 **Q. Aside from the IRP, were the AEP and Wabash loads considered in**
21 **Ameren Missouri's resource planning?**

22 A. Absolutely. As I previously stated, the IRP merely reflects a snapshot of
23 Ameren Missouri's resource plan at a point in time. An IRP is not the embodiment of the

1 ongoing system resource planning process. Ameren Missouri engages in resource
2 planning on a continuous basis, and the AEP and Wabash contracts were important
3 considerations in that planning process. For example, the MISO requires Ameren
4 Missouri to demonstrate on a monthly basis that it has sufficient “Planning Resource
5 Credits” to cover its firm demand (load and sales) plus an applicable reserve margin.
6 This demonstration must be made in a “Module E” compliance submission to the MISO.
7 Ameren Missouri accounted for the AEP and Wabash contracts in its Module E filings.
8 This is just one example of how Ameren Missouri engaged in system planning that
9 accounted for both the AEP and Wabash loads. In addition, Ameren Missouri included
10 these loads in its annual and monthly capacity position calculations, load forecasting, fuel
11 budgeting and risk management position calculations. These are all elements of system
12 resource planning.

13 **Q. You also characterize the AEP and Wabash agreements as having a**
14 **reliability of service second only to the service provided to Ameren Missouri’s own**
15 **customers. Can you explain further?**

16 **A.** Yes. The Wabash contract specifically addresses this issue. Paragraph 19
17 of the contract states in relevant part: “Seller agrees that it will consider Buyer
18 equivalent to Seller’s native load customers and agrees that the Product that it will
19 provide to Buyer, pursuant to this Agreement, will be System Firm power with the same
20 quality as the electric power that the Seller provides to its firm retail customers.” The
21 AEP contract provides for the sale of “Firm LD Capacity as that term is defined in the
22 Edison Electric Institute MISO Module E Capacity Transaction Confirmation, Version
23 1.0--October 20, 2008 incorporated herein by this reference and associated Firm LD

1 Energy.” The level of service required by each of those agreements is the same as, or
2 second only to, the service provided to Ameren Missouri’s own customers.

3 **Q. On pages 4 and 5 of his direct/rebuttal testimony, MIEC witness**
4 **Brubaker points out that under the AEP and Wabash contracts Ameren Missouri is**
5 **not providing various RTO and OATT services, and implies that this fact is relevant**
6 **to whether the AEP and Wabash contracts are requirements contracts. Do you**
7 **agree?**

8 A. No. The schedules Mr. Brubaker has supplied simply show that Wabash,
9 and not Ameren Missouri, is responsible for various RTO and OATT charges. Whether
10 Ameren Missouri pays these charges and then bills Wabash, or Wabash pays them
11 directly, has nothing to do with whether the contract is a partial requirements contract.
12 More importantly, I would note again that the AEP and Wabash agreements are partial
13 requirements sales and as such one should not expect them to provide the full scope of
14 products and services provided under a full requirements contract.

15 I have attached as Schedule JH-S6 some examples of other requirements contracts
16 where the purchaser, not the seller, is responsible for some of these RTO and OATT
17 services, including an agreement with the City of Kirkwood, which the Commission itself
18 has described as a full requirements wholesale customer.⁵

19 **Q. Other parties to this case have noted that on its 2009 Form 1 report**
20 **Ameren Missouri classified its municipal power supply agreements as “RQ,” which**
21 **indicates they are requirements service for purposes of Form 1, but did not classify**

⁵ *Comments of the Missouri Public Service Commission Regarding the Department of Energy’s 2009 Transmission Congestion Study and the Designation of National Interest Electricity Transmission Corridors*, p. 6, footnote 2, presented at the June 18, 2008 Pre-Congestion Study Regional Workshop in Oklahoma City, Oklahoma. See Schedule JH-S7.

1 **either the AEP or Wabash contracts the same way. Why did Ameren Missouri not**
2 **classify the AEP and Wasbash agreements as RQ?**

3 A. I am not responsible for completing FERC Form 1 but I would note that in
4 response to Staff data request MPSC 53.1, our accounting staff stated that the AEP and
5 Wabash contracts were not reported as “RQ” on the FERC Form 1 because they “...did
6 not meet the definition of RQ since those transactions were not included in the supplier’s
7 (i.e. Ameren Missouri’s) system resource planning since Ameren Missouri’s last system
8 resource plan was prepared prior to the loss of the Noranda load and consequently prior
9 to entering into these contracts. Consequently, under the FERC Form 1 instructions these
10 transactions were not “RQ” for reporting purposes, although they are requirements
11 transactions.” It is obvious to me that the standard utilized by accounting did not permit
12 a transaction to be labeled “RQ” unless it appeared in the Company’s most recent
13 Integrated Resource Plan.

14 **Q. Are you suggesting that the Company’s accounting staff applied the**
15 **wrong standard in reporting contracts as “RQ”?**

16 A. Perhaps. The accounting department established procedures for completing
17 page 310 of Form 1 that used a simple litmus test to determine whether contracts should
18 be reported as “RQ”: whether the customer was mentioned in the Company’s most
19 recent IRP. Although it may be logical and understandable to use such a simple litmus
20 test in filling out a reporting form, as my testimony indicates, I believe that “system
21 resource planning” involves more than just the IRP. If additional system resource
22 planning activities had been taken into consideration, in my opinion the AEP and Wabash
23 contracts would have been reported as “RQ.” However, whether these contracts were

1 reported as “RQ” or not does not change the fundamental nature of these contracts; they
2 are requirements contracts because they serve the load obligations of the purchasers.

3 **Q. On page 6 of her direct/rebuttal testimony, Staff witness Lena Mantle**
4 **states: “To my knowledge, contracts like the AEP and Wabash contracts have never**
5 **been included in the calculation of jurisdictional allocation factors in any Ameren**
6 **Missouri rate case or in Ameren Missouri’s resource planning process.” Is Ms.**
7 **Mantle correct?**

8 A. No. As Ameren Missouri witness Gary Weiss explains in detail in his
9 surrebuttal testimony, contracts similar to the AEP and Wabash agreements have been
10 included in jurisdictional allocation factors in previous Ameren Missouri rate cases. For
11 example, contracts for wholesale power sales to Missouri electric cooperatives, including
12 Citizens, have been included in the allocation in previous rate cases. Also, contrary to
13 Ms. Mantle’s recollection, partial requirements contracts for wholesale power sales to
14 out-of-state regulated electric utilities, such as Arkansas Power & Light Company and
15 Illinois Power Company, have also been included in the allocation. In fact, the AEP and
16 Wabash contracts themselves were included in the jurisdictional allocation in Ameren
17 Missouri’s filing at the beginning of its last rate case, Case No. ER-2010-0036.

18 **Q. In her direct/rebuttal testimony in this case, Ms. Mantle claims that**
19 **someone at Ameren Missouri told her the phrase “long-term full and partial**
20 **requirements sales” used in the definition of “OSSR” that is at issue in this case was**
21 **limited to sales to municipal utilities. Is Ms. Mantle’s recollection correct?**

22 A. No, Ms. Mantle’s recollection is not correct. During her deposition Ms.
23 Mantle was asked who from Ameren Missouri told her the phrase “long-term full and

1 partial requirements sales” was limited to sales to municipal utilities and when the
2 statement was made. In response, Ms. Mantle said she could not recall who made the
3 statement or when. She also stated that she could find no notes of the alleged
4 conversation. Deposition of Lena Mantle, p. 24, l. 18-p. 25, l. 8; p. 26, l. 3-6. I would
5 also note that Ms. Mantle never requested that the Company modify its tariff language to
6 include this “Missouri municipality” restriction. Making this modification would have
7 been simple, especially if, as Ms. Mantle would have the Commission believe, the
8 Company actually intended that restriction to apply. I can only conclude from these facts
9 that Ms. Mantle’s recollection of this alleged conversation is faulty.

10 **Q. Does it make sense that someone from Ameren Missouri would have**
11 **stated that the Company intended that the definition of requirement sales used in**
12 **the FAC tariff be limited to transactions with municipalities?**

13 A. No, it does not.

14 **Q. Why do you believe such a statement does not make sense?**

15 A. I believe such a statement does not make sense – and that no one from
16 Ameren Missouri told Ms. Mantle such a limitation was intended – because Ameren
17 Missouri has never limited its long-term requirements sales to transactions with
18 municipalities. Certainly at the time the Company filed Case No. ER-2008-0318, the rate
19 case in which the FAC tariff at issue in this case was approved, the only long-term
20 requirements contracts then in effect were between Ameren Missouri and several
21 municipalities. But as I noted previously, in the past Ameren Missouri has entered into
22 long-term partial requirements contracts with cooperatives, such as Citizens, and other
23 investor-owned utilities, such as Arkansas Power & Light Company and Illinois Power

1 Company. Given that history and the prospect that Ameren Missouri could enter into
2 long-term requirements contracts with cooperatives or other utilities in the future, it
3 would have made no sense for anyone from Ameren Missouri to tell Ms. Mantle that the
4 phrase “long-term full or partial requirements sales” that was used in the company’s FAC
5 tariff was limited to sales to municipalities.

6 **Q. Do other parties agree that long-term full or partial requirements**
7 **sales are not limited to transactions between Ameren Missouri and municipal**
8 **utilities?**

9 A. Yes. During his deposition, Mr. Brubaker acknowledged that “if the
10 transaction is structured in such a way that it’s a requirements-type contract” that an
11 agreement with a non-municipal utility could be included in the scope of the phrase
12 “long-term full and partial requirements sales.” Deposition of Maurice Brubaker, p. 51, l.
13 24-p.52, l. 4. At pages 3-4 of his direct/rebuttal testimony, Mr. Fayne acknowledges that
14 “wholesale partial and full requirements contracts are long-term bilateral commitments
15 with municipalities *or other utilities*” (emphasis added.) He reinforced this in his
16 deposition answering “No” when asked if “as the definition of long-term full or partial
17 requirements sales, as it applies to Ameren, is it limited to contracts between Ameren and
18 municipal utilities.” Deposition of Henry Fayne, p. 42, l.13-16. In addition, during her
19 deposition, Missouri Energy Group witness Billie Sue LaConte stated that a long-term
20 full or partial requirement sale could involve an entity other than a municipal utility as
21 long as the contract “meets the definition of long-term full or partial requirements
22 contract.” Deposition of Billie Sue Laconte, p. 55, l. 25-p. 56, l. 4.

23 **Q. Please summarize your testimony.**

1 A. The terms of the AEP and Wabash contracts make them long-term partial
2 requirements sales contracts. They are long-term because their terms are greater than one
3 year, which is the demarcation point between long-term and short-term widely used in the
4 wholesale power markets and consistent with FERC's longstanding practice. There is
5 really no credible support for the argument that these contracts are not long-term.

6 The AEP and Wabash contracts are also "partial requirements" contracts because
7 they are firm contracts for capacity and energy that serve a portion of the load obligations
8 of the purchaser. This meets the definition of partial requirements sales commonly used
9 in the wholesale power markets. It is also consistent with the plain meaning of the term
10 "partial requirements" and this definition was endorsed by the depositions of many of the
11 witnesses in this case. Although it is not necessary to qualify as a partial requirements
12 sale, the loads served under these contracts were also included in Ameren Missouri's
13 system resource planning efforts, and the reliability of the service under the contracts is
14 unquestionably the same as, or second only to, the reliability of service provided to
15 Ameren Missouri's own ultimate customers.

16 Finally, it is clear that Ameren Missouri's FAC tariff could not have been based
17 on the 20-year-old definitions of "long-term" and "requirements service" found on p. 310
18 of FERC Form 1, since many of the municipal contracts that all parties agree qualify as
19 long-term requirements sales contracts do not meet these definitions.

20 **Q. Does this conclude your surrebuttal testimony?**

21 A. Yes it does.

